Aged Care (Single Quality Framework) Reform
Bill 2018

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Date introduced: 24 May 2018
House: House of Representatives
Portfolio: Health
Commencement: 1 July 2019

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as at June 2018.
Purpose of the Bill

The purpose of the Aged Care (Single Quality Framework) Reform Bill 2018 (the Bill) is to amend the Aged Care Act 1997 (the Act) and the Australian Aged Care Quality Agency Act 2013 (the Quality Agency Act) to make provision for a single set of Aged Care Quality Standards to replace the four current sets applying to different types of aged care. The standards will be enacted through delegated legislation.

The Bill also makes a minor amendment to the Freedom of Information Act 1982 (the FOI Act) to make protected information which it is an offence to disclose under the Quality Agency Act exempt from disclosure under the FOI Act.

Background

Australian Government funded aged care services

Aged care services support older people who can no longer live without assistance in their own homes. The Australian Government is the primary funder and regulator of aged care in Australia. Services are delivered by many different not-for-profit, for-profit and government providers.1

Aged care services funded and regulated under the Act and associated Principles (made under section 96–1 of the Act) consist of:

- **Residential care** provided on a permanent or respite (temporary) basis in aged care homes2
- **Home care** via coordinated packages of care provided in the consumer’s home including personal and support services and clinical care and 3
- **Flexible care** for older people who may need a different care approach than that offered by mainstream home and residential care services, including:
  - **Transition Care** of up to 12 weeks of care and rehabilitation upon discharge from hospital
  - **Short-Term Restorative Care (STRC)** of up to eight weeks of goal-oriented services to reverse or slow functional decline
  - **Multi-Purpose Services (MPS)** providing integrated health and aged care services in small rural and remote communities that could not support stand-alone hospitals or aged care homes and
  - **Innovative care** through a small number of grandfathered places from pilot projects supporting people with aged care needs in state or territory-funded supported accommodation facilities.4

The Australian Government also funds aged care services through grants provided outside of the framework of the Act. The two main programs are:

- **the Commonwealth Home Support Programme (CHSP)** providing entry-level support services for frail older people living in the community and 5
- **the National Aboriginal and Torres Strait Islander Flexible Aged Care Programme (NATSIFACP)** providing culturally appropriate aged care for Indigenous Australians, particularly in remote areas.6

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3. Ibid., pp. 30–1.
4. Ibid., pp. 54–60.
5. Ibid., p. 24.
6. Ibid., p. 60.
**Current aged care quality standards**

All of the above services are required to comply with standards relating to the quality of care they provide.\(^7\) There are currently four different sets of standards, depending on the type of care provided. As shown in Table one below, some of the standards are contained in delegated legislation and others are administrative.

**Table 1. Current aged care quality standards**

<table>
<thead>
<tr>
<th>Name</th>
<th>Services covered</th>
<th>Instrument or guideline</th>
<th>Content</th>
</tr>
</thead>
</table>
| Accreditation Standards | • residential care  
• STRC in a residential setting | **Quality of Care Principles 2014** | Four standards:  
• management systems, staffing and organisational development  
• health and personal care  
• care recipient lifestyle and  
• physical environment and safe systems.  
44 outcomes in total. |
| Home Care Common Standards | • home care  
• STRC in a home setting  
• CHSP | **Quality of Care Principles 2014** | Three standards:  
• effective management  
• appropriate access and service delivery and  
• service user rights and responsibilities  
18 outcomes in total. |
| National Aboriginal and Torres Strait Islander Flexible Aged Care Program Quality Framework Standards | • NATSIFACP | **Quality Review for the National Aboriginal and Torres Strait Islander Flexible Aged Care Program** | Two overarching principles:  
• cultural safety and  
• continuous quality improvement.  
Two standards:  
• care delivery and information and  
• management and accountability.  
Nine outcomes in total. |
| Transition Care Standards | • Transition Care | **Transition Care Programme Guidelines** | Three standards:  
• optimising independence and wellbeing  
• multidisciplinary approach and therapy focussed care and  
• seamless care.  
Nine outcomes in total. |

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\(^7\) With the possible exception of Innovative care services. See DoH, *Single Aged Care Quality Framework: draft aged care quality standards consultation paper*, DoH, Canberra, 2017, p. 4. Some Multi-Purpose Services and Transition Care services rely on state or territory quality assessment arrangements. See DoH, *Application of draft Aged Care Quality Standards by service type* [draft], DoH, Canberra, April 2018, pp. 2–3.
The Department of Health (DoH) notes the following challenges in applying four different sets of standards:

- it is difficult for consumers to know what to expect from aged care services
- the system is complex, especially for organisations providing more than one type of care and
- the system can inhibit improvements in service delivery.\(^8\)

**Aged care quality regulation**

Responsibility for aged care quality regulation is currently split between three entities, as described below. The entities can share information with each other in order to carry out their duties.

