



Royal Commission
into Aged Care Quality and Safety

LEGISLATIVE FRAMEWORK FOR AGED CARE QUALITY AND SAFETY REGULATION

BACKGROUND PAPER 7

AUGUST 2019

The Royal Commission into Aged Care Quality and Safety was established on 8 October 2018 by the Governor-General of the Commonwealth of Australia, His Excellency General the Honourable Sir Peter Cosgrove AK MC (Retd). Replacement Letters Patent were issued on 6 December 2018.

The Honourable Richard Tracey AM RFD QC and Ms Lynelle Briggs AO have been appointed as Royal Commissioners. They are required to provide an interim report by 31 October 2019, and a final report by 30 April 2020.

The Royal Commission intends to release consultation, research and background papers. This background paper has been prepared by staff of the Office of the Royal Commission, for the information of Commissioners and the public. The views expressed in this paper are not necessarily the views of the Commissioners.

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Introduction

Aged care quality and safety regulation is intended to protect and enhance the health and wellbeing of care recipients.

This Background Paper summarises the key aspects of quality and safety regulation provided for in the *Aged Care Act 1997* (Aged Care Act), the *Aged Care Quality and Safety Commission Act 2018* (Quality and Safety Commission Act) and supporting legislative instruments, including:

- approval of providers, making them eligible to receive government subsidies and supplements to provide aged care
- the responsibilities of approved providers, including in relation to quality of care, user rights and accountability
- accreditation and quality review processes
- enforcement and sanctions
- complaints processes
- advocacy and community visitors.

There are some aged care services that are grant funded and operate outside the legislative framework of the Aged Care Act, namely the Commonwealth Home Support Programme and the National Aboriginal and Torres Strait Islander Flexible Aged Care Program. The arrangements in place to regulate the quality and safety of these programs will also be described in this paper.

The Background Paper does not cover the following aspects of the aged care regulatory framework:

- the allocation of aged care places
- the approval and classification of care recipients
- setting of accommodation payments and accommodation contribution levels
- oversight of refundable deposits and accommodation bonds
- the role of the Aged Care Pricing Commissioner.

The aged care system also interacts with a broad range of regulatory bodies and frameworks. For example: consumer protection issues are regulated by the Australian Competition and Consumer Commission; health practitioner issues are regulated by the Australian Health Practitioner Regulation Agency; and each jurisdiction has its own work health and safety regulator. Legislation and regulations relating to local planning, building, fire safety, food safety and public health, among others areas, all apply in the aged care context. This broader regulatory context is not the focus of this paper.

The Background Paper does not provide commentary or a view on the adequacy or effectiveness of the current quality and safety regulatory scheme.

Legislative framework

The Aged Care Act and the Quality and Safety Commission Act provide the legislative framework for the Australian aged care system.

Sitting underneath the Aged Care Act is a suite of principles that contain detail about the operation and regulation of the aged care system.¹ The current principles, which are legislative instruments and can be made and amended by the Minister, are as follows:

- Accountability Principles 2014
- Allocation Principles 2014
- Approval of Care Recipients Principles 2014
- Approved Provider Principles 2014
- Classification Principles 2014
- Committee Principles 2014
- Extra Service Principles 2014
- Fees and Payments Principles 2014 (No 2)
- Grant Principles 2014
- Information Principles 2014
- Prioritised Home Care Recipients Principles 2016
- Quality of Care Principles 2014
- Records Principles 2014
- Sanctions Principles 2014
- Subsidy Principles 2014
- User Rights Principles 2014.

Other legislative instruments made under the Aged Care Act are Aged Care Determinations, including a determination by the Secretary under section 14–6 of conditions that apply to all allocations of places and to allocations of certain flexible care places² and a determination by the Minister setting the amount of subsidies and supplements payable to approved providers of aged care services.³

Sitting underneath the Quality and Safety Commission Act are the Aged Care Quality and Safety Commission Rules 2018 (Quality and Safety Commission Rules), which contain much of the detail relating to the functions and operation of the Aged Care Quality and Safety Commission.

¹ The principles are made under the Aged Care Act, s 96-1.

² *Aged Care (Conditions of Allocation) Determination 2016*.

³ *Aged Care (Subsidy, Fees and Payments) Determination 2014*.

Key entities

Minister

The Minister⁴ has responsibility for the administration of the Aged Care Act and the Quality and Safety Commission Act.

The Minister has the power to make and vary the principles under the Aged Care Act described above. In addition, the Minister also has specific roles under the Aged Care Act relating to, for example:

- determining the number of places available for allocation
- setting subsidy amounts and other matters relating to aged care pricing.

Secretary, Department of Health

The Secretary of the Department of Health has a range of functions including:

- responsibility for approving providers of aged care
- determining conditions of allocation of places
- power to impose sanctions on approved providers, which can include revocation of their approved provider status.

The powers of the Secretary of the Department of Health can be delegated to a Commonwealth agency or authority and to members of Aged Care Assessment Teams. There is also scope for powers of the Secretary to be delegated to the Aged Care Quality and Safety Commission.⁵ In addition, the *Human Services (Medicare) Regulations 2017*, made under the *Human Services (Medicare) Act 1973*, prescribe a number of functions of the Aged Care Secretary under provisions of the Aged Care Act to be functions of the Chief Executive Medicare.

There are “authorised officers” for the purposes of the Aged Care Act, who are officers of the Department of Health and who are appointed by the Secretary for the purposes of the Aged Care Act. Authorised officers have a range of powers related to administration of the Aged Care Act.⁶

Aged Care Quality and Safety Commission

The Aged Care Quality and Safety Commission commenced operations on 1 January 2019. The functions of the Commissioner under the Quality and Safety Commission Act include:

- protecting and enhancing the safety, health, wellbeing and quality of life of aged care consumers
- promoting the provision of quality care and services in aged care
- consumer engagement functions
- complaints functions
- regulatory functions
- education functions.⁷

⁴ Currently the Minister for Health or the Minister for Aged Care and Senior Australians.

⁵ Aged Care Act, s 96-2.

⁶ Ibid, ch 6, pt 6.4.

⁷ Quality and Safety Commission Act, s 16.

