

Being a rights-based regulator



Australian Government

Aged Care Quality and Safety Commission

Engage
Empower
Safeguard



1. Introduction

1.1. Guiding statement

The aged care system is designed to uphold the rights of older people under the Statement of Rights. The Commission and the Department govern the aged care system in collaboration, to support a transparent, rights-based and sustainable aged care system which delivers high quality care and services for older people. As the aged care sector regulator, the Commission plays a central role in the aged care system through our safeguarding, education and engagement, registration of providers and complaints functions. We expect the aged care sector to work in partnership with older people to meet their needs, choices and preferences, while respecting their identity and treating them with dignity. This means holding providers, responsible persons and workers to account where we have evidence that they don't demonstrate the capability, capacity and commitment to comply with their obligations to deliver safe, quality care and services in a way that upholds the rights of older people.

Through our regulatory functions, our purpose is to protect and enhance the safety, health, wellbeing and quality of life of older people receiving aged care.

Staff of the Aged Care Quality and Safety Commission (the Commission) are responsible for undertaking their roles, making decisions and taking regulatory responses that uphold the rights of older people receiving aged care and ensure they are treated with dignity and respect.

Our business processes support staff to undertake their roles in a way that embeds the Commission's rights-based approach to regulation, so that upholding the rights of older people is at the centre of all that we do.

1.2. Purpose

The purpose of this document is to outline how the rights of older people receiving aged care services are upheld in all the ways the Commission regulates, including how we:

- engage, inform and empower older people and their representatives, and
- hold providers, responsible persons and workers to account for meeting their regulatory obligations to provide care and services in a way that upholds these rights.



1.3. Key messages

- The *Aged Care Act 2024* (Aged Care Act) places the older person at the centre of the aged care system.
- The Commission will uphold the rights of older people in how we regulate aged care. To do this we will:
 - support older people to understand and exercise their rights
 - require providers, responsible persons and workers to meet their obligations to deliver care in a way that upholds older people's rights.
- Under the Aged Care Act providers, responsible persons and workers must uphold older people's rights to safe, quality care that:
 - meets their needs
 - respects their identity, choices and preferences
 - maintains or improves their health, wellbeing and quality of life to the extent possible.
- The obligations for providers, responsible persons and workers in the Aged Care Act address the Royal Commission into Aged Care Quality and Safety's (Royal Commission) recommendations.
- Older people's rights are the foundation for these obligations – we listen to their voice and respect and reflect their choices and preferences.
- Providers must have the systems, processes and capabilities necessary to meet their obligations to uphold the rights of the older people they provide care to.
- By regulating providers', responsible persons' and workers' compliance with their obligations, the Commission holds them to account for delivering care in a way that is in line with the Statement of Rights.
- If we have evidence that providers, responsible persons or workers are not willing or able to comply with their obligations, we will take proportionate regulatory action.
- We will enforce the obligations that safeguard older people's rights.
- Providers also have a new obligation to show they understand the rights of older people and have practices to deliver care in line with the Statement of Rights.
- The Commission is building our skills as a rights-based regulator by making sure our regulatory staff are:
 - trained and competent in the skills their roles need
 - supported with fit-for-purpose guidance material (see the Regulatory Capability Framework).



- This includes providing training and guidance on the rights for older people across our 4 regulatory functions.

1.4. Scope

Staff across the Commission make rights-based decisions every day when carrying out our functions under the Act. They base these decisions and actions in line with the Regulatory Strategy, which sets out how we apply a rights-upholding lens to our regulatory role. This document applies to all regulatory staff.

1.5. Background

The Aged Care Act has been designed to uphold the rights of people accessing aged care services, placing their needs, choices and preferences at the centre of the system.

The new Act responds to around 60 Royal Commission recommendations, including to legislate:

- the Statement of Rights outlining the rights older people can expect to be upheld throughout their entry into and experiences of aged care services
- the Statement of Principles outlining what effective management, delivery and regulation of the aged care system should look like
- the new Support at Home program
- Aged Care Quality Standards
- stronger powers for the Commission.

