

# A New Aged Care Act: Exposure Draft

Stage 2 Public Consultation – open to February 2024

No	Response to consultation questions regarding...	Page Reference
	<b>Chapter 1 - Introduction</b>	<b>12-13</b>
1	<p><b>Are the revised Objects, Statement of Rights, and/or Statement of Principles clear and do they achieve their intent? If not, what changes are required?</b>                      We agree with the revisions and content and that they achieve the intent.                      Clients have responsibilities – can the Act include those also?                      There are often conflicts between provider and client with providers having WHS requirements (e.g. client asking for something that risks staff safety and legislative requirements – pets, lifting etc), that make withdrawal of service difficult when you can't support them                      Definitions and key concepts – meaningful and respectful activities to clients – more clarity required on that point.</p>	
2	<p><b>Some First Nations stakeholders indicated that they would also like to see a right to remain connected to Island Home (in addition to 'Country') included in the Statement of Rights? Do you agree? We would appreciate feedback from First Nations persons regarding their views on whether Island Home should be included here and in other relevant places in the Act.</b></p>	
3	<p><b>Do you consider the revised definition of high quality care will encourage providers to aim higher? Does it align with your future vision for aged care?</b>                      For those who have not been delivering care that meets this definition it should encourage a shift to a higher degree of care if providers are made accountable to this standard.                      It does align with our vision for aged care both now and into the future.</p>	
4	<p><b>Do you think a single service list will increase clarity of the services that the Commonwealth aged care system provides to older people?</b>                      Yes, we need to make things easy for older people.</p>	
5	<p><b>Are the proposed roles of supporters and representatives clear and distinctive? Please tell us why or why not.</b>                      Yes it is now clear and distinctive what these two roles are for. The very distinction that one supports but the other is in effect taking on the individuals role (as representative) makes it clear.</p>	

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6.	<p><b>Are you comfortable that the older person is only able to have representatives OR supporters? Are there situations where an older person, or their families and support networks, might want both a representative and a supporter?</b></p> <p>Yes, it would become very confusing if families or support networks would want both a representative and a supporter. There would be potential for conflict with decision making and provision of support by providers difficult to manage.</p>	
7.	<p><b>Registered providers will be required to interact with supporters and representatives to exchange information and in relation to a wide range of decisions that can be made by people accessing aged care services. What support will providers need to transition to these new arrangements?</b></p> <p>Clear direction on roles and responsibilities            What private information providers will need to be seeking for those representatives and supporters            What mechanisms are available for issues that arise            Education and training materials for providers            Information relevant for our clients</p>	
8.	<p><b>What sort of penalty should apply to supporters and representatives who do not comply with their duties, if any?</b></p> <p>They should no longer be allowed to be a supporter or representative if they fail to comply with their duties, which in effect means they are not undertaking the wishes of the older person they are meant to be supporting/representing. Not applying a penalty undermines the very purpose of the requirement of the Act.</p>	
9.	<p><b>Noting that representatives must always try to help a person to make their own decisions, should an older person be able to appoint a representative when they have decision-making capability but would prefer someone else to make decisions about their aged care? Please tell us why or why not?</b></p> <p>Yes they should, this extends their right to choice and control. They may well have sound decision making capability and the knowledge in many areas of their life but prefer for someone with more capacity to make aged care decisions on their behalf. Boundaries would need to be clear, and any areas of conflict managed by appropriate governance.</p>	

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	<b>Chapter 2 – Entry to the Commonwealth aged care system</b>	<b>31-32</b>
10	<p><b>What transitional arrangements would you like to see put in place to ensure there is a smooth transition to the new eligibility arrangements and to manage any impacts on people who do not meet the eligibility criteria?</b></p> <p>Clear transition framework that helps identify existing and new client inclusions and future eligibility. To be released as soon as possible.                      Aside operational framework clear financial framework (ie instructions to manage funding already in the pool).                      Extensive consultation and education with and for providers                      Communication to be available to be sent to clients (broader older persons in Australia also) explaining the new eligibility arrangements                      Providers do not want to be tangled in the process of existing client eligibility – suggest grandfathering current and existing arrangements</p>	
11	<p><b>Do you consider there are alternative services that can, or should, be made available for Aboriginal or Torres Strait Islanders persons aged 45-49 who are homeless or at risk of homelessness? Does aged care currently meet the needs of this particular group of individuals? We are keen to hear from First Nations stakeholders about their experiences or those of their family and community</b></p> <p>We do not believe aged care homes are suitable for homeless people or those at risk of homelessness. Based on the age group mentioned here, aged care doesn't currently meet the needs of an individual under the age of 50 identified as Aboriginal or Torres Strait Islander.</p>	
12	<p><b>Are you under 65 and currently accessing aged care services in the home or community? If so, we would welcome your feedback about whether you have considered other available services and your reasons for continuing to access aged care</b></p>	
13	<p><b>Is there anything else you would like to see specified in the legislation regarding the needs assessment process?</b></p> <p>No, it is similar to what currently occurs. The process will need to be articulated from an operational perspective but not incorporated in legislation.</p>	
14	<p><b>Are you comfortable with the proposed arrangements to maintain flexibility to vary services that a person can access under the CHSP when the Act is introduced? Note: Home Care Package arrangements are not impacted by these changes.</b></p> <p>This seems to be in keeping with current CHSP arrangements.</p>	

