



Australian Government

Regulatory Alignment
Across Care and Support
aged care | disability | veterans

Aligning regulation across aged care, disability support and veterans' care

Consultation paper

November 2021







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Introduction



In the 2021–22 Budget the Australian Government committed to align regulation of Commonwealth-funded care and supports – aged care, disability support, and veterans’ care – to improve protections and ensure consistent quality and safety for participants and consumers. This will also make it easier for service providers and workers with the necessary capabilities to deliver care and supports across the sector.

A background paper was published in October 2021 to support initial consultation with the sector. You can read the background paper on this work at www.health.gov.au/initiatives-and-programs/aligning-regulation-across-the-care-and-support-sectors and a summary is also provided in this paper.

Initial consultations were conducted with peak bodies and providers from mid to late October 2021 to capture early feedback on current challenges and possible ways to improve cross-sector regulation, as well as informing the next open stage of consultation with consumers, participants, carers, advocates, providers, workers and peak bodies. The feedback received through these initial activities has informed the contents of this paper.

This consultation paper forms an important part of the next stage of consultation. It facilitates stakeholder input on:

- what is **working well** and the **key challenges** consumers, participants, carers, providers and workers are experiencing with differences and duplication of cross sector regulation
- **possible solutions** to improve cross-sector regulation, including short-term ways to reduce duplication, and development of a model for best practice cross-sector regulation that provides consistency in regulation as well as appropriately catering for the different users and types of care and supports
- **a roadmap** for when and how to align regulation and implement best practice cross sector regulation.

Scope of consultation

All elements of quality and safety regulation in the care and support sector, including current challenges and options for improvement, are in scope for this consultation.

The following are out of scope:

- consumer eligibility or access to care and support programs
- pricing and payments (other than financial viability reporting)
- veterans' services that are not provided under the Veterans' Home Care or Community Nursing programs
- state and territory care and support programs.

Please note that the regulatory alignment work is separate from, but informed by, a range of other reforms across the care and support sector – for further information visit www.health.gov.au/initiatives-and-programs/aligning-regulation-across-the-care-and-support-sectors.

Background paper summary

The care and support sector

The care and support sector is made up of the following individual sectors:

- aged care
- disability support including the National Disability Insurance Scheme (NDIS)
- veterans' care (Veterans' Home Care and Community Nursing Services).

What is the challenge that alignment will address?

Similar services are provided across aged care, disability support and veterans' care, yet there are separate and overlapping regulatory frameworks. There are also different objectives and outcomes sought for Australians who access these services, but at the centre is the health, safety and wellbeing of the person receiving services. Providers that operate in the sector often have a focus on improving the lives of Australians who may be more vulnerable to risk than other people in their community.

While some differences across settings are appropriate, duplication in regulatory requirements may be a barrier to consistent quality and safety for consumers and participants. It may also be a barrier to the overall efficiency of the market, add to providers' costs and discourage market development and growth.

What will success look like?

The benefits anticipated from regulatory alignment include the following.

For consumers and participants, care and supports will be provided in a way that:

- consistently upholds and respects their legal and human rights
- provides consistent levels of quality and safety
- is person-centred and addresses the different care and supports any individual needs
- enables more choice by reducing barriers to providers with the necessary capabilities operating across the sector.

For providers and workers, this means:

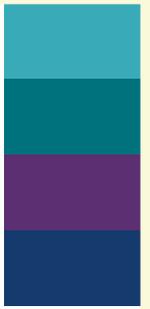
- regulatory obligations will be proportionate, clear and consistent across the sector
- resources and skills can be directed to service quality improvement
- they will have increased flexibility and mobility to operate across the sector with appropriate safeguards for the protection of consumers from harm.

