



# A new model for regulating Aged Care

## Consultation Paper No.1



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# Foreword

Regulation is one of the main mechanisms that governments use in protecting the health and safety of the community. In the context of aged care, the ultimate aim of regulation is to protect aged care recipients from harm, support and promote positive health and wellbeing outcomes, and incentivise providers to deliver safe and high quality care for older Australians.

The term aged care, as used in this document, refers to the delivery of subsidised care and support to older Australians. Services range from support for people to continue living independently at home to care provided in a residential aged care facility on a respite or permanent basis. Given the impact this care has on the lives of older Australians and their families, strong regulation is needed to ensure that the care is of high quality and there are effective safeguards in place to protect the health and safety of people receiving the care.

The Australian Government has primary responsibility for regulating aged care. State and Territory government regulation can also apply to, or have an impact on, aged care.

During 2020–21, around 1.5 million Australians received aged care support and services. The Australian Government expects that the demand for aged care and services, and the number of care providers, will greatly increase in future due to Australia's ageing population.

Various reviews into aged care, including the [Royal Commission into Aged Care Quality and Safety](#) (Royal Commission), have found that the aged care system needs significant improvement. The Department of Health and Aged Care (the Department) is leading the development of a wide range of reforms including a new Aged Care Act (the new Act) and regulatory model.



## **The new Aged Care Act and regulatory model**

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More than 50 of the 148 recommendations of the Royal Commission require the introduction of supporting legislation. An extensive program of legislative reform has commenced which will include the development of the new Act. The new Act will put older Australians and their needs at the centre of the legislative framework and underpin generational reform of aged care in Australia.

The Royal Commission also highlighted that the current regulatory framework is no longer suitable and that reforms to date have been piecemeal. A modern and fit-for-purpose regulatory model will be introduced to underpin the new Act and to support other reforms aimed at providing safe and high quality care and services for older Australians.

### **Related activities and reforms**

The design of the new regulatory model is being undertaken concurrently and collaboratively with related activities and reforms in the aged care sector. These include:

- [A new Aged Care Act | Australian Government Department of Health and Aged Care](#)
- [Reforming in-home aged care | Australian Government Department of Health and Aged Care](#)
- [Aligning regulation across the care and support sectors | Australian Government Department of Health and Aged Care](#)

Further information on aged care reforms is available on the [Department's website](#) and the [Ageing and Aged Care Engagement Hub](#).

# The purpose of this paper

This paper opens consultation with stakeholders to inform a new model for regulating aged care, which is referred to in this paper as the 'Regulatory Model'. This paper is the first in a series of consultation papers that will develop the different components of the model in more detail.

This paper is aimed at a broad audience, including older Australians, their families and carers, providers, workers and other groups and individuals with an interest in aged care regulation. Some parts of the paper may be more relevant to particular audiences than others.

This paper provides a high-level, end-to-end outline of the new model. It has three main parts:

## **1. How the new model for regulating aged care will protect the safety of older Australians**

This section describes how the new model will enhance protections for older Australians through regulation that is rights-based, person-centred, risk-based and supports continuous improvement.

## **2. An overview of the new model**

This section covers the different parts of the new model including the objectives, regulatory safeguards and tools, regulatory intelligence and governance.

## **3. Applying the new model**

This section describes expected changes arising from the new model and provides a high-level overview of how the regulatory tools will be applied under the model.

Some parts of the paper describe complex matters using technical language. A glossary is included at the end of this paper to explain some of the terms used. A user-friendly summary and a plain English version of this paper are available, visit the [designing a new approach to regulating aged care website](#).

## Who might find this paper interesting?

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## Sharing your feedback on this paper

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We welcome your feedback and will use it to inform the design of the new regulatory model to make sure it:

- is fit-for-purpose.
- addresses current challenges.
- allows for flexibility to address future challenges and changes in the aged care system.

**We welcome your feedback on this Consultation Paper No.1**

To share your views, visit the [Ageing and Aged Care Engagement Hub](#).

# The design approach

The Department is taking a staged approach to the design and consultation process of the new regulatory model as outlined below. This ensures stakeholders can get involved throughout the whole design process from high level principles and approaches to the rollout of the new model.

## **Stage 1: ‘Concept design’ – planning the new model [complete]**

The Department published a Concept Paper in February 2022 setting out concepts for designing the new model. The Concept Paper provides context and background to this Consultation Paper. You can read the Concept Paper here: [Concepts for a new framework for regulating aged care](#) or the Plain English version here: [Concepts for a new framework for regulating aged care – Plain English](#). The Concept Paper outlined the staged consultation approach we are taking to seek the views of all interested stakeholders.

## **Stage 2: Developing details of how the new model will operate [*in progress*]**

This stage includes the release of this paper to give you a high-level, end-to-end picture of a new model for regulating aged care. It discusses regulatory safeguards and tools that are the building blocks of the proposed model and the concepts and principles behind the proposed approach. The Department will explain the model, its safeguards and tools in further detail in the papers described in Stage 3.

## **Stage 3: Developing structures to support the new model**

We will consult with you on specific regulatory safeguards and tools of the model. This consultation will occur through separate consultation papers. These papers will expand on the tools introduced in this paper, how they could work in practice and what changes the sector could expect.

## **Stage 4: Working out how to put the new model into operation**

We will consult with you on what transition arrangements need to be in place to support the sector to move to a new regulatory model.

# How the new regulatory model will keep older Australians safe

On aged care regulation, the Royal Commission noted that:

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**“Ineffective regulation has been one of the contributing factors to the high levels of substandard care in Australia’s aged care system. Regulation should seek to prevent harm to people receiving aged care services and ensure that instances of substandard care are detected and addressed.”<sup>1</sup>**

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Aged care is currently regulated under the limitations of the existing legislative framework, which includes provisions that are out of date and no longer fit-for-purpose. The current approach needs to be strengthened to allow the Regulator to implement a modern and contemporary approach to regulation. At the core of this approach will be the safety and wellbeing of older Australians.

The Concept Paper identified several challenges with the current legislative framework:

- Aged care legislation is structured around approved providers rather than safeguards for older Australians, resulting in a regulatory approach that is provider-centric.
- There is a lack of legislative alignment between aged care and the broader care and support sector. This creates unnecessary barriers to providers and workers across the entire sector.
- A uniform approach to service types means that the Regulator is not able to consider the different risks arising from different types of care and services.
- Legislation requires all approved providers to be corporations or state/territory governments, but some services could be supplied by individuals, partnerships or other business structures.
- The current requirements for assessing providers against their responsibilities does not incentivise excellence, innovation and continuous improvement.

The new Act will address these existing challenges and position older Australians and their needs at its centre. In doing so, the introduction of a more contemporary and fit-for-purpose legislative framework will enable a stronger regulatory approach that better supports the provision of safe and quality care and strengthens protections for aged care recipients in line with the expectations of the Royal Commission.

1 Royal Commission into Aged Care Quality and Safety, [Final Report – Volume 1: Summary and Recommendations](#), 1 March 2021 p 136

## Regulatory stewardship

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The new model will adopt regulatory stewardship to ensure that aged care regulation remains fit-for-purpose over time and can accommodate changing risks, needs, service types, service delivery or funding models. Under stewardship:

- all stakeholders in aged care are the stewards of aged care regulation and play a key role in maintaining the ‘health’ of the regulation throughout its life cycle, including the design, implementation, monitoring and review stages. It involves proactive, ongoing maintenance and continued improvement of the regulation, in line with evolving best practice and innovation.
- a whole-of-system approach is applied which recognises that all parts of the aged care system are interconnected, and all stakeholders work together proactively and collaboratively to achieve the desired outcomes.

Key stakeholders in aged care, who collectively contribute to regulatory stewardship are:

- **Older Australians, their families and carers** whose needs and values are the foundation of our aged care system. Their lived experience and feedback inform the Government, the Department, the Regulator and aged care providers whether the system meets their needs and identify areas for improvement.
- **The Government** which sets the laws and provides strategic policy direction and funding. The Government’s decision making is informed by advice from the Department and Regulator and input from other stakeholders.
- **The Department of Health and Aged Care** which delivers the government agenda, leads policy development, implements agreed policy, undertakes strategic reviews and reforms, and provides advice to government. The Department works closely with the Regulator and other stakeholders and with communities across states and territories.
- **The Regulator**, currently the Aged Care Quality and Safety Commission, which administers the laws within the policy and legal framework set by the Government. The Regulator has oversight over the providers and workers delivering care to safeguard older Australians receiving aged care. As part of this role, the Regulator works collaboratively with the Department and other regulators, listens to and addresses concerns, and works with providers to improve compliance, sector capability and the quality and safety of aged care services.
- **An Inspector General of Aged Care** is also being established with a broad scope to review all aspects of the aged care system, including identifying issues relating to the performance of providers and treatment of people who need care.
- **Providers and workers** who provide aged care support and services to older Australians. They provide their views to inform policy development, implementation and reviews. They work with the Regulator, the Department and other providers to understand the regulations that apply to them to improve compliance, to share best practice for service excellence and to identify areas needing improvement.
- **Peak bodies, advisory and interest groups**, who represent older Australians, providers, advocates and community members. They provide a network of support and information sharing and a voice for specific groups to government and the Department.

