



# A New Aged Care Act: Exposure Draft

The Office of Chief Nurse and Midwifery Officer (OCNMO) of the ACT thanks the Department of Health and Aged Care for the opportunity to provide feedback on the Exposure Draft of the new Aged Care Act. Below is our response to the following questions:

## Chapter 1

1. Are the updated objects, Statement of Rights and Statement of Principles clear? Do they meet their aims?  
**Yes, it's clear and comprehensive. It aimed at ensuring quality and safe care for older people accessing funded aged care services.**
2. Some First Nations stakeholders would also like to add a right to stay connected to Island Home in the Statement of Rights. This would be in addition to 'Country'. Do you agree? We would like to get feedback from First Nations people about whether we should include Island Home in the rights and in other parts of the new Act.  
**ACT OCNMO have no comment on this as this is a matter for the First Nations stakeholders to provide feedback on.**
3. Do you think the updated definition of high-quality care will encourage providers to do better?  
**The updated definition of high-quality care will encourage providers to do better and aim higher. However, it could further strengthen the definition if "Respecting the individual's spirituality/religious background and sexuality" could also be included in Section 19, Part 2, Chapter 1.**
4. Do you think a single list of services will make it clearer which services the funded aged care system provides? **Yes**
5. Are the proposed roles of supporters and representatives clear? **Yes, it is clear.**
6. Do you think it's okay that an older person can only have either representatives or supporters? **Yes, as this gives more option to the older person.** Are there times when an older person, or their families and support networks, would want a representative and a supporter? **Yes, we anticipate that there would be times when an older person would want a representative and a supporter.**
7. Providers will need to interact with supporters and representatives about a range of decisions that people using their aged care services can make. What support will providers need to move to these new arrangements? **No comment as this is a matter for the providers to provide feedback on.**  
What sort of penalty should apply to supporters and representatives who don't carry out their duties, if any? **Fines and restrictions from being supporters and representatives could be applied if they do not carry out their duties. Following legal processes, Imprisonment should also be considered if criminal offence has been committed.**



8. Representatives must always try to help a person to make their own decisions. But sometimes the older person might not want to make the decision, even if they are able to. Should an older person be able to choose to have a representative, if they are still able to make their own decisions? Please tell us why or why not. **Yes, an older person should have the option of choosing to have a representative, even if they are still able to make their own decisions. Mild memory loss and slower thinking is a normal part of ageing, but most older people remain capable of making their own decisions. Throughout life, it is generally accepted that individuals may have a representative present with them during difficult conversations and decisions to assist them.**

## Chapter 2

9. What plans would you like to see put in place to make sure there is a smooth change to the new rules around who is eligible for aged care services? And to manage how this affects people who don't meet the rules? **The Exposed Draft in the new Act details the steps an individual needs to undertake to be approved to access aged care services. However, ACT OCNMO would support an alternative entry pathway to allow individuals to access services before they apply for aged care services or get an assessment. For example, in emergency situations or if there is likely to be a long wait for an assessment.**
10. Do you think there are other services that can or should be available for Aboriginal or Torres Strait Islander people aged 45 to 49 who are homeless or at risk of becoming homeless? Do the current aged care services meet their needs? We would like to hear from First Nations people about their experiences. Or the experiences of their family and community. **OCNMO believes that Aged Care Services should not be used to address homelessness. With the shortage of residential aged care positions currently, these positions should not be used to addresses issues outside of aged care. Homelessness is a separate issue with its own specific complexities and requires dedicated funding.**
11. Are you under 65 and using aged care services in your home or community? If so, have you thought about using other available services? For example, services through the NDIS? Why do you continue to use aged care services? We welcome your feedback. **No Comment.**
12. Is there anything else about the needs assessment process that you think we should include in the laws? **Nothing to add.**
13. Are you comfortable with the proposal to maintain flexibility to vary services that a person can use under the Commonwealth Home Support Programme (CHSP) when the Act is introduced? Note: these changes won't affect Home Care Packages. **Yes**
14. Is it clear in the new Act that a person can have their classification reviewed and changed if needed? **Yes, this is clear.**
15. We will develop alternative ways to enter the aged care system in the future. Do you have any feedback about emergency entry to aged care? Is there anything you would like us to address when we develop the alternative entry arrangements for the new Act? **ACT OCNMO have no comment about emergency entry to aged care as no detailed information has been provided in the Exposure Draft of the new Act.**



## Chapter 3

16. Do you think the draft statutory duties on registered providers and responsible persons meet the aims of the policy? **Yes**
17. Do you think the definition of aged care digital platform correctly describes the kinds of online platforms we should regulate? **No comment.**
18. What kind of information should aged care digital platforms show? For example, to help protect people who use aged care services. What responsibility should people who run digital platforms have to check information provided by aged care workers and providers? Can you think of any practical issues with digital platforms checking and confirming the information? **No comment.**
19. Do the proposed responsibilities on digital platform operators address the key risks and areas of oversight for online platforms? **No comment.**

## Chapter 4

20. What do you think about the structure proposed in Chapter 4? **Chapter 4 in the Act is yet to be drafted and remains blank. However, the proposed structure in Chapter 4 which is intended to cover means testing, subsidies, and payments and fees arrangements will make these provisions easier to understand and find in the new Act.**
21. Do you think having ‘person-centred’ and ‘provider-based’ types of subsidies reflects the person-centred approach of the new Act? **No comment as no detailed information regarding these two types of subsidies have been provided in the new Act.**
22. Are there any other ways you think we could improve the subsidy framework for the new Act? **No comment as no detailed information regarding the subsidy framework has been provided in the new Act.**
23. Do you agree with registered providers getting access to extra Government funding that they can use for a particular purpose? This would be rather than using it to deliver specific aged care services. For example, a one-off subsidy payment for extra equipment in a pandemic situation. **Yes, we agree.**

