

2022

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**HOUSE OF REPRESENTATIVES**

**AGED CARE AMENDMENT (IMPLEMENTING CARE REFORM) BILL  
2022**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Aged Care,  
the Hon Anika Wells MP)



# **AGED CARE AMENDMENT (IMPLEMENTING CARE REFORM) BILL 2022**

## **OUTLINE**

The Aged Care Amendment (Implementing Care Reform) Bill 2022 will amend the *Aged Care Act 1997* (Aged Care Act) to implement a series of urgent measures that will give older Australians the dignity and respect they deserve.

These amendments are intended to enable meaningful, practical improvements to the delivery of aged care services and to provide greater oversight and understanding of what funds are being used for. These measures put the quality of care and safety of older Australians first.

### **Amendments relating to registered nurses**

Schedule 1 to the Bill establishes a new responsibility in the Aged Care Act for approved providers of residential care and certain kinds of flexible care (as specified in the *Quality of Care Principles 2014* (Quality of Care Principles)) to ensure that a registered nurse (within the meaning of the *Health Insurance Act 1973*) is on site and on duty at all times (that is, 24 hours each day, 7 days each week) at each residential facility operated by them.

The new responsibility will complement existing approved provider responsibilities in the aged care legislation, including maintaining an adequate number of appropriately skilled staff to ensure the care needs of care recipients are met, and to provide such care and services as are specified in the Quality of Care Principles.

### **Amendments relating to capping home care charges**

Schedule 2 to the Bill introduces a new power into the Aged Care Act that will enable the Government to cap charges that approved providers of home care (home care providers) may charge care recipients. It also removes the home care providers' ability to charge exit amounts. These amendments will increase consumer transparency and will ensure more funds are available to meet the direct needs of care recipients.

### **Amendments relating to transparency of information**

Schedule 3 to the Bill introduces a mandatory requirement into the Aged Care Act for the Secretary of the Department of Health and Aged Care to publish information in relation to aged care services, including information about approved providers of those aged care services, in accordance with the *Information Principles 2014*. The Schedule will allow the information to be published. It is intended that this information will be published in a format that is clear and able to be understood by the public. It will increase transparency and accountability of the aged care sector and empower older Australians and their families to make more informed care decisions based on this information.

### **Financial Impact Statement**

<b>MEASURE</b>	<b>INDICATIVE FINANCIAL IMPACT OVER THE FORWARD ESTIMATES</b>
Schedule 1	\$450.7 million
Schedule 2	\$1.2 million
Schedule 3	\$8.1 million

The Bill's total indicative financial impact is a cost of \$460.0 million over forward estimates.

### **Regulation Impact Statement**

In respect to Schedule 1 to the Bill, consistent with the Office of Best Practice Regulation's Regulatory Impact Statement (RIS) requirements, the Department of Health and Aged Care certified that an independent review undertook a process and analysis equivalent to a RIS (Reference OBPR 22-02547). A supplementary regulatory impact analysis that complements the certification has also been completed. The certification, details of the review, and supplementary regulatory impact analysis are available at the end of this explanatory memorandum.

In respect to Schedules 2 and 3 to the Bill the Office of Best Practice Regulation assessed these amendments as non-regulatory (Reference OBPR 22-02577 and OBPR 22-02496).

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **AGED CARE AMENDMENT (IMPLEMENTING CARE REFORM) BILL 2022**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Bill**

The purpose of the Aged Care Amendment (Implementing Care Reform) Bill 2022 is to amend the *Aged Care Act 1997* (Aged Care Act) to effect meaningful changes to the delivery of aged care services and the means for care recipients and their families to assess the relative quality of service delivery by care providers and at individual care facilities.

#### *Schedule 1 – Registered nurses*

Schedule 1 to the Bill creates a new responsibility in the Aged Care Act for approved providers of residential care and certain kinds of flexible care (as specified in the Quality of Care Principles) to have a registered nurse (within the meaning of the *Health Insurance Act 1973*) on site and on duty at all times (that is, 24 hours each day, 7 days each week) at each residential facility they operate.

The new responsibility will complement existing approved provider responsibilities in aged care legislation, including maintaining an adequate number of appropriately skilled staff to ensure the care needs of care recipients are met, and to provide such care and services as are specified in the Quality of Care Principles.

#### *Schedule 2 - Capping home care charges*

Schedule 2 to the Bill will amend the Aged Care Act to introduce a power that will enable the Government to cap the charges that approved providers of home care (home care providers) can charge care recipients and remove home care providers' ability to charge exit amounts.

The amendments will also allow for the *User Rights Principles 2014* to specify requirements in relation to the prices charged by home care providers for, or in connection with, the provision of care or services to the care recipient. The amendments will enable the Government to increase transparency and ensure more funds are available to meet the direct care needs of care recipients.

#### *Schedule 3 – Transparency of information*

The amendments in Schedule 3 to the Bill provide that the Secretary of the Department of Health and Aged Care must publish information relating to aged care services, including approved providers of those aged care services, as specified in the *Information Principles 2014*. This will increase transparency and accountability, help older Australians and their families to understand key details of a provider's operations, and empower older Australians to make more informed care choices.

## **Human rights implications**

### *Schedule 1 – Registered nurses*

Schedule 1 to the Bill engages the right to health in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 25 of the Convention on the Rights of Persons with Disabilities (CRPD).

#### *Right to health*

These articles refer to the right of individuals, including persons with disability, to the highest attainable standard of physical and mental health. Schedule 1 promotes the right to health by explicitly requiring and strengthening the obligation for quality health services to be made available to care recipients of residential care at all times.

