

A new model for regulating aged care: Consultation Paper 2

Submission

23 June 2023



About ACCPA

The Aged & Community Care Providers Association (ACCPA) is the national Industry Association for aged care providers offering retirement living, seniors housing, residential care, home care, community care and related services.

ACCPA exists to unite aged care providers under a shared vision to enhance the wellbeing of older Australians through a high performing, trusted and sustainable aged care sector. We support our members to provide high quality care and services while amplifying their views and opinions through an authoritative and comprehensive voice to the government, community, and media.

Our sector serves to make better lives for older Australians, and so do we.

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Background

The Royal Commission into Aged Care Quality and Safety (Royal Commission) found that the current regulatory system is not fit-for-purpose.¹

In April 2023, the Department of Health and Aged Care (Department) released *A new model for regulating aged care: Consultation Paper No. 2: Details of the proposed new model* for consultation. This follows the release of a concept paper in February 2022 and Consultation Paper No. 1 in September 2022.

Consultation Paper No. 2 (Consultation Paper) outlines the policy direction of a proposed new regulatory model for aged care (new model), which is said to “support the new [Aged Care] Act, in-home aged care reforms and other recommendations from the Royal Commission” (page 6).

The Consultation Paper notes the new model will go live and come into effect with the commencement of the new Act, which the Department has separately indicated is expected to be 1 July 2024.

In the 2023-24 Federal Budget the Australian Government invested \$81.9 million over 3 years from 2023-24 to develop and deliver the new Act (and associated ICT system changes).²

ACCPA is pleased to submit our response to this consultation.

¹ Royal Commission into Aged Care Quality and Safety Final Report (March 2021), page 53.

² Budget 2023-24 Budget Paper No. 2: Budget Measures (May 2023), page 134. See also the Department of Health and Aged Care aged care reforms web page, [Older people are at the centre](#).

Executive summary

There is overall support for the proposed model, however ACCPA members are seeking a more balanced regulatory approach, a detailed sector implementation plan with timeframes and required actions for providers, and assurance that all registered providers including sole traders are appropriately registered and monitored to ensure the delivery of quality care and services.

ACCPA notes there remains a significant amount of information in relation to the proposed model that needs to be made available for consultation. As a result, it has not been possible to provide definitive or comprehensive feedback on many elements of the proposed model. To address this, ACCPA has identified a series of questions that it recommends the Department consider when reviewing consultation input and also articulate responses to in a consultation report back to the sector.

ACCPA recommends consideration be given to setting a commencement date for the new model and the new Aged Care Act that allows sufficient time after the passage of the relevant legislation and development of subordinate legislation for the Department and the Regulator to prepare and embed all the necessary changes, resources and training for providers and care recipients, as well as for their own staff.

Such an approach will also give providers sufficient lead time to prepare systems and practices for implementation and for the broader sector, including consumers to be well-informed about how the new legislative provisions may affect them. A commencement date after sufficient lead time will also provide an opportunity for the sector to understand the interaction of the proposed model with the new in-home aged care program design.

The change to relational regulation will require an investment by all stakeholders with the Department and the Regulator adapting leadership, internal capacity and change management approaches to exemplify the building of relationships, trust, and transparency with the sector and care recipients. This capability will need to be evident prior to commencement to support a successful transition to the new model.

Ensuring harmonisation of regulation across the care sector is achieved as part of the new model will also be important for its success.

It is important there is recognition that financial sustainability is critical to the capacity of providers to meet the compliance requirements of a new regulatory regime. ACCPA notes that appropriate costing of registration processes, components such as worker screening and compliance, particularly in the design of new in-home aged care program, needs to be undertaken and accounted for.

Further, the robustness of the aged care workforce to deliver on the reforms is key to the success of the proposed model including addressing the current substantial challenges in supply, attraction, and retention as influencing factors.

Summary of recommendations

- R1 That the Department respond to the questions identified in this submission in a consultation report back to the sector.**
- R2 That the Department and the Regulator engage with providers in the development and co-design of resources developed as part of the proposed education and engagement with providers.**
- R3 Dedicated and targeted educational materials and other supports that support excellence and cultivates innovation, as well as continuous improvement and capability-building, should be available to providers.**
- R4 Proposed registration category 2 should include technology assistance.**
- R5 Proposed registration category 3 should be merged with and subject to the same higher level of requirements as proposed registration category 4.**
- R6 That the Department provides further information and conducts further sector consultation regarding the difference between audit gradings 'conformance' and 'best practice conformance', and how they relate to the expected standard of care providers are funded to deliver.**
- R7 That the Regulator be required to provide clear and timely feedback to providers following audits against the Quality Standards.**
- R8 That consideration be given to the concept of peer review as part of the audit process.**
- R9 Establish a minimum standard of care management or support for each care recipient, including self-managed care recipients and those in a multi provider environment.**
- R10 The Department and the Regulator should pilot the new arrangements for provider obligations.**
- R11 High quality care should be clearly and objectively explained for each aged care service type, which will allow for mutual understanding and consistent application (including how high quality care in thin markets will be supported).**
- R12 That the intended future consultation and engagement ensure harmonisation of the definitions and application of high quality care across other reform processes underway including the Aged Care Taskforce, National Care and Support Economy Taskforce and IHACPA pricing and costing functions.**
- R13 That the proposed model be aligned with the outcomes from the Aged Care Quality and Safety Commission Capability Review.**
- R14 The model needs to provide procedural fairness for providers before final assessment decisions are made. There should also be a 'no fault' element to ensure a provider that demonstrates they have taken all reasonable steps does not receive a penalty.**
- R15 The Regulator should not be involved in seeking compensation on behalf of older people.**
- R16 The Department should consult with the insurance sector on the possible impact of the proposed model on insurance premiums and insurance coverage.**
- R17 The Department and the Regulator should develop supporting guidance materials in collaboration with the sector and disseminate these to existing providers with sufficient lead time to assist with the transition to the new model.**

