

**Department of Health
Ageing and Aged Care Group**

**Regulator Performance Framework
Self-Assessment Report
2016-17**

Accurate as at 30 June 2017

Introduction

The *Aged Care Act 1997* (the Act) provides a framework designed to protect and foster the quality of care, and quality of life of people receiving care - either in a residential setting or in their own home. The Act provides the regulatory, funding and quality foundations of Australia's aged care system. The regulatory framework intends to achieve standards of care, and promote continuous improvement across the industry, particularly through the accreditation and monitoring process.

Broadly, the Act and its subordinate instruments:

- limit access to subsidies to approved providers, and ensures that only people assessed as suitable to provide aged care are approved as providers
- make approved providers accountable for the care and services they deliver
- allows for funding subsidies to be allocated based on the care needs of the people receiving care
- specify the rights and responsibilities of the people receiving care, as well as the responsibilities of providers
- provide for sanctions to be applied if providers fail to comply with their responsibilities
- provide for a process of accreditation, with government subsidies contingent on service providers being accredited.

Each year the Minister for Aged Care is required by legislation to present a report to Parliament on the operation of the Commonwealth subsidised aged care system (*Report on the Operation of the Aged Care Act 1997* (ROACA)). ROACA is also published to enable data and information to be made publicly available on the activities undertaken by the Department in funding and supporting quality aged care. This report is intended not to duplicate the reporting within ROACA.

Regulator Performance Framework

This report examines the way the Department carries out its aged care regulatory functions. It explains how we do what we do, and in this regard, assesses performance against six key performance indicators drawn from the Australian government's *Regulator Performance Framework*.

The regulator performance framework was introduced in October 2014 to improve regulatory performance, and reduce unnecessary regulatory costs that inhibit productivity. The Ageing and Aged Care Group is one of eight Health Portfolio regulators required to measure its performance against the six key performance indicators in the framework.

This is the second year the Ageing and Aged Care Group will assess its performance as a regulator using the metrics agreed on by the former Minister for Health and Aged Care in 2015-16. In line with the Department's policy to provide a comprehensive report once in a three yearly cycle, this is a shorter, interim report.

The results have been validated by the Aged Care Sector Committee as the approved stakeholder consultation mechanism, and approved by the Secretary of the Department as the Accountable Authority under the *Public Governance, Performance and Accountability Act 2013*.

Regulation of aged care

The Australian Government has played a role in regulating the provision of aged care for more than 50 years. The introduction of the Act formalised the government's role in regulating the sector in 1997. The Act provides the regulatory framework for Commonwealth government funded aged care providers, and provides protection for aged care recipients. It sets out the approved provider responsibilities related to the provision of care and services to consumers. The Department of Health has three regulatory objectives in administering the Act. These are:

- To protect the health, safety and interests of care recipients.
- To ensure the accountability of providers of aged care for the subsidies they receive from the Commonwealth.
- To ensure access to aged care across Australia including to special needs groups.

The regulatory approaches adopted by the Department to achieve these objectives reflect government, industry, and consumer expectations. The Act provides the government with a range of regulatory powers to monitor approved providers and take compliance action, including the imposition of sanctions and the revocation of a provider's approval and places, if appropriate.

Our key regulatory activities include authorising entry into the industry; access to funding and places; monitoring aged care providers' compliance with their responsibilities; managing non-compliance and responding to adverse events or regulatory failure.

The Department works in a complementary and cooperative way with the Aged Care Complaints Commissioner (Complaints Commissioner) and the Australian Aged Care Quality Agency (Quality Agency) to assure the quality of care provided by approved providers. Where strategies undertaken by the Complaints Commissioner and Quality Agency to resolve non-compliance have not encouraged compliance, the Department may take compliance and enforcement action as a means of resolving the non-compliance. The Department may also take compliance and enforcement action as a supplementary strategy to existing actions by these organisations.

Impacts during Self-Assessment

During the assessment period, several reviews of aged care regulation have been completed or are under way and will impact on future policy and regulatory frameworks. The Government will consider the outcomes and recommendations of these reviews to ensure future aged care regulation meets societal expectations and is fit-for-purpose. Some initiatives and recommendations in this report may be subject to the outcome of Government consideration of these review processes.