What we're doing:

The Government has identified a number of shorter-term activities to align care and support regulation, including:

- improving information sharing between regulators
- trialling combined aged care and NDIS audits
- reviewing standards to work towards a shared core set of care and support standards, supplemented by standards that support outcomes for different users and types of care and supports
- implementing a national care and support worker screening check and code of conduct
- **developing a roadmap for medium to long term regulatory alignment reform.**

How to get involved



How to engage with this paper

You may respond to this paper through the consultation hub at <https://consultations.health.gov.au/best-practice-regulation/aligning-regulation-across-care-and-support-sector> by either a structured response or by providing a separate written submission to:

- share the challenges and benefits you've experienced or observed from differences in the way quality and safety is regulated across the care and support sector
- suggest ways to address the challenges, and any risks in doing so
- tell us how we should step out any changes to move towards best practice cross-sector regulation.

The paper includes some examples of the challenges and possible solutions raised by stakeholders to date. You are encouraged to reflect upon these and share your own experiences and solutions. Importantly, for any regulatory alignment options you suggest, please consider how they would support the safety and high quality of care and supports provided to consumers and participants.

The paper is accompanied by a supplement document, 'Overview of regulation in the care and support sector'. The supplement provides an overview of the different areas of regulation across the sector and may assist you in considering opportunities for regulatory alignment. See the end of this paper for some questions you may like to consider in relation to each area of regulation.

You may choose to answer as few or as many questions in this consultation paper as you like.

How to engage with future consultation activities

You are invited to participate in other upcoming consultation activities. See an outline of the consultation process at Figure 1.

There are a few ways that different audiences can participate, including:

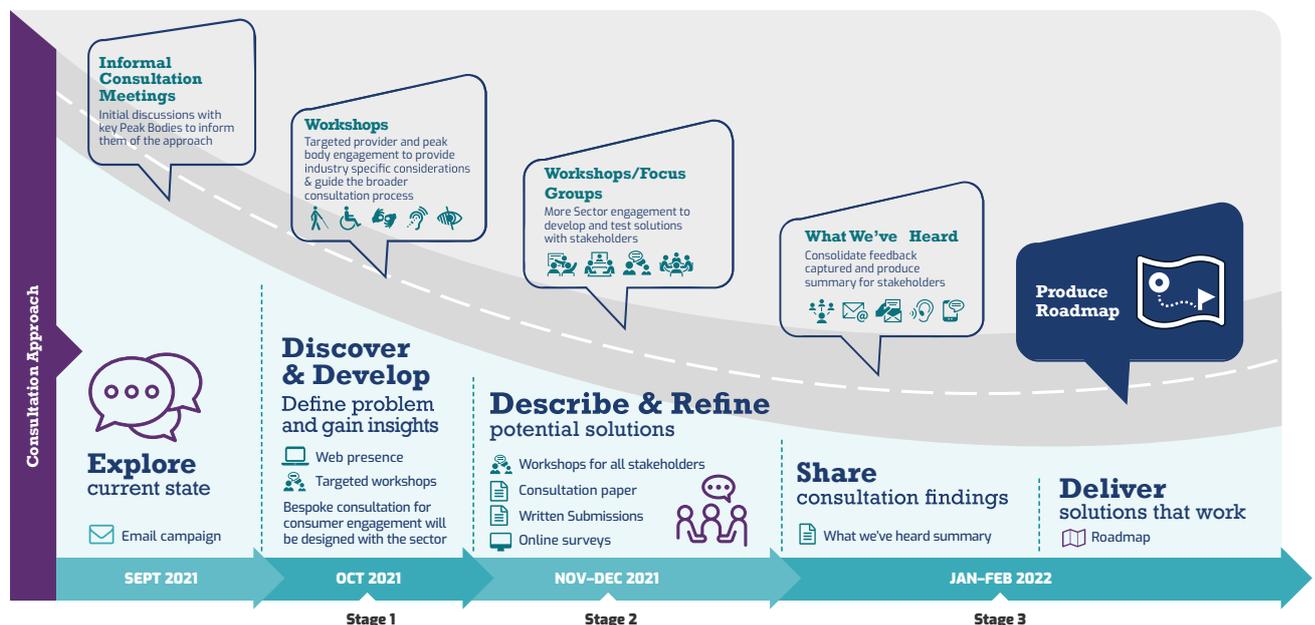
- taking part in a workshop or focus group
- participating in a targeted survey.

