



## Statement of Intent – 23 October 2024

This Statement of Intent responds to the Statement of Expectations issued by the Minister for Aged Care, the Hon Anika Wells MP, on 25 September 2024.

### Overview

Older Australians receiving aged care have the right to expect that they will be safe and well looked after. The purpose of the Aged Care Quality and Safety Commission (the Commission) is to protect and enhance the safety, health, wellbeing and quality of life of aged care recipients. We achieve this through a range of functions aimed at holding providers accountable for delivering quality care and services tailored to meet aged care recipients' personal needs and preferences.

The Commission operates independently and objectively in performing its regulatory functions and exercising its powers as set out in the *Aged Care Quality and Safety Commission Act 2018* (Commission Act) and the Aged Care Quality and Safety Commission Rules 2018. It does so in accordance with the broader governance and performance expectations of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Service Act 1999*.

I, as the Commissioner and accountable authority of the Aged Care Quality and Safety Commission, am responsible for the performance of the functions of the Commission and report to the responsible portfolio ministers and Parliament.

### Regulatory activities informed by the Principles of Regulator Best Practice

The Commission's approach to regulation is underpinned by a central concern to safeguard every older person's right to quality and safe aged care and services. We will pursue this by continuing to focus on risk and promote provider accountability, transparency and continuous improvement. Our regulatory strategy encompasses preventing, detecting and responding to risks to the safety and wellbeing of older people accessing aged care services.

The Commission strives to be consistently fair, balanced and effective in how we regulate aged care. By fair, we mean objective and transparent in our decision-making as we engage with older people, providers and workers when we regulate. By balanced, we mean that our decisions and actions are risk based and proportionate. By effective, we mean that in everything we do, we are focused on outcomes that improve services and each older person's experience of aged care.

In undertaking its regulatory activities, the Commission is guided by the best-practice principles outlined in the Regulator Performance Resource Management Guide (December 2022):

- **Continuous improvement and building trust:** The Commission will continue to build trust by demonstrating our strengthening capabilities and a commitment to ongoing improvement driven by internal audit and evaluation; and, by advice from the Aged Care Quality and Safety Advisory Council.
- **Risk based and data driven:** Drawing on our own data and external sources, the Commission will act to prevent and respond to risk and harm to older people. The urgency and intensity of the Commission's actions will be proportionate to the risk or harm to older people.
- **Collaboration and engagement:** The Commission will continue proactive engagement with our stakeholders to ensure that their different views, interests and expectations are understood and appropriately influence our priorities and operations.

These best-practice principles are embedded in the Commission's Regulatory Strategy. They also inform the performance measures in our Corporate Plan 2024-25 against which we will report in our Annual Report.

## The Government's policy priorities and objectives

### *Aged care reforms*

The Commission remains fully committed to supporting the delivery of significant Government reforms in aged care.

We will continue to monitor and ensure providers' compliance with new obligations, including the minimum staffing requirements introduced in 2023 for providers of residential aged care.

Providers who fail to meet their obligations will be managed under the Commission's provider supervision model. Under this model, all providers are assigned a supervision status based on our assessment of risk of harm to older people receiving care from that provider. The four levels of supervision, in order of increasing risk and intensity of Commission intervention, are risk surveillance, and targeted, active and heightened supervision.

All providers are subject to ongoing risk surveillance through the Commission's constant scanning of information collected about them, including from regulatory interactions, complaints, serious incident notifications, and mandatory provider reporting. If a provider is not complying with an obligation (for example, RN cover, care minutes, resident vaccinations), the Commission will assess the risk of harm and encourage the provider's voluntary remediation of the non-compliance. This is often the fastest way to ensure that the non-compliance is addressed and the risk to care recipients is mitigated.

If the non-compliance is not readily addressed, we will take compliance or enforcement action to compel the provider to comply and manage risks to older people where:

- there are risks to quality and safe care for older people
- non-compliance is related to shortcomings in the provider's business decisions
- the provider cannot demonstrate that they are making reasonable efforts to reduce the risks to older people and comply with their obligations.

If the non-compliance is associated with a serious failure to provide safe care that has harmed or endangered an older person, the Commission will not hesitate to take enforcement action which could include revocation of the provider's approval to provide aged care or a finding that responsible persons are not suitable to deliver aged care.

With respect to the new rights-based Aged Care Act, the Commission will continue to work closely with the Department of Health and Aged Care (the Department) to support the legislative process and preparations for the Act's implementation. The Integrated Sector Readiness Plan to be developed by the Department in partnership with the Commission will ensure that our communication, engagement, guidance and education activities are joined up, consistent and meet the needs of stakeholders.

This program of work includes supporting providers and workers to understand their obligations and building awareness for older people, workers, providers and the community on what they can expect from the Commission.