Review of National Aged Care Quality Regulatory Processes

In May 2017, the Minister for Aged Care commissioned an independent review of aged care quality regulatory processes in response to the Oakden report¹, which detailed failures in the quality of care delivered at the Makk and McLeay wards at the Oakden Older Persons Mental Health Service in South Australia.

¹ *The Oakden Report - The report of the Oakden Review* Groves A, Thomson D, McKellar D and Procter N. (2017) The Oakden Report. Adelaide, South Australia: SA Health, Department for Health and Ageing.

Senate Enquiry - Effectiveness of the Aged Care Quality Assessment and accreditation framework for protecting residents from abuse and poor practices, and ensuring proper clinical and medical care standards are maintained and practised

On 13 June 2017, the inquiry was referred by the Senate to the Community Affairs Committee in response to the reported incidents in the Makk and McLeay wards at the Older Persons Mental Health Service at Oakden in South Australia, and will examine the current aged care quality assessment and accreditation framework in the context of these incidents. The reporting date is 18 February 2018.

Elder Abuse – A National Legal Response (Australian Law Reform Commission)

On 20 June 2017, the Australian Law Reform Commission released its final report on the inquiry on *Protecting the Rights of Older Australians from Abuse*². This report makes several recommendations for aged care, including changes to the legislative requirements in relation to reporting abuse, aged care workforce rules, mandating requirements for restrictive practices, rules around decision making and changes to the Community Visitors Scheme.

The [report](http://www.alrc.gov.au/publications/elder-abuse-report) can be found at: www.alrc.gov.au/publications/elder-abuse-report

Aged Care Legislated Review

As part of the changes to aged care announced in 2012, a comprehensive review was included in the *Aged Care (Living Longer Living Better) Act 2013* to assess the impact of the *Living Longer Living Better* changes and where the Government need to take the system in the future.

The review started on 22 September 2016 following the appointment of Mr David Tune AO. A final report is scheduled to be provided to the Minister by 1 August 2017.

Prudential Standards Review

The Department of Health engaged Ernst and Young to undertake a review of the Prudential Standards to identify measures that can be put in place to strengthen the Act and the *Fees and Payments Principles 2014 (No. 2)*.

The prudential framework helps ensure the protection of residents' accommodation payments. As at 30 December 2016, approved providers reported holdings of approximately \$22 billion in accommodation payments paid by care recipients to enter care. The *Aged Care Sustainability Review 2016* found that this figure is projected to increase to \$36 billion by 2025.

The *Prudential Standards Review* made several recommendations regarding changes to the Prudential Standards and the Fees and Payments Principles, including creating more transparency of approved providers' corporate structures, improving the data provided by approved providers and strengthening the Department's capability to better regulate compliance with the Standards.

² ALRC Report 131, 2017 Elder Abuse – A National Legal Response <<https://www.alrc.gov.au/publications/elder-abuse-report>>.

2016-17 Performance Reporting

KPIs/Measures/Metrics	Evidence (Performance in 2016-17)
<p>KPI 1: Health does not unnecessarily impede the efficient operation of approved providers</p> <p><i>Measure 1.1: We demonstrate and apply an understanding of the operating environment of providers of aged care.</i></p> <p><i>Measure 1.2: We engage stakeholders (including providers) in the development of options to reduce compliance costs.</i></p>	<p>The Department considers broader developments across the sector and attempts to reflect shifts in policy and provider focus. It has been working with the aged care sector to progressively implement significant reforms to the delivery of aged care. The reforms have major impact to the operating environment of providers, particularly with the introduction of consumer directed care in home care in February 2017.</p> <p>To support the public and departmental staff to understand the impact of the aged care reforms on provider operating environments, we provide workshops, roadshows, technical reference groups, education and training (internal), presentations (internal), webinars, and information on the MyAgedCare web site and the internal intranet site.</p> <p>The Department consults extensively with industry and peak bodies during reform processes. We have sought input from providers through the Aged Care Sector Committee (ACSC) and National Aged Care Alliance (NACA) on our role in developing the single quality framework in an effort to understand the impact on operational and compliance costs, which may have a long term impact in reducing some compliance costs.</p> <p>The Department has consulted with industry, stakeholder groups, state and local government and peak bodies to improve the Aged Care Approval Rounds (ACAR). It explored the Government's role in controlling the number and mix of places for residential care and home care, and tested the number and mix of available places. Following each ACAR, information provided was analysed to improve or streamline the process for providers.</p> <p>In the 2016-17 ACAR places were made available at a state and territory level where previously the Department indicatively made places available at the aged care planning level. This allowed providers to apply with more targeted service proposals that were not constrained to the number of places indicatively made available at the aged care planning region level, which had been perceived as a business restraint by providers.</p> <p>The Department has consulted through the Prudential Standards Review on residential aged care accommodation payments and the effectiveness of arrangements for protecting refundable deposits and accommodation bonds. Further consultation on the implementation of the review recommendations will be undertaken.</p> <p>The Department engages with Transition Care Programme and Short-Term Restorative Care Programme providers through regular teleconferences to discuss program issues, propose solutions to provider concerns and share policy advice.</p>
	<p>Self-assessed rating: Very Good</p>