In terms of regulating quality and safety, the Aged Care Quality and Safety Commissioner has responsibility for:

- accreditation of residential care services
- quality reviews of home services
- monitoring of services for continuous improvement
- complaints handling.⁸

The Aged Care Quality and Safety Commission is made up of the Commissioner and its staff. Many of the accreditation and quality review processes of the Aged Care Quality and Safety Commission are undertaken by quality assessors (also referred to as regulatory officials⁹). The process for registration of quality assessors is provided for in the Quality and Safety Commission Rules.¹⁰ Complaints handling functions are undertaken by authorised complaints officers appointed under the Quality and Safety Commission Act.¹¹

Who is regulated?

The Aged Care Act regulates approved providers of aged care (and applicants for approved provider status). This includes approved providers of the following types of aged care:

- residential care¹²
- home care (under a Home Care Package)¹³
- flexible care, which includes: multi-purpose services,¹⁴ innovative care services,¹⁵ transition care¹⁶ and short-term restorative care.¹⁷

The provisions of the Aged Care Act do not apply to the Commonwealth Home Support Programme or the National Aboriginal and Torres Strait Islander Flexible Aged Care

⁸ Ibid, s 19.

⁹ See definition of regulatory official in section 7 of the Quality and Safety Commission Act.

¹⁰ Quality and Safety Commission Rules, pt 6.

¹¹ Quality and Safety Commission Act, s 73.

¹² The meaning of residential care is set out in section 41-3 of the Aged Care Act. Section 7B of the Subsidy Principles provides that for the purposes of section 41-3(2)(d), residential care does not include short-term restorative care.

¹³ The meaning of home care is set out in section 45-3 of the Aged Care Act. Section 70B of the Subsidy Principles provides that for the purposes of section 45-3(2)(b), home care does not include short-term restorative care.

¹⁴ The multi-purpose service program is a joint initiative of the Australian Government and state and territory governments. It provides an integrated health and aged care service for small regional and remote communities: Department of Health, *Legislation and rights and responsibilities of providers and care recipients of Multi-Purpose Services*, 2018, <https://agedcare.health.gov.au/programs/flexible-care/legislation-and-rights-and-responsibilities-of-providers-and-care-recipients-of-multi-purpose-services>.

¹⁵ The innovative care programme was established to support the development and testing of flexible models of service delivery in areas where mainstream aged care services may not meet the needs of a location or target group. A decision was taken by the Australian Government in 2006 to allow existing pilots to continue but not to fund any new innovative care placements from 25 May 2006: Department of Health, *Innovative Care Programme*, 2019, <https://agedcare.health.gov.au/programs-services/flexible-care/innovative-care-programme>.

¹⁶ Transition care service delivery is managed by state and territory governments, who are the approved providers of transition care places: Department of Health, *Transition Care Programme Guidelines*, 2015.

¹⁷ Flexible care includes multi-purpose services, innovative care services, transition care and short-term restorative care: Subsidy Principles, s 103.

Program, which are grant-funded. As such, the providers of services under the Commonwealth Home Support Programme and the National Aboriginal and Torres Strait Islander Flexible Aged Care Program are not “approved providers”. However, both programs are subject to quality reviews under the Quality and Safety Commission Act and Rules.

Other than short-term restorative care services, flexible care services that receive funding under the Aged Care Act are not subject to accreditation or quality review processes by the Quality and Safety Commission.

Complaints about issues relating to the responsibilities of approved providers or providers of the Commonwealth Home Support Programme or National Aboriginal and Torres Strait Islander Flexible Aged Care Program are all able to be made to the Quality and Safety Commission.

The table below summarises the different aged care services that are subject to the Aged Care Act and the various functions of the Aged Care Quality and Safety Commission.

		Aged Care Act applies?	Accreditation or quality reviews by the Aged Care Quality and Safety Commission?	Can be subject to a complaint under the Quality and Safety Commission Act?
Residential care		✓	✓	✓
Home Care Package		✓	✓	✓
Flexible care	Multi-purpose services	✓	x	✓
	Innovative care	✓	x	✓
	Transition care	✓	x	✓
	Short-term restorative care	✓	✓	✓
CHSP		x	✓	✓
NATSIFAC Program		x	✓	✓

Approval of providers

To receive Commonwealth Government subsidies to provide aged care—which includes residential care, home care and flexible care—an entity needs to be an approved provider.¹⁸

Responsibility to approve providers sits with the Secretary of the Department of Health.

Approved provider status can only be granted if the Secretary is satisfied that:

- the applicant is a corporation
- the applicant is suitable to provide aged care
- none of the applicant’s key personnel are “disqualified individuals”.¹⁹

¹⁸ Aged Care Act, pt 2.1.

¹⁹ Ibid, s 8-1. For the definition of “disqualified individual”, see section 10A-1.

Suitability of an applicant to provide aged care is assessed having regard to:

- experience in providing aged care
- a demonstrated understanding of responsibilities as a provider
- systems that the applicant has in place or proposes to put in place to meet approved provider responsibilities
- a record of financial management and methods that the applicant proposes to use to ensure sound financial management
- where the applicant has been a provider of aged care, its conduct as a provider and compliance with responsibilities.²⁰

The Secretary of the Department of Health has the power to revoke approved provider status if:

- the approved provider ceases to be a corporation
- the approved provider ceases to be suitable for approval
- the application for approval contained misleading information.²¹

In addition, revocation of approved provider status is a sanction that can be imposed if an approved provider has not complied with its responsibilities in relation to either quality of care, user rights or accountability.²²

State and territory governments and local government authorities are taken to be approved providers.²³

In addition, operators of nursing homes, hostels and community aged care services who were approved under the *National Health Act 1953* or the *Aged or Disabled Persons Care Act 1954*, as at the commencement of the Aged Care Act, are taken to be approved providers for the purposes of the new Act. Under these arrangements, there may be approved providers for the purposes of the Aged Care Act that are not corporations.²⁴

Responsibilities of approved providers

The Aged Care Act sets out the responsibilities and obligations of approved providers with respect to:

- quality of care²⁵
- user rights²⁶
- accountability.²⁷

There may be consequences for non-compliance with these responsibilities, as set out below.

²⁰ Ibid, s 8-3.

²¹ Ibid, s 10-3.