## Establishing foundations for a new regulatory model

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An effective regulatory model needs to have clear foundations.

The four proposed foundations of the new regulatory model are:

**1**

**Rights-based approach** – ensuring protections are in place to uphold the rights of older Australians.

**2**

**Person-centred approach** – the needs, goals, values and preferences of older Australians are at the heart of the regulatory model.

**3**

**Risk-based approach** – strengthening the regulatory response through an aged care regulatory model based on risk.

**4**

**Continuous improvement approach** – an ongoing commitment to enhancing the capability and quality of the aged care sector.



## Foundation 1 | Rights-based approach

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The Royal Commission recommended that the new Act should enshrine the rights of older Australians who are seeking or receiving aged care services.

A rights-based approach to the new Act is proposed, with the Government exploring how rights can be incorporated into the new framework in such a way that they are both aspirational, but also have practical impact for older Australians as intended by the Royal Commission.

It will be important that the revised regulatory model, which will be a critical component of the new Act complements any new ‘rights-based’ provisions in the new Act – ensuring that the wants and needs of older Australians are valued, and that they are protected from harm, abuse and neglect when receiving aged care services.

The rights of older Australians to be treated with respect and dignity will underpin all aspects of the model, including regulatory safeguards and tools.

### **The rights-based foundation will help older Australians to:**

- understand their individual rights as recipients of aged care services.
- feel confident that providers and the Regulator are overseeing the quality of their care.
- be protected against unfair or discriminatory practices when receiving care and services.
- feel assured their care is appropriate for their diverse experiences and backgrounds, and they will be treated with dignity (regardless of their levels of ability or independence).
- voice concerns and make complaints about their care and services without fear of retribution and, along with their family and carers, feel their concerns will be heard and acted on.



## Foundation 2 | Person-centred approach

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A person-centred approach ensures that the unique needs, goals, values and preferences of individual older Australians eligible for aged care are at the heart of the model and its design. The design of the model will focus on understanding the expectations of older Australians receiving care and incentivise providers to deliver safe and high quality care.

In practice, the person-centred approach will help older Australians feel engaged and informed when making choices about the providers they engage with and the services they receive. Their care experience should be respectful and responsive, centred around their preferences, values, needs and maintain their dignity. Service delivery should be seamless, with care supplied based on an individual's needs, rather than centred on compliance requirements.

It is essential that the model is co-designed with older Australians to give effect to this foundation. This will also help the model remain fit-for-purpose and responsive to the changing needs of older Australians and the sector over time. The model must be flexible enough to be able to continue to protect older Australians in the future while responding to changes in their service needs.

### **The person-centred foundation will help older Australians to:**

- have access to safe and quality care and services that promote a positive experience.
- feel supported in navigating the aged care system and informing its improvement.
- access the information they need to make informed choices about the providers they engage with and the services they receive.
- feel empowered to make decisions that are right for them.
- have equitable access to culturally appropriate care and services when they are needed.

## Foundation 3 | Risk-based approach

The new model for regulating aged care will be based on preventing, detecting and correcting risks. Through risk identification and responsive regulation, the risk-based foundation will establish appropriate regulatory safeguards and tools that proactively **prevent** the occurrence of risk and embed systems and processes to **detect** and **correct** issues that present risks of harm and safety to older Australians. Figure 1 below provides an overview of these concepts as part of the risk-based approach.



Figure 1. An overview of the approach to preventing, detecting and correcting risks in aged care.

In an ideal regulatory environment, effort is directed toward proactively preventing risks. However, it is important that the risk-based approach establishes effective risk management practices that enable risks to be detected, and where they have eventuated, promptly addressed through corrective actions. The use of regulatory intelligence also plays an important role in proactively managing risks, which is discussed in further detail later in this paper.

The Regulator already has tools to help identify issues early and strengthen its understanding of the risks of aged care providers. New tools and approaches will continue to be designed under the new regulatory model to support a contemporary approach to risk-based regulation.

Through preventing, detecting and correcting risks, the regulatory model will better manage and respond to aged care risks in line with the recommendations of the Royal Commission. This means the model will:

- promote the rights of older Australians and protect their dignity, choice and independence.
- maintain high quality outcomes for older Australians receiving care and services, building confidence and security in the aged care system.
- support best practice in service delivery to strengthen protections and improve outcomes for older Australians receiving aged care.
- ensure a robust aged care sector through registration and screening processes that make sure providers and workers participating in the sector are suitable.

The new aged care regulatory model will consider risks arising from the safety, quality and financial aspects of aged care service delivery. This paper focuses on the safety and quality aspects of the regulatory model. The Department is continuing to work through financial risks under a prudential framework as part of connected aged care reforms. As financial risks can contribute to quality and safety risks, the design of the model will consider the prudential design that is also underway. At a high level, the approach to designing the model for quality and safety can extend to the prudential component. However, there will be some critical differences in the way we consider risk arising from financial matters.

The risk-based foundation will be achieved through a risk-proportionate approach. As described in the Concept Paper, a risk-proportionate approach to regulation involves regulatory oversight, including monitoring, compliance and enforcement activities, being proportionate to the risk that is posed to older Australians. Risks are considered from a number of sources, including:

- the risks associated with the types of aged care services delivered.
- the setting where aged care services are provided.
- the providers delivering the aged care service.

A risk-proportionate approach does not mean that there is a reduction in regulatory oversight or a lessening of protections. Rather, it promotes a rebalancing of regulatory effort towards areas where the risk of harms to older Australians is greatest.

**The risk-based approach will help older Australians to:**

- have confidence that the regulatory model has the flexibility to ensure higher risk services have the appropriate level of regulatory oversight.
- have greater choice and access to the services they need by streamlining market entry requirements for providers of lower risk care and services.
- feel protected with the right regulatory safeguards and controls in place to manage different types of risk.

## Foundation 4 | Continuous improvement approach

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The design of the new regulatory model will facilitate continuous improvement through an ongoing commitment to improving the quality and safety of care and services delivered to aged care recipients. This foundation aims to improve the performance of the aged care sector by:

- recognising and incentivising providers and peak bodies to support their members to continuously improve their performance.
- encouraging providers to build their capacity and bolster their capability through information sharing and continuous improvement.
- facilitating innovation by searching for opportunities that enable more contemporary and fit-for-purpose practices.
- promoting the delivery of aged care in line with best practice principles.

Continuous improvement in aged care means regularly reviewing, and subsequently enhancing, processes and practices to make sure the delivery of care and services remain relevant, effective and efficient over time. Under this foundation, there will be a shift from a regulatory environment that primarily focuses on compliance to one that also promotes continuous improvement and incentivises performance excellence. Regulatory stewardship will also play an important role in promoting continuous improvement.

The new regulatory model will continue to require aged care providers to establish continuous improvement processes, building off the current requirements for providers to have plans for continuous improvement in place. These measures will help providers to better assess, monitor, and improve the quality and safety of care and services. The Regulator may also identify areas for improvement by tracking sector and provider performance through regulatory activities such as performance assessments, monitoring activities and reviewing complaints. The data and insights gathered from provider reporting can be used to continuously develop and improve the capability of aged care providers.

Reflecting on lessons learned from past performance represents a core component of continuous improvement. The regulatory model will promote a culture of learning through information sharing and supporting aged care providers to observe for risks and insights from their experiences in delivering care and services. Corrective actions taken to address risks and improve the quality of services are an important input into facilitating continuous improvement and ongoing capability building across the sector. All these insights and lessons learned will help aged care providers in planning and implementing continuous improvement initiatives.

Continuous improvement may range from small, incremental changes to more significant, large-scale and strategic reforms. No matter how big or small an initiative may be, improvements aim to bring about changes that resolve problems and achieve better outcomes for older Australians.

The needs and expectations of aged care recipients will be at the centre of the approach to continuous improvement. Opportunities for service improvement will include feedback collected from aged care recipients on their experience in receiving care and services. In doing so, the delivery of aged care will be responsive to change over time, so providers are able to continually deliver high quality and safe aged care services that are contemporary and impactful.

To enable this foundation, further consideration is required to understand the ways in which the aged care system can better incentivise excellence. Insights will be drawn from other sectors and industries where continuous improvement has been successfully embedded and how similar approaches could be used in aged care.

**The continuous improvement foundation will help older Australians to:**

- play an active role in contributing to the continuous improvement of the aged care system by sharing their input and having their feedback acknowledged and responded to.
- receive care and services that are reflective of their changing needs and continue to meet their expectations over time.
- feel supported by an aged care sector that is outcomes-driven and person-centred.
- have confidence that the right systems are in place for aged care providers to monitor and evaluate their performance and to take prompt actions that lift the quality of services provided.
- feel assured by a regulatory environment that encourages providers and their workforce to build a culture for undertaking innovative practices and ongoing improvement.

# An overview of the new model for regulating aged care

The new model for regulating aged care will be built on these four foundations and includes:

- an overarching aim.
- four objectives to promote safety and quality of care and services.
- regulatory safeguards and tools.

Figure 2 provides an overview of the end-to-end model.