- R18 Existing providers should be first advised of their proposed registration category(ies) at least six months before the go live date. The period between the go live date and re-registration for existing providers should be no less than 12 months.**
- R19 The Department and the Regulator should develop, in partnership with the sector, a detailed sector implementation plan with timeframes and required actions for providers. The plan should be communicated across the sector and include information on how the changes relate to other aged care reforms to ensure the regulatory system is synchronised and structured to adapt to a changed and changing aged care sector.**
- R20 Given the Royal Commission into Aged Care Quality and Safety Final Report was handed down on 1 March 2021, and the proposed reform is scheduled for 1 July 2024, the Department should undertake a comprehensive and thorough impact analysis regarding the new model and new Aged Care Act. This analysis should take into account current and future financial sustainability, workforce issues, and ensure any findings are accounted for in the design of the reform.**
- R21 The commencement date of the new model and new Aged Care Act should be set with sufficient time following the passage of the relevant legislation and all subordinate legislation for the Department and the Regulator to implement all the necessary resources and training for providers and care recipients, as well as their own staff.**
- R22 Two post-implementation reviews of the new model should be undertaken two years and five years post-commencement.**

1. Introduction

ACCPA is broadly supportive of the proposed new model pending our recommendations regarding design, timing and preparations for reform being taken into account.

The Consultation Paper identifies four foundations underpinning the new model: rights-based; person-centred; risk-proportionate; and focused on continuous improvement.

Page 9 of the Consultation Paper states that the changes to the way aged care is currently regulated seek to "increase protections for older people and empower them to exercise their rights; drive cultural change in the sector that promotes a new set of values and behaviours across the sector; improve provider capability, sector sustainability, and public confidence in the system and providers; and support continuous improvement".

Further details are required to understand how the aims will translate in practice. Noting the new model will be intrinsically linked to the new Act still under development, ACCPA is of the view that more detail is required for a comprehensive understanding of the workings and impacts of the new model. ACCPA has therefore posed key questions throughout this submission highlighting examples where further information is sought.

The Consultation Paper notes on page 10 that the new model is designed to facilitate a cultural change across the sector. ACCPA acknowledges challenges with the current regulatory system and is keen to see the system reconceptualised to a more relational approach within and across the entire system.

The Consultation Paper also notes on page 9 that the Secretary of the Department (as the System Governor under the new Act) will play an important role in actively managing the aged care system to ensure component parts work together effectively, including in thin markets. ACCPA hopes to see a reinforcing of protections in thin markets across all the components of the framework as it evolves.

Page 15 of the Consultation Paper indicates the new model will focus on building and strengthening relationships between providers and older people, the Regulator and providers, and older people and the Regulator to help make sure everyone understands what is expected and required. ACCPA is supportive of such a holistic, multi-stakeholder and collaborative approach, with shared understanding across the sector. Further information is required on how this will be achieved, and it will be critical this is reflected in practice.

Adequate funding and lead-time for the sector to achieve the aims and requirements for the new model will be imperative for its success, to ensure the best possible outcomes for care recipients. Providers need to be funded adequately to both deliver quality care and services and to establish expertise, processes, and systems to meet changed obligations. If there is no additional funding to make change happen, changes are set up to fail and/or will be implemented inconsistently.

ACCPA acknowledges the safeguards and regulatory tools identified in the Consultation Paper – supporting quality care; becoming a provider; responsibilities of a provider; and holding providers accountable – and will provide comment on each in the subsequent sections of this submission, along with commentary on the proposed transition approach.

ACCPA also notes the new model is "designed to improve and move closer to harmonisation in those areas that are important to stakeholders, while still recognising things that need to be different based on the varied care contexts" (Consultation Paper page 70). ACCPA is supportive of equity in regulatory approaches across the care sectors and notes it will be important that harmonisation efforts are coordinated with all aged care reforms.

R1 That the Department respond to the questions identified in this submission in a consultation report back to the sector.

2. Supporting quality care

The new model, and the “supporting quality care” safeguard, is said to place greater emphasis on relational regulation, with an aim to “create a responsive and collaborative environment for providers to engage with the Regulator (and the Department) on innovation and continuous improvement, and to seek support and advice to avoid non-compliance with their responsibilities” (Consultation Paper page 18).

ACCPA supports in-principle the concept of relational regulation as defined in the Consultation Paper. It will be important that this approach is balanced in practice and is operationalised across the new model. The shift to relational regulation will require an investment by all stakeholders with the Department and the Regulator adapting leadership, internal capacity and change management approaches to exemplify the building of relationships, trust, and transparency with the sector and care recipients. Indeed, ACCPA is of the view that the Department and Regulator should play a leading role in cultivating a culture of relational regulation.

