AGED CARE DIVERSITY CONSULTATIVE COMMITTEE AND BROADER GROUP NEW AGED CARE ACT DISCLOSURE BILL SUBMISSION

7 March 2024

Table of Contents

1. About the Aged Care Diversity Consultative Committee

The purpose of the Aged Care Diversity Consultative Committee (Diversity Consultative Committee) is to provide stakeholder direction and guidance to the Department of Health and Aged Care (the department) on the ways the aged care system can better cater to people with diverse characteristics and life experiences. This involves:

- providing advice on aged care policy, program and service matters relating to older people from diverse backgrounds and those with diverse characteristics and life experiences; and
- supporting members on aged care reference groups that represent diverse cohorts.

The Diversity Consultative Committee and it's broader group focuses on older people from all diverse population groups, reflecting the diversity of our society. It seeks to address common and specific

barriers impacting access to the aged care system by older Australians to drive cultural and systemic improvements and to ensure equity of outcomes, as the Royal Commission into Aged Care Quality and Safety identified as being needed.

Diversity groups include, but are not limited to, the following, noting the potential for intersectionality which means that many people belong to more than one group:

- Aboriginal and Torres Strait Islander peoples, including those from stolen generations
- people from culturally and linguistically diverse backgrounds
- people who live in rural, remote, or very remote areas
- people who are financially or socially disadvantaged
- veterans
- people who are experiencing, or at risk of, homelessness
- care-leavers including Forgotten Australians and former child migrants placed in orphanages
- parents separated from their children by forced adoption or removal
- lesbian, gay, bisexual, trans and gender diverse and intersex people
- aged care recipients with a disability and those with mental health problems or mental illness

The Diversity Consultative Committee members are attached an **Attachment A**, including broader group members.

2. Permission to publish

The Diversity Consultative Committee agrees to this submission being published on the Department of Health and Aged Care's website.

3. New Aged Care Act Disclosure Bill

Thank you for the opportunity to provide views on the new Aged Care Act Disclosure Bill which will inform the work of finalising the Act for parliamentary passage. The draft aged care Act overview and disclosure bill papers are at **Attachments B and C**.

4. Summary

The Diversity Consultative Committee and broader group considers the full range of diversity, particularly older people from marginalised groups, and their interests and needs are not fully represented in the new Aged Care Act Disclosure Bill and is concerned this will result in the aged care system not ensuring equity, access and inclusion for older people from marginalised groups, particularly where intersectionality exists.

Generally, the new Aged Care Act Disclosure Bill are accepted by the Diversity Consultative Committee and broader group, and previous consultations are evident in improving representation of the needs of older people from marginalised groups. The current aged care system, however, is particularly challenged in providing high quality care that meets diversity and cultural needs. There is concern that implementation and outcomes of the new Aged Care Act Disclosure Bill would not address and achieve required outcomes identified in the Royal Commission into Aged Care Quality and Safety. In addition, it is not expected to sufficiently meet current and future demographics, cohorts, needs and preferences, of older people from marginalised groups. Some examples of areas of concern are elaborated in the Diversity Consultative Committee and broader group responses to the consultation.

5. Consultation

The Diversity Consultative Committee and broader group feedback on consultation questions on the new Aged Care Act Disclosure Bill.

5.1. The Statement of Rights and The Statement of Principles

The new Aged Care Act introduces a Statement of Rights, outlining the rights of older people in the aged care system. This will help ensure that older people and their needs are placed, and remain, at the centre of the new system. Recommendation 1 of the Royal Commission into Aged Care Quality and Safety was that a new Aged Care Act be developed. As well as broadly supporting a 'rights-based' approach to the new Act, the Royal Commission recommended that the new Act should include a Statement of Rights (Recommendation 2).