### *Schedule 2 - Capping home care charges*

Schedule 2 to the Bill engages the following human rights:

- the right to health in article 12 of the ICESCR and article 25 of the CRPD; and
- the right to an adequate standard of living and social protection in article 28 of the CRPD;

#### *Right to health*

The right to health is contained under article 12 of the ICESCR and article 25 of the CRPD. These articles refer to the right of individuals, including persons with disability, to the highest attainable standard of physical and mental health.

The Government recognises that older people want to remain living in their own home for as long as possible and may need to receive care to do so. As such, the Government subsidises in-home aged care to provide comprehensive home care that can improve older Australians' quality of life and help them remain active and connected to their communities.

This involves the payment of subsidy to approved providers for the provision of care and services to people with a condition of frailty or disability who require assistance to achieve and maintain the highest attainable standard of physical and mental health. Schedule 2 to the Bill further promotes the right to health by maximising funds available to address care recipients' direct care needs in receiving in-home aged care services.

#### *Right to an adequate standard of living and social protection*

The right to an adequate standard of living and social protection is contained under article 28 of the CRPD. This article refers to the right of individuals, including persons with disability, to an adequate standard of living for themselves and their families, and to the continuous improvement of living conditions. The commitment to this right safeguards and promotes people's right to live without discrimination on the basis of disability.

Schedule 2 to the Bill positively engages the rights for persons with disabilities set out in article 28 of the CRPD, by providing genuine consumer direction of care. Schedule 2 will improve transparency over the actual use of home care subsidy by enabling the Government to cap costs that can be charged to care recipients under the Home Care Packages Program.

### Schedule 3 – Transparency of information

Schedule 3 to the Bill engages the following rights:

- the right to access information in article 21 of the CRPD;
- The right to the enjoyment of the highest attainable standard of physical and mental health in article 12(1) of the ICESCR; and
- the right to privacy in article 17 of the International Covenant on Civil and Political Rights (ICCPR) and article 22 of the CRPD.

#### *Right to access information*

The right to access information is contained in article 21 of the CRPD, which provides that appropriate measures should be taken to ensure people with disabilities can exercise their right to freedom of expression and opinion, including providing information in accessible formats, in a timely manner, without additional cost.

Schedule 3 to the Bill will promote the right to access information by requiring the Secretary of the Department of Health and Aged Care to publish information about aged care services and providers. This information will be made publicly available. It will provide older Australians, who may have impediments to their full and effective participation in society, and their families with clear, timely and meaningful information about aged care services and approved providers.

#### *Right to Health*

The right to health is contained in article 12(1) of the ICESCR, which provides that parties to the ICESCR should take measures to ensure enjoyment for everyone of the highest attainable standard of physical and mental health.

Schedule 3 to the Bill will promote the right to health by requiring the Secretary to publish information about aged care services and approved providers. This information will empower older Australians and their families to make more informed care decisions, which will support better care outcomes.

#### *Right to privacy*

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour or reputation, and that everyone has the right to the protection of the law against such interference or attacks. Article 22 of the CRPD outlines a similar right. Although the United Nations Human Rights Committee has not defined ‘privacy’, it should be understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

Schedule 3 to the Bill limits the right to privacy under article 17 of the ICCPR requiring the Secretary to publish specified information about aged care services and approved providers. This information must not include personal information about an individual, other than an individual who is one of the key personnel of an approved provider.

The right to privacy under article 17 can be permissibly limited to achieve a legitimate objective and where the limitations are lawful and not arbitrary. The term ‘unlawful’

in article 17 of the ICCPR means that no interference can take place except as authorised under domestic law. Additionally, the term ‘arbitrary’ in article 17(1) of the ICCPR means that any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. The Committee has interpreted ‘reasonableness’ to mean that any limitation must be proportionate and necessary in the circumstances.

As recommended by the Royal Commission into Aged Care Quality and Safety, the identification of the people who are an approved provider’s key personnel is vital to ensure that there is no uncertainty about which people must meet the relevant aged care regulatory standards. The objective of this provision is to promote accountability, transparency, and enable proper scrutiny of the approved provider’s operations. It will provide care recipients with knowledge about the people within the approved provider’s organisation that are responsible for executive decisions and planning, directing or controlling the activities of the approved provider’s entity and for the day-to-day operations of the aged care service and nursing services.

This provision is reasonable, necessary and proportionate to achieving this objective, noting that the names of members of an approved provider’s governing body, are already available to the public for some approved providers. For example, section 40-5 of the *Australian Charities and Not-for-Profits Commission Act 2012* requires the Australian Charities and Not-for-Profits Commissioner to maintain a register which include details such as the name of each ‘responsible entity’ (generally a director of the registered entity) and the position held by each responsible entity. However, the totality of information being sought under this measure is not readily and publicly available, in one place and at no cost, for all approved providers. This limitation on the right to privacy is therefore legitimate and necessary, and promotes the right to access information and the right to health.

### **Conclusion**

The Bill is consistent with human rights as it promotes the rights of older Australians. To the extent that the Bill may limit human rights this is reasonable, necessary and proportionate to protect the rights of older Australians.

**[Circulated by the authority of the Minister for Aged Care,  
the Hon Anika Wells MP]**



# **AGED CARE AMENDMENT (IMPLEMENTING CARE REFORM) BILL 2022**

## **NOTES ON CLAUSES**

### **Clause 1 – Short Title**

Clause 1 provides that the short title of the Act is the *Aged Care Amendment (Implementing Care Reform) Act 2022* (the Act).