## A new model for regulating aged care

Strengthen and enhance the protections, rights and the delivery of services provided to older Australians

We will achieve this aim through delivering against four objectives



Strengthen and develop capability



Safeguard older Australians



Preventive and corrective actions



Effective, efficient and contemporary regulation

Regulatory tools that promote the quality and safety of aged care services

### Registration

Registration and re-registration

Worker registration

### Provider responsibilities

Provider reporting

Incident management

Standards

Code of conduct

### Market oversight

Monitoring

Compliance

Enforcement

Complaints

### Engagement and capability building

Information sharing

Information for consumers

Education and engagement

The regulatory model is underpinned by four foundations

Rights-based

Person-centred

Risk-based

Continuous improvement

Figure 2. An overview of the new aged care regulatory model.

# The Regulatory Model: the aim and supporting objectives

The aim of the model is to **strengthen and enhance the protections, rights and the delivery of services provided to older Australians**. This aim will support the objectives of the new Aged Care Act.

The four overarching objectives will guide the design of the regulatory safeguards and tools, which help the Regulator to ensure quality and safety for older Australians. They reflect the need to prevent and detect risks and non-compliance and take corrective actions to protect older Australians.

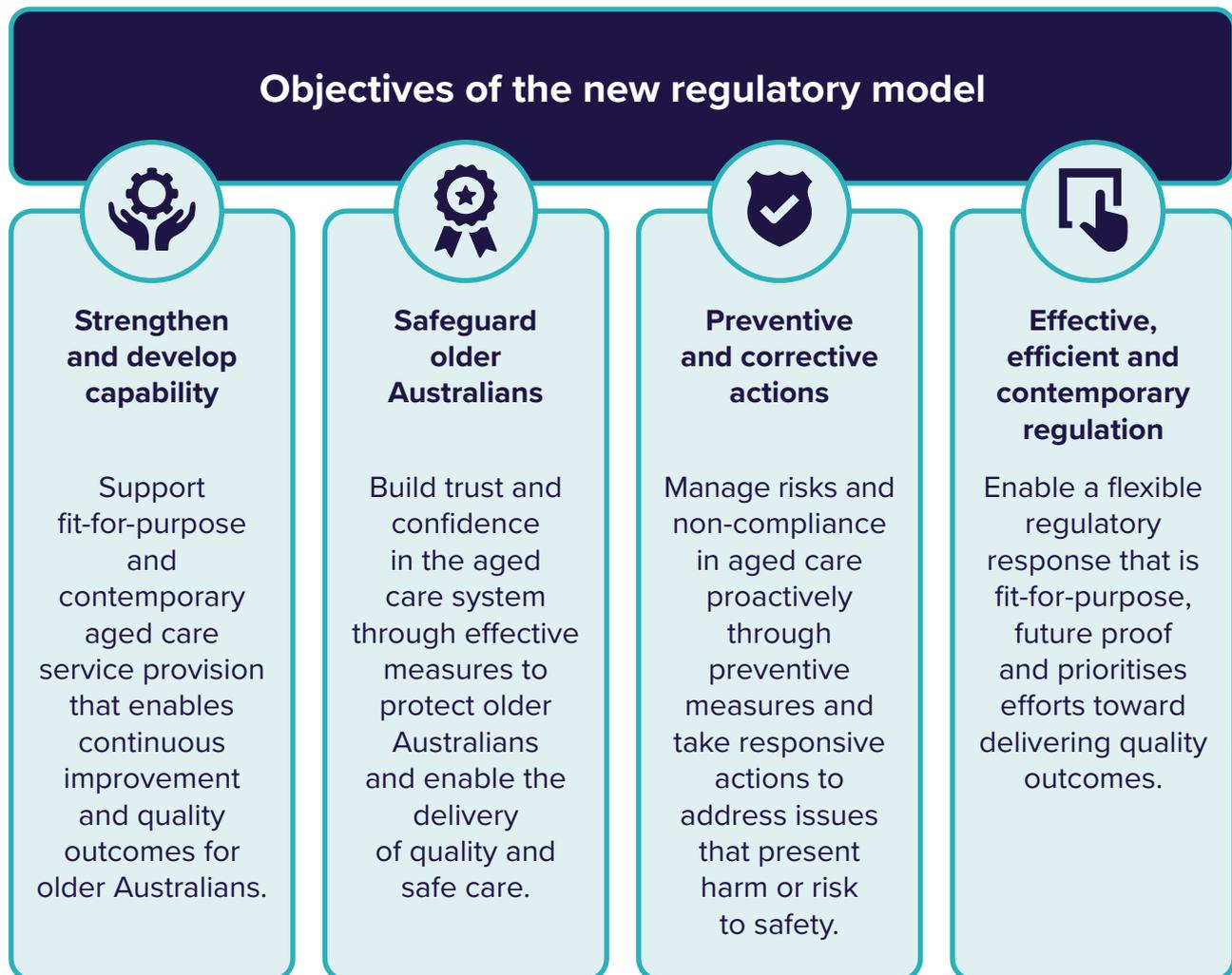


Figure 3. Objectives of the new regulatory model.

The objectives will benefit:

- older Australians, their families, carers and support networks - they will be better supported and empowered.
- providers and services – they will be high quality, safe and responsive.
- workers – they will be suitable and competent and supported in the care and services they provide.
- the Regulator – will be able to direct regulatory effort in the best way to protect older Australians from harms.

An overview of the objectives and what they mean for stakeholders is reflected in Figure 4 below.

	 <b>Strengthen and develop capability</b>	 <b>Safeguard older Australians</b>	 <b>Preventive and corrective actions</b>	 <b>Effective, efficient and contemporary regulation</b>
 <b>Older Australians and their families and carers</b>	Well-informed to enhance understanding of individual rights, and protect autonomy in decision making	Confidence in the quality and safety of care and services, with easy access to advocacy groups and other support systems	Empowered to raise issues and share their experiences through the approach that suits them best	Fit-for-purpose regulatory response that protects the safety, rights, dignity and evolving needs of older Australians
 <b>Providers and the aged care workforce</b>	Service delivery capability is built to efficiently meet demand and continuously improve care and services	Appropriate registration and screening processes, with clear requirements proportionate to the services provided	Fit-for-purpose reporting and governance assures ongoing suitability of key personnel and workers and delivery of high quality care	More efficient and fit-for-purpose provider requirements enable better allocation of the workforce to deliver high quality care
 <b>The Regulator</b>	Continuous sector learning and improvement that assists providers to strengthen service delivery outcomes	Regulatory functions enable modernised and fit-for-purpose safeguards that prevent and correct risks and non-compliance associated with service delivery	Risk-proportionate compliance and enforcement actions that identify opportunities for improvement to avoid the same problems reoccurring	Regulate with agility based on new and emerging risks and allows resources to be directed to areas with the most need

Figure 4. An overview of the objectives and expected outcomes sought for stakeholders under the new regulatory model.

# The Regulatory Model: regulatory safeguards and tools

## What are regulatory safeguards and tools

Regulatory safeguards will enable the model to achieve its objectives and promote quality, safety and best practice across the sector. They will be underpinned by regulatory tools that ultimately aim to protect Australians from harm, abuse or neglect when using care and services. They will also help the Regulator and providers to prevent, detect and correct risks across the sector.

Many of these tools are already in use by the Regulator. However, existing approaches to some tools will change in the new model to better support the aged care reforms. Reforms are also underway to modernise some of these existing tools, such as:

- the Support at Home Program.
- managing prudential risk in residential aged care.
- residential aged care funding reforms.
- strengthening provider governance.

## The regulatory safeguards and tools under a new regulatory model

Four core regulatory safeguards will support the model:

1. **Registration**
2. **Provider responsibilities**
3. **Market oversight**
4. **Engagement and capability building**

Underpinning these safeguards are 13 regulatory tools which are shown in Figure 5 below.



Figure 5. An overview of regulatory safeguards and tools.

A summary of the regulatory tools and how they could be used in a more modern and fit-for-purpose way under the model is included below.

# Regulatory Safeguard 1 | Registration

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## Registration and re-registration

Registration covers the process and requirements for aged care providers to enter the market. Under this approach, the registration of providers would be mandatory before they can deliver Government subsidised care and services to older Australians. Without registering, a provider will not be able to enter the market to deliver subsidised care and services. Services could still be provided in a private capacity.

Once registered, providers will have conditions placed on them that they must continue to adhere to in order to remain registered by the Regulator. This will include complying with a Code of conduct and any applicable Standards. The Regulator will have the power to vary or revoke a provider's registration if the conditions of a provider's registration have not been met or met to a satisfactory level.

The registration process is intended to be proportionate to the risks posed by the services the provider seeks to deliver to older Australians and the characteristics of the provider.

*Results achieved through this tool:*

- A risk-proportionate approach to market entry by graduating requirements in line with different risks of different care, services and providers.
- Increased service availability by making it more streamlined for providers of lower risk services to enter the aged care market.

The Regulator will decide on the re-registration of providers, which is an essential tool for the Regulator to re-test the suitability and capability of registered providers. In doing so, the Regulator may draw on data and evidence to decide whether a provider should be re-registered. This may include provider reporting results and compliance history, and feedback from older Australians including any complaints received.