The Diversity Consultative Committee and broader group feedback was:

- The Act does not entitle older people to rights to have aged care services, just assessment rights and rights to die. The legislation needs to contain the obligation to the Australian Government to provide aged care services. This is required to enable compatibility with obligations under the UN Convention on the Rights of Persons with Disabilities (CRPD). The International Convention on the Elimination of All Forms of Racism should be referenced. All people with disability have the right to an adequate standard of living for themselves and their families, and for continuous improvement of their living conditions. Article 28 of the CPRD obliges the Australian Government to safeguard and promote the realisation of these rights. People with disability are entitled to appropriate levels of social protection based on their individual circumstances and which recognises, without discrimination, the barriers to social and economic participation that they experience.
- The Act does not include discussion on what quality of life and quality of care is. Quality of life issues should be included in the Act, and not limited to nurse hours.
- The Act misses the opportunity to interpret the Royal Commission as a move away from a medicalised model to a more wholistic view of older people and ageing. It would benefit from including:
  - triggers for funding for social inclusion
  - investments in older people in being physically and mentally active for longer
  - culturally competent care, including Auslan; and
  - a focus on wellness of older people, not only care.
- The Act disenfranchises older people from marginalised groups. The Act requires an additional principle that entitlements/ assets due to being part of a group, for example veterans or care leavers, should not be taken (i.e. residential care subsidy overrides the Department of Veterans' Affairs pension, medical and medical aids entitlements).
- The Act does not include intersectionalities of marginalised groups and the cumulative impact of these on access and equity of aged care. Section 22(4) could add 'or' rather than 'and' or add an additional clause which recognises intersectionalities.
- The Act does not give scope for legal redress. The statement of rights and principles should include duties. Section 22 should include- 'at least' (not may); needs and availability and other people's needs should not be included as it is inequitable.
- The Act principles use the term culturally safe for First Nations and culturally appropriate for different contexts which is confusing. Terms culturally safe and culturally appropriate should be included in the definitions. Culturally appropriate should apply with all diverse groups and include awareness of all diverse groups.
- Section 23(d) workers skills needs be for all diverse groups to enable equity of outcomes for all diverse groups.
- War widows need to be included in Section 23(d).
- Language of culturally safe and culturally appropriate including culturally safe care and culturally appropriate care, and definitions, should also be consistent in the strengthened Aged Care standards to benefit implementation outcomes.
- Section 6.3(1) innovation and improvement needs to include evidence-based ideas.

- Where does preventive health sit? An opportunity exists to include in the preamble, possibly by integrating or being informed by the Healthy Ageing Strategy, and contemporizing quality of life ideas and positive ageing, often times bound by limits of Constitutional boundaries on paradigms of sickness rather than wellness (noting wellness and wellbeing is the focus of the majority of UN Conventions).
- Voluntary assisted dying rights need to be included, and issues of jurisdiction.
- In the statement of rights, diversity groups require stronger reference with inclusion of outside wellbeing bodies e.g. Ex-Service Organisations for Veterans - be permitted to have visitation and advocacy rights for residents in RACF.
- The rights of older people to have aged care services, and in a timely way is not assured. System failure and no requirement for providers to ensure provision needs to be further addressed.[only the right to an aged care assessment is included].
- Culturally and Linguistically Diverse (CALD) needs to be strengthened throughout the Act.
- The Statement of rights, Section 22, should include the right to communicate in the older person's [carers] preferred language and taking into account the medical condition of auditory dyslexia.
- The Statement of rights, Section 20, Complaints process must include in a culturally appropriate way and in preferred language and taking into account the medical condition of auditory dyslexia.
- The Statement of rights, Section 20, Perspectives of social models of care, including a community perspective, need to be strengthened to give effect to outcomes outlined in the Aged Care Royal Commission.
- The statement of rights Section 22, (c)(i) needs faith, social, and cultural support included to enable person centred culturally appropriate high-quality care; (c)(vii) to include co-design and CALD communities; (x) change bilingual to multilingual
- There has been no reference in the new Act to the International Convention on the Elimination of All Forms of Racial Discrimination. This needs to be included to protect older people and aged care workers from acts of racism perceived or otherwise and taking into account the medical condition of auditory dyslexia. It could be included in the Objects of the Act.
- The CPRD is not substantive enough in the new Act.
- Sections 31-32, to include culturally appropriate and sensitive decision-making processes. There should be a right to have an understandable conversation. Auditory dyslexia needs to be considered as a genuine need and not a racist response.
- Section 36, to include individuals aged 50-64 who have faced trauma and/or have had a refugee experience.
- Silos of sector areas needs, gaps of access and coordination needs to be better addressed, particularly disability and ageing and included in the System Governor reporting role and may need consideration in the subordinate legislation and regulations.
- Section 37, supported decision making, needs to be culturally appropriate and supportive of older people's vulnerabilities such as dementia, and be included in the System Governor reporting role.
- The principles should assure people that future aged care will look different and be better.
- The individual's right to communicate in one's preferred language is added to the principles.