A summary of findings from the consultation process will be published in early 2022. All forms of consultation will inform advice to Government in 2022 on a roadmap for regulatory alignment across the care and support sector.

For further information please visit the website www.health.gov.au/initiatives-and-programs/aligning-regulation-across-the-care-and-support-sectors or email RegulatoryAlignmentTaskforce@health.gov.au

If you wish to get involved in consultations for any related regulatory projects, for example worker screening or the national care and support sector code of conduct, further information will become available on the Engagement Hub located at agedcareengagement.health.gov.au

Figure 1: Regulatory alignment consultation process

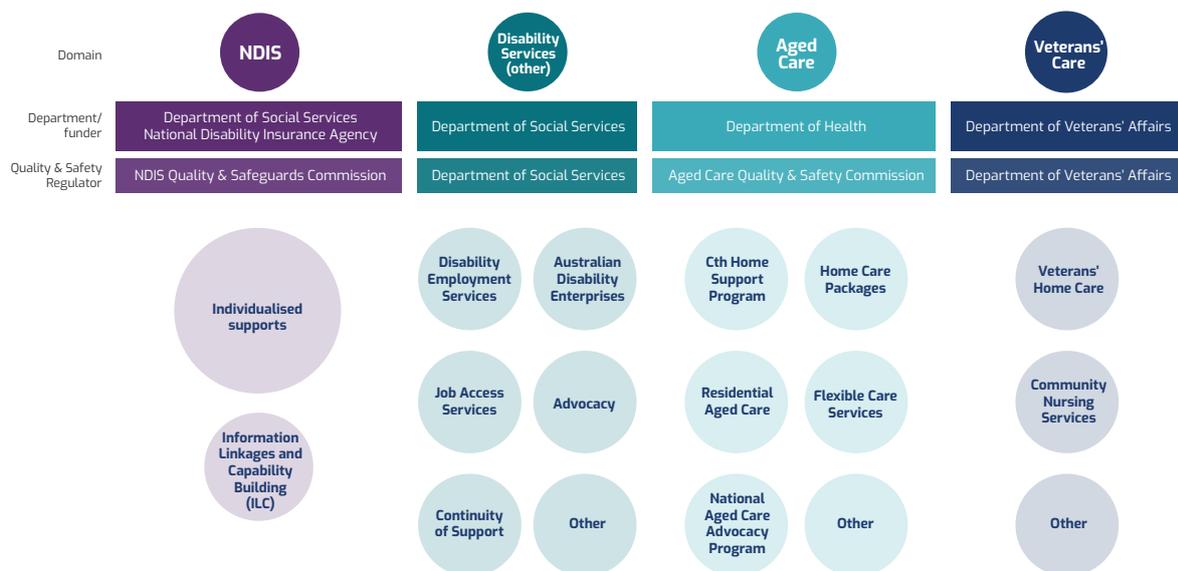


Regulation across the care and support sector

Programs and regulators

There are a number of separate programs across the care and support sector that are regulated by different departments and agencies.

Figure 2: Overview of Australia's care and support sector



See the Background Paper at www.health.gov.au/resources/publications/background-paper-aligning-regulation-across-australias-care-and-support-sectors, for more detail on the programs.

Although the way programs are funded is not within the scope of the regulatory alignment work, the funding and legislative basis of programs have implications for the way they are regulated. The basic different types are programs set out in legislation, grants, and procurements.

Program Type	
Aged care	<p>Residential aged care and respite care, home care packages, and most flexible care are funded largely through subsidy and supplements under the Aged Care Act 1997. Providers are required to be approved and are required to comply with the Aged Care Act, as well as the <i>Aged Care Quality and Safety Commission Act 2018</i> and associated rules.</p> <p>The Commonwealth Home Support Programme (CHSP) and National Aboriginal and Torres Strait Islander Flexible Aged Care Program are grants-based programs, with providers not required to be approved but subject to relevant parts of the quality frameworks under the same legislation. This is spelled out in the terms of the agreements through which these grant are administered.</p>
Veterans' care	<p>Veterans Home Care, and Community Nursing are funded through panel-based, fee-for-service contracts.</p>
NDIS	<p>Individualised packages of supports are funded in accordance with the <i>National Disability Insurance Scheme Act 2013</i> and associated rules.</p> <p>Information, Linkages and Capacity Building (ILC) is funded through grants.</p>
Disability services	<p>Most Commonwealth non-NDIS disability services programs, such as Disability Employment Services, are governed by the <i>Disability Services Act 1986</i> but funded through grant agreements that stipulate quality and safety requirements.</p>