## Worker registration

Worker registration describes the process and requirements for a worker to enter the aged care sector. A key input into the registration of workers is the worker screening process. Worker screening establishes the suitability checks and requirements that aged care workers must go through.

This includes an assessment of whether a person who provides, or seeks to provide, care and services to older Australians poses any risk to them.

*Results achieved through this tool:*

- The use of risk-based screening assists to prevent unsuitable people working in the care and support sector.
- Complaints or information received by the Regulator may trigger reviews of a worker's suitability to continue working in aged care.
- Workers are subject to ongoing monitoring to ensure they are able to maintain suitability and capability to deliver aged care.



## Regulatory Safeguard 2 | Provider responsibilities

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Provider responsibilities create the obligations that a provider must adhere to once they have successfully registered. The tools listed below represent some of the mechanisms in which obligations are applied to providers.

### Provider reporting

Provider reporting involves the supply of information and reports by an aged care provider to the Regulator. As an aged care provider, there are certain things that must be reported on, including reporting against any conditions on registration, financial and prudential matters and when serious incidents occur during the provision of aged care.

*Results achieved through this tool:*

- Provider reporting requirements are streamlined to reduce duplication and the administrative burden from reporting the same information multiple times, while still ensuring accountability and transparency.
- There is clarity on the intended usage of reporting so that providers understand the intention and necessity of the information they report. Older Australians will also understand why the Regulator collects information.
- Reporting enables the prevention and detection of risks to older Australians, and the insights from reporting are used to embed continuous improvement throughout the aged care sector.

### Incident management

An incident is considered to be an event or set of circumstances that resulted or could have resulted in unintended or avoidable harm, loss or damage to a person. Incident management establishes the responsibilities of aged care providers and workers to prevent, address and reduce incidents of abuse and neglect, and where required inform the Regulator about serious and reportable incidents that have occurred. Aged care providers are required to have effective incident management systems to support this objective and promote the safety, health, wellbeing and quality of life of aged care recipients.

*Results achieved through this tool:*

- Providers have fit-for-purpose systems in place that help build their capability in responding to risks and to continuously improve the management and prevention of incidents.
- Continued emphasis on open disclosure and discussions with older Australians, their families, carers and support network of incidents that have caused harm or have the potential to cause harm. This includes an explanation of what happened, and the steps taken to correct the incident and prevent reoccurrence.
- Data and insights from incident reporting are used to share principles of best practice and lessons learned amongst providers and the aged care sector.
- Availability of advocacy and support for older Australians is stronger so they feel comfortable to share their experiences. This also means including them in the incident resolution process.

## Standards

Providers delivering subsidised aged care services may be required to comply with Standards. Standards focus on outcomes for consumers and reflect community expectations regarding the quality and safety of aged care services and the care experience. They will be used to measure and benchmark the quality and financial performance of aged care providers. Graded assessments and comparisons of results can help to identify innovation and best practice amongst providers.

Graded assessments could be used to measure and compare provider performance against Standards. Using a grading scale will provide more meaningful outcomes for older Australians and enable the Regulator to better distinguish between the performance of providers. This will help to identify innovation and best practice, recognise and incentivise excellence while also identifying areas for improvement.

*Results achieved through this tool:*

- Older Australians, their families and carers have confidence that Standards keep providers accountable to deliver high quality and safe care.
- Understanding the Standards and expectations of high quality and safe care empowers older Australians to raise complaints if they receive a substandard experience.
- Aged care providers clearly understand what the Regulator and Australian community expects for the standards of safe and quality care and services.
- Providers have a framework to assess the quality and safety of the care and services they deliver.
- Performance against Standards can be made available to older Australians to help inform their choice of aged care provider. Graded assessments incentivise and reward excellence in quality of care for older Australians, rather than using a pass or fail status.

## Code of conduct

A Code of conduct sets the expectations of behaviours and proper practices that aged care providers, governing persons and workers must adhere to (Prior to the new model, the Code will apply to approved providers from commencement on 1 December 2022).

*Results achieved through this tool:*

- The Code protects older Australians and makes them aware of the expectations that providers and workers should be meeting when delivering care and services.
- Puts older Australians, their families and carers at the core of the regulatory system and provides an important tool to raise concerns.
- Providers and workers have clarity on expectations and proper practices when delivering care and services, and there is alignment with other codes in the care and support sector.
- Best practice is supported through introducing a contemporary and fit-for-purpose Code of conduct.
- The Regulator receives information about behaviours or conduct of concern, prompting monitoring activities and regulatory action where appropriate.
- There is scope to apply banning orders to governing persons and workers, and to take enforcement action for substantiated breaches of the Code.

## Regulatory Safeguard 3 | Market oversight

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### Monitoring

Monitoring involves the oversight of the safety and quality of the aged care market to identify and proactively respond to risks that might adversely impact older Australians. Regulatory activities include the routine monitoring of the quality of care and services delivered by aged care providers, assessing performance against provider responsibilities, observing for market failure and identifying financial and prudential risks.

*Results achieved through this tool:*

- The Regulator uses fit-for-purpose and flexible monitoring activities to understand and assess provider performance.
- Lessons learned from monitoring activities help take preventive action, detect system-wide risk and build capability and capacity for aged care providers, workers and the entire sector.
- The Regulator draws on appropriate powers to request documents and information from providers, undertake site visits, interview workers and others to understand risks and ensure they are appropriately managed.
- The right data and intelligence are collected to monitor the performance of the sector, detect risk and assess the likelihood and consequence of risks being realised.

### Compliance

Compliance is the process of ensuring aged care providers and workers meet their responsibilities (including Standards) as part of the delivery of care and services. Providers must demonstrate their compliance with these responsibilities, which can be checked through a mix of quality assessments, provider reporting and complaints. If an aged care provider fails to meet its responsibilities, the Regulator will issue a compliance notice or take appropriate enforcement actions.

*Results achieved through this tool:*

- Older Australians can use the findings of compliance checks to see how providers are performing, which will better inform their decisions and have confidence in the regulatory oversight that protects them.
- Providers can use the outcomes of compliance checks to benchmark themselves against other providers and identify areas for improvement.
- Information about compliance activities is clear and accessible. This includes information gathered from audits and system-wide findings and trends, which are available to support providers and aged care recipients.
- Compliance and audit requirements of aged care providers are proportionate to the risks the services and provider present to older Australians.
- Fit-for-purpose compliance actions are available to the Regulator to prompt a provider to comply with their responsibilities, deter misconduct and ensure grave misconduct meets proportionate consequences.

## Enforcement

Enforcement includes applying regulatory powers or actions in a proportionate and effective way in response to breaches or non-compliance with the aged care legislation and provider responsibilities. The enforcement actions are intended to oblige the provider to address quality and safety risks and comply with its responsibilities as quickly as possible. These actions also help to deter the provider from future non-compliance.

*Results achieved through this tool:*

- The community is assured that the Regulator is responding to non-compliance that poses a risk to the safety, health, wellbeing or quality of life of aged care recipients, and that there are consequences for providers that do not take action to meet quality and safety expectations.
- The Regulator takes proportionate regulatory enforcement actions that are reasonable and appropriate in responding to the risks presented to older Australians, which may include exiting unsuitable providers from the market.
- Sector-wide compliance is promoted through deterrence and providers who have not or are not complying are prompted to meet their responsibilities.
- Enforcement actions taken against providers are made available to older Australians to inform their decision-making.

## Complaints

Complaints refers to the formal management of feedback and issues raised by older Australians about providers and workers across the delivery of aged care. Families, carers, support networks and the general public can also make complaints. Complaints provide insights on provider and sector risks and performance.

*Results achieved through this tool:*

- Older Australians can make complaints about their care and services without retribution and feel their concerns will be heard and acted on.
- Provides clear guidance for how older Australians, their family and carers can make a complaint, through ensuring the process is easy and accessible, with advocates available as needed.
- Insights from complaints are used to prevent and detect risks, and lessons learned from complaints enables continuous improvement of provider capability and service quality.
- Complaints inform provider/worker compliance and any required enforcement actions.
- Effective feedback loops are in place that ensure timely feedback on the progress of a complaint and the corrective actions taken.

## Regulatory Safeguard 4 | Engagement and capability building

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### Information sharing

Information sharing is the processes that allow a ‘tell us once, use multiple times’ approach to information and data collection across the aged care sector.

*Results achieved through this tool:*

- Older Australians are protected when the Regulator has accurate and timely information or intelligence to inform their regulatory work and allows them to be proactive in mitigating risks and preventing harms.
- Government better utilises data and insights:
  - to identify and manage risks, including through Regulator action where required.
  - to support continuous improvement of provider capability and quality of care.
- Information is re-used across the care and support sector as appropriate, minimising the information sharing burden on providers and enabling stronger regulatory intelligence.
- Reduced administrative burdens through better information sharing allows aged care providers to re-focus efforts toward improving quality of care for older Australians.

### Information for consumers

Information for consumers refers to providing all the information that older Australians need to feel confident in decisions about their care and know what to expect. It should also support their families, carers and support networks to help older Australians with these decisions.