Through the Royal Commission recommendations, consultations, surveys and our other engagements with older people and their representatives, we know older people want:

- improved choice and control
- their rights to be upheld through effective regulation of the aged care sector, ensuring older people are offered safeguards and protections that uphold their rights and drive continuous improvement
- their concerns and complaints to be taken seriously and remedied without negative consequences
- providers to practice open disclosure so they are transparent and accountable for the safety and quality of care they deliver.

In line with the Aged Care Act, the Commission's regulatory activities span our 4 regulatory functions under the Act:

1. Safeguarding function
2. Engagement and education function



3. Registration of providers function
4. Complaints Commissioner functions

Through these 4 regulatory functions and in line with our Statement of Intent, we will consider whether providers, responsible persons and workers can demonstrate they have systems, processes and practices in place to uphold older people's rights in practice.

The outcome the Commission expects is that when the aged care system works in partnership with older people, they are empowered to exercise their independence, autonomy and freedom of choice. Older people will then not only receive safe, quality aged care and services that improves their health and wellbeing, their experience of their care will also improve, as it is delivered in a way that is culturally safe and reflects and respects each person's individual identity, needs, choices and preferences.

Care that upholds older people's rights protects their personal information, implements an effective complaints management system and incident management system and is free from all forms of violence, degrading or inhumane treatment, exploitation, neglect, coercion, abuse or sexual misconduct. When rights are upheld, older people are also supported to access advocates and maintain their social connections

2. Our rights-based approach to regulation

We all want to feel confident that the aged care and services older people access is safe, upholds their rights and provides suitable support to meet each person's needs, choices and preferences as they age. We expect that older people are treated with dignity and respect, in a way that recognises their diversity, and their health, wellbeing and quality of life are enhanced by the aged care they receive.

Our rights-based approach is informed by commitments in our Regulatory Strategy and underpins how we undertake our regulatory functions and engage with older people and the aged care sector.

The Commission's Regulatory Strategy outlines how we empower older people to exercise their rights and ensure that effective safeguards are in place to uphold these rights. To bring the Regulatory Strategy to life, the Commission's Regulatory Capability Framework outlines the capabilities our officers require to undertake their roles in a way that puts upholding the rights of older people at the centre of all that we do. Supporting this, we have policies, frameworks and procedural guidance for staff in each regulatory function.



We place the experiences of people receiving aged care at the centre of how we work and how we regulate. The Commission sees older people as diverse individuals with differing needs, choices and preferences. We hear what they tell us they want from their provider, responsible persons and workers delivering their care and services and from the Commission as the aged care regulator.

This means that through our 4 functions we:

- understand and acknowledge the rights of older people receiving aged care and make decisions that support those rights across all our functions [see function-specific guidance and Decision Making Framework]
- uphold the rights of older people and understand our decisions affect the lives of older people and the quality and safety of aged care services they receive
- see and treat older people as individuals with autonomy and diverse needs, choices and preferences. When we engage with older people, for example when they make a complaint, we work in partnership with them and their provider to achieve an outcome they are satisfied with
- support choice and control by engaging with and educating older people, providing information that assists them, their registered supporters and their families or advocates to make informed decisions about aged care providers and care and services that will best meet their needs and preferences, and we expect providers to do the same.

We uphold the rights of older people through our education and engagement function and interactions with older people who contact us with complaints and feedback and who we connect with during the course of other regulatory activities, for example audits.

This means we:

- support older people to understand their rights under the Statement of Rights and they have the information and access to advocates if they need to support them to exercise their rights – and we expect providers to do the same, so rights are upheld in practice
- empower older people to exercise these rights across their aged care experience, starting from when they develop their agreement with a provider to meet their needs, choices and preference to having a say in how their care and services are delivered in a way that respects and upholds their rights. This includes upholding older peoples' right to complain to their provider and/or the Commission without fear of reprisal and to receive a restorative outcome.

In line with our Regulatory Strategy, we use the data we collect about older people's experiences of aged care and providers', responsible persons and workers' willingness and ability to meet their obligations to uphold the rights of older people and deliver safe, quality care, so we can identify, prioritise and respond to risks.