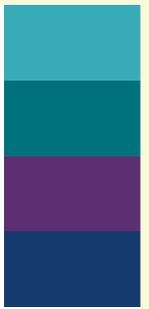
Regulatory functions

Despite the different regulators and different program types, regulation essentially comprises the following functions:

- **Education:** issuing information and education for providers about regulatory obligations and how to comply with them, and for consumers and participants about their rights in relation to services delivered by providers
 - For example, websites and guidance materials
- **Entry (registration, approval, agreement):** giving or cancelling approvals or registration of providers, or issuing funding agreements, and screening workers to operate in a sector
- **Rules and standards:** enforcing rules, codes and standards providers and workers must meet – for example:
 - codes of conduct
 - quality and practice standards
 - requirements for how to create individualised support strategies for people that reduce and eliminate the need for the use of practices that restrict or restrain them
- **Monitoring, assessment and reporting:** overseeing the conduct of providers and workers, including through reporting by providers, and assessment of how providers are meeting the regulations – for example:
 - incident reporting
 - audit or assessment of the quality of services a provider delivers and their compliance with regulatory obligations
 - other – activity, financial, performance
- **Complaints:** managing complaints from consumers/participants and the public about providers and workers and their compliance with their obligations, as well as requirements that are placed on providers about handling complaints
- **Compliance and enforcement:** making providers and workers meet their obligations and sanctioning them if they don't – for example:
 - infringement notices
 - directions to do things
 - penalties
 - bans
- **Consumer information:** publishing information about the quality of services and performance of providers to help consumers and participants make informed choices about the services they access, including through:
 - public registers of providers
 - quality indicators
 - star ratings

Please think about these areas of regulation as you answer the questions in this paper. The supplement document provides a more detailed overview of each of these areas of regulation in each sector.

Best practice, person-centred regulation



The primary measure of regulation of the care and support sector is its effectiveness in promoting quality and ensuring the safety of the people who use care and supports.

The Royal Commission into Aged Care Quality and Safety made a number of recommendations about how to improve quality and safety regulation in aged care and the Government is implementing a comprehensive program of reforms in response. Similarly, disability support is being reviewed by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, and through the review of the NDIS Quality and Safeguarding Framework. Veterans' care will be considered in the Royal Commission into Defence and Veteran Suicide and the review of veterans' services. All of this work is looking at *best practice regulation* in each sector and you are encouraged to contribute to the detailed regulatory review and design underway. Find out more at www.health.gov.au/initiatives-and-programs/aligning-regulation-across-the-care-and-support-sectors.

Best practice regulation is also the focus of the regulatory alignment process. The aim is not to simply pick one set of sector regulation over another, or to apply a one-size-fits-all approach that does not consider the circumstances of each sector. Rather, the aim of regulatory alignment is to develop a best practice approach to cross-sector regulation that most effectively and efficiently meets the quality and safety needs of the people who use care and supports.

The difference in focus here is that whereas sector-specific reforms are looking in detail at the needs of a particular sector, we are here interested in:

- what can and should be consistent across the sectors
- what needs to be different
- what is duplicative and could be streamlined without compromising quality or safety for consumers and participants
- what needs to be strengthened across sectors to better protect consumers and participants
- how we can learn from the different regulatory frameworks in each sector to improve regulation across all.

