

Aged care legislation update

Wednesday 3 August 2022

On Wednesday 27 July 2022, the Federal Minister for Aged Care, The Hon Anika Wells MP, introduced an aged care legislative package to Parliament. It consisted of two Bills:

- [**Aged Care and Other Legislation Amendment \(Royal Commission Response\) Bill Number 2**](#)

Status: Successfully received passage in the Federal Parliament on Tuesday 2 August 2022.

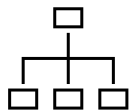
- [**Aged Care Amendment \(Implementing Care Reform\) Bill**](#)

Status: Referred to the Senate Community Affairs Legislation Committee and is set to report to the Senate on 31 August 2022.

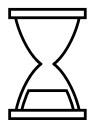
Executive summary



Who: Both legislative changes have implications for VHA members. This includes public sector residential aged care services (PSRACs) that are integrated with hospital services, as well as stand-alone PSRACS, and multi-purpose services (MPS). The legislation may also have implications for other VHA members including Ambulance Victoria, providers of palliative care, and community health services that deliver care or intersect with the aged care system.



What: The Royal Commission Response Bill responds to the final report of the Royal Commission into Aged Care Quality and Safety (the Royal Commission). The Implementing Care Reform Bill seeks to improve the quality of care and to ensure transparency over how funds are spent.



When: The Royal Commission Response legislation passed on 2 August 2022. The Implementing Care Reform Bill is before a senate committee and is scheduled to come into effect from December 2022.



Why: Both items of legislation set out to improve the health and wellbeing of older Australians and facilitate the delivery of high-quality aged care in line with the recommendations of the Royal Commission.

Aged Care and Other Legislation Amendment (Royal Commission Response) Bill

The Aged Care and Other Legislation Amendment (Royal Commission Response) Bill contains measures to implement urgent reforms to the aged care system and responds to 17 recommendations of the final report of the Royal Commission. It is of particular interest to VHA members as it pertains to the implementation of the new [Australian National Aged Care Classification \(AN-ACC\)](#) funding model.

The AN-ACC model is set to replace the Aged Care Funding Instrument (ACFI). It provides a system for calculating aged-care subsidies that distributes funding based on aged care residents' needs and the cost of care. It is set to come into effect on 1 October 2022. It also establishes the Independent Hospital and Aged Care Pricing Authority (IHACPA formerly IHPA) as the organisation responsible for setting prices for the delivery of aged care services from July 2023.

The other measures outlined in the Bill (Schedules 2–9) seek to enshrine transparency and the accountability of approved providers and improve quality of care and safety for older Australians receiving aged care services. This includes the Star Ratings System, which will see the Department of Health and Aged Care publish a comparison rating for all residential aged care services by the end of 2022. It also facilitates the extension of the Serious Incident Response Scheme (SIRS) to all in-home care providers from 1 December 2022, meaning increased protection for older Australians from preventable incidents, abuse, and neglect, as well as a new Code of Conduct for approved providers, their workforce, and governing persons.

Aged Care Amendment (Implementing Care Reform) Bill

The Aged Care Amendment (Implementing Care Reform) Bill 2022 includes a series of measures that 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.

If the Implementing Care Reform Bill passes it will require that there is at least one registered nurse (within the meaning of the *Health Insurance Act 22 1973*) on site, and on duty, at all times within residential facilities from 1 July 2023. In its current form, the Bill does state that providers will be able to apply for an exemption from the requirement. However, it is not yet clear who will be granted an exception and on what grounds.

Impacts to VHA members

Below are the provisions in the legislative package that the VHA has identified as key areas of interest for members:

New AN-ACC funding model – Some members may be better off because of the new [Australian National Aged Care Classification \(AN-ACC\)](#) funding model. The AN-ACC price for 2022–23 from 1 October 2022 is \$216.80 (compared to an ACFI price of \$188.60). This equates to average per bed per day funding of approximately \$225 (incorporating the \$10 per resident per day 2021 Basic Daily Fee supplement).

The AN-ACC model is based on data from the 2018–19 [Resource Utilisation and Classification Study \(RUCS\)](#). Basing AN-ACC on data from 2018 is not reflective of the current costs to services, or the requirement of services to delivery 200 minutes of care to residents per day as is required under AN-ACC.

Further refinements to the AN-ACC model will be required to ensure that the national price reflects the true cost of care and to account for increased costs to services resulting from inflation.