DoH is responsible for policy and compliance with the Act. DoH approves providers to provide care under the Act, and contracts providers of CHSP and NATSIFACP services to provide care outside of the Act. Providers must meet a range of responsibilities in the Act relating to the quality of care, the rights of care recipients and governance, or in the relevant contract. This includes the responsibility to meet the relevant quality standards, described above.\(^9\)

DoH is responsible for taking regulatory action when providers fail to comply with their responsibilities, including when they fail to implement improvements required by the Australian Aged Care Quality Agency (the Quality Agency) or by DoH.\(^10\) Regulatory actions include imposing sanctions and issuing notices of non-compliance.\(^11\)

The Quality Agency is an independent statutory agency established under the **Quality Agency Act**. The Quality Agency assesses services against the relevant standard through:

- accreditation of residential care services and residential STRC services
- quality reviews of home care services, CHSP services, home STRC services and NATSIFACP services and
- ongoing monitoring of performance.\(^12\)

If the Quality Agency finds that a service has not met one or more outcome under the relevant standard, it will require the service to rectify the non-compliance, and will also notify DoH. If the Quality Agency identifies non-compliance that poses a serious risk to care recipients, it notifies DoH of the serious risk. The Quality Agency can also decide to vary or revoke the accreditation of a residential care service.\(^13\)

The Aged Care Complaints Commissioner (the Complaints Commissioner) is a statutory office holder under the Act, supported by around 150 complaints officers.\(^14\) The Complaints

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10. Ibid.
13. Ibid., pp. 9–10.
Commissioner handles complaints about Australian Government funded aged care services, and can issue directions if she is not satisfied that a service is meeting its responsibilities.  

**Development of a single set of Aged Care Quality Standards**

The Australian Government announced in the 2015–16 Budget that it would ‘consult with the aged care sector regarding the establishment of a single quality framework for all aged care services’ because the current system of multiple standards ‘increases complexity and red tape for providers’. As part of the same measure, the Government stated it would consider options for moving from the Quality Agency as sole provider of accreditation services to ‘private market provision of accreditation services as part of a single aged care quality regime’. However, DoH stated in 2017 that the development of options to privatise accreditation services is not ‘part of the work to streamline quality assessment process’. The Bill does not provide for the privatisation of accreditation services.

The Government released a draft set of single Aged Care Quality Standards in March 2017, with further drafts following in 2018.

As the Aged Care Quality Standards will be enacted in subordinate legislation, a detailed discussion of their content is outside the scope of this digest. However, some brief information is provided below.

The final draft Aged Care Quality Standards consist of eight standards:

- **Standard 1** Consumer dignity and choice
- **Standard 2** Ongoing assessment and planning with consumers
- **Standard 3** Personal care and clinical care
- **Standard 4** Services and supports for daily living
- **Standard 5** Organisation’s service environment
- **Standard 6** Feedback and complaints
- **Standard 7** Human resources
- **Standard 8** Organisational governance.

Each of the eight standards includes a statement of outcome for the consumer, a statement of expectation for the organisation and a number of organisational requirements to demonstrate that the standard has been met.

20. Ibid.
For example, ‘Standard 3 – Personal care and clinical care’ includes the consumer outcome ‘I get personal care and/or clinical care that is safe and right for me’ and the organisation statement ‘Personal care and clinical care is safe and effective and delivered in accordance with the consumer’s needs, goals and preferences to optimise health and wellbeing.’ There are seven requirements for the organisation to demonstrate under this standard relating to best practice care, risk management, end of life care, management of deterioration, management of consumer information, referrals and infection control.21

Aged care providers will only have to meet the standards that are relevant to the care they provide and the environment in which services are delivered. For example, Standard 3 will only apply to services providing personal or clinical care. ‘Standard 5 - Organisation’s service environment’ will apply to care delivered in nursing homes, day centres and other organisational service environments, but will not apply to care and services delivered in the consumer’s home.22

According to DoH, the Aged Care Quality Standards will apply to residential care, home care, STRC, CHSP and NATSIFACP services. They will also apply to Transition Care and MPS services that do not rely on state or territory quality assessment arrangements. Innovative care is not mentioned.23

The Aged Care Quality Standards have been developed through extensive consultation and co-design, and have been field tested by the Quality Agency:

The Aged Care Quality Standards to be made under the reforms in this bill have been developed through significant consultation and co-designed with the aged-care sector. The Department of Health has undertaken research and consultation with the public, the aged-care sector, and other government organisations. A standards technical advisory group was also established by the department. The Australian Aged Care Quality Agency is developing guidance and educational material to support assessment of the standards, and has conducted field testing of the draft set of standards.24

