



Unpacking the exposure draft of the new Aged Care Act

The new rights-based Aged Care Act will inform the future of aged care in this country.

The Aged Care Exposure Draft proposes to replace today's current aged care legislation, particularly the Aged Care Act 1997 (which largely focused on the regulation and payment of providers) and the Aged Care Quality and Safety Commission Act 2018. The new Act focuses on the safety, health and wellbeing of older people and puts their needs and preferences first. It aims to create a simplified, rights-based legislative framework, with one piece of primary legislation that regulates aged care and a single set of subordinate legislations known as the Rules (not yet published for consultation).

The Aged Care Act Exposure Draft contains provisions that outline:

- the list of Objects, underpinned by a Statement of Rights and a Statement of Principles
- the rights of older people accessing aged care services, and the role of Supporters and Representatives who assist them
- the process of entry into the Commonwealth aged care system
- the obligations placed on registered providers, digital platform operators, aged care workers and responsible persons of registered providers

- the functions and powers of the System Governor (Department of Health and Aged Care) and the Aged Care Quality and Safety Commission
- how information will be kept confidential, records will be kept, and data will be shared
- how decisions will be made and how they can be reviewed.

The Aged Care Act Exposure Draft addresses much of the feedback provided by older people, families, carers, and other representatives at the joint COTA Australia/OPAN consultation forums last year. But it doesn't go far enough to deliver choice and control, transparency, an effective complaints process and enforceability of rights.

COTA Australia and OPAN, in partnership with 10 other older people and carer organisations, have identified 23 key issues with the current exposure draft in a *Key Issues Paper* summarised on the next page. The *Key Issues Paper* also contains solutions for discussion during the consultation period, which runs until 16 February 2024. **Read our Key Issues Paper** opan.org.au/exposure-draft

Visit the Department of Health and Aged Care's consultations webpage health.gov.au/our-work/aged-care-act/consultation for ways to provide your feedback or call 1800 318 209.

23 key issues with the Aged Care Act Exposure Draft

Read the full Key Issues Paper
opan.org.au/exposure-draft

- 1 The new Aged Care Act must commence on 1 July 2024 and be reviewed every 3 years
- 2 The Act must take a human rights-based approach with a focus on wellbeing, reablement and quality of life
- 3 Providers must have a positive duty to uphold rights, with pathways for older people to complain if they do not
- 4 Ensure principles of choice and control, consumer-directed care and self-management are embedded in the Act
- 5 Older people can make decisions and receive the support they require to make decisions when they need it
- 6 The Complaints Commissioner should have direct independent statutory authority and functions
- 7 The new Complaints Framework must be in the Act
- 8 Equitable and timely access to aged care services must be guaranteed within 30 days of application
- 9 Eligibility for early access to aged care services must be expanded
- 10 Aged Care Residents must have an absolute right to visitors, in all situations
- 11 The role of Independent Professional Advocates must be recognised in the Act
- 12 Diversity must be further strengthened within the Act
- 13 Disability Supports must be explicitly referred to in the Act.
- 14 Carers must be included within the Act
- 15 Providers that state their services are 'high-quality care' must comply and opt-in to an audit against the definition
- 16 Providers need to demonstrate an ongoing commitment to service improvement
- 17 Act protections should apply to all aged care services – government funded and private
- 18 The Act must ensure consistent transparency of information
- 19 Fees, contributions and government funding are fully transparent, fair, equitable and provide quality services
- 20 Language needs to be consistent and easy to understand
- 21 Better protections for older people on the use of Restrictive Practices
- 22 New security of tenure provisions must be included in the legislation
- 23 Clearer consultation timelines for the Support at Home amendments to the new Act