5.2. The definition of high-quality care

The new Aged Care Act definition of "high quality care" is designed to lift the standard of care provided to older people. The Royal Commission into Aged Care Quality and Safety recommended that high quality care be defined in the new Aged Care Act (Recommendation 13). This is important,

in line with the Royal Commission's vision for the aged care sector, to encourage registered aged care providers to aim higher and not simply focus on meeting minimum standards.

The Diversity Consultative Committee and broader group feedback was:

- The Act should:
  - focus on the person, and not providers; where the individual at the centre – this is what people want
  - include significant others (other people, chosen family) in a person's life, and working as a team
  - include but not give dominance to the provider as a joint stakeholder in the consumer's care
  - capture the focus of care as including the quality of relationships
  - should be aspirational (as hard to change later)
  - have further definition on person with disability and all marginalised groups
  - allow older people with disabilities to have access to the National Disability Insurance Scheme and aged care
  - include other supporting materials that will support providers to achieve the definitions; and
  - ensure the wording adequately covers all marginalized groups.
- Support materials should be available to providers to assist them on how to view the legislation, and their requirements. There is a risk that aged care providers may interpret the legislation differently, and it should not be up to the individual to test the strength of the legislation.
- Include language, in addition to culturally appropriate care. High quality care is based on good quality information and therefore language is vital.
- The definition of high-quality care:
  - Part (i) should include the words culture and faith.
  - Part (viii) should include co-design not only with Aboriginal and/or Torres Strait Islander persons but also with all diversity groups some but not limited to CALD, LGBTQIA+, Women, Veterans, Forgotten Australians, Care Leavers and People with Disability and People who are homeless or at risk of Homelessness.
    Part (x) change the word bilingual to multilingual to recognise that often CALD people and staff can speak more than two languages.
  - Add the following to the definition of high-quality care: Deliberate and targeted outreach services and capability building and navigation services to support seniors at risk of exclusion from aged care services.
  - Applying an intersectional lens to high quality care care taking into consideration multiple forms of disadvantage in diversity cohort some but not limited to: culturally, spiritually and linguistically diverse, LGBTQIA+, Veterans, Forgotten Australians, Care Leavers, People with disability, Women, and Aboriginal and/or Torres Strait Islander Peoples.
  - Add the following to the definition of high-quality care: that services are delivered in the preferred language of the individual and their carers.

5.3. A new duty of care and compensation pathways

A main feature of the new Aged Care Act will be a new regulatory model that includes expanded powers for the Commission. The protection and promotion of the rights of older people is central to these new arrangements. The inclusion in the new Aged Care Act of an overarching duty on registered providers is also being considered to make sure that the health and safety of people in their care is not unnecessarily put at risk, taking into account the rights of older people. This would

be in addition to any existing duties (for example under common law or work, health and safety legislation).