*Results achieved through this tool:*

- Information on providers is transparent, meaningful and accessible, with measurable feedback on performance that is easy to understand. Published information, such as performance ratings, enables older Australians to understand more about the provider and services they choose, and have confidence in them.
- The continued publishing of the Regulator’s actions and reporting on monitoring activities give older Australians useful information about provider performance.
- Greater transparency from provider reporting allows older Australians to compare providers and become more informed over the providers they use.



## Education and engagement

Education includes issuing information and materials:

- for providers, about regulatory responsibilities and how to comply with them.
- for older Australians, about their rights when using care and services. For example, education can be published through websites and guidance materials.

Engagement includes collaborating and consulting with the stakeholders to find and resolve problems and build trust and confidence in an aged care system that is responsive to the needs and expectations of all stakeholders.

*Results achieved through this tool:*

- The Regulator provides appropriate preparation, education and training for workers and providers of care and services.
- The Regulator can respond to a breach in the Code, or other non-compliance, by providing resources, training and education for aged care providers and/or workers.
- Older Australians can use the information they are provided to educate themselves on all regulatory safeguards and tools and empower themselves to advocate on their own behalf.
- Lessons learned are used to engage with the sector, including older Australians, providers and the workforce, to build capability through education and continuous improvement.

# Regulatory intelligence

Regulatory intelligence will be a critical support for the model. Regulatory intelligence is about collecting and synthesising the right data and information to help underpin evidence-based decision making. This will help decision makers when deploying a regulatory or policy response.

Regulatory intelligence includes four main enablers as outlined in Figure 6 below:

- **Data and information:** gathering and providing data, advice and information from regulatory functions, other co-regulators and open sources. This includes sharing information that may cross over multiple sectors.
- **Analytics and insight:** using data from both internal and external sources to synthesise insights and information. These insights can be used to develop strategy, realise the model’s intent, and find gaps that need improvement. This could include capability building, education and training, resources and investment. Analytics and the use of data will allow the Regulator to shift provider behaviour to achieve stronger and more responsive prevention.
- **Regulatory agility:** the regulation provides system-wide agility as the Regulator establishes its risk appetite and a risk management framework. A contemporary risk framework enables flexible priorities to meet evolving strategic intent. It is person-centric by catering to the strengths, changing needs and circumstances of older Australians over time. It is also responsive and proportionate to the risks presented by a service, provider or situation.
- **Experience feedback:** the use of ongoing feedback provided by the entire sector, through a wide range of channels, to detect risks, lessons, and opportunities to strengthen care and services.

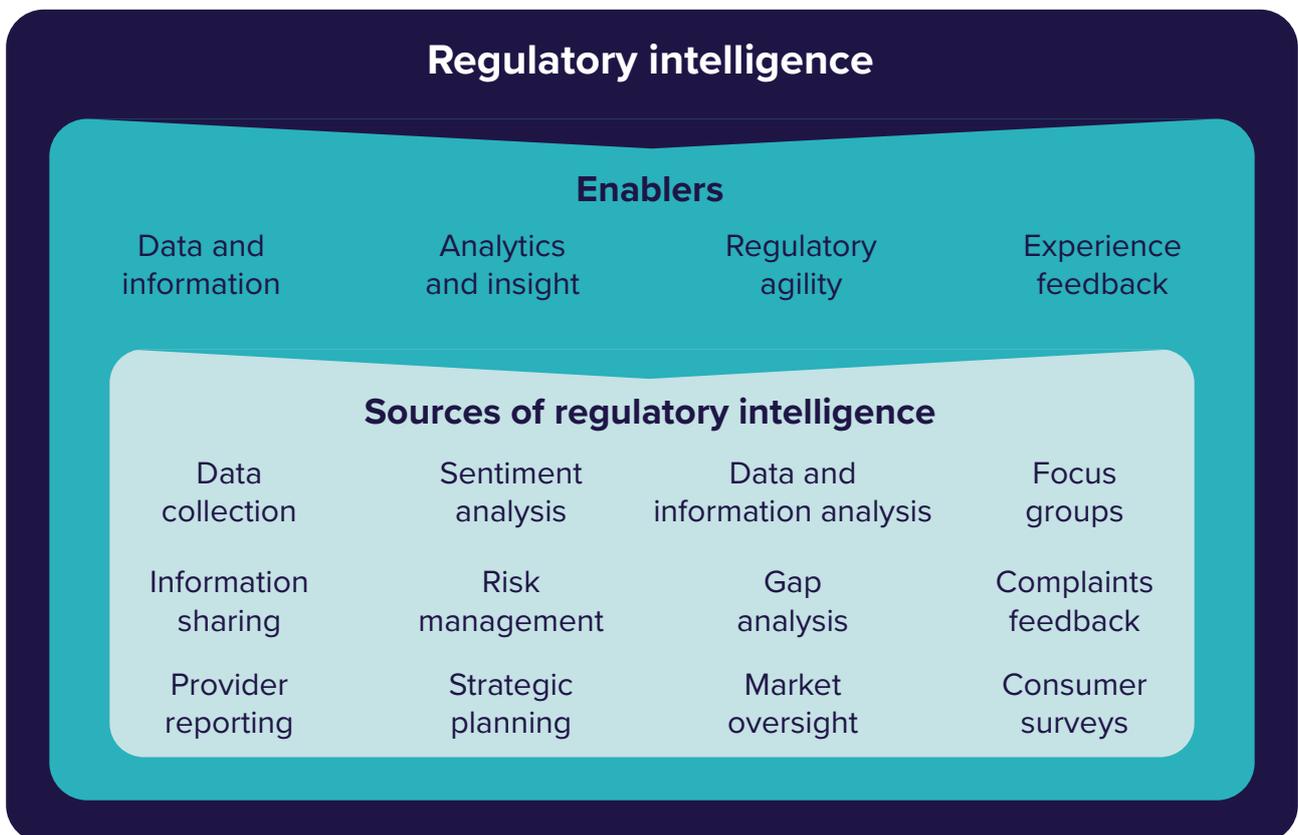


Figure 6. An overview of the different sources of regulatory intelligence.



## **Governance**

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The success of the new regulatory model will be supported by governance across the aged care sector. The Royal Commission recognised the critical role that provider governing bodies and executives play in:

- ensuring the safety and quality of care provided to older Australians.
- creating an innovative and trusted aged care system.

Many recommendations of the Royal Commission also focused on Regulator and provider governance. Variable provider governance and absence of system leadership and governance were found to be some of the systemic problems in aged care.<sup>2</sup> Taking into account reforms already underway to strengthen provider governance, the framework will also consider how to improve:

- Regulator governance to enable it to better direct resources more efficiently and effectively.
- provider governance.
- the system-wide governance involved in regulating and overseeing the aged care market.

The roll out of strong, effective and transparent governance arrangements will improve quality and safety for older Australians. It will also improve trust in the system and strengthen leadership and accountability.

<sup>2</sup> Royal Commission into Aged Care Quality and Safety, Final Report – Volume 1: Summary and Recommendations, 1 March 2021 p 73

## How governance is already being strengthened in aged care

The Aged Care Quality and Safety Commission is leading the *Governing for Reform in Aged Care Program*. This program will help members of governing bodies and executives to strengthen their organisational and clinical governance capability and work collectively to enact critical reforms. The program will continue until June 2023, and you can find out more at the [Governing for Reform website](#).

Legislative changes will soon come into effect to put the needs, preferences and best interests of older Australians at the core of service delivery by improving:

- provider governing body leadership and its access to information about the quality of care being delivered by the provider.
- provider transparency and accountability.

These reforms will introduce new governance responsibilities for certain providers. These responsibilities will relate to the membership of their governing bodies. They will also require new advisory bodies to provide feedback to the governing body on the quality of the provider's services to older Australians. They will also include enhancing requirements for ensuring the suitability of governing persons.

The reforms will also introduce the need for certain providers to give an annual operations statement to the Department. This statement will be available to the public on My Aged Care. This reform will increase transparency of provider operations for those receiving aged care. The Department is considering how other regulatory safeguards and tools will promote improved governance across the sector.

You can read more about the *Strengthening provider governance reforms* [here](#).

# Applying the new model

## How the new model will be different from the current regulatory framework

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### The current regulatory framework

The *Aged Care Act 1997*, the *Aged Care Quality and Safety Commission Act 2018* and the *Aged Care Quality and Safety Commission Rules 2018* enable the existing framework. They focus on ‘approved’ providers who enter the market to deliver residential, home or flexible care services. Once approved providers enter the aged care market, they are all required to comply with the Standards. These standards include activities and requirements that only a corporation could satisfy.

Residential aged care providers also need to go through an accreditation process, with re-accreditation occurring every three years. Home care providers are not subject to any accreditation process. However, under the *Aged Care Quality and Safety Commission Rules 2018*, a quality review at least once every three years applies to them. Finally, providers delivering services through the Commonwealth Home Support Programme funding agreements are not approved providers.

In the current framework, regulatory tools and intelligence are used to ensure compliance and build sector capability. However, the current approach to provider compliance does not build a culture of continuous improvement or incentivise performance excellence. It also does not use benchmarking to allow providers to compare their performance against others or identify areas where they can improve.