The Aged Care Quality Standards are designed to place the focus on consumers of care, drive improvements in the quality of care, decrease regulatory burden on providers and encourage innovation.25 Subject to passage of the Bill, providers will have a 12 month transition period from 1 July 2018. During this period they can begin to implement the new standards while still being assessed against the current standards. Providers will be assessed against the new standards from 1 July 2019 (when the Bill commences).26

The Review of National Aged Care Quality Regulatory Processes (the Carnell Paterson review) was commissioned by the Australian Government in response to failures of care identified at the Oakden Older Persons Mental Health Service in Adelaide. The review reported on 25 October 2017. It did not make extensive recommendations in relation to the draft Aged Care Quality Standards, but did note some positives including an increased focus on the quality of consumers’ lives, and the inclusion of clinical governance and open disclosure in the proposed standards.27

The review also recommended that aged care standards be reviewed every five years, and that

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22. DoH, Application of draft Aged Care Quality Standards by service type, op. cit., pp. 1–2.
23. Ibid.
25. Ibid.
Aged care standards should limit the use of restrictive practices (such as physical restraints or sedation) in residential aged care.28

Both the Senate Community Affairs References Committee and the House of Representatives Standing Committee on Health, Aged Care and Sport are currently enquiring into aspects of aged care quality.29 The Senate Community Affairs References Committee noted in its interim report that as the new single quality framework for aged care had only just been published in draft form, it would be ‘difficult for the committee to form a final view and set of recommendations for this inquiry’.30

Committee consideration

**Senate Standing Committee for Selection of Bills**
At the time of writing, the Senate Standing Committee for Selection of Bills had not yet considered the Bill.31

**Senate Standing Committee for the Scrutiny of Bills**
At the time of writing, the Senate Standing Committee for the Scrutiny of Bills had not yet considered the Bill.32

**Policy position of non-government parties/independents**
At the time of writing, no comment by non-government parties or independents specifically relating to the Bill had been identified.

**Position of major interest groups**
Around 350 submissions were received in response to the first release of the draft Aged Care Quality Standards in March 2017. DoH has published a summary of these submissions. While an examination of comments on individual standards is outside the scope of this Digest, DoH did identify some common broad themes including:

- support for a single set of standards to reduce duplication for providers and increase usefulness for consumers
- support for the structure and language of the proposed standards
- support for the consumer-centred focus of the standards
- concern about the level of staffing in aged care services, and suggestions for a more objective measure of sufficient staffing levels
- the importance of adequate supports for consumers who cannot communicate in English
- the importance of carers and

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28. Ibid., pp. 126, 147.
29. Senate Community Affairs References Committee, *Effectiveness of the Aged Care Quality Assessment and accreditation framework for protecting residents from abuse and poor practices, and ensuring proper clinical and medical care standards are maintained and practised*, Parliament of Australia website; House of Representatives Standing Committee on Health, Aged Care and Sport, *Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia*, Parliament of Australia website.
30. Senate Community Affairs References Committee, *Effectiveness of the Aged Care Quality Assessment and accreditation framework for protecting residents from abuse and poor practices, and ensuring proper clinical and medical care standards are maintained and practised: Interim report*, The Senate, Canberra, February 2018, p. 64.
• concern about the capacity of NATSIFACP and small volunteer-run organisations to meet the proposed standards.  

When the next draft of the proposed standards was released in early 2018, aged care providers continued to express their in-principle support for the single set of standards while awaiting final details and guidelines. SummitCare CEO Cynthia Payne described the twelve month period to transition to the new standards as ‘very optimistic’ for a ‘change management program of this size’. Sean Rooney, CEO of aged care provider peak body Leading Age Services Australia (LASA), also welcomed the release of the next draft and noted that LASA had sought funding from the Government to support providers to implement the new standards. As noted below, this funding was provided for residential aged care providers in the 2018–19 Budget.

Consumer organisations have varied in their response to the proposed standards. COTA Australia has welcomed the consolidation of the four existing sets of standards, and acknowledged ‘the considerable work that has been undertaken to develop simple, relevant, meaningful and measurable standards’. The Combined Pensioners & Superannuants Association (CPSA) has been more critical, arguing that the ‘new standards will hollow out an already insufficient system’ and are not sufficiently prescriptive to ensure quality care.

### Financial implications

According to the Explanatory Memorandum, the Bill has no financial impact.

However, the Government announced in the 2018–19 Budget that it would provide $50 million to residential aged care services to help them transition to the new standards.

### Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible because the proposed Aged Care Quality Standards support care recipients to achieve high standards of living and health and increase protections against violence and abuse. The Bill also supports the right to privacy by ‘exempting protected information, which can include personal information, from disclosure under the FOI Act’.