### **Clause 2 – Commencement**

Clause 2 provides a table setting out the commencement dates of the various sections in, and Schedules to, the Act. Sections 1 to 3 of the Bill (and anything in the Act not elsewhere covered by the commencement table) commences on the day the Act receives the Royal Assent.

Schedule 1 to the Bill commences on 1 April 2023, Schedule 2 to the Bill commences on 1 January 2023 and Schedule 3 to the Bill commences on 1 December 2022.

### **Clause 3 – Schedules**

Clause 3 provides that each Act that is specified in a Schedule to the Bill is amended or repealed as set out in that Schedule, and any other item in a Schedule to the Bill has effect according to its terms. This is a technical provision, which gives operational effect to the amendments contained in the Bill

## Schedule 1 – Registered nurses

### Overview

Schedule 1 amends Part 4.1 – Quality of Care in the *Aged Care Act 1997* (Aged Care Act) to insert a new responsibility for approved providers of residential care and certain kinds of flexible care specified in the *Quality of Care Principles 2014* (Quality of Care Principles), to have at least one registered nurse on site and on duty at each residential facility they operate 24 hours a day, 7 days a week. Enacting this new responsibility fulfils an election commitment of the Government and responds to Recommendation 86 of the final report of the Royal Commission into Aged Care Quality and Safety (Royal Commission).

### Part 1—Amendments

#### *Aged Care Act 1997*

##### **Item 1 – After paragraph 54-1(1)(b)**

This item inserts a new paragraph (ba) in subsection 54-1(1) that lists the responsibilities of approved providers in relation to the quality of aged care that the approved provider provides. This new paragraph requires compliance with new section 54-1A if that section applies to the approved provider.

##### **Item 2 – After section 54-1**

This item inserts a new responsibility into the Aged Care Act relating to registered nurses (within the meaning of the *Health Insurance Act 1973*) in new section 54-1A. This section applies to approved providers of residential care, and the kinds of flexible care prescribed in the Quality of Care Principles, where an exemption from this section has not been granted. The responsibility is that an approved provider must ensure at least one registered nurse is on site and on duty at a residential aged care facility at all times on and after 1 July 2023.

New subsection 54-1A(3) provides for a mechanism for the granting of exemptions in the Quality of Care Principles. New subsection 54-1(4) provides that, without limiting subsection (3), the Quality of Care Principles may provide for:

- the process for the making of applications for the grant of an exemption in relation to a residential facility
- the circumstances in which an exemption may be granted; and
- the conditions that may apply to such exemptions.

The inclusion of an exemption from the registered nurse responsibility is consistent with the Recommendation 86 of the Royal Commission. The Royal Commission recommended that approved providers should be able to apply for an exemption in certain circumstances, including for residential care facilities that are co-located with a health service where registered and enrolled nurses are present, and for facilities in regional, rural and remote areas where the provider has been unable to recruit sufficient numbers of staff with the requisite skills.

The new responsibility will complement existing approved provider responsibilities in aged care legislation, including maintaining an adequate number of appropriately skilled staff to ensure the care needs of care recipients are met (paragraph 54-1(1)(b) of the Aged Care Act) and to provide such care and services as are specified in the Quality of Care Principles (paragraph 54-1(1)(a) of the Aged Care Act).

## **Schedule 2 – Capping home care charges**

### **Overview**

Schedule 2 to the Bill introduces a new power into the Aged Care Act to enable the Government to cap the prices that approved providers of home care (home care providers) may charge care recipients and to remove home care providers' ability to charge exit amounts. This measure will enable the Government to take action to reduce package funding directed to administration and management and ensure more home care funds are available to meet the direct care needs of care recipients.

Under the Home Care Packages Program some administration and management costs are charged separately (for example, care and package management) while some are built into the unit price of direct care charges (for example, cost of office accommodation). Approaches to charging differ across home care providers. While these providers are required to publish their service charges online and provide these to care recipients, there are no set caps for charges and no effective cap on prices.

Section 56-2 also sets caps on home care fees, which are distinct from the charges being capped through these amendments. Home care fees are defined at section 52D-2 of the Aged Care Act. These are already capped through existing aged care legislation. Home care fees cannot be charged to the home care package under Schedule 3 of the Quality of Care Principles, and as such are not captured by these amendments.

### ***Aged Care Act 1997***

#### **Item 1 – After paragraph 56-2(a)**

Item 1 amends section 56-2 of the Aged Care Act (responsibilities of approved providers – home care), to add new paragraph 56-2(aa), which removes home care providers' ability to charge a care recipient for ceasing care. Some home care providers charge exit amounts to cover the administrative costs of ceasing care to a care recipient. This amendment would eliminate the ability for home care providers to charge for this separately, and instead encourage approved providers to charge appropriate care and package management amounts to cover these administration and management costs.

Item 1 also adds new paragraph 56-2(ab), which provides for the *User Rights Principles 2014* to specify requirements in relation to the prices charged by home care providers for, or in connection with, the provision of care or services to the care recipient.

#### **Item 2 – Application provisions**

Sub-item 2(1) provides that paragraph 56-2(aa) of the Aged Care Act applies in relation to an approved provider that ceases to provide home care to a care recipient on or after the commencement of this item.

Sub-item 2(2) provides that paragraph 56-2(ab) applies in relation to care or services provided on or after the commencement of this item.

## **Schedule 3 – Transparency of information**

### **Overview**

Schedule 3 to the Bill amends the Aged Care Act to introduce a requirement for the Secretary to publish information in relation to aged care services, including approved providers, as specified in the *Information Principles 2014* (Information Principles).