We will continue to work with older people, providers, responsible persons and workers and responsible persons to drive an aged care sector that respects and upholds older people's rights and delivers safe, quality care that improves their health, wellbeing and quality of life. To do this we will:

- evaluate our systems, processes, guidance and training to learn from our decisions and actions, in line with our Quality Assurance Framework
- apply the information, we receive to inform insights that identify sector, provider, responsible person and worker risks so the right person makes the right decision at the right time
- be open to feedback on how we regulate to drive continuous improvement.

Principles	What the Commission expects from providers, responsible persons and workers	What the Commission expects from itself
Transparency	<ul style="list-style-type: none">• Communicate and consult with older people clearly and openly.• Listen and respond to each person's needs, choices and preferences.• Practice open disclosure at all times, including as part of complaints management systems to work with the person when something has gone wrong.	<ul style="list-style-type: none">• Hold providers to account for demonstrating they are willing and able to meet their obligations to deliver care in a way that upholds rights.• Build trust in the Commission as regulator and aged care sector, and communicate why and how we regulate clearly.• Practice open disclosure in our regulatory activities.
Accountability	<ul style="list-style-type: none">• Older people – work in partnership with older people in a way that upholds their rights and empowers them to exercise these rights.• The Commission – complying with their obligations and have processes and practices that demonstrate how they understand and apply the	<ul style="list-style-type: none">• Take a risk-led, proportionate, evidence-based regulatory response when we detect risks.• Publish information on our website about the impact of our regulatory activities.• Work with the Department of Health, Disability and Ageing, so that providers, responsible persons and workers in the



	Statement of Rights in real-life situations.	aged care system uphold the rights of older people in practice.
Continuous improvement	<ul style="list-style-type: none">• Have plans in place to learn from their operations, including complaints management and incident management systems, so they can identify risk and have steps in place to continuously improve.	<ul style="list-style-type: none">• Work with older people, providers, workers and responsible persons to drive an aged care sector that respects and upholds the rights of older people and demonstrates this in practice.• Evaluate our systems, processes, guidance and training to learn from our decisions and actions.• Apply the information we receive to identify sector, provider, responsible person and workers risks.

2.1. Our service commitment to rights-based regulation

As part of our commitment to upholding the rights of older people receiving aged care and services, we:

Listen – to and empower older people to understand what they want from their providers, responsible persons and workers and the Commission as the aged care regulator. To do this we will:

- engage with older people to inform and support them and their supporters
- engage with advisory bodies
- uphold the rights of older people to open communication when managing complaints, so they have their complaints dealt with quickly and fairly, without fear of reprisal when issues arise, including complaints about a provider not upholding a person's rights. We work with complainants and providers under our rights-based complaints management framework, which includes whistleblower protections and restorative outcomes.
- apply the new supported decision-making framework – the Royal Commission noted the importance of supported decision-making to ensure people have control and choice over



their own life and care. Some older people may want or need support to make these decisions. Supported decision-making is the process of providing support to older people to help them to make and communicate their own decisions and remain in control of their lives. Under the Act, older people can still choose who can support them to make decisions, if they want or need support. These people can be registered supporters. Not every older person will want or need someone to support them. Carers and other significant people in an older person's life can continue to play an important role in supporting an older person without becoming a registered supporter. These new supporter arrangements are based on a supported decision-making model and include increased protections for the person to maintain autonomy and dignity.

Lead – a rights-based approach to delivering care for older people - we demonstrate how we regulate in a way that upholds the rights of older people and empowers them to exercise these rights. To do this we will:

- practice open disclosure – including through the complaints handling process we ask what the complainant wants from the process, keep them informed, and communicate the outcome. When something goes wrong, we are transparent and seek to remedy the situation, restore trusting relationships and prevent reoccurrence
- handle complaints in partnership with older people to achieve restorative outcomes – older people who make a complaint or raise an issue relating to a providers' conduct will be protected from reprisal action
- support older people to exercise their right to be independent and autonomous, including working in partnership with their provider to make decisions including where there may be dignity of risk
- establish a new compensation pathway where a serious injury or illness results from a breach of the registered provider's duty.

