



Two-year review

The Safe Harbour Reform Act provides that it will be reviewed as soon as practicable two years from the date of commencement, being July 2019.

This means further amendments to the Safe Harbour Reform Act may be made in two years or more based upon the evidence and experience from the enacting of the Safe Harbour Reform Act. This review will consider the application and effect of the Safe Harbour Reform Act on companies, directors, and the interests of employees, and creditors.²²



Conclusion

The enactment of the Safe Harbour Reform Act represents a steep change in the manner in which directors are able to address issues of their company's solvency.

Directors are now afforded additional protection to allow them the time and support necessary to turnaround a struggling company. The safe harbour protection comes with limits, and it is incumbent on directors to know how the new regime will affect them and their company during periods where solvency is in question.

The director can be reassured that they are protected by the safe harbour so long as they follow the correct procedures, including developing a sound turnaround plan, often with the advice of an appropriately qualified professional, and that they continued to evaluate that plan and changed tack where necessary.

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Aged Care Quality Reforms Aged Care (Single Quality Framework) Reform Bill 2018 (Cth)

By Alison Choy Flannigan, Partner and Rui Chi, Solicitor

Review of National Aged Care Quality Regulatory Processes

An independent review of the National Aged Care Quality Regulatory Processes (the **Review**) was announced in response to the Oakden Report which detailed failures in the quality of care delivered at the Oakden Older Persons Mental Health Service in Australia.²³

Following the publication of the Report into the Review of the National Aged Care Quality Regulatory Processes on 25 October 2017, which was led by Ms Kate Carnell AO in conjunction with Professor Ron Paterson, the Minister of Aged Care, Ken Wyatt announced several significant reforms to take place in the aged care community.²⁴

The key impending changes are:

- the establishment of a new Independent Aged Care Quality and Safety Commission (**Commission**) from 1 January 2019 to centralise accreditation, compliance and complaints handling;
- enhanced risk profiling of aged care providers to determine the frequency and rigour of visits;
- the development of options, in consultation with the sector, for an efficient Serious Incident Response Scheme to ensure the right systems are in place to identify and prevent situations such as Oakden from occurring again;
- the introduction of a performance rating against the quality standards; and
- the development of a user-friendly provider comparison tool on the My Aged Care Website.

Improving effectiveness of accreditation and unannounced audits

To strengthen ongoing accreditation processes, all residential care services will be subject to unannounced re-accreditation audits for those services:

- applying for re-accreditation from 1 July 2018; and
- with an accreditation expiry date on or after 1 January 2019.

²² *Ibid* item 3, 588HA

²³ Refer to the article on the Oakden Report in this publication.

²⁴ Review of National Aged Care Quality Regulatory Processes, Department of Health: <https://agedcare.health.gov.au/quality/review-of-national-aged-care-quality-regulatory-processes>.

Services that have already been advised of the date of their re-accreditation site audit or facilities with an accreditation expiry date before 1 January 2019 will not be affected by this change.

The unannounced re-accreditation audits are intended to capture a provider's everyday performance against Accreditation Standards.

For the transition into a more responsive regulatory model, the expanded risk profiling of providers will be applied to determine the frequency and duration of unannounced visits commensurate with providers with the greatest risk of non-compliance.

A new national independent oversight body

Higher quality benchmarks will be established in the aged care system to give assurance to the senior Australians and their families that they will be properly cared for through a new and independent Aged Care Quality and Safety Commission. The Commission will streamline the functions of the Australian Aged Care Quality Agency, the Aged Care Complaints Commissioner and the aged care regulatory functions of the Department of Health.

The new Commission is anticipated to be a responsive avenue to address any quality issues that may arise within the system.

The unified Commission seeks to ensure that the risks to senior Australians and care failures within the aged care system will be identified, alleviated and rectified quicker than before. It is also anticipated that the new integrated agency will provide senior Australians with more transparency when choosing aged care options.

The Commission will be led by an Independent Aged Care Quality and Safety Commissioner who will report to the Minister of Aged Care and be supported by an advisory group and a new Chief Clinical Advisor.