²² Ibid, s 66-1(a).

²³ Ibid, s 8-6.

²⁴ *Aged Care (Consequential Provisions) Act 1997*, ss 7, 10, 13.

²⁵ Aged Care Act, ch 4, pt 4.1.

²⁶ Ibid, ch 4, pt 4.2.

²⁷ Ibid, ch 4, pt 4.3.

Quality of Care

Overview

The responsibilities of approved providers in respect of quality of care include:

- providing care and services as specified in the Quality of Care Principles
- maintaining an adequate number of appropriately skilled staff to ensure that the care needs of care recipients are met
- providing care consistent with the User Rights Principles
- complying with the Aged Care Quality Standards
- complying with obligations with respect to physical and chemical restraint
- any other responsibilities as specified in the Quality of Care Principles.²⁸

Services

The Aged Care Act and Quality of Care Principles set out aged care services that approved providers must provide.²⁹

The Quality of Care Principles contain a schedule of services that must be provided to all recipients of residential care who need them.³⁰ These include ‘hotel services’ and care services. Hotel services include, for example: accommodation, grounds and building maintenance, furnishings, meals (including special diets), bedding, laundry, toiletries and social activities.³¹

Care services include, for example: daily living activities and assistance, emotional support, treatments and procedures carried out according to instructions of a health professional, recreational therapy, rehabilitation support, assistance in obtaining health practitioner services, assistance in obtaining access to specialised therapy services and support with cognitive impairment.³²

Further care services that must be provided according to need, such as mobility aids and equipment, nursing services, and therapy delivered by a health professional, may be subject to an additional fee payable by the care recipient.³³ The schedule includes a brief description of what each of the services should comprise.

The Quality of Care Principles also contain a schedule of services that *may* be provided by home care service providers. These services include, for example: personal care services (such as assistance with bathing, going to the toilet, dressing, mobility and getting in and out of bed), support with activities of daily living including communication support, assistance with meals and eating, and management of skin integrity and continence. Other support services that may be provided include, for example: cleaning, laundry, gardening, transport and leisure activities. Support to manage a care plan may also be provided. Home care service providers may provide clinical care such as nursing and access to other health related services.

²⁸ Aged Care Act, s 54-1(1)(a). For obligations relating to restraint see Part 4A of the Quality of Care Principles.

²⁹ Aged Care Act, s 54-1(a).

³⁰ Quality of Care Principles, sch 1—Care and services for residential care services.

³¹ *Ibid*, sch 1, pt 1.

³² *Ibid*, sch 1, pt 2.

³³ *Ibid*, sch 1, pt 3.

The Quality of Care Principles also set out:

- the care and services that must be provided in the context of short-term restorative care in a residential setting
- the care and services that may be provided in the context of short-term restorative care in a home care setting.³⁴

Services that are to be provided in short-term restorative care are similar to those provided for in relation to residential and home care services, as described above.

Aged Care Quality Standards

The Quality of Care Principles are made by the Minister under the Aged Care Act.³⁵ Prior to 1 July 2019, the principles included separate residential care accreditation standards and home care standards. These standards also applied to flexible short-term restorative care in either residential or home settings.

The four residential care accreditation standards applicable prior to 1 July 2019 related to: management systems, staffing and organisational development, health and personal care, care recipient lifestyle, and physical environment and safe systems. Those four standards comprised 44 outcomes that providers were required to achieve.

The three home care standards applicable prior to 1 July 2019 included: effective management; appropriate access and service delivery; and service user rights and responsibilities. Those three standards were comprised of 18 outcomes that providers were required to achieve.

From 1 July 2019, the Quality of Care Principles have included a single Aged Care Quality Standards framework which applies to residential care services, home care services and short-term restorative care provided in either a residential or home care setting.³⁶ The Aged Care Quality Standards are structured so that only those relevant to the aged care service will apply to the provider.³⁷

The Aged Care Quality Standards framework comprises eight standards:

1. Standard 1—consumer dignity and choice
2. Standard 2—ongoing assessment and planning with consumers
3. Standard 3—personal care and clinical care
4. Standard 4—services and supports for daily living
5. Standard 5—organisation's service environment
6. Standard 6—feedback and complaints
7. Standard 7—human resources
8. Standard 8—organisational governance.³⁸

Each standard includes a statement of the outcome for the consumer, expectations of the organisation and requirements to be achieved.

³⁴ Ibid, sch 5.

³⁵ Aged Care Act, s 96-1.

³⁶ Quality of Care Principles, ss 7, 13, 15B, 15C.

³⁷ Department of Health, *Application of Aged Care Quality Standards by Service Type*, 2019.

³⁸ Quality of Care Principles, sch 2.

While the new Aged Care Quality Standards came into effect from 1 July 2019, the processes for accreditation, quality review, monitoring and compliance action remain largely unchanged.

Quality of care in other services

The Commonwealth Home Support Programme grant funding arrangements require service providers to comply with the Aged Care Quality Standards.³⁹

The National Aboriginal and Torres Strait Islander Flexible Aged Care Program is also required to comply with the new Aged Care Quality Standards.⁴⁰

User Rights

The responsibilities of approved providers with respect to user rights are set out in Part 4.2 of the Aged Care Act. They include responsibilities:

- relating to the amounts charged to care recipients for services
- to comply with requirements relating to managing refundable deposits, accommodation bonds and entry contributions
- to provide for security of tenure in relation to a care recipient's place in a residential care service
- to enable a person acting for a care recipient, or an advocate or community visitor (for residential aged care facilities) access to services
- to establish and implement a complaints resolution mechanism by the approved provider.⁴¹

The Aged Care Act and the User Rights Principles also set out requirements for:

- resident agreements, in relation to residential aged care
- home care agreements, in relation to home care services
- flexible care agreements, in relation to short-term restorative care.⁴²

Resident agreements and home care agreements are an agreement between the approved provider and the care recipient about matters including the manner in which care will be provided and the processes applied to complaints.

An approved provider of home care must also give each care recipient an individualised budget for the care to be provided to the care recipient, as set out in the care recipient's care plan.⁴³

From 1 July 2019, the User Rights Principles have contained a Charter of Aged Care Rights. The Charter replaces three separate charters of care recipients' rights that previously applied to residential care, home care and short-term restorative care.