We have a range of stakeholder engagement mechanisms through which we will continue to engage with older people, workers, aged care providers, peak groups and others. These include the Aged Care Quality and Safety Advisory Council; the Commission Consultative Forum; the Consumers and Families Panel; the Aged Care Providers and Workers Panel; and our Culturally and Linguistically Diverse and First Nations Reference Groups.

We will test our sector readiness activities and products with these fora and through other consultation processes to ensure that our initiatives are fit for purpose.

## ***Response to Independent Capability Review***

The Commission will continue to implement the recommendations of the Independent Capability Review in accordance with the intent of the Review and the Government's response. By December 2024, the Commission and Department expect to have delivered all recommendations for which they have sole or shared responsibility.

Implementation of the Independent Capability Review recommendations is enhancing the Commission's strengths and capabilities to deliver best practice regulation. This is being achieved via six workstreams:

- **Operational function maturity:** ensuring effective, proportionate and transparent regulation that improves the quality and safety of care and incentivises providers' continuous improvement
- **Data and intelligence:** ensuring enhanced intelligence-led, risk-based regulation, with sophisticated use of data and intelligence to better inform and respond to risk
- **Stakeholder engagement:** ensuring that the Commission is better informed about and more responsive to stakeholders' needs, and that stakeholders have increased trust in, and understanding of, the Commission through relevant and appropriate communications and engagement
- **Governance and funding:** ensuring an adequately resourced and cohesive, transparent and accountable Commission, with clear lines of responsibility and consistency built into decision-making processes
- **Workforce management:** ensuring increased capability, quality and productivity through a safe, engaged, capable and accountable Commission workforce
- **ICT systems:** ensuring the Commission's ICT systems are secure, robust, user focused, scalable and support better decision-making.

The Commission will maintain a fit-for-purpose Regulatory Strategy that details our approach to delivering regulatory functions.

Our 2024–25 Regulatory Strategy sets out how the Commission will deliver on its goals and commitments. It outlines our approach to holding providers and workers accountable through managing complaints about their performance, undertaking risk analysis, and pursuing provider supervision and enforcement. It also speaks to how the Commission

incentivises and supports providers and workers to consistently reach for delivery of high-quality care and how we are simultaneously building our own capability and accountability.

The Commission is committed to updating its Regulatory Strategy annually including ahead of the introduction of the new Aged Care Act.

## **Relationship with key stakeholders**

The Commission recognises that having trusted relationships with key stakeholders is vital to achieving the best care outcomes for aged care recipients. Our Stakeholder Engagement Strategy 2023-25 underscores the value we place on our relationships with stakeholders and how we will work to maintain and strengthen those relationships.

### ***Older people accessing aged care services***

Older people are at the centre of all that we do. We listen to them to understand what is important to them and what they need from the Commission. We also publish fit-for-purpose information and other resources to give older people confidence to make informed decisions and choices about their aged care, and to speak up when something about their care is not working well for them.

We hear directly from older people (and their representatives) when handling their complaints about particular aged care services, and through interviews we undertake as part of our auditing, monitoring and enforcement activities. Receiving and resolving complaints lodged by aged care recipients and their supporters affords a vital and highly valued opportunity for the Commission to understand not only their experiences of aged care, but also their provider's performance. The Commission will take action against providers who punish people for raising concerns or complaints either with aged care staff or management, or with the Commission.

The Complaints Commissioner will continue to actively promote good complaint handling by providers, their use of consumer advisory bodies, and the practice of open disclosure to hear the voice of older people and to partner with them when responding to incidents. This will be supported by the Commission's regular publication of reports to share insights gained through complaints processes about what matters to older people.

In addition to the information obtained from complaints about providers and services, we will also continue to seek input from older people and their representatives by undertaking research, surveys and focus groups with them, and by continuing our engagement with representative organisations (such as the Older Persons Advocacy Network and the Council on the Ageing).

The Commission takes seriously its responsibility to provide accurate information to aged care recipients that is clear, straightforward and accessible.

Our Consumers and Families Panel provides an ongoing opportunity for us to co-design and test our resources and communications with a self-nominated cohort of older people and family members to make sure that our publications meet their needs. A wide range of resources including fact sheets, education videos, webinars and guidance in multiple languages will continue to be available on our website, and regularly updated. Older people who prefer to speak with someone over the phone can call our customer contact centre (1800 951 822).

We will also continue to publish information about how individual aged care services perform against the Quality Standards to assist older people and their families to make informed choices about their preferred provider. Information available online includes non-compliance decisions and banning orders relating to aged care providers and workers, and information about Star Ratings and compliance ratings.

## **Workers**

The Commission recognises the central role of skilled, competent, well-supported aged care workers in the delivery of safe, quality care that promotes individual wellbeing. We will continue to encourage aged care workers to raise their concerns about quality of care directly with us, which they can do confidentially or anonymously if they wish.