The Royal Commission found that there is a lack of transparency and accountability about approved providers and that good quality comparative information about aged care services is not publicly available. This lack of information and transparency has impacted the ability for older Australians and their families to make informed judgements about the quality of aged care in particular services, and the accountability of aged care providers to Australian taxpayers.

This new requirement responds to Recommendation 88 of the final report of the Royal Commission.

In addition, this measure will also enable the publication of information such as how much approved providers and aged care services spend on care, nursing, food, maintenance, cleaning, administration, and profits. This intends to help rebuild trust in the sector and ensure that residents' and taxpayers' funds are being spent on the care of older Australians.

This measure allows the Information Principles to specify what information the Secretary must publish, the way in which it must be published, and when it must be published.

This provision will require the Secretary to make publicly available information about aged care services, including about approved providers, which aims to enable older Australians and their families to better understand key details of aged care approved providers and/or their services. Specifying the information that the Secretary must publish in the Information Principles enables the Minister to amend the information to be published in response to changing circumstances and expectations, based on what is most valuable to older Australians, their families and other members of the public. The information to be published is expected to include:

- financial information, including expenditure on care, nursing, food, maintenance, cleaning, administration, and profits;
- levels of care time provided;
- details of key personnel; and/or
- information about staffing of an aged care service.

### **Part 1—Amendments**

#### ***Aged Care Act 1997***

##### **Item 1 – In the appropriate position in Division 86**

Item 1 inserts new section 86-10 in Division 86 of the Aged Care Act.

New section 86-10 requires the Secretary to, in accordance with the Information Principles, make certain information in relation to aged care services, including information about the approved providers of those aged care services, publicly available.

#### Subsection 86-10(1)

New subsection 86-10(1) provides that the Secretary must, in accordance with the Information Principles, make publicly available information in relation to aged care services.

Subsection (1) enables the Information Principles to specify what information must be made publicly available and how and when it must be made publicly available.

The Information Principles will be amended to provide details of information that the Secretary must publish, and any other requirements regarding publishing the information.

- The Government has committed that this will include information on how much is spent on care, nursing, food, maintenance, cleaning, administration and profits by approved providers of residential aged care services. This will enable older Australians to better compare approved providers and their aged care services.
- The amendment also responds to Recommendation 88 of the Royal Commission, by requiring publication of specified information about the affairs of approved providers.

#### Subsection 86-10(2)

Without limiting subsection 86-10(1), new subsection 86-10(2) sets out certain matters which may be dealt with by the Information Principles for the purposes of new section 86-10. This includes information about an aged care service or a specified class of aged care services (paragraph 86-10(2)(a)) and information about an approved provider, or a specified class of approved providers (paragraph 86-10(2)(b)). This allows the Secretary to publish different information about a service type or approved provider depending on the type of aged care service or approved provider, or other factors specified in the Information Principles.

New paragraph 86-10(2)(c) provides that the Information Principles may specify the way in which the Secretary must publish the information, or a class of information.

Information reported by approved providers to the Secretary may be of a technical nature and difficult to understand without specialist expertise. Therefore, it would be inappropriate to publish information in its raw form. This paragraph is of high importance as it will ensure information is published in a form that is simple to understand and of value to older Australians.

New paragraph 86-10(2)(d) provides that the Information Principles may specify the period within which the Secretary must publish the information, or a class of information.

Subsection 86-10(3)

New subsection 86-10(3) provides that information made publicly available for the purposes of new subsection 86-10(1) must not include personal information about an individual. This excludes an individual who is one of the key personnel of an approved provider.

As recommended by the Royal Commission, the identification of the people who are an approved provider's key personnel is vital to ensure that there is no uncertainty about which people must meet the relevant aged care regulatory standards. The objective of this provision is to promote accountability, transparency, and enable proper scrutiny of the operations of aged care services and approved providers of these services. It will provide care recipients with knowledge about the people within the approved provider's organisation who are responsible for executive decisions and planning, directing or controlling the activities of the provider's entity and for the day-to-day operations of the aged care service and nursing services.

**Item 2 – Application**

Item 2 provides application arrangements in respect to new section 86-10 of the Aged Care Act inserted by Item 1. Item 2 provides that new section 86-10 of the Aged Care Act applies in relation to information whether the information was acquired or created before, on or after the commencement of this item. This means any information specified in the Information Principles under Item 1 may be made publicly available regardless of when it was acquired or created. This aligns with the intent of the amendments, which aim to improve transparency by expanding the information that can be made publicly available to better enable older Australians and their families to make more informed choices about approved providers and their aged care services. This necessarily includes information that was created or acquired before the commencement of this provision.

## Certification of independent reviews



Australian Government  
Department of Health and Aged Care

Deputy Secretary

Mr Jason Lange  
Executive Director  
Office of Best Practice Regulation  
Department of the Prime Minister and Cabinet

Dear Mr Lange

**Certification of independent reviews: Initial response to the Royal Commission (Quality and Safety) -Strengthening providers; New Aged Care Act.**

I am writing to certify that the attached independent review (Attachment A) has undertaken a process and analysis equivalent to a Regulation Impact Statement (RIS) for two aged care quality measures currently being considered by Government:

- the requirement for Registered Nurses (RNs) in residential aged care facilities 24 hours a day, 7 days a week (24/7) and
- increasing care minutes from 200 minutes (including 40 RN Minutes) per resident per day, from 1 October 2022, to 215 minutes (including 44 RN minutes) from 1 October 2024.