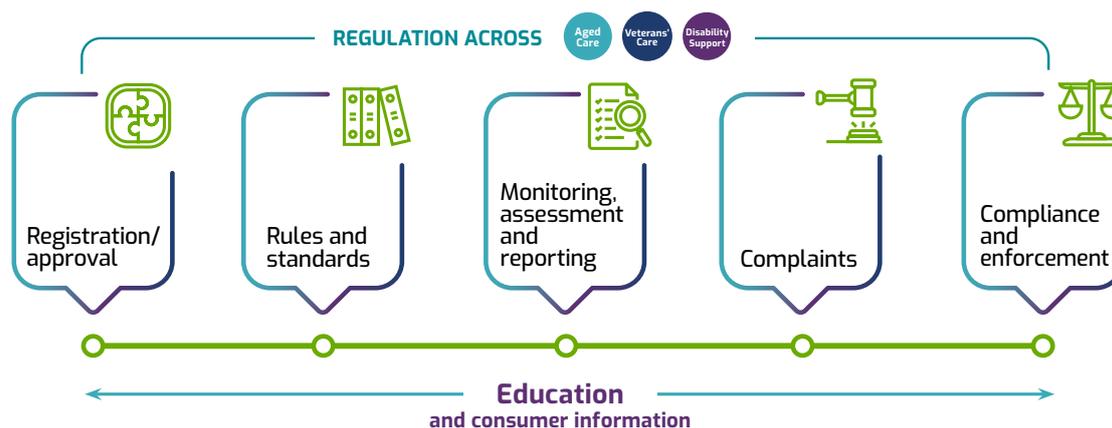
Questions

1. **What potential benefits and risks can you see in pursuing greater alignment of regulation across the care and support sector?**
2. **What are the fundamental aspects of regulation that should be consistent across the care and support sector?**
3. **What differences need to be catered for in cross-sector regulation?**
You may want to think about differences between:
 - consumers, participants and carers
 - providers and workers
 - service types.

User experience

In regulatory alignment, in addition to the effectiveness of regulation we are also interested in the **experience of users** – consumers and participants, carers, providers, and workers. In particular, we want to understand how regulation is experienced across the sector.

Figure 3: User Experience



What's working well?

There are consistent elements of regulation across the care and support sector, but different ways of implementing them and different approaches to overseeing them. We want to understand what's working well for you.

What we have heard so far

Based on early consultation, the following are examples of what users have reported is working well in regulation across the sector. They are examples only to prompt your reflection on your own experiences.

Providers

- Increased transparency of incidents is an important safeguard that is supported, we just want to report each incident only once.

Workers

- A single worker screening check for NDIS workers across different jurisdictions, instead of the multiple different state-based checks, has made things much easier.