## The new regulatory model

The new Act will implement the new model under which aged care will be regulated in the future. The new model will be future proofed as much as possible so that the law can continue to be relevant as the needs of older Australians change over time. The new Act will provide a single piece of primary legislation with appropriate subordinate legislation and guidance. Built on the four foundations, the regulatory model will shift to give greater emphasis to risk, centred on protecting the health and safety of older Australians.

Providers will register into the appropriate registration category by going through an application process and meeting the legislation's stated criteria. Core provider responsibilities such as the Code of conduct will apply to all providers and aged care workers once successfully registered. Additional responsibilities may also be applied according to the registration category. Higher provider categories will need to meet greater responsibilities as well as the Standards. For some services, the provider may not need to be a corporation, and some responsibilities and Standards may not be applicable.

The Regulator will use regulatory tools and intelligence to ensure compliance and build sector capability. It will also include the use of lessons learned and best practice that could inform the rest of the sector. The Regulator will apply greater emphasis on preventing and detecting risk, including risk of failure before it happens. Where risks need to be managed, the Regulator will be able to apply appropriate regulatory powers that prompt a provider to take corrective actions that address the risk in line with their responsibilities. This effort may range from education and engagement through to enforcement actions.



## Applying the new model through regulatory stages

This section provides more information on the proposed new model and how the tools might secure safe and high-quality care for older Australians by managing risk. It is important to note that further detail on these components will be explored more as part of further consultation papers.

The new model will apply across three regulatory stages, to protect the quality and safety of care and services as outlined in Figure 7 below.

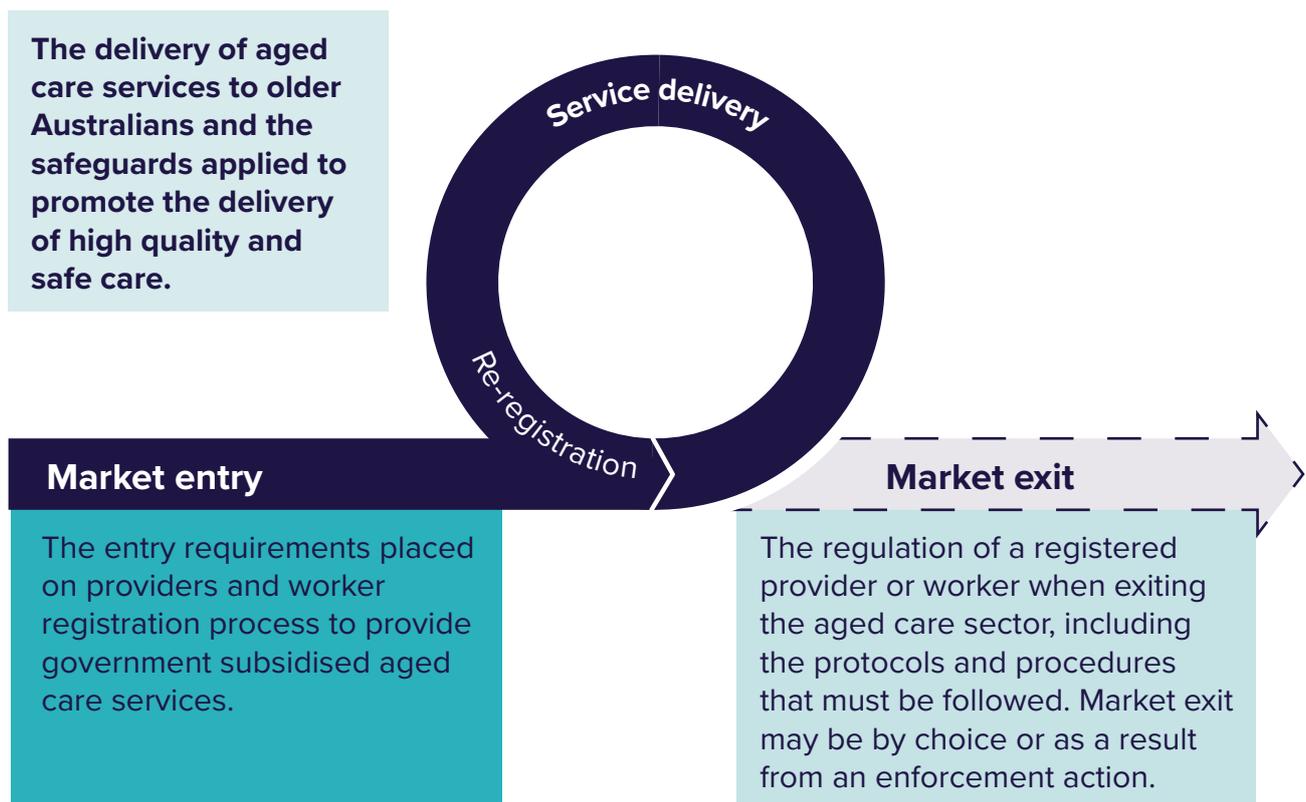


Figure 7. An overview of the three regulatory stages.

Different types of risks to quality and safety present themselves across these regulatory stages. The Regulator will apply regulatory safeguards and tools differently across each stage. This will more effectively prevent, detect and correct these risks.

## Market entry

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Market entry describes the process that an aged care provider must complete to enter the aged care sector. It also covers requirements to continue to provide Government-subsidised care and services. The tools in place at this stage check that providers and workers are suitable, capable and viable to deliver care and services. This means older Australians, their families, carers and support networks can have confidence in the providers that they use. This includes confidence that they will deliver high quality and safe care and services.

The market entry stage involves the application requirements placed on new aged care providers and the re-registration of existing providers. Under the new model, it is proposed that this could include a risk-proportionate approach to entering the market through registration based on the types of care and services a provider will deliver.

Once an application is successful, aged care providers will have responsibilities that they must adhere to, which will be set out in the new legislation. It is proposed that different responsibilities could also apply to providers based on the different risks that the services they offer present to older Australians. Aged care workers will be screened to make sure they are suitable to work with older Australians and provide care and services.

## Registration

Under the revised regulatory model, a new registration model is being considered which will form the single-entry point for all aged care providers. This will see a shift from 'approved' providers to 'registered' providers in the new regulatory model.

A new registration model will still require providers to go through an application process with the Regulator and meet stated criteria on matters such as provider suitability, viability and capability. However, the registration model will be able to graduate entry requirements and provider responsibilities according to the types of care and services being provided and the risks associated with them. This approach aims to encourage providers of lower risk services to enter the aged care market through a more streamlined market entry process while maintaining appropriate protections for higher risk services.

Eligibility to participate in the market will also be extended beyond corporations and state/territory governments to include individuals or sole traders; recognising that care and services need not always be delivered by corporations and that in some cases delivery by individuals is appropriate. This has the potential to expand the workforce available to deliver care and services and increase choice and the availability of care for older Australians.

Further development and consultation will inform how this model will operate. A possible approach is that all providers will need to apply and be registered into a 'registration category'. Application requirements and ongoing responsibilities could be based on the registration category that a provider is registered into.

An option for establishing registration categories may be through grouping care and services that have similar risk profiles. This approach would allow registration categories to address the different types of risks that arise from the delivery of different care and services. Such groupings are in line with the risk-based foundation of the model.

We will develop registration categories, including the criteria for different categories, with stakeholders through the consultation process.

## Worker registration

A proposed worker registration model, that includes a worker screening process, aims to make sure that workers are suitable to deliver services and care in the aged care sector. The Department is considering the types of care and services that need worker screening in line with the risk-based approach. Worker suitability screening may encompass a person's national criminal history, relevant reportable incidents, disciplinary proceedings or complaints. Workers will likely have ongoing suitability requirements. They may also be subject to regulatory action and imposed limitations if the Regulator finds they are no longer suitable to provide care and services to older Australians.

Details of how worker registration will be applied under the new regulatory model will be consulted on with stakeholders in a separate discussion paper.

## Service delivery

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During this regulatory stage, older Australians receive care and services from registered providers. Appropriate use of regulatory safeguards and tools prevent, detect and correct service delivery risks to older Australians. This includes the risk of not receiving care, or receiving inappropriate, unsafe, or poor-quality care.

The Regulator will use all regulatory tools to manage the risk of harm to older Australians. Standards will allow the appropriate measurement and benchmarking of a provider's performance and service quality. Providing information for consumers will ensure older Australians know their rights and avenues to raise and correct issues. Engagement and education will allow the sharing of best practice and lessons learned to encourage compliance and excellence in service delivery.

The Regulator can detect issues with care or compliance through complaints or their monitoring of the market. The Regulator may find issues through provider and incident reporting, or a reported breach of the Code of conduct. Information sharing will ensure that the Regulator has the data and insights it requires to prevent risks from eventuating. Information sharing also creates efficiencies in how the Regulator deals with information.

Where issues or provider non-compliance need correction, the regulatory response will be proportionate to the risk of harm to the older Australian, and the action required of the provider to correct this harm. That is, the Regulator may respond through engaging and educating the provider or with enforcement actions.

### Provider responsibilities

Provider responsibilities encompass things like provider reporting, having appropriate incident management systems in place, adhering to a Code of conduct and meeting Standards as required. The Regulator monitors and assesses provider compliance with these responsibilities for accountability and to ensure high quality and safe care is given. This is consistent with the approach under the current Aged Care Act.