With further development of these reforms, anticipated to come into effect from 1 October 2023, a supplementary RIS addressing the implementation and evaluation of these measures is provided.

The Royal Commission into Aged Care Quality and Safety noted that the evidence is compelling that overall staffing levels in aged care are linked to quality of care, and that RN numbers are a particularly important factor in meeting an acceptable quality of care for care recipients.

These documents are submitted to the Office of Best Practice Regulation for the purposes of satisfying the regulatory impact analysis requirements of the



Government's ongoing response to the Royal Commission into Aged Care Quality and Safety (Royal Commission).

The scope of the certified reviews covers the scope of the policy proposal, with the exceptions of implementation and evaluation measures. Given the Government's existing commitment to implementation of relevant Royal Commission recommendations, the Department will remain alert to opportunities to embed evaluation into the policy proposal. Therefore, I am satisfied that with this addition, the scope of the certified documents matches the policy proposal and answers six of the seven RIS questions.

The regulatory burden to business, community organisations or individuals is quantified using the Australian Government's Regulatory Burden Measurement framework and is provided below.

I note that the implementation of this proposal will increase the regulatory burden on private and not-for-profit providers. A search was undertaken across the Department, but no offset measures were identified. The Department will remain alert to opportunities to reduce the regulatory burden for affected stakeholders.

**Regulatory burden estimate table**

**Average annual regulatory costs (from business as usual)**

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	49	82	0	131

Accordingly, I am satisfied that the attached report is consistent with the Australian Government Guide to Regulatory Impact Analysis.

Yours sincerely

Michael Lye  
Ageing & Aged Care

7 July 2022

Attachment A: Independent review for certification of ongoing response to the Royal Commission into Aged Care (Quality and Safety)

**Independent review for certification of ongoing response to the Royal Commission into Aged Care (Quality and Safety)**

1. Royal Commission into Aged Care Quality and Safety, Counsel Assisting's Proposed Recommendations at Final Hearing, 22 October 2020

Available at: <https://agedcare.royalcommission.gov.au/media/29098>



**Australian Government**  
**Department of Health and Aged Care**

# **Introduction of 24/7 onsite registered nurse and increased minimum care minutes requirements**

**Supplementary Regulatory Impact Analysis**  
**July 2022**

## Purpose of this document

This Supplementary Regulatory Impact Analysis has been prepared by the Department of Health and Aged Care (the Department) to inform Australian Government decision-making on reforms to improve the quality of residential aged care by:

- making it mandatory to have a registered nurse (RN) onsite 24-hours a day 7 days a week in residential aged care facilities from July 2023;
- increasing the minimum number of care minutes per resident per day to 215 minutes, including 44 RN minutes, from October 2024.

This supplementary analysis complements the certification by the Department that an independent review (The Royal Commission into Aged Care Quality and Safety) undertook a process and analysis equivalent to a Regulatory Impact Statement (RIS) for these regulatory changes.

This supplementary RIS analysis compliments the analysis undertaken by the Royal Commission by addressing RIS *Question 7 - How Will You Implement and Evaluate Your Chosen Option?*

## Background

In February 2021, as part of their final report, the Royal Commission into Aged Care Quality and Safety (the Royal Commission) recommended (Rec 86) the adoption of a regulatory requirement that established minimum care time requirements in residential aged care facilities, including:

1. An initial requirement to deliver an average of 200 care minutes per resident per day, including 40 RN minutes as well as to have an RN onsite for 16-hours per day (from July 2022).
2. increasing the requirement to 215 minutes, including 44 RN minutes, as well as making it mandatory to have a registered nurse onsite 24-hours a day (from July 2024)

On 11 May 2021, in response to the Royal Commission, the previous government announced a package of support and reform to aged care as part of the 2021-22 Budget, including funding the first component listed above from 1 October 2022, and making the requirement mandatory from 1 October 2023.

As part of its election commitments, the Government undertook to require an onsite RN in residential aged care facilities 24-hours a day, 7-days a week (24/7) and to increase to the average minimum care minutes requirement to an average 215 minutes, including 44 minutes of RN time, in line with the full Recommendation 86 of the Royal Commission.

The Government is introducing legislation that contains a number of measures including introducing the 24/7 RN onsite requirement as a new approved provider responsibility from 1 July 2023.

Subordinate legislation changes will also be introduced following this to mandate the minimum care time requirements of an average of 200 minutes (including 40 RN minutes) from October 2023, increasing to 215 minutes (including 44 RN minutes) from October 2024.

These measures are aimed at improving the quality of care delivered within residential aged care by ensuring appropriate levels of staffing are provided at all times.

The regulatory impacts of the introduction of the 200 minute care time requirement was assessed previously, and so are not included in the analysis of this supplementary RIS.

### The importance of 24/7 RN availability and increased care minutes

People living in residential aged care facilities are some of the most vulnerable people in society and have increasingly complex health and personal care needs.

RNs facilitate the delivery of high quality nursing care, blending skills in chronic and acute illness, with an individualised, person-centred approach to the nursing care of all care recipients. The multi-faceted role of the RN in residential aged care facilities underpins the provision of collaborative, coordinated and integrated care. RNs collaborate with general practitioners, health professionals and service providers in the provision of quality care in residential care.

The Australian Institute of Health and Welfare records that 50% of people in residential aged care facilities experience some form of dementia, 87% require high level care and approximately 80% are known to have a mental health condition<sup>1</sup>. The result is an increasing demand for services that can support a growing pattern of frailty, dependence and complexity amongst populations receiving care in residential aged care.