³⁹ Department of Health, *Commonwealth Home Support Programme: Program Manual 2018*, 2018, p 86.

⁴⁰ Department of Health, *National Aboriginal and Torres Strait Islander Flexible Aged Care Program: Program Manual 2019*, 2019, p 18.

⁴¹ Aged Care Act, s 56-4.

⁴² *Ibid*, ss 52F-2, 56-2, 59-1, 61-1, User Rights Principles, ss 14, 22, 23AF.

⁴³ User Rights Principles, s 21A.

The Charter of Rights, which is contained in Schedule 1 of the User Rights Principles, is as follows:

1 Meaning of *I, me and my*

If a clause of this Schedule uses the expression *I, me* or *my*, the clause applies to a care recipient who is provided with:

- (a) residential care
- (b) home care
- (c) flexible care in the form of short-term restorative care.

2 Care recipient's rights

I have the right to:

1. safe and high quality care and services
2. be treated with dignity and respect
3. have my identity, culture and diversity valued and supported
4. live without abuse and neglect
5. be informed about my care and services in a way I understand
6. access all information about myself, including information about my rights, care and services
7. have control over and make choices about my care, and personal and social life, including where the choices involve personal risk
8. have control over, and make decisions about, the personal aspects of my daily life, financial affairs and possessions
9. my independence
10. be listened to and understood
11. have a person of my choice, including an aged care advocate, support me or speak on my behalf
12. complain free from reprisal, and to have my complaints dealt with fairly and promptly
13. personal privacy and to have my personal information protected
14. exercise my rights without it adversely affecting the way I am treated.

The approved provider has obligations to inform care recipients of the Charter of Rights and help them understand the rights set out in the Charter, providing the care recipient with a copy and an opportunity for the service user and the care recipient to sign the Charter.⁴⁴

In terms of enforcing the rights in the User Rights Principles, there is scope for the care recipient to make a complaint to the service provider or the Aged Care Quality and Safety Commissioner. Sanctions can be imposed on an approved provider if they are found to have acted in a way that is inconsistent with any of the rights and responsibilities of care recipients that are specified in the Charter.⁴⁵

⁴⁴ Ibid, ss 9, 11, 14, 16, 19, 20, 22, 23AA, 23AD, 23AE, 23AF.

⁴⁵ Aged Care Act, ss 56-1(m), 65-1.

User rights in other services

Both National Aboriginal and Torres Strait Islander Flexible Aged Care Program service providers and Commonwealth Home Support Programme service providers are required to comply with the Charter of Aged Care Rights, as set out in the respective program manuals.⁴⁶

Accountability

Approved providers are accountable for the services they provide. These are provided for in Part 4.3 of the Aged Care Act and the Accountability Principles.⁴⁷

They include responsibilities:

- to comply with record keeping requirements in the Aged Care Act⁴⁸
- to cooperate with any person exercising powers under the Aged Care Act or the Quality and Safety Commission Act⁴⁹
- in relation to the classification of care recipients, to conduct appraisals and reappraisals of the care requirements of care recipients as required⁵⁰
- to undertake criminal history checks for staff members and volunteers⁵¹
- to ensure that none of its key personnel are disqualified individuals (within the meaning of the Aged Care Act)⁵²
- if, when approving the provider as a provider of aged care, the Secretary specified any circumstances that the Secretary was satisfied materially affected the provider's suitability to provide aged care, to ensure that there are no changes to those circumstances without informing the Secretary of the proposed changes and obtaining agreement for the changes⁵³
- to notify the Secretary of a change of circumstances that materially affects the approved provider's suitability to be a provider of aged care (other than any circumstances specified by the Secretary when approving the provider) within 28 days after the change occurs⁵⁴
- to provide aged care financial reports and general purpose financial reports on an annual basis⁵⁵
- to participate, if requested, in an aged care workforce census⁵⁶
- to report alleged and suspected assaults⁵⁷

⁴⁶ Department of Health, *National Aboriginal and Torres Strait Islander Flexible Aged Care Program: Program Manual 2019*, 2019, p 8
Department of Health, *Commonwealth Home Support Programme: Program Manual 2018*, 2018, p 10.

⁴⁷ Aged Care Act, s 63-1.

⁴⁸ Aged Care Act, s 63-1(1), pt 6.3, Records Principles.

⁴⁹ Aged Care Act, ss 63-1(b)–(ba).

⁵⁰ *Ibid*, s 63-1(h).

⁵¹ Accountability Principles, pt 6.

⁵² Aged Care Act, s 63-1A, pt 2.

⁵³ *Ibid*, ss 8-5(3), 63-1C.

⁵⁴ *Ibid*, ss 9-1, 63-1C.

⁵⁵ Accountability Principles, pt 4.

⁵⁶ *Ibid*, pt 5.

⁵⁷ Aged Care Act, s 63-1AA.
Accountability Principles, pt 7.

- to report missing residents⁵⁸
- to collect and report data in compliance with the National Aged Care Mandatory Quality Indicator Program.⁵⁹

Reportable assaults

Approved providers of residential care are required to report alleged and suspected assaults on a person receiving residential care from the provider. The obligation to report arises in relation to incidents that might constitute an offence. The approved provider must report the incident to the police and the Secretary.⁶⁰

There is an exemption from the reporting requirement if the alleged perpetrator is a resident with cognitive or mental impairment and the provider puts a behaviour management plan in place and maintains a record of the plan.⁶¹

Providers are required to maintain records of alleged or suspected assaults, whether or not the incident was also reported to the police and the Department of Health.⁶²

National Aged Care Mandatory Quality Indicator Program

The Quality Indicator Program, previously a voluntary program, became mandatory on 1 July 2019.

Approved providers of residential care are required to provide information to the Department of Health in accordance with the National Aged Care Mandatory Quality Indicator Program Manual.⁶³

The National Aged Care Quality Indicator Program involves collecting data for three indicators:

- pressure injuries
- use of physical restraint
- unplanned weight loss.