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15.	<p><b>Are you comfortable that there are clear arrangements in place under the new Act for a classification decision to be reviewed and changed if required?</b></p> <p>Yes, this appears to be similar to the current arrangements.</p>	
16.	<p><b>Do you have any feedback about emergency entry to aged care that you would like to see addressed in developing the alternative entry arrangements for the new Act?</b></p> <p>We support the notion of emergency entry arrangements however would request that any funding for delivery of services be provided in advance.</p>	

	<b>Chapter 3 – Registered providers, aged care workers and digital platform operators</b>	<b>45</b>
17.	<p><b>Do you consider that the proposed draft statutory duties on registered providers and responsible persons achieve the proposed policy intent?</b></p> <p>Yes it does achieve the policy intent. The changes, however, (noting support workers are now exempt due to first round consultation) may still disincentivise providers from registering and people at key management level taking a role in aged care.</p>	
18..	<p><b>Does the proposed definition of aged care digital platform appropriately identify the kinds of online platforms that should be regulated?</b></p> <p>Yes</p>	
19.	<p><b>What information should be displayed on aged care digital platforms to help protect people receiving services within the Commonwealth aged care system? What obligations should operators of digital platforms have to check information provided by aged care workers and registered providers? Can you identify any practical issues with operators validating the proposed information?</b></p> <p>The information suggested is appropriate, and as much as possible should replicate registered provider obligations. The issue of checking information becomes difficult when privacy issues are used as a reason for not providing clarification of workers and providers. How is a person appropriately identified when they make contact for this detail? It needs to be simple yet efficient and privacy controlled.</p>	
20.	<p><b>Do the proposed additional obligations on digital platform operators address the key risks and areas of oversight for online platforms?</b></p>	

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	<b>Chapter 4 – Fees, payments and subsidies</b>	<b>64</b>
<b>21.</b>	<b>How does the proposed structure of Chapter 4 read to you?</b> It makes sense, as is proposed.	
<b>22.</b>	<b>Do you think categorising the subsidies into person-centred and provider based reflects the person-centred approach to the new Act?</b> Yes	
<b>23.</b>	<b>Are there any other improvements you would like to see made to the subsidy framework for the new Act?</b> No	
<b>24.</b>	<b>Do you support registered providers being given access to specific additional Commonwealth funding which must be used for a particular purpose, rather than to deliver specific aged care services?</b> Yes	

	<b>Chapter 5 – Governance of the aged care system</b>	<b>69</b>
<b>25.</b>	<b>Do you think there are any additional functions missing from the role of the Commissioner?</b> There are no functions missing from the role. Although it should be clearer who in the Commission is responsible for restrictive practice regulation.	
<b>26.</b>	<b>Is it clear how the roles of the System Governor and Commissioner differ, but also fit together, as regulators of the aged care system?</b> Yes it is clear that the roles work together to enable a well functioning regulatory environment, but have clearly distinct functions and responsibilities.	
<b>27.</b>	<b>Do you think the proposed arrangements for the Complaints Commissioner clearly demonstrate their role in the aged care system?</b>	

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	The Exposure Draft indicates both the Commissioner and the Complaints Commissioner have functions relating to complaints and it is not clear who has responsibility for the varying functions and responsibilities. It is noted the Commissioner can delegate complaints functions, supposedly to the Complaints Commissioner. Why have both references? – needs to be clear.	
28.	<p><b>Do you think there would be a benefit to requirements regarding liquidity and capital adequacy extending to home services providers, to provide continuity of care and monitor financial viability and sustainability in the home services sector?</b></p> <p>No we do not accept that there would be a benefit to extend this to home services sector. Whilst home services providers need to manage financial circumstances including liquidity, capital and asset management, we are not putting at risk the livelihood – accommodation, meals, and other aspects of care that applies to residential clients. A simple review of a home care providers annual audited statements is sufficient to know the equity position of a provider and their financial sustainability.</p>	
	<b>Chapter 6 – Regulatory mechanisms</b>	<b>76</b>
29.	<p><b>Do you consider the expanded powers made available to the Commissioner will ensure they can take a pro-active and risk-proportionate approach to the regulation of the sector?</b></p> <p>Yes it is considered appropriate. The risk proportionate approach is only defined by the areas worded notices and other notices. It isn't clear from other parts how the risk proportionate approach will apply.</p>	
30.	<p><b>Do you have any concerns about the new powers for the Commissioner to enter a residential care home without consent or a warrant? Are there any additional safeguards you think should be put in place?</b></p> <p>This requirement isn't unreasonable, no concerns at all, noting we are a home care provider.</p>	
31.	<p><b>Does the new Act provide sufficient clarity regarding the role of the Department In managing the integrity of the aged care program? Is there anything you would like to see included in the new framework to ensure program assurance is maintained?</b></p> <p>No, the Act doesn't provide clarity at all regarding the role of the Department.</p>	
32.	<p><b>What are the advantages and disadvantages of the proposed new critical failures powers? Are these powers necessary to ensure urgent and decisive action can be taken to protect older persons in residential care and maintain service continuity?</b></p> <p>Advantage – third party external viewpoint, new eyes with a sole focus on sorting the issues Disadvantage – Potential unjust, requisite skills need to be available</p>	