Consumers, participants and carers

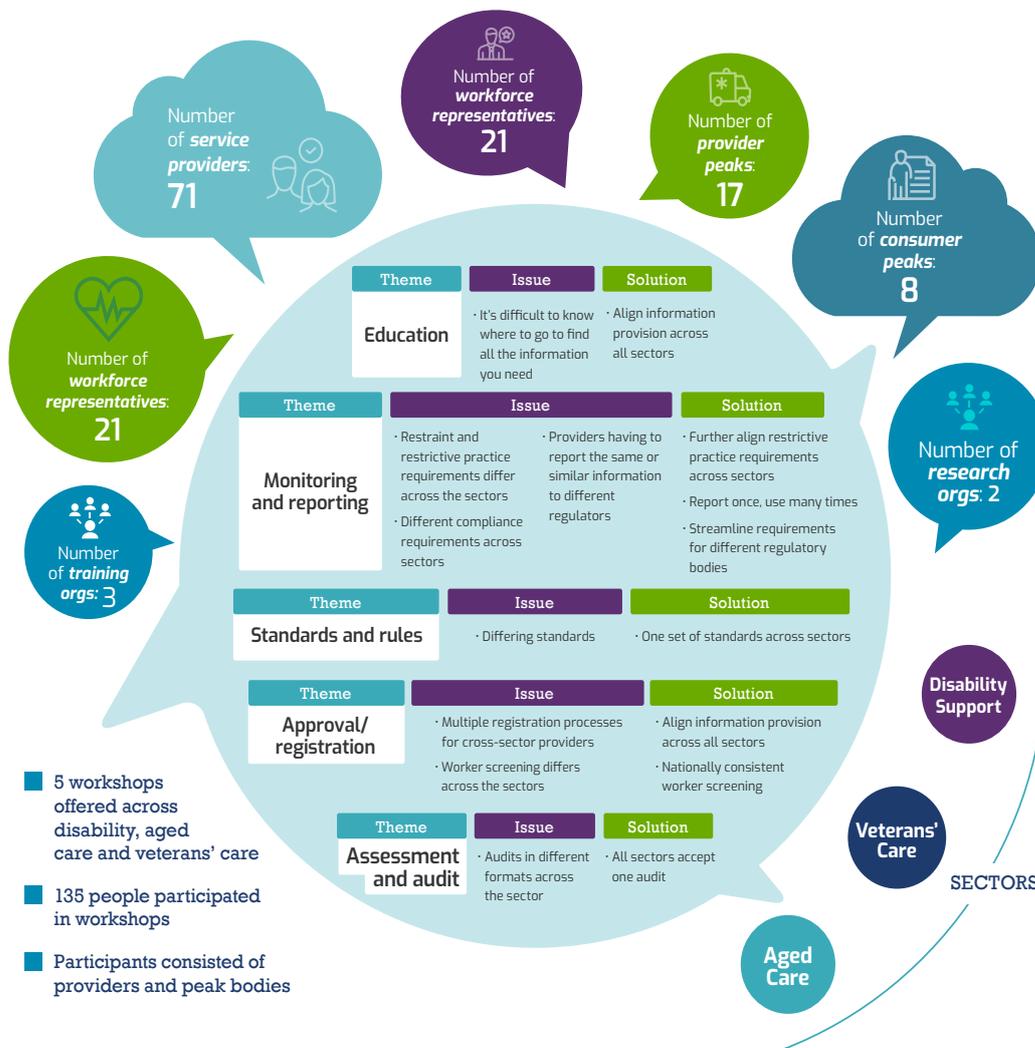
- The changes across sectors to limit the use of restraint are really important.
- It is good that the regulations consider vulnerable groups, such as children and young people, people with dementia and people who are in the end stages of their lives. Cross-sector regulation should continue to build upon and strengthen what is already in place.

Questions

4. What aspects of regulation in each sector are working well that you would like to see adopted more consistently across the sectors?

Figure 4: Workshop feedback and participation

Workshop Feedback and Participation



Challenges

The challenges we are particularly interested in are those that arise from the interactions, differences and overlaps between quality and safety regulation across the sector. For example, requirements to create processes and procedures that meet multiple sets of standards and requirements.

What we have heard so far: challenges

Based on early consultation, the following are examples of the challenges with cross-sector regulation that users have reported. They are examples only to prompt your reflection on your own experiences.

Providers

- It can be difficult to understand the different regulatory obligations across sectors and to design business processes that comply with them all.

Workers

- There are different requirements that workers need to meet to provide care and support services across the sector.

Consumers and participants

- It can be difficult to understand how things are regulated and what you should do if something goes wrong.

Questions

5. **What challenges have you experienced or observed because of the different ways quality and safety is regulated in aged care, disability support and veterans' care?**

Developing solutions

Solutions to the issues experienced across the sector with quality and safety regulation will be developed by drawing upon:

- evidence of effective regulation, including international approaches; and
- the experiences of people who use or engage with quality and safety regulation.

Snapshot: International approaches to regulation of care and support

Looking at international approaches to regulation of care and supports helps us to think differently about how we regulate the sector in Australia. A few key features are important: What types of care and supports do they regulate? How do they regulate them?

Please note that the below examples do not cover veterans' care, which is generally regulated separately.