2.1 Information for older people, their families, and carers

ACCPA agrees that “older people and their representatives should have access to the information they need to feel confident in decisions about their care and know what to expect before they receive services” (Consultation Paper page 20).

It is noted that, as part of building capability “providers should inform and seek feedback from older people on their approach to continuous improvement” (Consultation Paper page 20). ACCPA seeks further information on expectations for providers with respect to this and how this intersects with the existing Strengthening Provider Governance legislative requirement for providers to make an offer to consumers to establish a consumer advisory body at least once a year. A partnership approach between providers and care recipients is supported to promote shared understanding of quality care.

Page 21 of the Consultation Paper suggests the Regulator, Department and providers may have a role to play through education and awareness campaigns and provision of clear and targeted information to older people, so that older people and their representatives are made aware of where they can go for help. ACCPA supports in-principle a multi-stakeholder approach to information provision, and, in particular, the Department and/or Regulator should provide clear information such as responsibilities of providers and care recipients and where complaints should be directed. It will also be important for care recipients to understand that only registered providers can deliver Commonwealth subsidised aged care services, which differs to the National Disability Insurance Scheme (NDIS).

2.2 Education and engagement with providers

ACCPA supports education and engagement mechanisms with providers, provided these are clear, consistent, fit-for-purpose, and recognise that care delivery is not one-size-fits-all.

Engagement with providers should be regular and targeted, and timely in response to changes and reforms.

ACCPA is particularly supportive of methods through which providers can learn from each other to foster innovation. Advanced training and resources from the Department and the Regulator should be developed to enhance capability and innovation. Educational materials around expected standards of care will also be important to facilitate a shared understanding.

ACCPA seeks further information about the kinds of information, materials and programs that will be available, and how these will be developed.

The Department and the Regulator should also tap into the significant expertise that exists in the provider sector by engaging providers in the development and co-design of resources.

R2 That the Department and the Regulator engage with providers in the development and co-design of resources developed as part of the proposed education and engagement with providers.

2.3 Building capability and continuous improvement

A framework that supports capability-building and continuous improvement is welcomed, including where there is a holistic approach with defined roles for the Regulator, providers, care recipients, the community and other stakeholders.

ACCPA notes the Regulator's proposed role in producing insights on systemic issues that require targeted development and education campaigns to support the sector through its '*prevent, detect, correct*' approach. ACCPA seeks further information on this proposal, particularly how this information will be shared across the sector in order to facilitate, as the Consultation Paper indicates on page 21, providers learning from risk or issues, to prevent them from occurring.

ACCPA supports opportunities for providers to share learnings through "local or sector level associations, such as professional associations, membership bodies and communities of practice", as suggested on page 21 of the Consultation Paper.

Regional assistance forums and discussion with aged care sector workers to understand the challenges they are facing, actions to work cooperatively with the sector to assist them to address these challenges, mechanisms to assist aged care providers to fully understand their requirements in relation to best practice care would also be welcomed to build capability.

Further, fit-for-purpose and innovation-focused educational materials would serve to enhance provider capability and continuous improvement. There should also be materials targeted at different service types.

Page 21 of the Consultation Paper also notes that "provider performance reporting will need to show direct links to the care and services accessed by older people, how it is tracking over time and how it will be improved". ACCPA queries what this means in practice and seeks to ensure that any enhanced performance reporting requirements are offset with associated supports. It is also noted that differences in digital capacity across different service providers may impact the ability to efficiently collect and use data to drive continuous improvement.

Providers need to be funded adequately to deliver both quality care and services and to establish expertise, processes and systems, particularly in light of ongoing workforce challenges faced by the sector and the need to continue running daily operations on top of keeping abreast of upcoming reforms.³

Reduction of administrative burden through harmonisation across the care and support sector will also allow providers to focus more on continuous improvement.

ACCPA acknowledges that provider capability, by providing a responsive and collaborative environment for providers to seek support and advice to prevent a finding of

³ ACCPA has previously advocated for the recognition of costs to support investment in innovation and technology: see ACCPA submission on the [Independent Health and Aged Care Pricing Authority Towards an Aged Care Pricing Framework Consultation Paper](#) (October 2022) page 12.

non-conformance, is a cultural shift. Providers will need to be able to trust that a proactive approach seeking support is not subsequently used to identify and target a provider for a compliance audit, unless the risk identified warrants that action.

2.4 Incentivising high quality and safe care

ACCPA considers that approaches to supporting excellence are positive steps. ACCPA supports performance-based regulation,⁴ and incentives for high performance are aligned to this approach.

The Consultation Paper proposes a multi-faceted approach to incentivising excellence. ACCPA is of the view that more objective information is needed to make clear what this means in practice, including how it relates to the level of care providers are funded to deliver. For example, what is meant by “good performance” and “high performer”? How is this measured or determined? How will providers be supported to become “high performers”?

More detail is required to understand how, in practice, providers will be supported by the Government, Department and the Regulator to provide high quality care and encouraged to dedicate resources to continuous improvement and engage in innovative practices within their funding allocation.

ACCPA is keen to see a robust approach to supporting excellence that goes beyond de-incentivising poor performance and cultivates opportunities for providers to engage in innovative practices despite ongoing sector-wide workforce challenges. ACCPA recommends the model incorporates education and other supports that support excellence and cultivates innovation, and which would also support the realisation of continuous improvement and capability-building.

R3 Dedicated and targeted educational materials and other supports that support excellence and cultivates innovation, as well as continuous improvement and capability-building, should be available to providers.