### Parliamentary Joint Committee on Human Rights

At the time of writing, the Parliamentary Joint Committee on Human Rights had not yet considered the Bill.
Key issues and provisions

Amendments to the Act

Section 54–1 of the Act sets out the responsibilities of approved providers in relation to the quality of care they provide. Currently, residential care providers must comply with the Accreditation Standards, home care providers with the Home Care Standards and certain flexible care providers with the Flexible Care Standards. The Act provides for these standards to be set out in the Quality of Care Principles.42

Items 1 and 2 repeal the references to these three different standards, and replace them with references to the Aged Care Quality Standards. Proposed section 54–2 provides that the Aged Care Quality Standards may be made under the Quality of Care Principles, and may set out different standards for different kinds of aged care.

The Minister noted in his second reading speech that the Aged Care Quality Standards will be enacted through amendments to the Quality of Care Principles 2014, which are a disallowable instrument:

The Aged Care Quality Standards will be enacted through amendments to the Quality of Care Principles 2014, issued by the Minister for Aged Care under the Aged Care Act 1997, consistent with the manner in which current Accreditation Standards and Home Care Standards have been issued. Principles are subject to parliamentary scrutiny and disallowance, meaning that the final content of the Aged Care Quality Standards will be able to be transparently reviewed by parliament.43

Amendments to the Quality Agency Act

Items 4 and 6 repeal the definitions of Accreditation Standards and Home Care Standards in the Quality Agency Act.44 Item 5 inserts a proposed definition of the Aged Care Quality Standards meaning those set out in the Quality of Care Principles made under the Act.

Section 12 of the Quality Agency Act sets out the functions of the Chief Executive Officer (CEO) of the Quality Agency. These functions currently include accrediting residential care services in accordance with the Accreditation Standards and the Quality Agency Principles and conducting quality reviews of home care services in accordance with the Home Care Standards and the Quality Agency Principles.45

Item 7 removes the reference to the Accreditation Standards for accrediting residential care services and the reference to the Home Care Standards for reviewing home care services. This means that the CEO will only accredit or review services in accordance with the Quality Agency Principles. Presumably the Quality Agency Principles will be amended to refer to the Aged Care Quality Standards.

The CEO also currently reviews the quality of CHSP, NATSIFACP and STRC services.46 The Minister’s second reading speech advises that the CEO will have the power to assess CHSP, NATSIFACP and flexible care services (which include STRC) ‘through a specification instrument made by the

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42. Aged Care Act 1997, sections 54–2, 54–4 and 54–5. The Quality of Care Principles 2014 set out the Accreditation Standards and the Home Care Standards. They also specify that the Flexible Care Standards for short-term restorative care in a residential care setting are the Accreditation Standards, and the Flexible Care Standards for short-term restorative care in a home care setting are the Home Care Standards.


44. Australian Aged Care Quality Agency Act 2013, section 3.

45. Ibid., paragraphs 12(a) and 12(b). The Quality Agency Principles 2013 are made under section 53 of the Australian Aged Care Quality Agency Act 2013.

46. Australian Aged Care Quality Agency (Other Functions) Instrument 2015.
Minister’. Presumably this will require the Australian Aged Care Quality Agency (Other Functions) Instrument 2015 to be amended or remade to refer to the Aged Care Quality Standards.

Another function of the CEO is to advise the Secretary of the Department about services that do not meet the Accreditation Standards or the Home Care Standards.

**Item 8** removes the reference to the Accreditation Standards or the Home Care Standards from this function and replaces it with a reference to the Aged Care Quality Standards.

### Amendments to the FOI Act

The *Quality Agency Act* defines protected information as personal information or information relating to the affairs of an approved provider which was acquired in the performance of the functions of the CEO or the Aged Care Quality Advisory Council. Disclosing protected information obtained under the *Quality Agency Act* is an offence punishable by up to two years’ imprisonment, unless it is done for the purposes specified in the *Quality Agency Act*.

The *FOI Act* provides for a right of access to documents held by the Australian Government. Access is not required to be given to exempt documents. One way a document can be an exempt document is if its disclosure is prohibited under other legislation and the legislation is listed in Schedule 3 of the *FOI Act*.

**Item 9** amends Schedule 3 of the *FOI Act* to add protected information which it is an offence to disclose under the *Quality Agency Act* to the list of information which is exempt from disclosure under the *FOI Act*.

### Concluding comments

There are currently four different sets of quality standards for Australian Government funded aged care services. The Government is proposing to replace these with a single set of Aged Care Quality Standards applicable to all types of aged care service. This Bill makes provision for a single set of Aged Care Quality Standards in the relevant legislation, although the standards themselves will be enacted through delegated legislation.

The proposed Aged Care Quality Standards have been released in draft form and subject to extensive consultation. Support for the change to a single set of standards, and for the form and content of the new standards, has been broad but not universal amongst aged care providers and consumer groups.

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49. Ibid., section 3.
50. Ibid., sections 48, 49, 50.
52. Ibid., subsection 11A(4).
53. Ibid., subsection 38(1).