Practice – regulatory responses that safeguard older people by holding providers, responsible persons and workers to account when we detect risks and are not assured that providers, responsible persons or workers are willing or able to deliver safe, quality care in a way that upholds older peoples' rights. We do this by taking timely, risk based regulatory monitoring, compliance and enforcement responses to focus on actions that maximise our impact. This includes:

- registering, renewing and varying registration of providers as a safeguard so that there is assurance that providers who demonstrate their competency, capability and commitment to delivering safe, quality care enter and remain in the system
- auditing providers registered in categories 4 to 6 against the strengthened Quality Standards, to understand whether they are upholding older people's rights to quality and



safe care that is person centred, offers dignity, respect and privacy, choice and independence, and quality of life.

- monitoring to detect and respond to risks that arise from providers, responsible persons and workers not demonstrating their capability, competence and commitment to delivering safe, quality care that upholds older peoples' rights to exercise autonomy, independence, choice and control.
- taking proportionate compliance and enforcement action when there are serious breaches, so we reinforce the obligations on all providers, responsible persons and workers that uphold the rights of older people under the Aged Care Act.

The outcome of this is that providers and their organisations and responsible persons promote a culture and practice of quality, safety and inclusion and that workers deliver safe, quality care that upholds older peoples' rights.

3. What this means for older people

The Aged Care Act puts the rights of older people first. It aims to ensure aged care services are safe and older people are treated with respect. A key change under the Act is that every older person is presumed to have the ability to make decisions. The Commission upholds the rights of older people through our commitment to putting the experiences and decisions of older people about their aged care at the centre of our regulatory decisions and actions. We bring this to life through uplifting staff capability, supported by our operational policies and function-specific guidance, which embed a rights-based lens to all that we do.

These obligations make what older people can expect from providers, responsible persons and aged care workers clear. This means that older people will be aware of their rights and can seek to have them upheld. Older people will be also able to register a supporter who must comply with supported decision-making principles.

3.1. Dignity, respect, voice and choice

In line with the Statement of Rights, older people have the right to dignity, respect, voice and choice. This includes the right to:

- make their own decisions about their own life
- have their decisions not just accepted, but respected
- get information and support to help make these decisions
- communicate their wishes, needs and preferences, including where they wish to work with their provider to support their right to exercise dignity of risk



- feel safe and respected
- have their culture and identity respected
- stay connected with their community.

The Commission will regulate providers in line with their obligations, including how they demonstrate they understand and apply the Statement of Rights in practice, are compliant with the Code of Conduct and meet the strengthened Aged Care Quality Standards for providers registered in categories 4 to 6. We expect providers to manage complaints with transparency and clear communication to understand what the older person whose poor experience is at the centre of the complaint wants. This includes acknowledging when things have gone wrong (referred to as open disclosure) in order to work with the older person to remedy the situation, restore the relationship and prevent reoccurrence (referred to as achieving a restorative outcome).

3.2. Recognising the diversity of older people

Older people can expect that providers have systems, policies and practices in place and support an environment that ensures the care and services they deliver are culturally appropriate and trauma informed, so they reflect and respect the diverse life experiences of the older people receiving care and services.

Providing culturally safe care is not only a requirement for aged care providers but is essential to ensuring older peoples' preferences, requirements and values are at the centre of care delivery. Culturally safe care recognises that older people are all unique with different lived experiences. This can include social, cultural, linguistic, religious, spiritual, psychological and medical needs that can vastly affect the care, support and services they need.

In line with the Aged Care Diversity Framework, the Commission recognises that like our wider community, older people have diverse characteristics and life experiences, so may need different approaches to the aged care services they receive. This is also reflected in how we expect providers, responsible persons and workers to work in partnership with older persons to plan and deliver care and services that meet their needs, choices and preferences, including in relation to their individual identity.

This means that older people:

- have a voice and can express choice – so their needs, choices and preferences are listened to
- are respected and treated as diverse individuals – so assumptions are not made about their needs, choices and preferences by their provider and aged care workers
- have care and services delivered by an appropriately skilled, trained, culturally capable and diverse workforce – this reflects and supports the diversity of the community they work in.



4. What this means for providers

The Commission expects providers to empower older people to exercise their rights across all stages of their aged care experience. The outcome we expect is that older people receive quality and safe funded aged care services that continuously improve.