The Diversity Consultative Committee and broader group feedback was:

The Act should:

- have the duty of care and compensation pathways included, noting other Acts also have this and the duty of care words are acceptable
- have aged care providers accountable when things go wrong – this is what consumers want
- note there may be a disincentive for workforce (directors and aged care workers) but words are acceptable
- include that training needs to be available/provided to workers; and
- include a duty of care threshold where providers are to be held responsible in accordance with extraordinary circumstances (death)
- consider if the risks are too high and act as disincentive for directors to take risks and accepting responsibilities when they are already liable in OHS legislation. Discussion included (a) that it was not an unreasonable bar to set given serious failure of systems result in serious harm (such as death) and not just a "human error", but incredibly poor practice. If this raises the bar and causes people to take more responsibility and have more oversight – that's what we want to improve the system (as per workplace deaths/accidents etc)
  (b) New "responsible person duty" would make directors and managers personally liable for failings of the provider in the delivery of care to residents and in-home clients. Both civil and criminal liability is proposed to apply. This would expose directors to risk of criminal prosecution as well as significant civil fines for the organisation's delivery of care. This will make it difficult for our Boards to have members from diverse and special need groups as Directors, and its already difficult enough to ensure lived experience in our governance.
  Of note, this new duty was not recommended by the Aged Care Royal Commission, and it does not apply to private hospitals etc. Why would anybody volunteer for our Boards?
- Consider that very strict legislation needs to also have support for the aged care providers to improve. This will require better education, training etc in the sector. Serious incidents currently have very short timeframe to make a change according to Aged Care Quality Commission; and
- Concern that duties for aged care workers – who are not very well paid will have a disincentive (responsible persons) as well as need to be protected from racism.

5.4. Protections for whistle-blowers

The new Aged Care Act introduces a new broad whistle blower framework. It will aim to protect those who seek to disclose information about suspected breaches of aged care legislation.

The Diversity Consultative Committee and broader group feedback was:

- The Act has adequate protections and the terms 'reasonable' belief' and in good faith are adequate.
- The Act should be strengthened:
  - to include other ways to make complaints; and
  - so the burden of proof should be on the person taking complaint.

5.5. Embedding supported decision-making

The new Aged Care Act sets up nominee arrangements which clarify when a person, or body, may act for a person receiving (or seeking to receive) aged care. It will help to protect the autonomy of older people through a supported decision-making model. The Royal Commission into Aged Care Quality and Safety noted the importance of supported decision making which ensures people are able to make decisions about their care and continue to have control and choice over their own life.

Under the new scheme there will always be a presumption of legal capacity in the first instance noting that a diagnosis of dementia or cognitive impairment does not mean a person is incapable of making decisions, but rather that they may require support to help them understand information, make decisions and communicate those decisions.

The Royal Commission noted that where it is not possible for an older person to communicate their preferences, decision making must align with what the person would likely want, based on all the information available, including by consulting with family members, carers and other important people in their life.

The Diversity Consultative Committee and broader group feedback was:

- The Act should strengthen:
  - when two sectors are involved including addressing gaps for Forgotten Australians
  - needs assessments for trauma informed care
  - resourcing for supported decision making
  - guardianship needs that have cultural safeguards
  - flexibility so that supporters can be changed overtime
  - that a supporter not provided is not a barrier to care
  - inclusion of braille and audio needs of older people and their supporters
  - inclusion of interpreters. The System Governor section should be amended to enable that approval and include required assistant aids so as not to be a barrier for older Australians who require communication supports via interpreters and translators (see Ch. 2, Pt 2, Div 4, s. 49 where there is no specific reference to the Systems Governor being able to approve communication aids, assistive technology, live assistance or other supports)
- to include and be consistent with the CRPD noting the Convention rejects substitute decision making, and that advanced care directive vary by jurisdictions, and considerations for First Nations older people
  - addressing risks of vulnerability for marginalised groups in supported decision making and digital platforms; and
  - increase the number of allowable supported representatives to multiple.
- The Act should be more appropriate for First Nations people:
  - with many young people that are disability-funded in their aged care service and having to comply with both disability and aged care legislation and regulations. Many Aboriginal residents get offended when talking about supported decision-making, they are unsure how it will be different. There are some instances where there are guardianship orders in place and they don't feel they have had the opportunity for supported decision-making. They would want the supported decision-making provisions to be as drafted (i.e. with a presumption of legal capacity). They want it to be implemented and service providers to be held accountable. Who would be judging if it's necessary? In rural/regional areas there are no SILs available and it's complex because of having to comply with two sets of legislation. People want services on country. See here for a clear explanation of supported decision making. https://adacas.org.au/advocacy-support/supported-decision-making/