Further, AN-ACC is focused on funding care and does not extend to supporting services to invest in measures to improve the quality of life of residents. For example, it does not extend to the provision of lifestyle enhancements and diversional therapy; things that residents value and that are important to their physical and mental health and wellbeing.

Star Ratings System – The publication of [star ratings](#) will feature a broad star rating and a rating against four sub-categories; five quality indicators, service compliance ratings, consumer experience and staff care minutes.

Code of Conduct - Schedule 3 of the Aged Care and Other Legislation Amendment Bill requires compliance with a Code of Conduct (Code) by approved providers, their aged care workers and governing persons. It also gives the Aged Care Quality and Safety Commissioner functions to act in relation to compliance with the Code to enforce action for substantiated breaches, such as issuing a civil penalty or a banning order. Further, Schedule 3 enables the establishment of the Code, which will apply to the personal care workforce, as well as banning orders as one of a wider range of enforcement powers.

Incident management and reporting – Schedule 6 of the Aged Care and Other Legislation Amendment Bill sets out to achieve greater information sharing between Commonwealth bodies across the aged care, disability and veterans' affairs sectors. It also enables information sharing with worker screening units in relation to non-compliance with the Code by approved providers and their workers and governing persons.

Restrictive practices – Schedule 9 of the Aged Care and Other Legislation Amendment Bill revises the strengthened arrangements on the use of restrictive practices that commenced on 1 July 2021. The amendments introduce interim arrangements to address this issue until State and Territory laws can be amended. The amendments allow for the *Quality of Care Principles 2014* (Quality of Care Principles) to make further provision for the giving of informed consent to the use of restrictive practices where a care recipient does not have capacity to consent. This includes the authorisation of a person to consent to the use of a restrictive practice on a care recipient's behalf, where State and Territory laws do not clearly provide for a person to consent to the use of restrictive practices. To support these interim arrangements, the amendments also insert an immunity provision where approved providers have relied on the consent given by the restrictive practices substitute decision maker.

Next steps

The progression of this legislation will provide some clarity to a sector under pressure – a sector that is trying to navigate a complex reform environment while delivering care, responding to the ongoing pandemic, and dealing with a workforce in crisis.

The VHA will continue to engage with our members to ensure that their concerns and experiences relating to reforms in the aged care sector are heard and communicated proactively to both federal and state governments, and as opportunities arise to respond to relevant inquiries.

We will also continue to advocate for investments in public sector aged care through via our representation on the National Aged Care Alliance (NACA) and through our ongoing advocacy for the upcoming state election, and beyond.

The following table provides a summary of the legislation that is currently before Parliament and the reforms they pertain to.

Legislation	Reforms
Aged Care and Other Legislation Amendment (Royal Commission Response) Bill	<p>Contains measures to implement changes to the Aged Care Act responding to 17 recommendations of the Royal Commission:</p> <ul style="list-style-type: none"> • Schedule 1: AN-ACC funding model to replace ACFI (from 1 October 2022) • Schedule 2: Facilitate the publication of star ratings (from day after Act receives Royal Assent) • Schedule 3: Code of conduct for the aged-care sector (1 December 2022) • Schedule 4: Extends the SIRS to home care and flexible care (1 December 2022) • Schedule 5: Strengthen the governance of approved providers (1 December 2022) • Schedule 6: Facilitates increased information sharing (from day after Act receives Royal Assent) • Schedule 7: Increase government oversight of refundable accommodation deposits and bonds (from day after Act receives Royal Assent) • Schedule 8: Expands the functions of a renamed Independent Health and Aged Care Pricing Authority (from day after Act receives Royal Assent) • Schedule 9: Provides an interim solution regarding informed consent for the use of restrictive practices and limited immunity for providers from civil or criminal liability (from day after Act receives Royal Assent)
Aged Care Amendment (Implementing Care Reform) Bill	<p>Contains amendments to the Aged Care Act 1997 to implement measures to improve the delivery of aged care services and provide greater oversight and understanding of what funds are being used for:</p> <ul style="list-style-type: none"> • Schedule 1: Requires at least one nurse on call 24/7 in a residential facility (from April 2023) • Schedule 2: enables the Government to cap what approved home care providers can charge and prevents them charging exit fees (from 1 January 2023) • Schedule 3: Enables the Government to publish information about providers' operations including what they are spending money on (from December 2022).



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