Table 1. Overview of international approaches to regulation of care and support

	Scope of regulation	Regulatory functions and approach
England	<p>The Care Quality Commission (CQC) regulates adult social care and health services in England:</p> <ul style="list-style-type: none"> • residential care and nursing homes • home care agencies that offer services in the home (e.g. a care worker) • community-based services that help people live independently and offer care, support and treatment for people with learning disabilities, acute or chronic conditions, mental health needs or substance misuse problems. 	<p>The role of the CQC is to register care providers (based on legal requirements and being able to meet 13 fundamental standards of care), to monitor, inspect and rate services, to take action to protect people who use services and to publish reports on quality issues in social care and health services.</p> <p>The CQC has adopted a human rights approach to social care: Fairness, Respect, Equality, Dignity, Autonomy. Other features of the CQC include 'expert inspections', which involve people who use services in inspections, and partnerships with other organisations in the social care system.</p>
New Zealand	<p>The Ministry of Health and the Health Quality and Safety Commission regulate the health and disability sectors, including:</p> <ul style="list-style-type: none"> • age-related residential care • disability services • a range of other services. 	<p>The role of the Commission is to: monitor and report on quality and safety; build sector capability for quality and safety improvement; support clinicians to be leaders of quality and safety improvement best practice; build consumer engagement and partnership; influence health quality and safety; and be a catalyst for change.</p> <p>Health and disability services that are required to be certified are required to comply with criteria relevant to that service. Audits are reported on relevant standards only. Ministry of Health funded services and supports are independently evaluated and audited to help ensure they deliver quality supports.</p>

	Scope of regulation	Regulatory functions and approach
Scotland	<p>The Care Inspectorate is a national agency responsible for regulating:</p> <ul style="list-style-type: none"> • adult care services • early learning and childcare • children’s services • community justice services. 	<p>Key functions of the Care Inspectorate are: registration, inspection, complaints, enforcement, improvement support, advice and guidance, and sharing good practice.</p> <p>Inspection reports are publicly available on the Care Inspectorate website. Assessment of services is against six National Health and Social Care Standards. Care services in Scotland must be registered with the Care Inspectorate and a broad range of workers in those services must be registered with the Scottish Social Services Council (SSSC).</p>
Ireland	<p>The Health Information and Quality Authority (HIQA) is an independent authority established to drive high-quality and safe care for people using health and social care services in Ireland, including:</p> <ul style="list-style-type: none"> • acute and community healthcare services • disability services • older people’s services • children’s services • health information • health technology assessment. 	<p>HIQA’s role is to develop standards, inspect and review health and social care services and support informed decisions on how services are delivered.</p> <p>HIQA is currently developing new principles-based national standards for health and social care services. The draft principles – a human rights-based approach, safety and wellbeing, responsiveness, and accountability – have been developed to be used consistently across all national standards developed by HIQA, irrespective of the setting or service type.</p>
Canada	<p>Long-term care is regulated, funded and delivered under the provincial/territorial governments.</p> <p>National legislation guides some, but not all, aspects of service delivery, regulation and administration.</p> <p>Disability legislation exists across all 13 provincial and territorial jurisdictions, and municipalities also play a role in administering disability programs, standards and welfare services.</p>	<p>In Canada, national legislation guides some, but not all, aspects of service delivery, regulation and administration. The regulation of aged care and disability supports is decentralised and is the responsibility of the provincial and territorial governments. Each of the provinces and territories differs in terms of its requirements of care and support providers.</p>

What we have heard so far: solutions

Based on early consultation, the following are examples of possible solutions to the challenges of cross-sector regulation that people have reported. They are examples only to prompt your consideration of preferred solutions.

- A single source of consistent information about what providers need to do to comply with regulatory obligations across the sector
- Report information once only to a single point, with regulators to share that information with each other (report once, use often)
- A single core set of standards that address common outcomes that are sought across the sector, supplemented by those that are specific to different types of care and support
- A centralised provider registration process across the sector, or elements of the registration process that can be completed once and shared between regulators, such as suitability checks of applicants and key personnel.