- Needs assessment could be more explicitly cover that there is a right to trauma-informed care to give a sense of empowerment. The application of the principles need to be implemented and people have confidence they will be implemented
- How are conflicts managed? Who is supporting the person to make a decision in thin markets and having independent support. In practise there needs to be independent supports especially in thin markets where there are limited options and for example only one provider. 95% of Aboriginal people in Residential Aged Care in a rural/regional service are under a guardianship arrangement
- Supporters and representatives can be different people and this should be recognised. They should be able to change
- Provide central support for First Nations people in thin markets where there are conflicts i.e. a right to independent advocacy
- Any type of supported decision including guardianship making should have a component where there is a cultural safeguard for the guardianship arrangements if someone doesn't have family support, and putting this into practise. There needs to be alternative support needs for First Nations people.
- That the systems Governor promotes and supports a culturally appropriate aged care system which enables culturally appropriate and sensitive decision making by individuals from diverse cultural, linguistic and faith backgrounds.

5.6. Eligibility for Commonwealth funded aged care services

The Diversity Consultative Committee and broader group feedback was:

- The Act should strengthen:
- the right to culturally appropriate, people centred, timely, trauma informed Commonwealth funded aged care services; and
- include and not bias against war widows and veterans.
- The powers allocated to the ACQSC makes it difficult for providers to accept ‘complex’ cases into RAC, meaning that many members from diverse backgrounds my struggle to gain access. There is nothing in the draft that really supports providers to actively seek and manage very difficult cases.
- That eligibility for age 50 or over should include a person who has faced trauma including having had a refugee experience.

5.7. Work force

The Diversity Consultative Committee and broader group feedback was:

- The Act should strengthen:
- the provision around criminal records, and jurisdictional issues noting this is a barrier to workforce entry, including for marginalised groups, and consider that criminal records need to recognise that some Forgotten Australians have done nothing wrong and yet have a criminal record because it is allocated to them because they were in care; or they have a Defence caused disability such as PTSD; and to be conscious of the workforce needing to be culturally skilled, and are expected to be trained in delivering culturally appropriate care and cross-cultural communication in service delivery, as part of workforce considerations.
- the needs for new migrants and emerging marginalised groups who do not have a workforce to support them
- addressing racism in the aged care sector.

5.8. Other

The Diversity Consultative Committee and broader group feedback was:

- Marginalised groups should not be missed in the Act. e.g. homelessness
- Listing marginalised groups was a majority view.
- The explanatory memorandum should include education and awareness raising and availability and use of training and material to support this.
- Quarantine redress payments for Forgotten Australians, Stolen Generations, British child migrants, white domestic kids, and war widows.
- These should not be included as an asset as was done with Prisoners of War.
- Access to interpreters and translators in First Nations languages should be included in the Act, as likely to affect access to My Aged Care.
- Issues such as thin markets and impacts don't get captured; safeguarding functions 142(b) should include something on this.
- People doing the assessment need to have the appropriate knowledge including culturally appropriate knowledge and skills. The Rules will prescribe the assessment tools which in the disability sector was an issue and should be prescribed in the Act including these issues. Other view that some things will be in a disallowable instrument so will be approved by Parliament.
- Homelessness: people need adequate housing so they're not channelled into the aged care system because of a lack of housing. Also need social services around aged care not just residential aged care including supports for people to stay on community rather than needing to go to residential aged care.
- That a provision is included in the new Act, under provider governance, that aged care providers are required to offer services options that are culturally and linguistically appropriate to meet the individuals' cultural, linguistic, and spiritual needs and preferences.
- That digital platform operators are required to provide services in a culturally appropriate and accessible manner.
- That the new Act is translated into key community languages to ensure it is accessible for culturally and linguistically diverse communities.
- That the System Governor has the following functions:
  - iii) promoting diversity of registered providers to enable individuals to choose between registered providers including culturally diverse and appropriate providers;
  - (iv) providing education to build the capacity of registered providers to adopt best practice in the delivery of funded aged care services including the capacity to deliver culturally appropriate care.
  - (v) building the capacity of diversity groups and their communities to establish inclusive aged care services, including working in partnership with newly arrived communities to enable access to culturally appropriate services and provide support to multicultural communities to set up community-run, ethno-specific services.
- That the System Governor has the following functions:
  - (f) to review the Commonwealth's administration of the aged care system, or a part of that system, including undertaking research, evaluation and analysis, such as periodic review of the Aged Care Quality Standards and Commission and facilitate the collection of diversity data.
- To unpack the word cultural diversity and include the words 'spiritually and faith diverse' in the new Act in relation to diverse individuals and groups (See Chapter 1, Part 3, Division 2, Section 22, Page 34). This may include individuals who identify with the following diversity characteristics and/or Diversity Groups: (a) are Aboriginal or Torres Strait Islander persons, including those from stolen generations; or (b) are veterans or war widows; or (c) are from culturally, ethnically, spiritually, faith and linguistically diverse backgrounds; or (d) are