Further, data provided to the Royal Commission by the Australian College of Emergency Medicine indicates that up to 40% of all transfers of care recipients from residential aged care facilities to hospital emergency departments are potentially avoidable through the provision of quality clinical care in the aged care facility. Falls, antimicrobial misuse, poor wound management, medication error, escalation plans for expected deterioration of chronic diseases, end of life care and palliative care reflect some of the key contributors to avoidable presentations<sup>2</sup>. These are all conditions and situations that an onsite RN is well placed to manage.

Evidence also indicates that almost half of all ambulance transfers from a residential aged care facility to a hospital emergency department occur after hours<sup>3</sup>. This is a time when staffing levels in aged care facilities are reduced, with access to nursing care, particularly RN skills, limited.

RNs are able to recognise and ensure early intervention and management in response to changes in an individual's health, thus reducing the risk of deterioration and potentially reducing the need for unplanned admissions to acute facilities or transfer to emergency departments. This not only assists in maintaining quality of life for care recipients but also reduces overall costs to the health system.

The hospital environment poses a number of substantial risks to older people, especially patients from residential aged care including; hospital acquired infections,

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<sup>1</sup> AIHW (2019b) People's care needs in aged care <https://www.gen-agedcaredata.gov.au/Topics/Care-needs-in-aged-care>

<sup>2</sup> ACEM (2019), ACEM Submission to the Royal Commission into Aged Care Quality and Safety, [https://acem.org.au/getmedia/27518608-64e3-4752-aa1c-a4c6036fbf0b/SUB418\\_190910\\_ACEM\\_Submission\\_Royal\\_Commission\\_into\\_Aged\\_Care](https://acem.org.au/getmedia/27518608-64e3-4752-aa1c-a4c6036fbf0b/SUB418_190910_ACEM_Submission_Royal_Commission_into_Aged_Care)

<sup>3</sup> Dwyer RA, Gabbe BJ, Tran T, Smith K and Lowthian JA (2020), Residential aged care homes: Why do they call '000'? A study of the emergency prehospital care of older people living in residential aged care homes, J Emergency Medicine Australasia

deconditioning, delirium, pressure injuries and further falls<sup>4</sup>. An RN onsite 24/7 is able to provide care that avoids these potentially adverse outcomes and improves the quality of life of care recipients.

The Royal Commission contracted a report from the University of Wollongong's Centre for Health Service Development, which found that, on average, each resident in a residential aged care facility currently receives 180 minutes of care per day, of which 36 minutes are provided by registered nurses<sup>5</sup>.

The Royal Commission report concluded that staffing levels within large parts of residential aged care fall well short of good or even acceptable practice standards. It found that the evidence is compelling that overall staffing levels in aged care are linked to quality of care, and that RN numbers are a particularly important factor in meeting an acceptable quality of care for care recipients.

In their final report, the Royal Commission noted 2016 data indicating that RNs comprised 21% of the residential direct care workforce in 2003, but that by 2016 this had dropped to around 15%. The proportion of enrolled nurses also dropped, from 13% to 10%. Over the same period, the proportion of the residential direct care workforce who were personal care workers increased from around 58% to around 70%. This has resulted in increasingly complex resident care needs being managed by a workforce with lower skills levels.

Following consideration of the evidence, the Royal Commission recommended...

*...that the Australian Government should require approved providers of residential aged care facilities to meet a minimum quality and safety standard for staff time. The standard should set required daily minimum staff time for registered nurses, enrolled nurses and personal care workers for each resident, over two stages—with 200 minutes of care per day of which 40 minutes are provided by registered nurses by 2022, and 215 minutes of care per day by 2024, of which 44 minutes are provided by registered nurses. In addition, when fully implemented in 2024, the standard should require at least one registered nurse on site at each residential aged care facility at all times.*

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<sup>4</sup> ACEM *ibid*

<sup>5</sup> AHSRI and University of Wollongong, Resources Utilisation and Classification Study - <https://www.health.gov.au/resources/publications/resource-utilisation-and-classification-study-rucs-reports>

# Supplementary Assessment RIS Question 7 - How Will You Implement and Evaluate Your Chosen Option?

## Implementation

The key implementation timeframes for the new mandatory care time reforms are:

- From **1 October 2022** providers will be funded for the new care minutes target of an average of 200 minutes, including 40 registered nurse minutes per resident per day;
- From **July 2023** it will be mandatory to have an RN onsite 24/7;
- From **1 October 2023** it will be mandatory to deliver to an average of 200 minutes, including 40 registered nurse minutes per resident per day;
- From **1 October 2024**, the average minimum care minutes per resident per day will increase to 215 minutes, including 44 RN minutes.

With the implementation of the Australian National Aged Care Classification (AN-ACC) from 1 October 2022, there will be a \$5.4 billion funding boost (over the 2022-23 Budget forward estimates) to enable residential aged care providers to increase staffing levels to meet the new 200 care minute requirements (targets). The care minute targets will form new care minute standards that will be mandatory from 1 October 2023. This requirement will be set in subordinate legislation.

The care time targets for each facility are adjusted according to the AN-ACC casemix classification for each resident (as recommended by the Royal Commission). In practice this means that facilities with a higher total casemix outcome (meaning higher needs residents) would receive more funding while also being required to meet higher care minute targets.

New quarterly reporting at the facility level of direct care time and costs commences for the July-September period as part of the new Quarterly Financial report (QFR). This reporting will allow the Department and the Aged Care Quality and Safety Commission (the Commission) to assess whether providers are meeting their care minutes requirements.