Providers are required to report the data quarterly to the Department of Health through an online portal. A report will be generated for the provider.⁶⁴ The Department has stated that consolidated quality indicator data will be published on the Australian Institute of Health and Welfare website, GEN Aged Care Data.⁶⁵ The Manual states the program will:

- provide a set of meaningful and measurable quality indicators to assist residential care services to monitor and improve important aspects of care
- enable residential care services to monitor and identify trends in their performance over time, compare with other services, and implement improvements that will promote quality of care and quality of life

⁵⁸ Accountability Principles, s 25.

⁵⁹ Ibid, s 26.

⁶⁰ Aged Care Act, s 63-1AA.

⁶¹ Aged Care Act, s 63-1AA(3), Accountability Principles, s 53.

⁶² Records Principles, s 8.

⁶³ Accountability Principles, s 26.

⁶⁴ Department of Health, *National Aged Care Quality Indicator Program Manual 1.0*, 2019.

⁶⁵ Department of Health, *About the National Aged Care Mandatory Quality Indicator Program, 2019*, <https://agedcare.health.gov.au/ensuring-quality/quality-indicators/about-the-national-aged-care-quality-indicator-programme>.

- over time, provide nationally comparable quality indicator data across residential care services in Australia
- develop an evidence base to facilitate quality improvement initiatives
- enhance community understanding of quality in residential care services over time through publication of information about the quality indicators
- provide more information to consumers and residential care recipients to assist with choices and decision-making about residential care services over time.⁶⁶

Accountability in other services

National Aboriginal and Torres Strait Islander Flexible Aged Care Program providers are accountable to the Commonwealth Government under the terms of their grant agreement, including requirements stated in the relevant program manuals.⁶⁷

In relation to the National Aboriginal and Torres Strait Islander Flexible Aged Care Program, there are requirements around reportable assaults in the program manual.⁶⁸ Both the National Aboriginal and Torres Strait Islander Flexible Aged Care Program and Commonwealth Home Support Programme service providers have obligations in relation to staff and volunteer police checks.⁶⁹

Accreditation, quality reviews and monitoring

The Aged Care Quality and Safety Commission's regulatory functions include:

- accreditation of residential care services (including short-term restorative services in a residential setting)
- quality review of home care services, short-term restorative services provided in a home setting, Commonwealth Home Support Programme and National Aboriginal and Torres Strait Islander Flexible Aged Care Program services
- monitoring of residential care services, home care services, short-term restorative services in a home or residential setting, Commonwealth Home Support Programme and National Aboriginal and Torres Strait Islander Flexible Aged Care Program services.⁷⁰

The Quality and Safety Commission Rules set out processes for accreditation, quality review and monitoring.

The table below shows the accreditation and quality review paths, which service types they apply to, and the different regulatory processes (at a very high level). The various processes are described in more detail below.

⁶⁶ Department of Health, *National Aged Care Quality Indicator Program Manual 1.0*, 2019, p 6.

⁶⁷ Department of Health, *National Aboriginal and Torres Strait Islander Flexible Aged Care Program: Program Manual 2019*, 2019, p 9; Department of Health, *Commonwealth Home Support Programme: Program Manual 2018*, 2018, p 1.

⁶⁸ Department of Health, *National Aboriginal and Torres Strait Islander Flexible Aged Care Program: Program Manual 2019*, 2019, p 13.

⁶⁹ Department of Health, *National Aboriginal and Torres Strait Islander Flexible Aged Care Program: Program Manual 2019*, 2019, p 12; Department of Health, *Commonwealth Home Support Programme: Program Manual 2018*, 2018, p 87.

⁷⁰ Quality and Safety Commission Act, s 19.

ACCREDITATION		QUALITY REVIEW			
Residential care service	Short-term restorative care (residential)	Home Care Packages	Short-term restorative care (home care)	CHSP	NATSIFAC Program
Accreditation (prior to receiving subsidies) and re-accreditation (within 12 months of accreditation).		Quality review (at least every 3 years, except for NATSIFAC Program, where it is every 2 years).			
Site audit conducted by an assessment team as part of the re-accreditation of a service.		Site visit conducted as part of a quality review.			
Review audit conducted where information comes to the attention of the Aged Care Quality and Safety Commission to indicate the need for review of an accredited service.		<i>No equivalent.</i>			
Assessment contact – contact <i>other than a site audit or review audit</i> between the Aged Care Quality and Safety Commission and the provider. ⁷¹		Assessment contact – contact <i>other than a quality review</i> between the Aged Care Quality and Safety Commission and the provider. ⁷²			

Accreditation of residential care services

A residential care service must be accredited for the approved provider to receive a residential care subsidy from the Commonwealth Government.⁷³

The Aged Care Quality and Safety Commission undertakes accreditation of residential care services, including short-term restorative care provided in a residential care setting.⁷⁴

An approved provider can apply to the Commissioner for accreditation of a service.⁷⁵ Initial accreditation is determined on a written application from the approved provider. In determining the application, the Commissioner must take into account:

- whether the approved provider will undertake continuous improvement in relation to the service as measured against the Aged Care Quality Standards
- any relevant information provided by the Secretary of the Department of Health
- any other relevant matter.⁷⁶

Initial accreditation of a commencing service is for one year.⁷⁷ When notifying an approved provider of the decision to accredit, the Aged Care Quality and Safety Commission must also notify them of a range of matters including any improvements to the service that the provider is required to make to ensure the service will comply with the Aged Care Quality Standards and arrangements for ongoing assessment contacts.⁷⁸

⁷¹ Quality and Safety Commission Rules, s 5.

⁷² Ibid.

⁷³ Aged Care Act, s 42-1(1)(c).

⁷⁴ Quality and Safety Commission Act, s 19. Quality and Safety Commission Rules, s 25. Note that in relation to providers of short-term restorative care in a residential setting, a provider may apply to the Aged Care Quality and Safety Commission for accreditation. Accreditation does not, however, appear to be a requirement for eligibility to receive a flexible care subsidy in the way that it is a requirement to receive a residential care subsidy: see Aged Care Act, ch 3, pt 3.3.

⁷⁵ Quality and Safety Commission Rules, s 27.

⁷⁶ Ibid, s 29(2).

⁷⁷ Ibid, s 29(3)(a).

⁷⁸ Ibid, s 30.