Improved response to serious incidents of abuse and neglect

In the recognition of better safeguard for consumer's rights, a new independent Serious Independent Response Scheme (**SIRS**) will be enacted for aged care with oversight from the new Aged Care Commissioner. The SIRS should replace the current reportable assaults process in the *Aged Care Act 1997*.

Under the new scheme, aged care providers should give the Aged Care Commissioner notice as soon as possible or within 28 days of becoming aware of a reportable incident. The incident will be investigated and an appropriate action to be determined by the Aged Care Commissioner.

To enhance the transparency and accountability of providers in handling complaints, the Review also recommended that providers be obliged to report the number of incidents and the Aged Care Commissioner will be empowered to publicly name providers who create barriers to legitimate complaints handling as non-compliant providers.

Star-rated system for provider performance reporting

To provide accessibility of information to consumers on quality of care, a star-rated reporting system for performance data will be introduced. The proposed new performance reporting system will encapsulate the results from accreditation audits and consumer experience reports. The scores against each Accreditation Standard, including an overall score for each facility, will also be provided to the consumer.

Accompanying the star-rated reporting system, the new Aged Care Commissioner will also make available an online comparison tool to allow consumers to easily compare the performance of aged care homes in a chosen area.

Improved assessment against Accreditation Standards

One of the concerns raised in the Review is the lack of clarity around best practice for clinical care, particularly issues relating to the administration of medication, sterilisation standards and incident reporting protocols.

Single Quality Framework

The Government has also introduced the *Aged Care (Single Quality Framework) Reform Bill 2018 (Cth)* which is intended to come into force from 1 July 2019, giving a 12 month transition period to allow for any system and process changes required to meet the new standards. The Bill amends the *Aged Care Act 1997 (Cth)* and the *Australian Aged Care Quality Agency Act 2013 (Cth)*.

The proposed Aged Care Quality Standards implemented under the Bill will replace the existing quality standards including:

- accreditation standards for residential care;
- home care standards for home care; and
- flexible care standards for short-term restorative care.

The Aged Care Quality Standards will be more focused on consumers rather than provider processes. It is anticipated that the standards will improve the quality of care delivered to consumers, enable a competitive system driven by consumer standards, and thereby decrease regulatory burden on aged care providers.

The *Freedom of Information Act 1982* will also be amended so that documents containing protected information acquired by the Commission in the course of its functions are exempt from disclosure.

Aged Care Quality Standards

In March 2017, the Department of Health (the **Department**) released two consultation papers seeking stakeholder feedback on key elements of a proposed new Single Quality Framework for aged care. The consultation papers sought stakeholder views about:

- the draft quality standards described in the Single Aged Care Quality Framework – Draft Quality Standards Consultation Paper 2017 (the **Draft Quality Standards Consultation Paper**)
- options for improving the processes for assessing performance against the single set of quality standards described in Single Aged Care Quality Framework – Options for Assessing Performance against Aged Care Quality Standards – Options Paper 2017 (the **Assessment Options Paper**)

The current draft sets out the following eight standards:

Standard 1 – Consumer dignity and choice

Consumer outcome

I am treated with dignity and respect, and can maintain my identity. I can make informed choices about my care and services, and live the life I choose.

Organisation statement

The organisation:

- Has a culture of inclusion and respect for consumers
- Supports consumers to exercise choice and independence
- Respects consumers' privacy.

Requirements

The organisation demonstrates the following:

- 1.1 Each consumer is treated with dignity and respect, and their identity, culture and diversity is valued.
- 1.2 Each consumer is able to (and supported to as needed) exercise choice and independence, including to:
 - make decisions about their own care and the way that care and services are delivered
 - make decisions about when family, friends, carers or others should be involved in their care
 - communicate their decisions
 - make connections with others and maintain relationships of choice, including intimate relationships.
- 1.3 Where a consumer's choice involves risk to their health and/or safety, they are informed about the risks, the potential consequences to themselves and others, and how risk can be managed to assist the consumers to live the life they choose.
- 1.4 Information provided to each consumer is current, accurate and timely, and communicated in a way that supports the consumer's understanding and the exercise of choice.

- 1.5 Each consumer's personal privacy is respected and information is kept confidential.