The model will create a new approach to provider responsibilities to address current challenges and best complement the introduction of the proposed registration model. There is an opportunity to make these responsibilities fit-for-purpose, reduce duplication and give clarity about the risks they seek to manage.

The Royal Commission provided 26 recommendations about current provider responsibilities. The Department is conducting further analysis on how these might best be applied under the new model, including to ensure the delivery of high quality and safe care.

Provider responsibilities may be structured to manage risks arising from both the delivery of care and services, and the individual provider. With this in mind, the Department is proposing that there are 3 types of provider responsibilities:

### **Provider responsibilities that manage risks arising from care and services:**

- **Core provider responsibilities** – create obligations that apply to all registered aged care providers. Core provider responsibilities recognise that there are risks common to all service types when delivering services to older Australians.
- **Category-specific provider responsibilities** – create obligations that apply to specific registration categories or care and services within a registration category, separate from core obligations. Category-specific provider responsibilities recognise that the types of risks vary across the different registration categories.

### **Provider responsibilities that manage risks arising from providers:**

- **Provider-specific responsibilities** – create obligations to manage risks arising from a specific, individual providers where required.

Core and category-specific provider responsibilities seek to mitigate risks of the service being delivered, regardless of the provider delivering these services. Provider-specific responsibilities help to minimise the risks of an individual provider without losing the benefits of service availability.

Provider-specific responsibilities may, for example, set specific monitoring requirements or set further conditions on how an aged care provider can deliver a service. The Regulator could vary these responsibilities as a provider demonstrates proficiency in areas where risks were previously found.

### **Code of conduct**

The Code of conduct will be a critical protector of the rights and safety of older Australians. Work is underway to consider how the Code of conduct may align across the care and support sector. The Code of conduct is an example of a core provider responsibility that will apply to all providers, regardless of their registration category. The Code of conduct will also apply to all aged care workers and governing persons. Complaints or issues raised from a potential breach of the Code of conduct by a provider or aged care worker may bring about monitoring activities by the Regulator. The Regulator may also take subsequent enforcement action in response. Details of how the Code of conduct will be applied under the new regulatory model will be consulted on with stakeholders in a separate discussion paper.

### **Standards**

Standards are an example of category-specific provider responsibility. Standards will scale on a risk-proportionate basis, and providers will be assessed against Standards according to their registration category. It is not anticipated that Standards will apply to every aged care service, for example, lower risk services such as gardening and outside maintenance. However, categories of higher risk services will have Standards that apply. There may be different Standards based on services that are delivered in the home compared to residential care. Details of how Standards will be applied under the new regulatory model will be consulted on with stakeholders in a separate discussion paper.

## Provider reporting and incident management

The new regulatory model will aim to ensure that provider reporting is purposeful and targeted. The focus will be on the collection of relevant information that helps the Regulator to prevent and detect risks and identify when a provider needs to take corrective actions. The Regulator can scale reporting requirements based on the characteristics of each provider, such as the type of service that is being delivered, their size and history of compliance.

Provider reporting will also be used to differentiate providers based on their performance. By publishing reporting outcomes, providers will be able to benchmark themselves against each other. This aims to incentivise performance excellence, promote continuous improvement and build the capability of aged care providers. This approach will be enabled through a scheme that requires providers to report on their compliance with registration requirements and obligations and Standards where applicable.

As part of a provider's responsibility to have appropriate incident management systems in place, in some circumstances providers will also need to report serious incidents that occur during the provision of aged care services to the Regulator. This will allow the Regulator to take actions that address any non-compliance with a provider's responsibilities.

Details of how provider reporting and incident management will be applied under the new regulatory model will be consulted on with stakeholders in a separate discussion paper.

## Market oversight

Market oversight involves collaboration and commitment between all stewards in the aged care sector. To enable continuous improvement and best allow for a person-centred, risk-based, and rights-based approach, the model will introduce appropriate process that promote effective market oversight.

To enable market oversight, the Regulator must have agility and flexibility to allow for an appropriate response to different or changing risks, failures and non-compliance. Appropriate market oversight tools also allow the Regulator to prevent and detect risks more easily. This better safeguards older Australians, ensuring the delivery of quality and safe care.

It is also critical that the Regulator has the right information and suitability re-assessment periods to support the future risk-proportionate model. This will include:

- core reporting requirements applicable to all providers and the reporting requirements for the specific registration category applied to a provider.
- the ability to regularly re-assess each provider's suitability to remain registered, to ensure each provider is subject to ongoing review and monitoring.
- undertaking risk-based monitoring using regulatory intelligence to find emerging risk or form part of a campaign (for example to improve performance in a particular area).
- reporting on the results of monitoring activity and trends to improve quality and safety of care and services.

## Monitoring

To prevent and detect risk, the model should contain several monitoring tools that allow the Regulator to adopt the most appropriate approach according to:

- the risk being managed.
- the particular conduct.
- the provider.

Under the new model, underpinned by data and intelligence, monitoring may consist of:

- the power to use monitoring at any time, including risk-based and routine monitoring, and campaign based monitoring.
- the power to ask for documents, perform site visits, and interview workers and any other relevant parties as required, based on risk.
- an effective triaging system to make sure that the Regulator is aware of and responds to any urgent matters (for example, older Australians at immediate risk of harm).

Risk-based monitoring will be an important feature of the new regulatory model. Where potential risks and concerns are identified, including from provider reporting or regulatory intelligence, the Regulator may choose to undertake risk-based monitoring. This means monitoring be conducted at any time, and could involve monitoring against provider obligations, including the Standards, Code of conduct and other conditions of registration.

Risk-based monitoring will allow the Regulator to take a targeted approach to any risks and issues and respond as appropriate through enforcement actions. It will provide intelligence that is fed back into the Regulator's ongoing monitoring activities which can be used to inform a provider's registration suitability.

There will be some specific circumstances where monitoring activities identify thin markets. In this situation, it will be important to ensure that the Regulator has flexibility to put in place proportionate responses, while ensuring that the provider maintains safe and quality services and continuity of care for recipients. These conditions will be explored in more detail in further consultation.



## Compliance

It is proposed that the Regulator would have a range of compliance mechanisms it could apply across all provider categories that would allow for a more flexible and targeted regulatory approach. Providers will be encouraged to not only voluntarily meet compliance, but to go beyond the minimum standards and strive for best practice. Where the Regulator detects non-compliance, it will consider, at a minimum:

- whether the non-compliance poses an immediate and severe risk to the safety, health, or wellbeing of older Australians, and therefore requires an urgent response.
- the degree to which the provider is non-compliant and to what extent the provider is likely to address the non-compliance.
- how the non-compliance was detected, for example, was a complaint made or was the non-compliance detected through monitoring activities.

A provider's compliance history may also be factored into the Regulator's registration and re-registration decisions. This includes whether provider-specific responsibilities are needed while a provider improves its compliance performance.

Details of how compliance will be applied under the new regulatory model will be consulted on with stakeholders in a separate discussion paper.



## Enforcement

Where there is a risk of harm to older Australians that needs to be addressed, the Regulator would have a range of enforcement tools available. These tools would be proportionate to the risk that has eventuated. This will allow the Regulator to adopt the most appropriate enforcement approach according to the risk, the particular conduct and provider circumstances. When dealing with enforcement action, the model would still include protections for workers, providers, and others, including to ensure procedural fairness.

In line with the continuous improvement approach, there will also be greater emphasis on provider capacity and capability building. This will be achieved through sharing lessons learned and best practice across the sector. This means that in the absence of severe and immediate risks of harm (or actual harm) the response of the Regulator may be to educate a provider or worker on building capability, before taking a more serious enforcement action.

Under the new model, enforcement powers may consist of:

- the power to issue notices to the provider requiring them to act or stop taking action.
- powers linked to registration including the power to vary or revoke registration (powers to vary might include the power to vary the registration period or place limits on the provider's services).
- powers derived from the *Regulatory Powers (Standard Provisions) Act 2014* (Cth), including powers to issue infringement notices, impose civil penalties, seek injunctions and enter into enforceable undertakings.
- other powers consistent with those already in use in the care and support sector, such as the power to issue banning orders (relevant to both providers and individuals), applicable across the sector.
- the power to pursue criminal offences where the conduct warrants such action.
- emergency powers to be used in limited circumstances where there is an immediate risk to the life and safety of older Australians.

Details of how enforcement will be applied under the new regulatory model will be consulted on with stakeholders in a separate discussion paper.

## Complaints

Complaints and feedback will remain an integral component of market oversight. They provide an important insight into the experiences of older Australians receiving care and services as well as early indicators for areas of emerging risks or systematic issues. Complaints help to detect a provider's non-compliance with their responsibilities and standards. This informs the Regulator to educate, intervene early or take other timely regulatory action.

The use of complaint data and information would also inform the re-registration process. In exceptional circumstances, the Regulator may use it to impose provider-specific responsibilities during the registration period. Providers will also need to communicate with and tell older Australians of the actions taken in response to a complaint. It is also critical to inform and empower older Australians, their families, carers, support networks and aged care workers on how to lodge a complaint.