4.1. Working with older people to uphold their rights

The Commission expects providers to:

Listen – to older people when working with them to:

- communicate what their rights are and how the provider will uphold these
 - this includes practicing open disclosure and respecting privacy
- plan their care and services so that it meets their assessed needs in line with respecting their choices and preferences
 - this includes implementing systems and processes to support individuals to exercise dignity of risk – we expect providers to communicate with older people where risks are identified, then work collaboratively with them to find a solution that respects the person's agency and autonomy, while balancing this with managing the risks.
- understand how the person would like to receive their care and services, balancing this with the rights of others
 - this includes implementing systems and processes for supporting decision making, including exercising dignity of risk, so that older people are empowered to make decisions about their care and how this is delivered.
- exercise their right to make a complaint or provide feedback without fear of reprisal
 - this includes using an open disclosure approach when things go wrong to achieve a resolution that remediates the issue, restores trusts and prevents reoccurrence.

Lead – demonstrate leadership in continuously improving their governance capabilities so that they implement:

- their incident management system in way that enables them to learn from incidents and prevent their reoccurrence



- systems to learn from complaints and feedback to improve the quality and safety of the care and services they deliver
- clinical governance that drives safe care that enhances the health, quality of life and wellbeing of older people.
- strong governance policies, processes and capabilities, including financial and prudential governance.

Practice – care and services to older people in a way that:

- respects the person's individuality, dignity, needs, choices and preferences, including where they choose to make decisions that involve supporting them to take risks
- is free from abuse, violence and neglect
- supports the person to stay connected with their family, friends, advocates and community.

The Commission expects governing bodies, executive, workers and responsible persons to be aware of their role in and responsibility to promote and drive a culture of culturally safe care within their organisation. This is part of meeting the obligation to demonstrate how they understand and have policies, processes and practices in place for upholding the Statement of Rights.

We expect providers to have processes in place to balance rights. The rights of individual older people may compete or conflict or need to be balanced with the rights and freedoms of other people, including workers and other people accessing services. Rights may need to be limited to comply with laws, such as those relating to workplace health and safety. Providers also need to have systems and process in place to support dignity of risk. Managing dignity of risk well includes engaging older people and their supporter/s to understand older persons' preferences, being transparent and documenting these in agreements, with risk management plans in place to support workers deliver care that provides dignity of risk, so older people are empowered to take personal risks.

4.2. Culturally safe care

To uphold the rights of older people, including respecting each person's diversity and identity, providers are required to deliver culturally safe and trauma informed care.

When a provider effectively delivers culturally safe care, it:

- empowers older people to exercise their rights, including to make informed decisions and be active participants in their care
- enables older people to retain connections to their culture and traditions, including connection to Country, family, law, ceremony and language
- reduces social isolation and loneliness and feelings of marginalisation



- provides effective leadership and build trust in the organisation's ability to provide safe care for older people from diverse backgrounds, including Aboriginal and Torres Strait Islander persons
- demonstrates expected behaviours and values
- increases mutual respect and enhanced relationships with the workforce and community
- demonstrates to staff that their diversity is valued and engaged within their organisation
- fulfils its legislative obligations and regulatory requirements.

5. What this means for workers and responsible persons

Under the new Act, aged care workers include members of the governing body, workers employed by the provider or sub-contracted by the provider and volunteers. By regulating aged care workers and responsible persons under the Code of Conduct and other obligations we will uphold older people's right to be treated with dignity and respect, value their diversity and be free from abuse or neglect. This means:

- seeing and treating each older person as an individual, focusing on the person's capabilities, rather than their limitations
- acknowledging older peoples' autonomy, independence and right to make decisions and exercise choice about how their care is delivered
- checking unconscious bias, including benevolent ageism – not making assumptions about people because of their age
- checking language is respectful – not talking down to older people
- fulfilling and complying with revised worker screening arrangements.