Standard 2 – Ongoing assessment and planning with consumers

Consumer outcome

I am a partner in ongoing assessment and planning that helps me get the care and services I need for my health and wellbeing.

Organisation statement

The organisation undertakes initial and ongoing assessment and planning for care and services in partnership with the consumer. Assessment and planning has a focus on optimising health and wellbeing in accordance with the consumer's needs, goals and preferences.

Requirements

The organisation demonstrates the following:

- 2.1 Ongoing partnership with the consumer (and others that they wish to involve) in assessment, planning and review of their care and services.
- 2.2 Assessment and planning informs the delivery of safe and effective care and services.
- 2.3 Assessment and planning identifies and addresses the consumer's current needs, goals and preferences, including advance care planning and end of life planning if the consumer wishes.
- 2.4 The assessment and planning process is undertaken in a culturally safe manner.
- 2.5 The assessment and planning process includes other providers, organisations and individuals involved in the care of the consumer.
- 2.6 The outcomes of assessment and planning are effectively communicated to the consumer and documented in a care and services plan that is readily available to the consumer, and where care and services are provided.
- 2.7 Care and services are reviewed regularly for effectiveness, and when circumstances change or when incidents impact on the needs, goals or preferences of the consumer.

Standard 3 – Personal care and clinical care

Consumer outcome

I get personal care and/or clinical care that is safe and right for me.

Organisation statement

Personal care and clinical care is safe and effective and delivered in accordance with the consumer's needs, goals and preferences to optimise health and wellbeing.



Requirements

The organisation demonstrates the following:

- 3.1 Each consumer gets safe and effective personal care and/or clinical care that is tailored to their needs and optimises their health and wellbeing.
- 3.2 Clinical care is best practice.
- 3.3 Identification and management of high-impact or high-prevalence risks associated with the care of each consumer.
- 3.4 The needs, goals and preferences of consumers nearing the end of life are recognised and addressed, their comfort maximised and their dignity preserved.
- 3.5 Deterioration or change of a consumer's function, capacity or condition is recognised and responded to in a timely manner.
- 3.6 Information about the consumer's condition, needs and preferences is documented and communicated within the organisation, and with others where responsibility for care is shared.

3.7 Timely referrals to other providers, organisations and individuals when necessary.

3.8 Minimisation of infection-related risks to consumers, the workforce and the broader community through implementing:

- standard and transmission-based precautions to prevent and control infection
- practices to promote appropriate antibiotic prescribing and use to support optimal care and reduce the risk of increasing resistance to antibiotics.

*Standard 4 – Services and supports for daily living**

Consumer outcome

I get the services and supports that are important for my health and wellbeing and that enable me to do the things I want to do.

Organisation statement

The organisation provides safe and effective services and supports that optimise the consumer's independence, health, wellbeing and quality of life.

Requirements

The organisation demonstrates the following:

- 4.1 Each consumer gets safe and effective services and supports for daily living that are culturally safe and meet the consumer's needs, goals and preferences and optimise their independence, health, wellbeing and quality of life.
- 4.2 Services and supports for daily living support each consumer to participate in their community within and outside the service, have social and personal relationships, and do the things of interest to them.
- 4.3 Information about the consumer's condition, needs and preferences is documented and communicated within the organisation, and with others where responsibility for care is shared.
- 4.4 Timely referrals to other providers, organisations and individuals when necessary.
- 4.5 Where meals are provided, they are varied and of adequate quality and quantity.

*Services and supports for living include, but are not limited to, food services, domestic assistance, home maintenance, transport, recreational and social activities.

*Standard 5 – Organisation's service environment**

Consumer outcome

I feel I belong and I am safe and comfortable in the organisation's service environment.

Organisation statement

The organisation provides a safe and comfortable service environment that promotes the consumer's independence, function and enjoyment.

Requirements

The organisation demonstrates the following:

- 5.1 A service environment that is welcoming and easy to understand, and optimises each consumer's sense of belonging, independence, interaction and function.
- 5.2 A service environment that is safe, clean, well-maintained and comfortable, including furniture and equipment that is suitable for the consumer.
- 5.3 Consumers can move freely within the service environment, including both indoor and outdoor areas.