Further details on the complaints process will be consulted on with stakeholders in a separate discussion paper.

## Engagement and capability building

### Information sharing

Information sharing under the new model will introduce better processes that allow a 'tell us once, use multiple times' approach to information and data collection. This will include collecting and sharing information on providers, market trends and regulatory intelligence, which may also play an important role in informing broader aged care policy.

Information sharing can be further described across the main stakeholders:

- 1. Regulator to and from older Australians:** enables complaints about providers to be shared to the Regulator. This ensures open communication with the Regulator about the complaint resolution process and outcome (for example, the provider was held accountable for wrongdoing), and transparency around provider performance. This transparency will enable better choice and control over care and services.
- 2. Provider to and from older Australians:** includes information required to understand older Australians' rights and service delivery expectations. This will enable appropriate support, choice and control, and transparency.
- 3. Regulator to Regulator:** will allow co-regulators to share intelligence, minimise risk and the duplication of reporting by providers.
- 4. Provider to and from Regulator:** includes information supplied by a provider to the Regulator, and information sharing required for benefits to older Australians and capability building.

Relevant legislation will be established to allow such sharing of information, including protecting privacy and confidentiality of aged care recipients. Regulatory technology could be utilised so that information sharing can be done with ease, in a timely way and through a secure system that will support an increase in digital interactions with the sector.

Details of how information sharing will be applied under the new regulatory model will be consulted on with stakeholders in a separate discussion paper.

## **Information for consumers**

Information for consumers aims to promote greater choice and control by enabling older Australians, their families, carers and support networks to make informed decisions about the care and services they receive. Existing aged care reforms are underway to provide older Australians with increased information, and the new regulatory model will further promote this reform intent by making information for consumers more meaningful and more visible.

Under the new model, older Australians will have access to the right information at the right time to support them in accessing care, engaging with providers, and raising any concerns. It will outline the types of care and services available, their rights in relation to services delivered by providers, and what they can expect when receiving aged care. Information about the quality of services and performance of providers will also be published to help older Australians and participants make choices about the providers they engage with and the services they receive with greater confidence.

Details of how information for consumers will be applied under the new regulatory model will be consulted on with stakeholders in a separate consultation paper.

## **Education and engagement**

Education and engagement will focus on encouraging excellence rather than focusing on poor performance. This is not to say that appropriate enforcement actions will not be taken where required. Rather, if a provider can be supported through education and engagement, this should be the initial response of the Regulator where appropriate to the level of risk involved.

Education and engagement may be used at a system level and for individual providers. It may also focus on a specific incident or market trends identified from monitoring, complaints, or regulatory intelligence, using data and relevant insights to inform and educate the sector.

Details of how education and engagement will be applied under the new regulatory model will be consulted on with stakeholders in a separate consultation paper.

## Re-registration

To continue delivering services, providers will be required to periodically re-register with the Regulator. This allows the Regulator to maintain visibility of the suitability of a provider over time and assess their fitness to continue in the market. Once registered, a term will be set before a provider must re-register. The registration term will be determined on a risk-proportionate basis, and as a result, may be different across the different provider categories and individual providers.

The Regulator will decide re-registration in line with the initial provider registration process. Re-registration provides an opportunity for the Regulator to re-test the suitability, capability and viability of registrants based on regulatory intelligence, provider reporting, and compliance history. Compliance history would include the results of audits and complaints. Higher risk services sitting in the upper registration categories may also need to undergo another audit process along with their re-registration.

As a regulatory tool, re-registration would also allow the Regulator to perform a stocktake of aged care providers and provide useful insight. For example, it would allow the Regulator to understand how many providers are operating in the market, which will better inform the Regulator in performing its work and help to identify thin markets.

Further detail on re-registration requirements and how re-registration will be applied under the new regulatory model will be provided in further consultation papers.

## Market exit

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Market exit involves the regulation of a registered provider or worker when exiting the aged care sector, including the protocols and procedures that must be followed. Market exit may be by choice on behalf of the provider or worker, or come as a decision of the Regulator through an enforcement action to revoke registration because of monitoring and compliance-based activities. A provider may also exit the aged care sector by letting their registration lapse. Providers will need to ensure continuity of care and services before they exit the market. Providers may also have enduring requirements, such as retaining records.

Details of how exits will be applied under the new regulatory model will be consulted on with stakeholders in a separate consultation paper.



# Transitioning to a new regulatory model

This section aims to give a preliminary view of transition. A detailed plan for transition is expected to be shared with the sector in late 2022 through a separate consultation paper.

Transition includes the planning, processes and approach to support older Australians, the aged care sector and the Regulator to move to the new regulatory model.

The reform program is complex and will cause change for older Australians, providers and the workforce. Transition to a new regulatory model requires design that takes into account other reforms and their effect on providers and workforce.

As the model design progresses, we will continue to consider the impacts on the sector of transitioning from the existing framework to a new model.

## Transition principles

Transition to the model will follow certain principles:

- the safety and quality of care, including service continuity for older Australians, will be of the highest priority.
- transition is organised and structured to help create a seamless experience for all stakeholders.
- communication and consultation with the sector will be extensive and gives the opportunity for feedback.
- transition is coordinated with other aged care reforms.
- the transition approach will be as clear as possible.
- the sector is clear on dates for changes, including the transition start, and what transition entails.

**Thank you for taking the time to consider this consultation paper.  
We welcome your feedback:**

To share your views, visit the  
[Ageing and Aged Care Engagement Hub](#).

# Appendix

## Glossary of terms

Term	Definition
Audit	The assessment of providers against their requirements (particularly the Standards), and the powers that enable appropriate access to the required inputs to complete the assessment, such as provider information, sites and people.
Code of conduct	A Code of conduct sets the expectations and proper practices aged care providers, governing persons and workers must adhere to.
Compliance	Compliance is the process of ensuring aged care providers and workers meet their responsibilities (including Standards) as part of the delivery of care and services.
Complaints	<p>A complaint is an expression of dissatisfaction with any aspect of a provider’s responsibilities that requires the Regulator to facilitate a resolution.</p> <p>The model also considers complaints as a regulatory tool that refers to the formal management of feedback and issues raised by older Australians about providers and workers, across the delivery of aged care. Families, carers, support networks and the general public can also make complaints.</p>
Education and engagement	<p>Education includes issuing information and materials:</p> <ul style="list-style-type: none"><li>• for providers, about regulatory responsibilities and how to comply with them.</li><li>• for older Australians, about their rights when using care and services. For example, education can be published via websites and guidance materials.</li></ul> <p>Engagement involves collaborating and consulting with the stakeholders to identify concerns and continually improve the aged care sector.</p>
Enforcement	Enforcement includes applying regulatory powers or actions in a proportionate and effective way in response to breaches or non-compliance with the aged care legislation. The Regulator may also apply enforcement actions to mitigate risks.
Governing person	Governing person of a provider means an individual who is one of the key personnel of the provider.

Incident management	Incident management establishes the responsibilities of aged care providers and workers to prevent, address and reduce incidents of abuse and neglect, and where required inform the Regulator about serious and reportable incidents that have occurred.
Information sharing	Information sharing involves distributing and receiving information and data collection across between stakeholders, with a focus on managing risks and building sector capability.
Information for Consumers	Information for consumers includes all the information older Australians need to feel confident in decisions about their care and know what to expect. It should also support their families, carers and support networks to help older Australians with these decisions.
Monitoring	Monitoring involves the oversight of the safety and quality of the aged care market to identify and proactively respond to risks that might adversely impact older Australians
Procedural fairness	Procedural fairness means acting fairly in administrative decision making. It relates to the fairness of the procedure by which a decision is made, and not the fairness in a substantive sense of that decision. A person may seek judicial review of an administrative decision on the basis that procedural fairness has not been observed.
Provider reporting	Provider reporting includes the supply of information and reports by an aged care provider to the Regulator.
Registration	Registration covers the process and requirements for aged care providers to enter the market. The Regulator can require providers to register with them before they can provide Government subsidised care and services to older Australians.
Regulation	Any rule endorsed by government where there is an expectation of compliance (regardless of whether they are prescribed in or outside legislation).
Regulatory intelligence	Regulatory intelligence is generally the monitoring, gathering, and analysing of publicly available and experience-based regulatory information needed to develop regulatory strategy and inform tactical, operational and strategic decisions.
Older Australians	Individuals in the community who are eligible to receive subsidised aged care services. Often when we refer to older Australians, we are also considering their families, carers and support network who give support and are involved in care decisions.
Standards	Standards focus on outcomes for consumers and reflect community expectations regarding the quality and safety of aged care services and the care experience.
Systemic problems	Serious and recurrent issues that stem from problems in the design and operation of a system.

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The Regulator	The aged care Regulator (the Aged Care Quality and Safety Commission).
Thin markets	Thin markets exist where there is a discrepancy between the needs of older Australians and the services available in the market. This could be driven by limited-service availability in a specific region (most often in regional, rural and remote locations) or could be due to a lack of culturally appropriate service types for certain populations.
Worker screening	Worker screening establishes the suitability checks and requirements that aged care workers must go through. This includes an assessment of whether a person who provides, or seeks to provide, care and services to older Australians poses any risk to them.

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