2.5 Further information sought

1. How will the Department and the Regulator contribute to cultivating a culture based on relational regulation? What changes will the Regulator be making to build and strengthen the relationship with providers and with older people?
2. What will be expected in relation to providers informing and seeking feedback from care recipients on their approach to continuous improvement, and what does this mean in practice? Will there be education and resources to guide providers on best practice?
3. What kinds of information, materials and programs will be available for providers? How will these be developed?
4. How will the insights on systemic issues that require targeted development and education campaigns to support the sector, produced through the Regulator’s *‘prevent, detect, correct’* approach, be communicated to facilitate capability-building and continuous improvement?
5. Page 21 of the Consultation Paper states that “provider performance reporting will need to show direct links to the care and services accessed by older people, how it is tracking over time and how it will be improved”. What does this mean in practice?

⁴ E.g., Malcom Sparrow’s ‘Model 2’ regulatory approach, whereby regulators are performance-based, outcomes-based, principle-based, and responsive. See Raimund Laqua, [*The Regulatory Tsunami*](#) (2019).

6. Page 22 of the Consultation Paper states that the Regulator, government, providers, workforce (including volunteers), other health professionals and the community working together to identify, manage or remove providers that deliver substandard care, will help the sector as a whole lift its capability. How will this work in practice, noting the Consultation Paper also indicates it will involve supporting and stewarding providers in particular communities and regions where there is a risk that older people will not have access to aged care services?
7. How will providers be supported by the Government, the Department and the Regulator to provide high quality care?
8. What is meant by “good performance” and “high performer”? How will this be measured or determined? How will providers be supported to become “high performers”?

3. Becoming a provider

ACCPA supports the proposed registration and re-registration process for all providers seeking to deliver Commonwealth subsidised aged care services.

However there needs to be more detailed information made available about the registration and re-registration requirements for each of the proposed registration categories including the different evidentiary requirements for certain categories.

3.1 Entities

There are risks associated with sole traders (single worker) that the Regulator will need to manage to ensure the worker is appropriately skilled to deliver the care and services and has governance and other processes in place including for example back-up arrangements for times when the worker is unavailable.

There are also probity issues with single workers that the Regulator will need to address including, for example, strongly discouraging sole traders from being hired by care recipients who are family members.

3.2 Subcontractors

ACCPA supports the proposal that subcontractors engaged directly by a registered provider will not be required to be registered, with the registered provider being responsible for the quality and safety of services delivered by subcontractors.

The Consultation Paper also notes subcontractors may decide to apply to become a registered provider. ACCPA has assumed that if a registered provider subcontracts work to another registered provider, that the first registered provider will still be responsible for the quality and safety of services delivered by the subcontractor.

3.3 Registration categories

There is a balance in putting in place arrangements that support and encourage new providers, particularly into the home and community sector, while ensuring to the greatest extent possible that all care and services are delivered safely and to the expected quality standard.

In relation to the proposed six registration categories, ACCPA considers that proposed registration category 3 (social support) should be merged with and subject to the same higher level of requirements as proposed registration category 4 (clinical and specialised supports). ACCPA is also of the view that personal care should remain in proposed registration category 4 (clinical and specialised supports) and not be moved to a registration category that has a lower level of requirements/obligations. This is because of the associated service risks to older people receiving these services.

Advice is sought from the Department on what will happen with set price points and pay rates for aged care workers providing services in the different registration categories. For example, workers delivering domestic assistance and personal care in the one home visit which better accommodates the Social, Community, Home Care and Disability Services Industry Award requirements to pay staff for a minimum of two hours.

It should be recognised that smaller providers may be challenged by increasing governance, data collection and reporting requirements and appropriate technological supports or grant funding should be made available to them.

More specifically, in relation to proposed registration category 2 we recommend the “description” include technology assistance and the “rationale for grouping services into this registration category” acknowledge the need for targeted training and resources to facilitate people living safely in their homes for longer based on a variety of circumstances, including the different devices care recipients have and different ways of learning.

R4 Proposed registration category 2 should include technology assistance.

R5 Proposed registration category 3 should be merged with and subject to the same higher level of requirements as proposed registration category 4.

3.4 Online platforms

For online platforms, ACCPA considers that either the online platform organisation will need to register (where they are seeking to directly deliver Commonwealth subsidised aged care services although this is not expected to occur often if at all) and/or the workers on the online platform will need to be registered. Care recipients need to be confident that the care and services they are receiving are being delivered by a registered provider(s).

3.5 Assessment of provider suitability

There needs to be more detailed information made available about what obligations will apply to the currently proposed registration categories 1-3 to ensure quality care and services are delivered noting it is proposed that the Quality Standards will not apply to these registration categories.

There are concerns that under the proposed approach, some aged care workers will not be required to be trained (e.g., to recognise dementia or deterioration, work health and safety obligations, manual handling, incidents, complaints, risks, enhancing physical and cognitive capacities, and mental health etc.) resulting in poorer outcomes for care recipients.

The proposed approach does not acknowledge the professionalism of aged care workers in delivering services over and above the provision of the underlying service (e.g., cleaning services, gardening etc). There is the possibility that the holistic nature of care that can be delivered under the current home care packages model will be lost if these providers are unable to compete for some services with other providers that do not have the same governance and compliance requirements.