The Commissioner must appoint an assessment team to conduct a site audit at the premises of the service when an approved provider applies for re-accreditation of a service.⁷⁹ The assessment team must assess the quality of care and services provided against the Aged Care Quality Standards.⁸⁰

During the audit, the assessment team must meet with the person who is in charge of the service and at least 10% of the care recipients of the service (or their representatives). If a care recipient of the residential service or their representative asks to meet the assessment team, the provider must take reasonable steps to enable the person to meet the team privately.⁸¹

The assessment team must produce a site audit report which will be taken into consideration by the Commissioner in determining whether to reaccredit the service. The Commissioner must consider whether the service will undertake continuous improvement as measured against the Aged Care Quality Standards.⁸²

The Commissioner must decide the period of re-accreditation, any improvements to the service the provider is required to make to ensure the service will comply with the Aged Care Quality Standards, including a timetable for improvement, and arrangements for ongoing assessment contacts with the provider of the service.⁸³

A provider can apply for reconsideration of a decision not to accredit a service.⁸⁴ The Commissioner is also empowered to revoke accreditation of a service.⁸⁵ The Commissioner must publish decisions not to accredit a service on the Aged Care Quality and Safety Commission's website.⁸⁶ A provider can apply to the Administrative Appeals Tribunal for review of a decision not to accredit a service or to revoke the accreditation of a service if the decision has been confirmed after internal review by the Commissioner.⁸⁷

Quality review of home services

Home care services include:

- home care services provided in relation to Home Care Packages;
- flexible care services through which short-term restorative care is provided in a home care setting
- Commonwealth Home Support Programme services.⁸⁸

Unlike for residential care, there is no accreditation requirement for home care services. In other words, an approved provider is able to provide home care services prior to any accreditation or quality review process being undertaken by the Aged Care Quality and Safety Commission.

The Commissioner must ensure that a quality review of a home service is conducted at least once every three years.⁸⁹

⁷⁹ Ibid, ss 32, 36.

⁸⁰ Ibid, s 36.

⁸¹ Ibid, s 38.

⁸² Ibid, ss 40–41.

⁸³ Ibid, s 41.

⁸⁴ Ibid, ss 41, 43.

⁸⁵ Ibid, s 44.

⁸⁶ Ibid, s 48.

⁸⁷ Ibid, s 103.

⁸⁸ Ibid, s 4, definition of "home service".

⁸⁹ Ibid, s 52.

Quality reviews must include site visits of the premises of the provider and may include a site visit of the premises on which the service is provided.⁹⁰ The assessors assess the quality of care against the Aged Care Quality Standards.

The assessors must meet with the provider. Unlike residential care accreditation assessments, home care service assessors are only required to meet with a care recipient, or their representative, if a request has been made by or on behalf of the care recipient. Otherwise, the assessor is dependent on information from service users being provided through the service.⁹¹

The Quality and Safety Commission Rules require the Commissioner to give the home service provider written notice of their visit unless the Commissioner already has reasonable grounds to believe that the provider is not complying with the Aged Care Quality Standards.⁹²

The final report produced following the quality assessment must include:

- an assessment of the provider's performance against the Aged Care Quality Standards
- areas in which improvements are required, including a timetable for improvement
- arrangements for ongoing assessment contact with the provider.⁹³

Quality review of National Aboriginal and Torres Strait Islander Flexible Aged Care Program services

The Commissioner conducts quality reviews of National Aboriginal and Torres Strait Islander Flexible Aged Care Program services in accordance with the Aged Care Quality and Safety Commission Rules and the National Aboriginal and Torres Strait Islander Flexible Aged Care Program Quality Framework.⁹⁴

In July 2019, the Aged Care Quality and Safety Commission published National Aboriginal and Torres Strait Islander Flexible Aged Care Program Quality Review Guidelines. Those Guidelines provide for the implementation of the quality review process over two years.⁹⁵

The first year includes a formal review against the Aged Care Quality Standards including self-assessment by the provider (which includes identifying opportunities for continuous improvement) and a site visit by an assessment team.

The requirements around the site visit are less prescriptive than for residential services regulated under the Aged Care Act. For example, there is no requirement to seek feedback from at least 10% of residents.

Following the site visit, an interim quality review report is given to the service provider within seven days. They have 28 days to respond. If standards are not met, that response may include the submission of a revised plan for continuous improvement.⁹⁶

⁹⁰ Ibid, s 53.

⁹¹ Ibid, ss 54–55.

⁹² Ibid, s 53

⁹³ Ibid, s 57.

⁹⁴ Quality and Safety Commission Rules, s 58.

Aged Care Quality and Safety Commission, *National Aboriginal and Torres Strait Islander Flexible Aged Care Program Quality Framework: Quality Review Guidelines*, 2019.

⁹⁵ Aged Care Quality and Safety Commission, *National Aboriginal and Torres Strait Islander Flexible Aged Care Program Quality Framework: Quality Review Guidelines*, 2019, pp 6–7.

⁹⁶ Ibid, p 20.

A final quality report includes:

- a summary of findings
- an assessment of the service's performance against the Aged Care Quality Standards
- whether each requirement is met, part met or not met
- arrangements for assessment contacts for the service
- other relevant information.

A copy of this final quality report is sent to the Department of Health.⁹⁷

The second year includes follow-up activities to monitor progress of the results from the quality review against the provider's plan for continuous improvement and the Aged Care Quality Standards.⁹⁸

Where a service fails to meet the Aged Care Quality Standards, it will be the subject of monitoring by the Aged Care Quality and Safety Commission. Monitoring could include assessment contacts (either on-site or desk assessments) and progress reports by way of submission of a revised plan for continuous improvement.⁹⁹

Continuous improvement, assessment contacts and review audits

Part 5 of the Quality and Safety Commission Rules provide for continuous improvement, monitoring of services, assessment contacts and review audits.¹⁰⁰

Continuous improvement

Providers of residential care services (including short-term restorative care) and home care services (including short-term restorative care and Commonwealth Home Support Programme) must have a plan for continuous improvement in respect of the Aged Care Quality Standards.¹⁰¹

As noted above, the National Aboriginal and Torres Strait Islander Flexible Aged Care Program service providers are required to identify opportunities for continuous improvement in the context of a quality review.

Assessment contacts

In between accreditation or quality review cycles, the Commissioner or a quality assessor may make assessment contacts with providers, with or without notice.¹⁰² Assessment contacts may or may not include a site visit.