## Chapter 5

24. Do you think the role of the Commissioner should include other activities? **The Commissioner’s role, as outlined in the Act, focussed on the rights of older persons and aims at ensuring safe and quality care to older Australians in the performance of these functions. The Commissioner’s functions have been grouped into four succinct functions – safeguarding, engagement and education, complaints, and registration of providers functions. At this stage, the ACT OCNMO could not determine any other activities that can be included in the role of the Commissioner.**
25. Is it clear how the roles of the System Governor and Commissioner are different? **Yes, it is clear.**
26. Do you think the arrangements for the Complaints Commissioner clearly show what their role is? **Yes, it does.**



27. Do you think requirements for providers to make sure they maintain stable and secure finances should also apply to the home services sector? For example, to protect ongoing and consistent care and check that finances are sustainable in that sector? **Yes, there would be a benefit to requirements regarding liquidity and capital adequacy be extended to home services providers. This will protect continuity of care to the older person and monitor financial viability and sustainability in the home services sector.**

## Chapter 6

28. Do you think the Commissioner's added powers will make sure they can regulate the sector in a proactive way that balances risk? **Yes**
29. 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 other safety measures you think should be put in place? **Recommendation 97 of the Royal Commission into Aged Care recommends that if there is an immediate and severe risk to the safety, health and wellbeing of people living in a residential care home, then the Commissioner should have the statutory power to enter it without consent or a warrant. The ACT OCNMO support this recommendation for monitoring and investigation purposes.**
30. Does the new Act explain the System Governor's role in managing the integrity of the aged care program clearly enough? Is there anything you would like us to include in the new framework to make sure we make sure aged care funding is used correctly? **The new Act provide sufficient clarity regarding the role of the Department of Health and Aged Care in managing the integrity of the aged care program. There is nothing we would like to add in the new framework to ensure program assurance is maintained.**
31. What are the pros and cons of the proposed new critical failures powers? Are these powers needed to make sure the Commissioner can protect older people and keep residential care homes if the provider gets into difficulties? **No comment as Part 11 which pertains to Critical Failures Powers is yet to be drafted and no detailed information has been provided in the Exposure Draft of the new Act.**
32. Are the reasons listed for using the critical failures powers fair? Or are there others we could consider? **No comment as Part 11 which pertains to Critical Failure Powers is yet to be drafted and no detailed information has been provided in the Exposure Draft of the new Act.**

## Chapter 7

33. Do you agree with the scope of protected information under the new Act? **Yes.**
34. What challenges could there be with the whistleblower framework? How do you think we could solve these challenges? **The whistleblower framework contained in the Exposure Draft of the new Act does not include dealing with complaints that are deemed vexatious, malicious or knowingly false.**
35. What else might stop people reporting about what they experience in the aged care system? How can we make this easier for people? **ACT OCNMO cannot see any other barriers for people that might stop them from disclosing information about what they observe in the aged care system.**



## Chapter 8

36. Do you have any concerns about the process of asking for an independent review body to review a decision under the current aged care laws? Would you like any concerns addressed in the new Act? **It is proposed that the new Act will provide for a consistent process to all reviewable decisions. If an individual is still not happy with decision given by the System Governor and the Commissioner, they can ask an independent body to review the decision. These provisions are currently not included in the Exposure Draft and so we cannot comment on the content of "Part 2 – Review of Decisions" as no detailed information has been provided. However, in principle, the ACT OCNMO supports the notion of older people having the option of going to a new federal administrative review body to have their reviewable decision reconsidered.**
37. Are there any decisions that the System Governor and the Commissioner should only assign to staff of senior levels? **No comment**

## Chapter 9

38. Do you agree with the new Act being developed in phases? **Yes, we agree**
39. Do you think this approach will allow for more time to consult on key changes? Or do you think this will be more challenging for the aged care sector? **No comment, as this is a matter for the Registered Providers, aged care workers and people who access aged care services to provide feedback on.**
40. What do you think will be the benefits delivered through each phase of the changes? **No comment, as this is a matter for the Registered Providers, aged care workers and people who access aged care services to provide feedback on.**
41. Do you have any ideas about the best way to schedule putting these important changes in place? For example, to help support a smooth transition and help people comply with the new laws? **No comment, as this is a matter for the Registered Providers, aged care workers and people who access aged care services to provide feedback on.**
42. 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? **No comment, as this is a matter for the Registered Providers, aged care workers and people who access aged care services to provide feedback on.**
43. What will you need to do to get ready for the new aged care system? **No comment, as this is a matter for the Registered Providers, aged care workers and people who access aged care services to provide feedback on.**
44. Is there anything that will affect you getting ready for the new aged care system? **No comment, as this is a matter for the Registered Providers, aged care workers and people who access aged care services to provide feedback on.**
45. Do you have any concerns about the sector being ready to move to the new aged care system from 1 July 2024? **Whilst the OCNMO supports the implementation of having at least one registered nurse on duty at all times at an approved residential care home, we are concern how providers will be able to recruit the nursing workforce by 1 July 2024 given of the shortages we are experiencing at the moment.**



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