financially or socially disadvantaged;(e) are experiencing homelessness or at risk of experiencing homelessness; or (f) are parents and children who are separated by forced adoption or removal; or (g) are adult survivors of institutional child sexual abuse; or (h) are care-leavers, including Forgotten Australians and former child migrants placed in out of home care; or (i) are lesbian, gay, bisexual, trans/transgender or intersex or other sexual orientations or are gender diverse or bodily diverse; or (j) are an individual with disability or mental ill-health; or (k)are neurodivergent; or (l) are deaf, deafblind, vision impaired or hard of hearing; or (m) live in rural, remote or very remote areas.

- Undertaking aged care needs assessments should include c) a discussion with the individual that supports any cultural, linguistic, and faith preferences, needs and requirements to ensure a culturally appropriate and holistic assessment process.

Attachment A – DCC members and broader group

Diversity Consultative Committee members

Name	Position / Organisation
Samantha Edmonds	Chair: Director, Policy and Systemic Advocacy, Older Persons Advocacy Network
Kylie O'Bryan	Executive Manager, Booroongen Djugun – Member of the National Aboriginal and Torres Strait Islander Ageing and Aged Care Council
Matthew Moore	General Manager, Aged Care, Institute for Urban Indigenous Health
Mary Ann Geronimo/ Zulieka Arishiro (proxy)	Chief Executive Officer, The Federation of Ethnic Communities' Councils of Australia
Nikolaus Rittinghausen	Manager, The Centre for Cultural Diversity in Ageing. PICAC Alliance
Sophia Petrov	National Manager, Policy and Engagement, Council on the Ageing
Bryan Lipmann AM	Chief Executive Officer, Wintringham
Fiona York	Executive Officer, Housing for the Aged Action Group Inc
Nicky Bath	Chief Executive Officer, LGBTIQ+ Health Australia
Melanie Avion	Professional Officer, CRANAplus
Nathan Klinge	Chief Executive Officer, RSL Care SA
Tara Pamula/ Suzi Clark (proxy)	Executive Director, Engagement, Education and Sector Capability, Aged Care Quality and Safety Commission
Eliza Hazlett	Assistant Secretary, Dementia, Diversity and Design Branch, Australian Government Department of Health and Aged Care
Bill Jolley	Individual

Diversity Consultative Committee Broader Group

Name	Position / Organisation
Frank Golding	Vice President,Care Leavers of Australia Network CLAN
Steve Williamson	CEO, Deafness Forum of Australia
Leena Vuorinen	General Manager, Ageing Well, Deaf Connect
Mary Mallett	CEO, Disability Advocacy Network Australia
Samantha Connor	President, People with Disability Australia
Anne Livingstone	Chair, Forgotten Australians Roundtable