Following an assessment contact, the regulatory official must give the provider written notice of any areas for improvement in respect of the Aged Care Quality Standards, including a timetable for improvement.¹⁰³

⁹⁷ Ibid, p 21.

⁹⁸ Ibid, p 2.

⁹⁹ Ibid, p 21.

¹⁰⁰ Quality and Safety Commission Rules, pt 5.

¹⁰¹ Ibid, s 62.

¹⁰² Ibid, ss 64–65.

¹⁰³ Ibid, s 68.

For the National Aboriginal and Torres Strait Islander Flexible Aged Care Program, the Aged Care Quality and Safety Commission must monitor a service in accordance with the Quality Framework. The National Aboriginal and Torres Strait Islander Flexible Aged Care Program Quality Review Guidelines provide that there may be an assessment contact outside of the quality review process to:¹⁰⁴

- assess performance against the Aged Care Quality Standards
- assist the process of continuous improvement
- identify whether there is a need for a quality review
- provide additional information or education about the quality review process and requirements.

For National Aboriginal and Torres Strait Islander Flexible Aged Care Program assessment contacts in the form of a site visit, 14 days' notice is required.¹⁰⁵

Review audits

For accredited residential care services, the Commissioner may arrange for a review audit to occur at the provider's premises if there has been a specified change in the provider's circumstances or the Commissioner believes on reasonable grounds that the provider might not be complying with the Aged Care Quality Standards.¹⁰⁶

On receiving a review audit report, the Commissioner has 28 days to decide whether to revoke the accreditation of the service.¹⁰⁷ A decision to revoke accreditation must be published on the Aged Care Quality and Safety Commission's website. Alternatively, the Commissioner may vary the service's period of accreditation. The Commissioner may identify areas in which improvements are required to ensure compliance with the Aged Care Quality Standards, including a timetable for improvement.¹⁰⁸

If a service provider has been notified of a timetable for improvement in the context of either:

- accrediting, re-accrediting or conducting a review audit of a residential care service
- a quality review of a home care service
- an assessment contact of either a home care or residential care service

and has failed to achieve compliance with the Aged Care Quality Standards at the end of the period set out in the timetable, the Commissioner must direct the provider to revise the improvement plan¹⁰⁹ and inform the Department of Health.¹¹⁰

If the Commissioner finds a failure to comply with the Standards has placed, or may place, the safety, health or wellbeing of a care recipient at serious risk, the Commissioner must inform the Department of Health.

The Commissioner has obligations to inform the Department of Health if she or he becomes aware of failures of approved providers to comply with their responsibilities.¹¹¹

¹⁰⁴ Aged Care Quality and Safety Commission, *National Aboriginal and Torres Strait Islander Flexible Aged Care Program Quality Framework: Quality Review Guidelines*, 2019, p 23.

¹⁰⁵ *Ibid*, p 23.

¹⁰⁶ Quality and Safety Commission Rules, s 70.

¹⁰⁷ *Ibid*, s 77.

¹⁰⁸ *Ibid*.

¹⁰⁹ *Ibid*, s 84.

¹¹⁰ *Ibid*, ss 81–82.

¹¹¹ See, eg, Quality and Safety Commission Rules, pt 8, div 2, ss 78, 79, 81, 82, 85.

Other flexible services

As noted in the table, the Aged Care Quality and Safety Commission does not undertake accreditation, quality reviews or monitoring of multi-purpose services, transition care or innovative care services.

Multi-purpose services are subject to the National Quality Improvement Framework for Multi-purpose Services. Most multi-purpose services are co-located with health care services and are accredited to the National Safety and Quality Health Service Standards.¹¹²

Complaints

The handling of complaints in relation to aged care is a function of the Aged Care Quality and Safety Commissioner.

Any person may make a complaint to the Commissioner about either:

- the responsibilities of an approved provider of an aged care service under the Aged Care Act or the Aged Care Principles
- the responsibilities of the services provider under the Commonwealth Home Support Programme or National Aboriginal and Torres Strait Islander Flexible Aged Care Program.¹¹³

This gives the Commissioner broad scope to respond to complaints about all Commonwealth funded aged care services.

In dealing with complaints, the Commissioner is required to respond to each issue in the complaint and may decide to either:

- take no further action
- quickly resolve the issue to the satisfaction of the complainant
- commence a resolution process.

The Quality and Safety Commission Rules set out the requirements in relation to a resolution process.¹¹⁴ They provide scope for investigation, conciliation between the complainant and the provider and mediation.

The Aged Care Quality and Safety Commission is not required to investigate matters that are being dealt with by another person or body (such as the Australian Health Practitioner Regulation Agency) or where a coronial inquiry is underway.¹¹⁵

¹¹² Exhibit 4-17, WIT.0128.0001.0001, Statement of Jaye Smith, 10 May 2019, paragraph 109. See also Department of Health, *Legislation and rights and responsibilities of providers and care recipients of Multi-Purpose Services*, 2018, <https://agedcare.health.gov.au/programs/flexible-care/legislation-and-rights-and-responsibilities-of-providers-and-care-recipients-of-multi-purpose-services>.

¹¹³ Quality and Safety Commission Rules, s 11(1).

¹¹⁴ *Ibid*, ss 15–18.

¹¹⁵ *Ibid*, s 17.

If, in the context of a complaints resolution process, the Commissioner is satisfied that either:

- an approved provider is not meeting their responsibilities under the Aged Care Act or principles
- a service provider of a Commonwealth funded aged care service¹¹⁶ is not meeting their responsibilities under the relevant funding agreement,

the Commissioner has the power to issue directions. The directions can require the aged care service provider to take specified action to meet their responsibilities.¹¹⁷

If the aged care service provider fails to comply with the directions within a specified period, the Commissioner must inform the Secretary of the Department of Health.¹¹⁸

In addition, under the user rights provisions of the Aged Care Act, an approved provider must establish a complaints resolution mechanism.¹¹⁹

Consequences of non-compliance

Sanctions can be imposed on an approved provider that does not comply with its quality of care, user rights or accountability responsibilities.¹²⁰ Powers with respect to imposition of sanctions are presently conferred upon the Secretary of the Department of Health.