3.6 Audit against the Quality Standards

In principle, ACCPA supports audits being graded to support excellence, innovation, and continuous improvement. However, it is unclear what the difference is between ‘conformance’ and ‘best practice conformance’ noting that aged care standards are best practice and providers are funded to deliver care and services to an agreed standard.

ACCPA is also concerned that care recipients will not understand the difference between ‘conformance’ and ‘best practice conformance’ and what it means in practice for the care and services they are receiving.

Following an audit, the Regulator should provide observations to providers which would promote relational regulation. A rating of non-conformance needs to be accompanied by

recommendations from the Regulator for improvement, so providers clearly understand what they need to do to achieve conformance.

ACCPA believes that it is important that graded assessments are supported with published objective performance criteria to reduce ambiguity.

The proposed model does not address how the Regulator will improve the quality of audits including findings, reasons, decisions, consistency, and the ability for providers to ask for and receive a timely review. As a key stakeholder in regulating aged care, it is critical the Regulator's performance is transparent and subject to continuous improvement.

ACCPA recommends consideration be given to the concept of peer review as part of the audit process. In general practice, for example, one of the assessors that comes to the practice when it is undergoing accreditation is a peer of a like practice. The idea is that the peer provides both insights to the accreditation team, and also helps bridge the discussion for the executive/owner undergoing accreditation with a focus on sharing, learning, and quality improvement.

- R6 That the Department provides further information and conducts further sector consultation regarding the difference between audit gradings 'conformance' and 'best practice conformance', and how they relate to the expected standard of care providers are funded to deliver.**
- R7 That the Regulator be required to provide clear and timely feedback to providers following audits against the Quality Standards.**
- R8 That consideration be given to the concept of peer review as part of the audit process.**

3.7 Timeliness of registration and re-registration

The Consultation Paper does not discuss what will happen if the Regulator is delayed in assessing re-registration applications. Providers need certainty and cannot be left in a situation where their registration inappropriately lapses.

Also, the Consultation Paper does not discuss how the Regulator will assess registration and re-registration applications, and in a timely way, particularly if there is a rush of applications from sole traders and partnerships shortly after the new regulatory model commences.

3.8 Further information sought

1. Is proposed category 6 - residential care providers the only category of providers required to be a constitutional corporation?
2. What is the targeted timeframe for the Regulator to process requests for registration including for existing registered providers seeking to register in a new category?
3. What is the targeted timeframe for the Regulator to process requests for re-registration?
4. What are the circumstances in which the Regulator will be able to shorten or vary the standard three-year registration period?
5. How will the registration arrangements work for residential aged care providers with multiple sites?
6. How will the registration arrangements work for home support providers where the registered provider provides services in more than one registration category?

7. For providers registered in more than one registration category, how will the registration/obligation requirements be streamlined and made more efficient for the Regulator and the provider?
8. Are there details about the proposed graduated registration requirements such as a declaration to meet evidentiary requirement for certain categories or more stringent assessments and higher evidentiary requirements for other categories?
9. For proposed category 1 – home and community services, are there more details about the system of mutual recognition of regulatory requirements to be implemented to reduce red-tape and ensure older people's safety?
10. For proposed category 2 – assistive technology and home modifications, are there more details about the practical interaction between the Regulator and other regulators managing risks (e.g., compliance with building codes, fair trading legislation, and medical devices regulation)?
11. Is there more information about aligning obligations to similar service offerings in the NDIS, to facilitate providers and workers to enter the aged care sector?
12. Are there more details about the opportunities for streamlining registration and assessment that are being explored, including recognising accreditations issued by other regulatory schemes?
13. How much will it cost to register and re-register in both a single registration category and in more than one registration category? How much will it cost to register and re-register where the registration period is either longer or shorter than three years?
14. How will price points (and funding) be adjusted as more compliance requirements are added?

4. Responsibilities of a provider

ACCPA supports the overall approach of the obligations architecture (figure 2 on page 41 of the Consultation Paper) and proposed provider registration obligations (figure 3 on page 44 of the Consultation Paper).

However, as noted earlier (section 3.5), there needs to be more detailed information made available about what obligations will apply to the currently proposed registration categories 1-3 (or registration categories 1-2 if our recommendation to merge registration categories 3 and 4 is accepted) to ensure quality care and services are delivered, noting it is proposed that Quality Standards will not apply to these registration categories.

In 2022, the Aged Care Quality and Safety Commission published [Quality and Safety in Home Services - 5 Key Areas of Risk](#). It is unclear how the proposed new arrangements will adequately address these risks in all circumstances including protecting care recipients who are more vulnerable for example because they live alone or are isolated from local communities and long-term family/support relationships.

Concerns have also been raised about ensuring quality care and services are provided by sole traders (single worker) and in multi provider situations (e.g., self-managed home care situations where there are many providers delivering services to an aged care recipient).

In multi provider situations, who has overall responsibility for outcomes for care recipients? How will the individual providers, taking part in an aged care recipient's care, share information? Who will act upon a report stating significant deterioration and what will the clinical escalation process look like? Will there be a care management service? If yes, where will it sit in the proposed model?⁵⁶

The coordination of care and services in a multi provider environment needs further consideration.

In addition, ACCPA recommends the Department pilot the new arrangements to identify and address areas for improvement before full implementation.

R9 Establish a minimum standard of care management or support for each care recipient, including self-managed care recipients and those in a multi provider environment.