*An organisation's service environment refers to the physical environment through which care and services are delivered, including aged care homes, cottage style respite services and day centres. An organisation's service environment does not include a person's privately owned/occupied home through which in-home services are provided.

Standard 6 – Feedback and complaints

Consumer outcome

I feel safe and am encouraged and supported to give feedback and make complaints. I am engaged in processes to address my feedback and complaints, and appropriate action is taken.

Organisation statement

Regular input and feedback from consumers, carers, the workforce and others is sought and is used to inform individual and organisation-wide continuous improvements.

Requirements

The organisation demonstrates the following:

- 6.1 Consumers, their family, friends, carers, and others are encouraged and supported to provide feedback and make complaints.
- 6.2 Regular feedback is sought from consumers, carers, the workforce and others about their experiences of the service.
- 6.3 Consumers have access to advocates, language services and other mechanisms for raising and resolving complaints.
- 6.4 An open disclosure process is used in resolving complaints and when things go wrong.
- 6.5 Feedback and complaints are examined and used to improve the quality of care and services.

Standard 7 – Human resources

Consumer outcome

I get quality care and services when I need them from people who are knowledgeable, capable and caring.

Organisation statement

The organisation has sufficient skilled and qualified workforce to provide safe, respectful and quality care and services.

Requirements

The organisation demonstrates the following:

- 7.1 The workforce is planned and the number and mix of staff deployed enables the delivery and management of safe and quality care and services.
- 7.2 The workforce behaves and interacts with each consumer in a way that is caring and respectful, and embraces their identity, culture and diversity.
- 7.3 The workforce has the skills, capabilities, qualification and knowledge to effectively perform their role.
- 7.4 The workforce is recruited, trained, equipped and supported to deliver the outcomes required by these standards.

7.5 Regular assessment, monitoring and review of the performance of each member of the workforce.

Standard 8 – Organisational governance

Consumer outcome

I am confident the organisation is well run. I am a partner in improving the delivery of care and services.

Organisation statement

The governing body is accountable for safe and quality care and services.

Requirements

The organisation demonstrates the following:

8.1 Partnering with consumers in the planning, delivery and evaluation of care and services (including supporting consumers to do so).

8.2 The organisation's governing body promotes a culture of safe, inclusive and quality care and services and is accountable for their delivery.

8.3 Effective governance supported by organisation wide systems for safety and quality, including systems for:

- continuously improving outcomes for consumers
- risk management, including managing high impact or high prevalence risks associated with the care of consumers
- information management
- practising open disclosure
- ensuring clear responsibilities and accountabilities
- ensuring compliance with legislative requirements and relevant standards
- antimicrobial stewardship
- identifying and responding to abuse and neglect of consumers
- minimising the use of physical and chemical restraint.

8.4 When clinical care is delivered, an effective clinical governance framework is established and maintained as an integral part of the organisation's governance

A copy of the draft Aged Care Quality Standards is available at: <https://agedcare.health.gov.au/quality/single-set-of-aged-care-quality-standards/draft-aged-care-quality-standards-and-draft-application-of-draft-aged-care-quality-standards-by-service-type>

The final standards will be presented to government for consideration. Subject to the agreement of the Australian Government and any necessary amendments being made to legislation, the new standards will take effect from 1 July 2018.

All Approved Providers should have reviewed their policies and procedures to be consistent with the proposed new standards.

Enhanced information on quality of services

More information on the quality of both residential and community aged care services will help consumers to make informed decisions about their care and services.²⁵

Enhancements to improve access to quality information on the My Aged Care website include:

- improvements to the home care packages service finder, enabling providers to advertise detailed information about their costs and the addition of search fields such as: religion, language, special needs and specialised services;
- a 'non-compliance service finder' to allow consumers to more easily search for current and archived compliance action taken against residential services and home care package providers;
- information about how to find quality services, and how consumers' rights are protected;
- information about a residential aged care service's accreditation status with improved links to the Australian Aged Care Quality Agency 's accreditation audit reports and consumer experience reports, where available; and
- an icon in the service finder identifying a provider's participation in the voluntary National Quality Indicator Program (NQIP) for residential aged care providers. ■

²⁵ <https://agedcare.health.gov.au/quality/single-quality-framework-focus-on-consumers>