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33.	<p><b>Are the conditions identified to trigger the critical failures powers reasonable, or are there other conditions that could be considered?</b> They seem reasonable enough</p>	
	<p><b>Chapter 7 – Information Management</b></p>	83
34.	<p><b>Do you agree with the proposed scope of protected information under the New Act? What information do you think should be protected under the new Act?</b> Yes we agree with the proposed scope. However, where a client that is receiving services has been discharged by the provider due to a serious criminal act, this should be able to be available to new providers where this poses a significant risk to their staff. Likewise staff who have been terminated by a provider due to conduct issues, negligence, breaches of legislation etc – there should also be a mechanism for this information to be available to providers.</p>	
35.	<p><b>What challenges could there be with the proposed whistleblower framework, and do you have any proposed solutions?</b> How does the person receiving the disclosure substantiate or justify the reasonableness of the issue if it is being made anonymously, and how do they sufficiently investigate? What is ‘reasonable grounds’? This is all a bit vague!! Solution – the whistleblower framework needs to ensure sufficient information is provided by the person so that the situation can be substantiated, rather than sending providers down a rabbit hole to defend their circumstances.</p>	
36.	<p><b>What other barriers are there to people disclosing information about what they observe in the aged care system, and how can these best be overcome?</b> Non timely responses by regulators to their specific issues when they are made. Family interventions / elder abuse by their own members of family. Ie. Having alternative reasons for not wanting their issue known. Mechanisms and support for providers where this occurs.</p>	

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	<b>Chapter 8 – Miscellaneous</b>	<b>89</b>
37.	<b>Do you have any concerns about review rights under the current aged care legislative framework that you would like to see addressed under the new Act?</b> No concerns	
38.	<b>Are there any decisions that should only be delegated to staff of senior levels by the System Governor and the Commissioner?</b> Those relating to critical decisions affecting providers.	
	<b>Chapter 9 – The reform timeline and readiness support</b>	<b>95-96</b>
39.	<b>Do you support a phased approach to reform?</b> Yes.	
40.	<b>Do you consider this will allow for staged implementation and more time for consultation on key changes? Or do you consider that it will add complexity and prove challenging for the aged care sector?</b> Staged implementation and more consultation is important. And it will allow for providers to prepare themselves for the reforms and to ensure all necessary education, tools and resources are available to both staff and clients. It is essential that the stages are implemented in a commonsense way.	
41.	<b>What do you consider to be the benefits that will be delivered via each phase of the reforms?</b> Clarity for provider and clients Education and training opportunities Communication touchpoints Preparation for providers	
42.	<b>Do you have any views on the best approach to schedule the implementation of these important reforms to help ensure a smooth transition and compliance with the new legislative framework?</b> Yes. It would be helpful if they are scheduled in a way that provides realistic timeframes for implementation and also aligned with financial year and budgetary preparation timeframes. Budget development is undertaken from Feb-Mar with workshops and	



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	approval processes in readiness for Board sign off and implementation from 1 July. Changes impacting on budgets should therefore be known to include in budget drafts by early in a new year, at latest, for introduction into next financial year.	
43.	<p><b>Are there any particular reform initiatives that you consider must be prioritised for commencement? Alternatively, are there any initiatives that you think would benefit from delayed commencement?</b></p> <p>Provided realistic timeframes are in place and education and information is sufficient, no priority preferences.</p>	
44.	<p><b>What type of activities will you need to do to transition to the new aged care system (e.g. structural changes, staff training etc) and how much time will you need for these activities prior to the new system taking effect?</b></p> <p>Restructure – current staff are structured for current funding and service arrangements            Training and education of staff            Education of clients            Governance requirements for Board of Directors            Policy changes            Realistically these types of changes take significant time – 12 month lead time would be ideal to be prepared.</p>	
45.	<p><b>Are there factors that may impact your readiness for transition that you would like the Government to consider?</b></p> <p>Yes, staffing and funding are two factors that may impact our readiness. These reforms are welcomed, however there are no additional roles to assist in the transition and likewise no additional funds to create transition roles to assist. All must be done whilst still maintaining current practices and service delivery levels to clients, essentially ‘off the side of the desk’.</p>	
46.	<p><b>Do you have any concerns about the sector being ready to transition to the new aged care system from 1 July 2024? How much time do you think the sector realistically needs?</b></p> <p>Yes, realistically, as per the comments above, a full 12 months with information forthcoming to prepare for a 1 July 2025 implementation would be preferred and most likely more successful. So – providers can have documentation, communication, structures, policies, and other requirements in place during that time ready for an ‘at latest’ date of 1 July 2025. Eg if ready earlier implement new system changes, if not ready 1 July 2025 is final.</p>	

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