R10 The Department and the Regulator should pilot the new arrangements for provider obligations.

4.1 High quality care

The Consultation Paper states that there will be further consultation and consideration of a proposed definition of high quality care which will be defined in the new Aged Care Act.

The Consultation Paper also indicates only providers in specified registration categories will need to demonstrate their commitment to deliver high quality care.

It is unclear why all registered providers would not be required to deliver high quality care.

The proposed approach appears to be at odds with the aims of the new regulatory model and is likely to be difficult to explain and confusing to care recipients receiving care and services in the non-specified registration categories.

⁵ See ACCPA submission [In Home Aged Care Discussion Paper – ACCPA Response](#) (December 2022) pages 18-20.

⁶ See ACCPA submission [Revised Aged Care Quality Standards](#) (November 2022) pages 12-13.

It is important that what high quality care means in relation to each of the different aged care service types is clearly and objectively explained so providers and care recipients can start from a position of mutual understanding, and it will be clearer when care has fallen below standard and what steps need to be taken to improve the quality of care.

ACCPA notes there is overlap between the proposed definition of high quality care and the Quality Standards which has the potential to be unnecessarily confusing. Definitions must not be open to wide and varied interpretation by the Regulator, providers and care recipients.

In developing the definition of high quality care, the Department will need to give consideration to ensuring the provision of high quality care is accurately costed and funded. Providers will need sufficient, reliable and timely access to workforce supply and support for ongoing workforce professional development. There will also need to be continued recognition and support for the role of informal carers in supporting care recipients.

R11 High quality care should be clearly and objectively explained for each aged care service type, which will allow for mutual understanding and consistent application (including how high quality care in thin markets will be supported).

R12 That the intended future consultation and engagement ensure harmonisation of the definitions and application of high quality care across other reform processes underway including the Aged Care Taskforce, National Care and Support Economy Taskforce and IHACPA pricing and costing functions.

4.2 Further information sought

1. Why aren't conditions also called obligations or vice versa, as it is confusing to have both conditions and obligations for what appears to be similar requirements?
2. When will the details of all the proposed obligations/conditions, evidence requirements and implementation requirements for each registration category, service type, type of entity, and operational setting be available for consultation?
3. Are proposed registration categories 1-3 subject to the Serious Incident Response Scheme?
4. What will be required when making a digital declaration (versus a quality assessment) (figure 2 on page 41 of the Consultation Paper)?
5. What circumstances will a condition specific to a provider be imposed? If imposed because of the performance of a provider, can the risk be remediated, or does it remain for the length of registration?
6. When will the Statement of Rights be available for consultation?
7. When will consultation be undertaken on the definition of high quality care? What evidence base or sector engagement work has been used for the proposed definition and will this information be included in the future consultation?
8. When will the proposed fees and payments requirements be available for consultation?
9. How will the cost impact of the regulatory requirements, be reflected in pricing (and funding)?
10. What are the proposed security of tenure requirements in the new Aged Care Act?

5. Holding providers accountable - challenging assumptions and elevating the narrative

ACCPA supports the approach under the new model of there being a stronger focus on connecting information and intelligence to prevent, detect and correct risk and poor provider performance.

However, ACCPA strongly believes the approach should start from the position that providers are striving for the delivery of high quality care and services within the funding provided by the Government and care recipients, and not from an implied assumption that providers are not seeking to deliver or strive for optimal performance.

There is need for all stakeholders across the sector to reconceptualise the narrative. The use of the phrase of 'holding providers to account' does not elevate the sector as a whole or cultivate trust in the broader community. Furthermore, it is intrinsically linked to the limitations of the current regulatory model such that aged care is far behind modern regulatory practices, as compared to models used in other sectors.

It is also not reflective of the journey the sector has come on since the Royal Commission into Aged Care Quality and Safety. Recommendations of the Royal Commission were largely supported by the provider sector. Furthermore, this is in a context where providers were also navigating the devastating impacts of the COVID 19 pandemic on the sector. More recently, providers have been committed to implementing 2022 legislative reforms and planning for significant future reforms while still experiencing significant financial and workforce sustainability issues. The level of support for, and commitment to implement post-Royal Commission reforms from the provider sector and to work in partnership for well-designed reform in aged care is clear and ongoing.

The 2022 Strengthening Provider Governance legislative reforms were supported by ACCPA and are currently being implemented. In addition, providers are responding to greater financial reporting and transparency to demonstrate their accountability for aged care funding. The time is now to carefully consider the language and tone used when discussing aged care reform to ensure we challenge assumptions and how these might influence policy design, seek to elevate the narrative and allow optimism for real change to take shape as part of the reform pathway the whole sector is on.

From the way language is used in this consultation paper, it is clear that a change in culture and mindset is needed in the way the Department and the Regulator communicate with providers, care recipients and more broadly. There is a need for all stakeholders in the aged care sector to strive for a positive view about the sector's potential, while at the same time, dealing appropriately where providers fail to meet required standards.

It is therefore imperative that natural justice and the independent review of decisions is available to providers. ACCPA also considers improved transparency and equity with other sectors to be important considerations.

More effort should be placed on improving the accessibility and analysis of the range of data held by the Regulator to increase and enhance provider performance and practices.

It will be important for the proposed model to be considered in the context of, and consistent with, the outcomes from the Aged Care Quality and Safety Commission Capability Review.