5.1. The Code of Conduct and Statement of Rights

Workers are responsible for meeting the following obligations under the Code of Conduct. When delivering funded aged care services to individuals, workers must:

- a) act with respect for individuals' rights to freedom of expression, self-determination and decision making in accordance with applicable laws and conventions; and
- b) act in a way that treats individuals with dignity and respect, and values their diversity; and
- c) act with respect for the privacy of individuals; and
- d) deliver funded aged care services in a safe and competent manner, with care and skill; and
- e) act with integrity, honesty and transparency; and



- f)** promptly take steps to raise and act on concerns about matters that may impact the quality and safety of funded aged care services; and
- g)** deliver funded aged care services free from:
 - (i)** all forms of violence, discrimination, exploitation, neglect and abuse; and
 - (ii)** sexual misconduct; and
- h)** take all reasonable steps to prevent and respond to:
 - (i)** all forms of violence, discrimination, exploitation, neglect and abuse; and
 - (ii)** sexual misconduct.

Under the Statement of Rights, older people have a right to have their care and services delivered by aged care workers who have the appropriate qualifications, skills and experience.

In line with the Statement of Principles, the aged care system is expected to support workers to be empowered to support innovation, continuous improvement and the delivery of high-quality care.

Providers are responsible for their workers' compliance with the Code of Conduct, as well as ensuring their governing body members, responsible persons and all other workers have the appropriate skills, knowledge and experience to be involved in delivering aged care and services to older people.

5.2. Whistleblower protections

Workers have increased protections through the expanded whistleblower protections in the Aged Care Act.

The Act does more to protect whistleblowers – people who call out issues. This is to make sure older people, people who are close to them, and aged care workers can report information without fear that they will be punished or treated unfairly.

People can make a report to:

- the Commissioner or a Commission staff member
- the Department of Health and Aged Care or an official of the department
- a registered provider
- a responsible person of a registered provider
- an aged care worker of a registered provider
- a police officer
- an independent aged care advocate.



People can make the report in person, over the phone or in writing. The report can also be made anonymously.

A report can be made about someone who has not followed the aged care law, or more broadly, about an organisation that hasn't followed the aged care law. If someone makes a report, they will:

- be protected from any negative results that come from making the report
- have their identities or identifying information protected, with some exceptions – for example, where it is necessary to share information with a lawyer, or to prevent a serious threat to a person or people.

6. What this means for the Commission

As the aged care regulator, the Commission's role is to **uphold the rights** of older people by **enforcing the aged care law**. This means holding providers, responsible persons and workers to account where we have evidence that they cannot demonstrate that they have the capability, competence or commitment to comply with their obligations to deliver safe, quality care and services in a way that upholds the rights of older people and treats each person with dignity and respect.

6.1. Bringing our rights-based approach to regulation to life

The Commission's approach centres on the following actions. Through our 4 regulatory functions (see section 6.2.1), we will:

- Engage with older people, aged care providers, responsible persons and workers – so that they understand the rights under the Statement of Rights and what these mean for them in practice.
- Empower older people – to understand and exercise their rights, including in relation to exercising their choices and preferences in how they receive care, and to make a complaint to their provider or the Commission when something goes wrong, and working with the person, their supporters and the provider so the older person receives an outcome that remedies the situation, restores trust in their provider and prevents the situation from reoccurring. This also includes taking proportionate action when providers don't meet their complaints management and incident management obligations.
- Enforce the law – when the Commission has evidence that a provider, responsible person or worker has breached or is non-compliant with an obligation, the Commission will act in a timely, proportionate way to hold the provider, responsible person or worker to account



A rights-based approach to regulation means that the Commission uses its powers and functions to regulate in a way that improves outcomes for older people. To do this we will:

- respect the rights of older people to exercise choice, including working in partnership to exercise dignity of risk, be treated with dignity and respect and be free from abuse, violence and neglect – this includes respecting the diversity of older people and providing culturally safe care
- hold providers, responsible persons and workers to account when they cannot demonstrate they are capable, competent and committed to meeting their obligations
- emphasise stronger working relationships between older people, providers and the Commission, so that older people are empowered to exercise their rights and providers and workers uphold these rights in their day-to-day capabilities, practices and processes.
- provide transparency and collaboration, including through how we deliver our education activities and how we resolve complaints to achieve a restorative outcome.