The Commission is an independent statutory authority tasked with overseeing the regulation of aged care. The Commission's role is to uphold the objects of the [Aged Care Quality and Safety Commission Act 2018](#) to:

- protect and enhance the safety, health, well-being and quality of life of aged care consumers
- promote confidence and trust in the provision of aged care
- promote engagement with consumers about the quality of care and services.

As the national regulator of aged care services subsidised by the Australian Government, the Commission's role is to approve providers' entry to the aged care system, to accredit, assess, monitor and investigate aged care services against requirements, and to hold services to account for meeting their obligations.

The Commission resolves complaints about aged care services and to provide education and information about our functions, and engages with consumers to understand their experiences and to provide advice to providers about working with consumers in designing and delivering best practice care.

The Commission delivers regulation that is proportionate, risk-based, responsive and intelligence-led. This regulatory approach enables the Commission to focus activities on the areas of greatest risk to the safety, health and wellbeing of aged care

consumers, and on those providers providing care and services that fall short of legislated standards.

The Commission uses education, information and targeted communications to support their regulatory objectives, including publishing outcomes of our regulatory activities to promote greater transparency and accountability, and highlighting best practice.



The reporting for care minutes and 24/7 RN care will be used to inform the new star ratings – primarily the rating for the delivery of quality care outcomes for residents. The star ratings are being developed to allow consumers to meaningfully compare aged care facilities based on the amount of resident care they deliver.

The requirement for 24/7 RNs will be set in primary legislation, with funding arrangements to support providers to meet this requirement to be determined through the October 2022-23 Budget. It is likely that additional reporting will be required by providers on 24/7 RN coverage, for example reporting at the end of each month through a form on the My Aged Care Provider Portal on the periods a facility did not have an onsite RN. This will be developed in consultation with the sector, including through the Residential Aged Care Funding Reform Working Group.

The Commission will have a substantial role in relation to the 24/7 RN and care minute measures. This includes:

- educating the residential aged care sector about how the new requirements will be regulated;
- identification of high risk services through analysis of data, including in combination with other regulatory intelligence;
- monitoring and enforcing service compliance with the requirements; and
- managing increases in the volume of complaints about aged care staffing matters.

To support approved providers to understand and deliver on the new care time requirements, the Department has:



- developed an online AN-ACC funding and care minutes estimator to help providers estimate their care time requirements (and funding levels) based on their mix of residents
- established a specialised AN-ACC Funding Helpdesk to help providers understand their potential funding and care minutes targets (email: ANACCFundinghelp@health.gov.au or phone: (02) 4406 6002)
- published fact sheets explaining how the care minutes targets are calculated, and information on what counts as care time.

Further information and training will be provided to support providers to support implementation, as further policy details are settled. These will include broadcasts to providers through webinars, newsletters and websites, fact sheets and other resource material.

### *Potential implementation challenges/barriers*

Key challenges for implementation of the 24/7 RN and care minutes reform measures are likely to be the preparedness of service providers and their ability to meet the new requirements.

There are several reasons why these challenges may arise:

- the ongoing need for priority to be placed on responding to COVID-19;
- difficulty in attracting sufficient staff to deliver the increased care minutes requirements;
- difficulty in attracting RNs, particularly in rural and remote settings; and
- the breadth of aged care reforms arising from the Royal Commission.

The ongoing COVID-19 pandemic, combined with seasonal influenza, is creating significant staffing issues across the aged care sector as both residents and staff are affected. This is adding additional stress to current staffing levels and impacting the relief staffing pool normally accessed to meet such short-term staffing requirements.

Further, the need to grow the current aged care workforce – both nursing and care workers – is a key element in sourcing the workforce needed to deliver both the 24/7 RN and care minutes reforms into the future. Without significant increases in migration, growing the workforce locally will be challenging – at least in the short to medium term.

The Government recognises that addressing low pay is critical to recruiting the workforce needed to provide safe, quality care to the growing number of older Australians. The Government will support workers' calls for better pay by making a submission to the Fair Work Commission's aged care work value case by 8 August 2022, meeting recommendation 84 of the Royal Commission. This vital and essential work needs to be treated with respect and rewarded with better pay.

While the aged care legislation allows for non-compliance actions to be used when a provider breaches its responsibilities, the initial focus of implementation will be to support providers to understand and implement the new provisions.

Risk mitigation actions include staggered implementation timeframes, commencing from 1 October 2022, with consultations with the sector including discussion about how workforce shortages impacting implementation of the 24/7 RN requirement will be considered, particularly for aged care facilities in rural and remote settings.

The Department has also established a confidential help desk for facilities seeking specific assistance on reporting residential care labour costs and hours to support providers to submit high quality information.

With regard to the revised reporting requirements, an information and communication technology (ICT) capability is being developed. This capability will enable the extraction of existing information held by the department, additional information to be submitted by providers, and for reports in compliance with both the 24/7 RN measure and the average minimum care minutes measure to be made publicly available on the My Aged Care portal, specifically through inclusion of this information in the star rating measure. Stakeholders will be consulted during the development of the ICT solution to help enhance the user experience for providers in submitting data and for those accessing information on My Aged Care.

Aged care stakeholders will be supported to implement the ICT solution by:

- involvement in user testing
- online training for approved providers
- online support tools
- an environment that will allow providers to become familiar with the tool prior to formal submission of their data
- a Department staff member being available to respond to sector enquires regarding the revised reporting requirements and their use in informing star ratings.

A key challenge to the ICT capability is the development of an elegant solution to extract data that is currently held by the Department in multiple databases to minimise the need for providers to resubmit this data. The ICT solution will be developed in close consultation with owners of each source database to respond to this challenge.