R13 That the proposed model be aligned with the outcomes from the Aged Care Quality and Safety Commission Capability Review.

5.1 A new approach to holding providers accountable

The approach needs to have a continuous improvement partnership element so that all stakeholders work together to deliver quality care and services. The Regulator will need to be responsive and collaborative to requests for guidance and support, and not act punitively towards a provider for seeking guidance by prompting an audit and identifying non-compliance, unless warranted.

The Consultation Paper notes that the new model will respect the autonomy and independence of older people to make decisions that are right for them. It will be important for the Regulator when making determinations to also consider the rights of the community around each older person (e.g., in a residential aged care home), and the balance that is often required by a provider to consider both.

The approach needs to be supportive, and not create fearful submission.

There needs to be procedural fairness so providers can respond before a final assessment decision is made and a 'no fault' element to ensure a provider that demonstrates they have taken all reasonable steps does not receive a penalty.

R14 The model needs to provide procedural fairness for providers before final assessment decisions are made. There should also be a 'no fault' element to ensure a provider that demonstrates they have taken all reasonable steps does not receive a penalty.

5.2 Risk-based monitoring

The proposed power of the Regulator to enter and remain in a premises at any time without warrant or consent to exercise their monitoring and investigation powers should be limited to extreme circumstances which are set out in the relevant legislation and communicated to providers in relevant guidance materials.

5.3 Complaints management and feedback

The principles of open disclosure and restorative justice are similar. Open disclosure is well understood and accepted in aged care. However, restorative justice is a term commonly used in relation to crime and its introduction into the new Aged Care Act may move it away from a partnership model of care to fear based. An open disclosure framework builds a positive culture of working together to find resolution and identify continuous improvement.

5.4 Compensation

In relation to compensation, ACCPA considers it would be highly inappropriate for the Regulator to have any role in seeking compensation on behalf of older people as the Regulator would be working outside their scope of independently monitoring compliance with governance obligations and imposing penalties for non-compliance. There are other well established avenues including independent advocacy organisations that are better placed for care recipients to seek support and compensation.

R15 The Regulator should not be involved in seeking compensation on behalf of older people.

5.6 Insurance premiums

ACCPA members are concerned that insurance premiums may increase under the proposed new model. There is also a concern that depending on the final penalty/compensation arrangements put in place, providers may not be able to obtain insurance as these will be uninsurable risks. Once the design of the proposed model becomes more settled, ACCPA thinks it will be important for the Department to discuss possible insurance consequences with the insurance sector.

R16 The Department should consult with the insurance sector on the possible impact of the proposed model on insurance premiums and insurance coverage.

5.7 Further information sought

1. How will the Regulator ensure the proposed risk-based approach appropriately includes sole traders and partnerships particularly if this market captures the majority of care recipients?
2. What arrangements will be put in place, so providers only need to report information once?
3. What arrangements will be put in place so there will be no overlap between the activities of the Department and the activities of the Regulator?
4. What arrangements will be put in place to check the accuracy of information provided about providers to the Department or the Regulator?
5. When will more information be made available for consultation on the proposed enforcement powers including civil penalties, additional offence provisions, and critical failure powers?
6. When will more information be made available for consultation on the circumstances in which compensation may be available to older people who are negatively affected by registered providers?

6. Transitioning to the new model

ACCPA supports a transition approach where the Regulator and Department are engaged with providers in the lead up to the go live date and afterwards.

It is noted that detailed plans for transition will be shared with the sector across 2023. ACCPA considers it too early to offer substantive comment on the mechanics of the transition arrangements based on the information currently available.

More detail is required to understand what support is needed, particularly in light of other upcoming reforms such as the revised Quality Standards and the in-home aged care reforms, and indeed the new Aged Care Act. It is unclear how these reforms will work together and, as such, what providers need in order to optimally implement them.

6.1 Transitioning existing providers

The proposed transition arrangements for existing providers appear reasonable, however it will be imperative that the Regulator and the Department engage with providers and offer timely advice and assistance as intended throughout the process. The approach for how providers are to engage with the Regulator and the Department will need to be communicated to providers.

It will be important that sufficient time is allowed before the go live date for existing providers to consider the advice from the Department/Regulator on their proposed deemed registration category(ies) and for corrections to be rechecked and approved.

It is noted on page 66 of the Consultation Paper that providers who are subject to compliance and enforcement activity at the time of deeming will see this process through under the current framework. ACCPA awaits further details on this matter, noting that transitional arrangements describing how this will work will be included with the new Act.

ACCPA recommends that supporting guidance materials (e.g., checklists and fact sheets) be developed (in collaboration with the sector) and disseminated with sufficient lead time to assist existing providers with the transition.

R17 The Department and the Regulator should develop supporting guidance materials in collaboration with the sector and disseminate these to existing providers with sufficient lead time to assist with the transition to the new model.

The resourcing requirements and impact on providers will also need to be factored into the transition process. Particular consideration and supports should be made for small as well as rural, regional, and remote providers.

Providers will also need to understand expectations around informing care recipients and strategies for managing expectations during the transition.

In terms of timing, and subject to further detail, ACCPA recommends existing providers should be first advised of their proposed registration category(ies) at least six months before the go live date. ACCPA acknowledges this is likely to pose a challenge to a 1 July 2024 commencement date of the new model.