When an aged care worker contacts us to make a complaint or raise concerns, we will explain how we can help and will work towards a resolution as quickly as possible, communicating the outcome at the end of the process if they want to hear back from us. If a worker discloses to the Commission that a reportable incident has occurred, we will ensure their awareness of protections against adverse actions or reprisals available under the current Aged Care Act in this circumstance.

The Commission will also continue to raise awareness across the aged care workforce of the Commission's responsibilities to regulate aged care workers, volunteers and governing persons under the Code of Conduct. The Code of Conduct safeguards older people by ensuring that workers meet expected behaviours, such as acting with respect, when providing aged care.

Where we have concerns about a worker's behaviour, we will act. The action we take, and how quickly we take it, will depend on the level of risk to older people. Where worker conduct poses higher levels of risk to older people, we will undertake an investigation to gather further information about the worker's conduct and/or their provider to inform our response.

## **Providers**

Ensuring that providers have the knowledge and capability to deliver high-quality care is the most effective way of safeguarding older people and ensuring that they have a positive experience of aged care. The Commission remains committed to delivering sector-wide and targeted education and campaigns designed to lift provider performance on specific issues. This includes promoting best-practice models for high-quality and safe care, and explaining provider responsibilities in clear and straightforward ways. We will continue to strengthen relationships with aged care providers to encourage their focused efforts to build the capability necessary to give every older person the positive aged care experience they deserve.

With respect to infection prevention and control, the Commission expects providers to embed suitable preventative and responsive measures for infectious diseases (including COVID-19) in the day-to-day operations of all residential aged care services, and to integrate these measures in the governance of their organisations. This includes residential providers ensuring that all older people in their care have timely access to vaccinations and treatments as part of routine care planning and clinical care. The Commission will continue to monitor services' vaccination rates to identify and take appropriate action regarding providers who may not be meeting their responsibilities.

As set out in the Commission's Regulatory Strategy 2024-25, we use a range of regulatory approaches and tools to monitor providers' performance on a continuing basis. We recognise providers who are getting it right and providing a level of care that enriches older people's lives. We expect and celebrate models of care that aim high, strive for best practice and exemplify the rights of older people to quality aged care.

Where we identify risks to older people or non-compliance, we take action to require the provider to address the concerns. We acknowledge and take into account when providers lead and proactively engage in the processes of remedying risk and non-compliance, restoring consumer trust, and preventing reoccurrence when things go wrong.

Our provider supervision model ensures that providers assessed to be higher risk experience a greater intensity of supervision and engagement from the Commission in response to the risks identified. Where a provider fails to fulfil an undertaking to address identified non-compliance or to comply with a notice, they will be subject to enforcement actions which could include sanctions, banning orders and/or civil penalties. We will always take compliance and enforcement actions to protect older people when we identify serious failures to provide safe care.



## ***Minister and portfolio***

The Commission will continue to keep you, as responsible Minister, informed in a timely manner about any emerging trends, issues or risks identified through or otherwise relevant to our operations and functions.

As part of the Health and Aged Care portfolio, the Commission will also continue to work closely and collaboratively with the Department to develop and implement the Government's policy and reform initiatives relating to aged care. I will inform the Secretary of the Department of relevant issues and information, including any concerns or clarification of legislative requirements, resourcing and policy.

Our interactions with the Department are and will continue to be enabled and supported by the updated **Memorandum of Understanding (MoU) between the Commission and the Department of Health and Aged Care July 2024**. The MoU confirms our strong shared commitment to collaborative engagement and outlines operational protocols for information and data sharing.

The Commission will ensure that we stay well-informed about the broader policy direction of Government as well as relevant strategies and initiatives being pursued, to position us to continue fulfilling our commitment to the Government's aged care reform agenda.

## **Accountability**

Under the Commission Act, the Advisory Council advises the Commissioner on the performance of statutory functions. It also provides advice to the Minister in relation to these functions, upon request.

The Commission will continue to work with the Advisory Council and the Department to action the Independent Capability Review's recommendation to strengthen the role of the Advisory Council with the aim of building greater trust and confidence in the Commission as the national regulator of aged care. This includes preparing for the proposed changes to the Advisory Council's role and functions expected to be introduced with the new Aged Care Act.

## **Organisational matters**

The Commission is accountable to the Government, Parliament and the public for its performance as a national regulator.

The Commission will continue to operate on a sustainable, economical and ethical basis and meet its performance planning, measuring and assessing, and reporting



accountabilities through its Corporate Plan and Annual Report, as set out in the PGPA Act and Commission Act.

The Government's Statement of Expectations and this Statement of Intent will be published on the Commission's website. They will also be incorporated in the Commission's corporate plans.

*J. M. Anderson*

**Janet Anderson PSM**

Commissioner

Aged Care Quality and Safety Commission

23 October 2024