Name	Position / Organisation
Caroline Carroll	Chair, Alliance for Forgotten Australians
Justine O'Neill	Chairperson, Council for Intellectual Disability
Professor Lee-Fay Low	Associate Professor, Brain and Mind Centre, University of Sydney
Ruth Das	National Project Manager Mental Health Australia
Charlotte Smith	Manager, Victorian Adoption Network for Information and Self Help (VANISH)
Sandra South	Policy and Research Manager AAG Research and Trust, Australian Association of Gerontology
Professor Bianca Brijnath	Director of Social Gerontology, National Ageing Research Institute
Professor Irene Blackberry	Director, Centre for Rural Ageing Research, La Trobe University
Tanya Cameron	National President, Country Women's Association of Australia
Marcella Fischer	Multicultural Advisor Multicultural Advisory Service - Qld
Edwina Macdonald	Acting CEO, Australian Council of Social Services
Natasha Brunhuber/ Leonie Williamson	Executive Officer, Healing Foundation
Pat McCabe	President, Totally and Permanently Incapacitated Veterans
Jenny Gregory	National President Australian War Widows
Chris Edwards	Manager, Government Relations, Vision Australia
Alison Brook	CEO, Carers Australia

Attachment B - A New Aged Care Act - Overview

The Australian Government is developing a new Aged Care Act which will place older people at the centre of the aged care system.

Why are we developing a new Aged Care Act?

The Royal Commission into Aged Care Quality and Safety recommended that a completely new Aged Care Act be developed.

The new Act will replace existing legislation, including the *Aged Care Act 1997* (Aged Care Act) and *Aged Care Quality and Safety Commission Act 2018*. It will provide the foundations of a new aged care system where there is no place for substandard care, and high quality care becomes the norm. It will also help deliver the Government's response to several Royal Commission recommendations that rely on primary legislation.

The new Act will build on the priority aged care reforms already delivered via the *Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022*, the very first Act of the 47th Parliament, and the *Aged Care Amendment (Implementing Care Reform) Act 2022*, which was enacted on 9 November 2022.

What will the new Act cover?

The new Act and related subordinate legislation will replace the entire, existing aged care legislative framework. It will:

- include a Statement of Rights and pathways for older people to have their rights upheld
- create a single entry point to the aged care system, with clear eligibility requirements and a fair, culturally appropriate single assessment system
- support the delivery of a range of aged care services, including in-home care services,
- put in place new system oversight and accountability arrangements
- introduce a new approach to regulating aged care which will encourage delivery of high quality care and strengthen the powers of the aged care regulator.

What is the Constitutional basis for the new Act?

The new Act will have a new constitutional basis. This will:

- help ensure the legislation is focused on the needs of older people accessing or seeking to access aged care services, and
- ensure that a wider group of aged care providers, not just those who are "constitutional corporations", are able to deliver funded aged care services once the Support at Home program commences in 2025.

It is proposed that the new Act rely on the external affairs power (section 51(xxix) of the Constitution), with reference to the Convention on the Rights of Persons with a Disability and the International Covenant on Economic, Social and Cultural Rights, where available for constitutional support.

Other powers are also expected to be relied on to provide constitutional support for particular aged care programs. This may include the hospital benefits power (section 51(xxiiiA) of the Constitution), the race power (section 51(xxvi) of the Constitution), the State grants power (section 96 of the Constitution) and the Territories power (section 122 of the Constitution).

How is the Government consulting with aged care stakeholders?

To ensure the new Act will meet the needs of the sector and older people, the Department of Health and Aged Care has been working closely with the National Aged Care Advisory Council and the Council of Elders to test and seek advice on the various policy, program and regulatory provisions for the new Act. The department has also been engaging with other aged care sector stakeholders to share information about the new Act and help ensure it will be inclusive and sensitive to the diverse backgrounds of older people.

Drafting of the new Act is also taking into consideration feedback from the related aged care reform consultation activities, with many of these reforms to be delivered by the new Act and referenced in the new Act or in its subordinate legislation.

*Extracted from Department of Health and Aged Care, Information Sheet, A New Aged Care Act.

Attachment C - New Aged Care Act Disclosure Bill - Papers

1) Exposure Draft – Aged Care Bill 2023

2) A new Aged Care Act (new Act) – Exposure Draft – Consultation paper no.2

3) A new Aged Care Act (new Act) – Exposure Draft – Consultation paper no. 2 summary – Plain English version