In undertaking all our regulatory functions, the Commission expects that:

- providers, responsible persons and workers deliver care and services in a way that respects the older persons' rights to be treated with dignity and have their identity, needs, preferences and choices respected and reflected
- older people are free from neglect, violence and degrading treatment
- experience safe, quality care that meets their needs and enriches their health, wellbeing and quality life
- are empowered to understand and exercise their rights, including the right to complain and be supported by advocates of their choosing.

6.2. Our rights-based approach in action

The Commission works to uphold the rights of older people receiving aged care and services, including the right to be treated with dignity and respect, and to live free from abuse, exploitation, violence and neglect.

We regulate providers, responsible persons and workers, and empower older people, so they understand and meet their obligations to deliver safe, quality care in a way that meets their needs, and respects and reflects their choices and preferences. This includes delivering care in a culturally safe and culturally appropriate way, so each older person's identity, culture, spirituality and diversity is valued and supported.



6.2.1 Upholding rights through regulating the obligations of providers, responsible persons and workers

The Commission regulates how providers, workers and responsible persons deliver care in a way that upholds rights through our 4 functions:

1. Registration of providers – entering and remaining in the aged care system

The Commission registers and renews registration for providers who demonstrate they are suitable to deliver aged care.

We regulate compliance with conditions of registration, including having an effective complaints management system and incident management system. We handle respond in a timely, proportionate way to risks of harm to older people and incident notifications where a harm has occurred, so that providers are held to account to remedy the situation, restore trust in the relationship with the provider and prevent harms from reoccurring.

It is a registration condition that providers registered into categories 1–6 must be able to demonstrate how they understand the rights of individuals under the Statement of Rights and have practices in place to ensure they take all reasonable and proportionate steps in place to act compatibly with the Statement of Rights.

It is a condition of registration for certain registered providers that a registered provider must demonstrate understanding of the Statement of Rights and have in place practices to ensure that the provider acts compatibly with the Statement of Rights: see subsection 144(1). A person may make a complaint to the Complaints Commissioner about a registered provider acting in a way that is incompatible with the Statement of Rights: see section 358.

When providers registered in categories 4,5 and 6 seek to renew their registration, they are invited to be audited against the strengthened Aged Care Quality Standards. In response to Royal Commission recommendations, the Quality Standards strengthen obligations around how providers deliver care and services to people with dementia and from diverse backgrounds, with an enhanced focus on provider governance, food and nutrition and clinical care. They are designed to improve outcomes for older people by setting clear expectations for providers in delivering quality aged care that upholds the rights of older people. The strengthened Quality Standards are consistent with and reflect the rights in the Statement of Rights (see Appendix A).



2. Safeguarding to prevent and respond to regulatory risks

The Commission upholds the Statement of Rights by encouraging the delivery of culturally safe, culturally appropriate, trauma aware and healing informed funded aged care services through the condition of registration. We protect continuity of care through monitoring the financial viability and sustainability of registered providers.

Everyone has the right to a safe, respectful and enjoyable aged care experience. We also regulate worker screening and Code of Conduct obligations to ensure only workers who are suitable to deliver aged care work in the aged care sector and meet their obligations under the Code of Conduct. The Code describes how aged care providers, their governing persons (for example, board members), and workers (including volunteers) must behave and treat people receiving aged care. It helps ensure that people can have confidence and trust in the quality and safety of aged care they receive. The Code is underpinned by the rights in the Statement of Rights and:

- supports a person's right to personal choice, dignity and respect
- promotes kind, honest and respectful behaviour
- keeps people receiving aged care safe from harm.

When there is evidence that workers are not suitable, the Commission will take regulatory action, including using banning orders to prevent them from working in aged care.

We undertake risk-led, proportionate monitoring, compliance and enforcement actions. When we have evidence that providers are not willing or able to meet their obligations, the Commission will require the provider to remedy the situation. The Commission will take proportionate regulatory action if providers can't or won't comply.

Providers are required to demonstrate their commitment to go further than complying with their obligations. They are required to be able to demonstrate how they plan to continuously improve the quality of care and services they deliver. Providers registered into registration categories 4 to 6 who are subject to audit at regular intervals against the strengthened Quality Standards to renew or vary their provider registration who demonstrate they are delivering high quality care and are committed to continuously improving can be rewarded by an 'exceeding' conformance rating.