Questions

6. **What are some possible solutions that would address the challenges you identified with cross-sector regulation of care and supports?**
 - What would be the benefits? What would be the risks – especially any risks to consumers and participants – and how could they be appropriately addressed?
7. **For consumers, participants and carers, what, if any, changes would you like to see in how providers and workers are held to account across the sector?**

Priorities and timing

A key focus of the regulatory alignment work is to develop a roadmap for medium to longer term regulatory alignment. The roadmap will outline the outcomes we are seeking and the steps and timeframes proposed to achieve them.

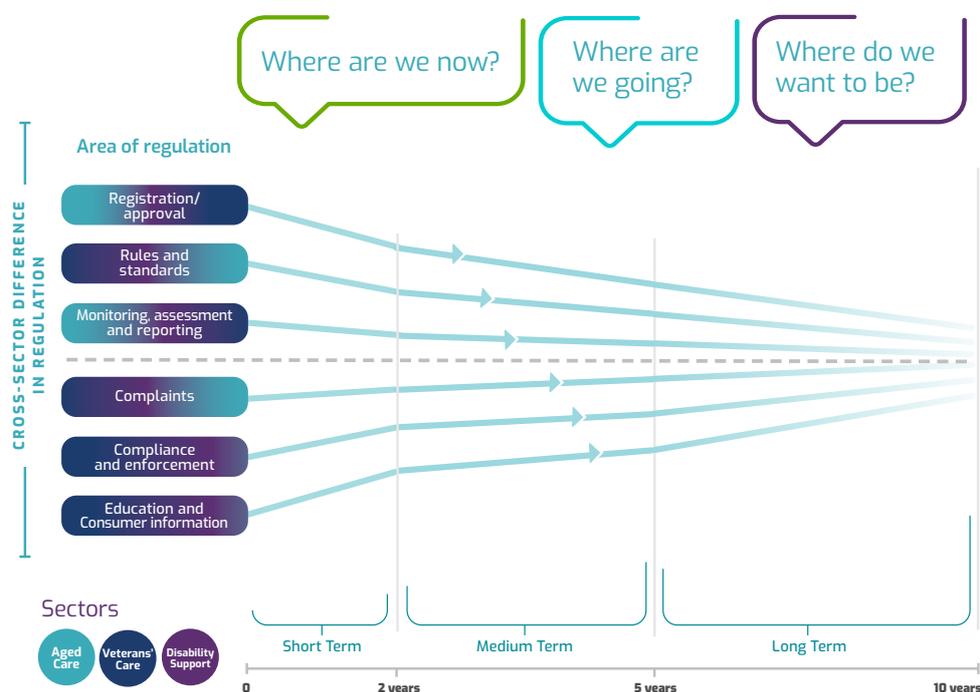
The options are open, with no plan yet set for what is to be achieved and when.

For example, an option may be as simple as streamlining the reporting of information to multiple regulators – reporting once to meet multiple obligations. Other options might be more comprehensive, such as a core set of standards for the care and support sector.

For options that involve significant change, we could either make large-scale changes over a shorter period of time, or stagger smaller, incremental changes over a longer period of time. For example, core care and support standards could be specifically developed in the short to medium term, or standards could be aligned incrementally over the next decade.

Your input and feedback on regulatory alignment options and timeframes for implementation will help to shape the roadmap for reform.

Figure 5: Priorities and timing roadmap



Questions

- Where would you start in pursuing alignment of quality and safety regulation across the care and support sector? In your opinion, what should be medium to longer term activities?

Optional deep dive into the areas of quality and safety regulation



If you would like to provide more detailed input about a specific area of regulation, please review the supplement document and for any of the areas of regulation, consider the following questions:

- **What challenges exist because of differences or overlaps across the care and support sector in the specific area of quality and safety regulation?**
- **From your perspective, what solutions to the challenges you have identified in the specific area of regulation should be considered? What would be the benefits and risks of these solutions?**

Thank you

Thank you for taking the time to read this consultation paper. We look forward to your response to this paper and/or to your participation in an upcoming workshop or focus group.

For further information, see our website – www.health.gov.au/initiatives-and-programs/aligning-regulation-across-the-care-and-support-sectors – or email us at RegulatoryAlignmentTaskforce@health.gov.au.