Implementation of the AN-ACC represents a significant change to the aged care sector, and the Department is working closely with stakeholders to ensure they are supported through the implementation phase to deliver improved quality care outcomes for residents.

### ***The role of the Commission in implementation***

It is critical that the Commission is appropriately resourced and equipped to regulate the new provider requirements. The public will rightly expect a strong response from the regulator once the requirements come into effect. This will in turn inspire confidence in the regulatory framework that safeguards vulnerable consumers. The Commission anticipates that their response will include unique and new regulatory activities that look specifically at the 24/7 RN and care minute requirements and respond to the increased volume of complaints.

From the Commission's perspective, the elements that may impact implementation include:

1. Sector size and understanding. The residential aged care sector is large, with approximately 2,700 services delivering care to approximately 189, 000 consumers, illustrating the need to significantly invest in communication and education activities which build sector understanding and capability. Residential aged care services are not currently required to meet mandatory requirements for staffing and time spent on care delivery. A critical part of ensuring compliance will be explaining how the Commission will regulate the requirements, and what our expectations of the sector are. The Commission will take care to understand the information needs of residential

care services and consumers about care minutes and RN requirements, to develop materials that are fit for purpose for this sector, and to ensure that key messages are received by all target audiences - providers, services, and consumers.

2. Impact of increased regulatory activity. The Commission anticipates a reasonable proportion of services will be non-compliant with the requirements and require some form of regulatory treatment. The data collation and analysis, and compliance monitoring and enforcement activities implicated in the implementation of these measures are complex and will require a nuanced approach to be developed and executed in collaboration with the Department. It is understood that the ability of services to meet the requirements will be highly variable due to a range of factors, and in thin markets (geographically or otherwise) may be compromised. The Commission will also consider provider compliance through the broader lens of risk related to poor quality of care for consumers, and actively consider compliance with related responsibilities, like the Aged Care Quality Standards.
3. Increased volume of complaints. The Commission anticipates an increase in both new and unique complaints, and complaints processing activity, with the implementation of the new measures. It is expected that consumers and their families/representatives will be highly sensitive to services' compliance with these new requirements. This, in turn, is likely to lead to an increase in complaints to the Commission about related matters.

## Evaluation

The Department is planning a multi-level evaluation strategy, consistent with the systemic nature of the AN-ACC reform. The evaluation of this specific measure will use qualitative and quantitative metrics to measure success against the objectives of the 24/7 RN and average minimum care minutes reforms in support of broader aged care reform for senior Australians. This approach will also enable identification of whether additional reforms are required to deliver sustainable quality and safety in Australia's home and residential aged care services. The approach will feed into Ministerial and public reporting.

The Department is exploring the feasibility of publishing the de-identified data resulting from assessments, to encourage independent academic research on factors correlating with better practice care provision by providers and improved care experience for recipients.

The Department will monitor financial impacts through payment system data produced by Services Australia. The annual independent pricing review function will additionally use costs data supplied by a representative sample of providers as a key input in forming its recommendations about the overall funding envelope and specific subsidy rates within it.

At the overall level, the department would report various financial and output metrics annually in the Portfolio Budget Statement, the Annual Report and in the Report on the Operation of the Act.

Specific components of the 24/7 RN access and average minimum care minutes reforms will also be monitored using a mixed methods approach, drawing on quantitative and qualitative data sources. Monitoring activities will help keep track of sector performance against the new responsibilities and help to inform any decision to modify aspects of the approved provider responsibilities. Activities will also track

changes in the quality of life for care recipients – for example through reductions in transfer to hospital, reduced falls, improvement in condition and fewer pressure injuries.

Where practicable the evaluation will use existing data. Where new systems are being developed technical reporting mechanisms will be incorporated to allow real time monitoring and feedback notifications – existing My Aged Care monitoring tools will be leveraged where possible.

Examples of data that may be tracked include:

- care time data collected through the QFR
- formal and informal feedback and consultation with the aged care sector on the impact of the reforms
- monitoring provider compliance, including provider performance against Aged Care Quality Standard 3 – Personal Care and Clinical Care, Standard 4 – Services and supports for daily living and Standard 7 – Human Resources
- analysis of complaints data for matters relating to clinical care and support for daily living.

While ACFI and other legacy funding arrangements would cease in October 2022, ACFI influences on provider behaviour would take some time to wash out of the system. The Department would undertake a review of the AN-ACC model as a whole after two years of full operation, once it becomes possible to assess accurately the extent to which it is achieving reform objectives.

## Estimate of Regulatory Burden

The regulatory burden to business, community or individuals is quantified using the Australian Government’s Regulatory Burden Measurement Framework and is provided below.

The arrangements for 24/7 RN and increasing the minimum per resident care minutes requirements to 215 minutes will increase the regulatory burden on business and community organisations. However, the Royal Commission into Aged Care Quality and Safety made strong links between the access of care recipients to 24/7 RN care and increased average minimum care minutes and the quality and safety of services. In addition it should be noted, that residential aged care providers will be provided additional government funding to deliver the additional required care. This funding is not included in the costing below.

No offsets were identified to offset this regulatory burden, the department remains alert to reduce the regulatory burden for affected stakeholders.

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$49	\$82	-	\$131

**Independent reviews for certification of response to the Royal  
Commission into Aged Care Quality and Safety**

1. Royal Commission into Aged Care Quality and Safety, *Final Report*,  
26 February 2021

Available at:

<https://agedcare.royalcommission.gov.au/publications/final-report>