The Quality and Safety Commission Act foreshadows an intention to transfer these regulatory powers of the Department of Health to the Aged Care Quality and Safety Commission through further legislative amendment.¹²¹

In deciding whether to impose sanctions, the Secretary of the Department of Health must consider the seriousness of the non-compliance, whether the non-compliance has occurred before, and whether the non-compliance threatens the health, welfare or other interests of care recipients.¹²² The decision on whether the non-compliance threatens or would threaten the health, welfare or interests of current and future care recipients must be the Secretary's paramount consideration.¹²³

The Secretary of the Department of Health has power to impose a range of sanctions on an approved provider, including:

- revoking or suspending or restricting the approved provider's approval
- restricting the payment of a subsidy to care recipients receiving care prior to receiving notice of the sanction
- revoking or suspending or prohibiting the allocation of places to the provider
- varying conditions on allocation of places

¹¹⁶ Defined to include the Commonwealth Home Support Programme or National Aboriginal and Torres Strait Islander Flexible Aged Care Program.

¹¹⁷ Quality and Safety Commission Rules 2018, s 19.

¹¹⁸ *Ibid*, s 21(3).

¹¹⁹ Aged Care Act, s 56-4.

¹²⁰ *Ibid*, s 65-1.

¹²¹ See section 5(2) of the Quality and Safety Commission Act, which states that "it is Parliament's intention to further the objective of this Act by conferring, through future legislative change, additional functions on the Commissioner relating to matters such as the approval of providers of aged care and compliance".

¹²² Aged Care Act, s 65-2.

¹²³ *Ibid*, s 65-2(2).

- revoking or suspending or prohibiting permission for the provider to provide extra services
- prohibiting charging of accommodation payments, contributions or bonds
- requiring repayment of grants to the Department of Health or refund of money to a care recipient
- requiring the transfer of unspent home care amounts.¹²⁴

To avoid sanction, a provider may enter into an agreement with the Department of Health to take steps such as:

- providing training for employees
- providing security for a debt owed by the provider to the Commonwealth
- appointing an advisor or an administrator
- transferring some or all of the places allocated to the provider to another provider
- entering into a written undertaking to remedy the non-compliance.¹²⁵

Unless there is an immediate and severe risk to the safety, health or wellbeing of care recipients to whom the approved provider is providing care, the Secretary of the Department of Health must follow the process below before a sanction can be issued:¹²⁶

- give the approved provider a notice of non-compliance
- give the approved provider either
 - a notice of intention to impose a sanction
 - a notice to remedy the non-compliance
 - a notice of intention to impose sanctions in respect of a specified part of the non-compliance and a notice to remedy the remainder of the non-compliance
- give the approved provider notice of the Secretary's decision on whether to impose a sanction.

The approved provider has an opportunity to respond to each notice given.¹²⁷

Sanctions will ordinarily take effect at the time notice of the sanction is given to the provider but can be deferred or imposed progressively.¹²⁸ This would, for instance, allow residents to be informed and assisted to relocate to another service.

The Sanctions Principles set out matters the Secretary must consider when deciding on the sanction period and in deciding whether it is appropriate for the sanctions to be lifted.¹²⁹

A provider can apply to the Department of Health to review a decision to impose a sanction or for a sanction to be lifted. A provider can seek a further review from the Administrative Appeals Tribunal.¹³⁰

¹²⁴ Aged Care Act, s 66-1. Sanctions Principles, ss 6A-6B.

¹²⁵ Aged Care Act, s 66-2.

¹²⁶ Ibid, s 67-1.

¹²⁷ Ibid, ss 67-2, 67-3, 67-4.

¹²⁸ Ibid, s 67A-1.

¹²⁹ Aged Care Act, Chapter 4 Div 68, Sanctions Principles, pt 4.

¹³⁰ Aged Care Act, s 85-8.

Consequences of non-compliance for services providers other than approved providers

For National Aboriginal and Torres Strait Islander Flexible Aged Care Program and Commonwealth Home Support service providers, non-compliance can be reported to the Department of Health. The Department of Health is able to suspend or reduce grant funding under a grant agreement.¹³¹

Advocacy and community visitors programs

The User Rights Principles require approved providers to facilitate access to residential facilities and home care services for advocacy and community visitors.¹³² For home care services and flexible care services, the obligation extends to advocacy bodies but not community visitors.¹³³

The Aged Care Act provides scope for advocacy grants to be made for the purposes of:

- encouraging understanding of, and knowledge about, the rights of recipients and potential recipients of aged care services
- enabling care recipients to exercise those rights
- providing free, independent and confidential advocacy services in relation to the rights of people who are or may become care recipients or who are representatives of care recipients.¹³⁴

Advocacy grants are currently made pursuant to the National Aged Care Advocacy Program Guidelines.¹³⁵

The Aged Care Act also provides scope for community visitor grants to be made. Community visitor grants are for the purposes of:

- facilitating frequent and regular contact with the community by care recipients to whom residential care or home care is provided
- helping such care recipients to maintain independence through contact with people in the community
- assisting care recipients from particular linguistic or cultural backgrounds to maintain contact with people from similar backgrounds.¹³⁶

In 2018, community visitor grants were subject to an open tender process for the first time since 1992.¹³⁷ This followed a review of the Community Visitor Scheme in January 2017.¹³⁸

¹³¹ Exhibit 2-89—WIT.0058.0001.0001—Statement of Fiona Buffinton, 11 March 2019, paragraph 29. See also the Commonwealth Standard Grant Agreement, <https://www.finance.gov.au/sites/default/files/Cth%20Standard%20Dec%202018.pdf>.

¹³² Aged Care Act, s 56-1(l).

¹³³ Ibid, ss 56-2(l), 56-3(k).

¹³⁴ Ibid, pt 5.5.

¹³⁵ See Department of Health, *National Aged Care Advocacy Program Guidelines*, 2017.

¹³⁶ Aged Care Act, pt 5.6.

¹³⁷ See Department of Health, *Review of implementation and communications, Community Visitors Scheme, Access and Information Program 2018 Grant Opportunity*, 2019.

¹³⁸ Department of Health, *Review of the Community Visitor Scheme: Final Report*, 2017.