3. Engagement and education

The Commission educates and engages with the sector, providers, responsible persons and workers so they understand and meet their obligations to work in partnership with older people, so they deliver safe, quality care that meets the needs, choices and preferences of older persons. We also engage with and educate older people, so they understand their rights and are empowered to exercise these rights.



4. Complaints Commissioner

When the Complaints Commissioner receives complaints about an older person's aged care experience, including where a right under the Statement of Rights has not been upheld, we will work with the person impacted and their provider to listen to what the older person wants to seek a restorative outcome, communicate transparently using an open disclosure approach, so there is transparency in the process and resolve the complaint in a timely way

The Commission expects that providers must be able to demonstrate they understand the Statement of Rights and have practices in place to ensure they work in partnership with older people to deliver funded aged care services in a way that is compatible with the Statement of Rights.

6.3. Understanding and reflecting the diversity of older people in our rights-based approach

Older people can expect that providers have policies and practices in place and support an environment that ensures the care and services they deliver are culturally appropriate for the diverse life experiences of the older people receiving care and services. This means that they listen to the needs, choices and preferences of older people and not make assumptions about them. It also means that providers employ an appropriately skilled, trained, culturally capable and diverse workforce that reflects and supports the diversity of the community they work in.

Provision of culturally safe care is not only a requirement for aged care providers but is essential to ensuring older peoples' preferences, requirements and values are at the centre of care delivery. Culturally safe care recognises that older people are all unique with different lived experiences. This can include social, cultural, linguistic, religious, spiritual, psychological and medical needs that can vastly affect the care, support and services they need.

In line with the Aged Care Diversity Framework, the Commission recognises that like our wider community, older people have diverse characteristics and life experiences, so may need different approaches to the aged care services they receive. This is also reflected in how we expect providers, responsible persons and workers to work in partnership with older persons to plan and deliver care and services that meet their needs, choices and preferences, including in relation to their individual identity.



7. Conclusion

Care that respects people's rights is good care – this is rights-upholding care. Where there is good care, there are rights-upholding cultures. Where there is poor care, the opposite is true, and we can describe these as rights-rejecting cultures.

We want our rights-based approach to improve our shared understanding of rights. This includes older people who use services and their families, providers, responsible persons and workers delivering services and Commission staff regulating provider and worker obligations. We want everyone to recognise their role in ensuring older people's rights are directly linked to safe, quality care that is continuously improving.

When the Commission detects risks to the health, safety, quality of life and wellbeing of older people, including in relation to their rights not being upheld, we will seek assurance that providers, responsible persons and workers are willing and able to meet their obligations. For more information on how the Commission considers the Statement of Rights alongside other obligations, including the strengthened Quality Standards and Code of Conduct, please refer to Appendix.

Everyone has a role to play in supporting the rights of older people.



Appendix A

Statement of Rights

- ***The person maintains independence, autonomy, empowerment and exercises freedom of choice***

An older person has a right to engage in decisions about the types of aged care services they receive and how those services are delivered.

- ***Older people have equitable access***

An older person has a right to fair access to aged care services irrespective of whether they live in an urban, regional, rural or remote Australian location. They also have the right to access services, irrespective of how they live or with whom they choose to live.

- ***The person receives quality and safe funded aged care services***

An older person has a right to be free from all forms of violence, degrading or inhumane treatment, exploitation, coercion, abuse or sexual misconduct.

- ***The person's privacy and personal information is protected***

An older person has a right to have their personal information protected.

- ***The person experiences person-centred communication and can raise issues without the fear of reprisal***

An older person has a right to be at the centre of all communication regarding their health, safety and wellbeing. Where an older person expresses their concern about any aspect of their care, they should be able to openly express their concerns without fear of reprisal, such as restricted access to services of their choice.

- ***Access advocates, maintain significant persons and stay socially connected***

An older person has a right to be supported by advocates, including family members and other significant persons. They have the right to stay socially connected with people and activities that are meaningful and valuable to them.