It is noted on page 66 of the Consultation Paper that re-registration periods for deemed providers will be staggered based on risk-based considerations, past performance and the timing of the provider's most recent accreditation or quality review under the current framework. Providers will need to understand how their initial registration period is determined and whether there will be an opportunity to request a review of the period decided.

The period between the go live date and re-registration cannot be too short. ACCPA recommends the minimum time for this should be 12 months.

R18 Existing providers should be first advised of their proposed registration category(ies) at least six months before the go live date. The period between the go live date and re-registration for existing providers should be no less than 12 months.

6.2 New providers entering aged care

ACCPA notes the proposed approach for new providers entering aged care is subject to further consultation and detailed consideration. It is noted that new providers will be encouraged in the period leading up to transition to submit an application to be registered after the go live date. ACCPA queries what information, education and guidance will be provided to potential new providers in the lead up to transition to inform them of these arrangements?

6.3 Further information sought

1. When will the approach to transition be finalised, and details consulted with and communicated to the sector?
2. How will both existing providers and new providers be supported in the lead-up to and during transition? What information, education and guidance will be provided?
3. How will the Department navigate sector information for home and community care providers with the new in-home care program now scheduled to commence on 1 July 2025? How will CHSP-only providers be supported given this will be their first experience with registration under the Aged Care Act?
4. Will providers be informed how their initial registration period (i.e., length of time before re-registration is required) is determined, and will there be an opportunity for a provider to request a review of the period decided?

7. Concluding comments: timing and implementation

To support successful implementation of the new model, ACCPA members have called for clear, coordinated, and timely communication of details regarding the new model and transition supports, for both providers and care recipients. Providers need detailed information with sufficient lead time to ensure they can implement the changes to the best of their ability and funding availability.

Further information on the new model is required to enable a comprehensive understanding of practical impacts. Keeping abreast of upcoming changes and allowing sufficient time to ensure systems, frameworks and policies align to the new requirements, and staff are aware and trained, will be paramount to ensure a smooth implementation.

ACCPA acknowledges that there are many current and ongoing challenges related to financials, workforce, and regulatory requirements. With additional attention required for the reforms, providers need to know the details and an advance plan with a detailed schedule for each change and milestone.

The new model and transition processes will also need to be aligned to other reforms underway, such as the revised Quality Standards and in-home aged care reforms. The ability for providers to build and maintain capacity to successfully operate under a new regulatory model will be dependent on consistency across reforms.

Advice from the Independent Health and Aged Care Pricing Authority on pricing for AN-ACC is also a relevant factor. There will also need to be harmonisation between the new model and the outcomes of the Aged Care Quality and Safety Commission Capability Review. As a result, ACCPA recommends a detailed sector implementation plan be developed in partnership with the sector to ensure issues faced on-the-ground are considered and captured.⁷

R19 The Department and the Regulator should develop, in partnership with the sector, a detailed sector implementation plan with timeframes and required actions for providers. The plan should be communicated across the sector and include information on how the changes relate to other aged care reforms to ensure the regulatory system is synchronised and structured to adapt to a changed and changing aged care sector.

This will support providers to manage change strategically and effectively in order to implement the reforms.

Further, ACCPA noted in our Federal Government Pre-Budget Submission 2023-24 that providers are reporting there are already increasing costs for the implementation of reform measures and that not all reforms have been costed through Departmental impact analyses.⁸ ACCPA recommends the Department undertake a comprehensive and thorough impact analysis of the new model and new Aged Care Act.

R20 Given the Royal Commission into Aged Care Quality and Safety Final Report was handed down on 1 March 2021, and the proposed reform is scheduled for 1 July 2024, the Department should undertake a comprehensive and thorough impact analysis regarding the new model and new Aged Care Act. This analysis

⁷ ACCPA has been consistent in its calls for sector implementation planning – see [ACCPA Federal Government Pre-Budget Submission 2023-2024](#) (February 2022) page 11.

⁸ See [ACCPA Federal Government Pre-Budget Submission 2023-2024](#) (February 2022) page 11.

should take into account current and future financial sustainability, workforce issues, and ensure any findings are accounted for in the design of the reform.

The Department and the Regulator will also need to be adequately focused on monitoring and managing the reform implementation phase to promote public confidence in the Government's approach to reform implementation.

Moreover, ACCPA is concerned there is not enough time for all the necessary activities that need to be done before a commencement date of 1 July 2024, including further consultation on the details of the proposed changes (including engagement with care recipients), consultation on the draft new Aged Care Act, introduction and passage of the new Aged Care Act and supporting delegated legislation, and availability of training, education and support materials for providers/workers/care recipients.

R21 The commencement date of the new model and new Aged Care Act should be set with sufficient time following the passage of the relevant legislation and all subordinate legislation for the Department and the Regulator to implement all the necessary resources and training for providers and care recipients, as well as their own staff.

Finally, the development of system-level and outcome indicators should be considered to measure the effectiveness of the transition (and impact on care recipients) and, ultimately, the effectiveness of the new program in delivering high quality care. ACCPA recommends at least two post-implementation reviews of the new model be undertaken two years and five years post-commencement.

R22 Two post-implementation reviews of the new model should be undertaken two years and five years post-commencement.

7.1 Contact

If you have any further questions or would like to discuss, please contact us at policy@accpa.asn.au (attn: Deidre Gerathy, Senior Policy Advisor and Keelie Bormann, Policy Advisor).