KPIs/Measures/Metrics	Evidence (Performance in 2016-17)
<p>KPI 2 Health's Communication with approved providers is clear, targeted and effective</p> <p><i>Measure 2.1: We provide guidance and information to providers that is up to date, clear, accessible and concise through appropriate media.</i></p> <p><i>Measure 2.2: We are open and transparent in our dealings with providers to ensure regulatory functions are clearly explained and offers providers information that supports them in complying with the Aged Care Act 1997.</i></p>	<p>The Department of Health provides information, tools and resources to support aged care providers to understand their legislated responsibilities, particularly new reforms that impact how they provide care and services. We publish guidelines, fact sheets, videos and other resources for aged care service providers. All published materials meet accessibility guidelines, or have appropriate exemptions applied.</p> <p>We continue to publish guidelines to assist providers with application processes, and to understand our regulatory framework, e.g. Aged Care Funding Instrument User Guide, Police Certificate Guidelines and other departmental guidelines.</p> <p>Prudential guidelines are produced annually at the time most providers report their financial results.</p> <p>The Department delivers targeted information, statistics and education about provider responsibilities using a variety of media appropriate to the message and audience. This includes, for example, webinars, electronic newsletters, and bulk messaging as needed.</p> <p>The Department committed to produce an ACFI education video in our 2015-16 self-assessment, and successfully delivered this as an ACFI education webinar available to subscribers on the Aged Care Channel. This information could have been made more broadly available through use of a web channel that did not require subscription.</p> <p>We explain our regulatory functions, particularly in relation to places management, compliance and enforcement actions, and provide our Client Service Charter.</p> <p>The Department publishes comprehensive guidance for applicants in each ACAR, including demographic planning data and heat maps highlighting the areas of need for new aged care places within Australia. For probity and fairness published information ensures that all applicants have access to the same information during the application process.</p> <p>A communication strategy across major and regional media targeted indigenous and CALD print and radio media to ensure transparent advertising of the ACAR. This is aimed at ensuring maximum coverage of the message as well as departmental allocation outcomes.</p> <p>Aged care information is distributed to providers through an Aged Care Industry Newsletter emailed fortnightly and a short message subscription service (known as BIDS) via email to ensure that up to date information is available. Links to these messages, as well as policies and guidelines are made available on the Department of Health website.</p> <p>In 2016-17 we reviewed, tested and updated a sample of the information about our regulatory role available to providers on our web site. These are being progressively re-published across the 2016-17 and 2017-18 years. There is a future plan identified to make it easier for service providers to find information on the MyAgedCare web site.</p>
	<p>Self-assessed rating: Good</p>

KPIs/Measures/Metrics	Evidence (Performance in 2016-17)
<p>KPI 3 Health's actions are proportionate to the regulatory risk being managed</p> <p><i>Measure 3.1: We apply a risk-based proportionate approach to compliance obligations, engagement and regulatory enforcement actions</i></p> <p><i>Measure 3.2: Our approach to assessing regulatory risk is regularly reviewed. Strategies, activities and enforcement actions are amended to reflect changing priorities that result from new and evolving regulatory issues</i></p>	<p>The aged care legislative framework is underpinned by a national policy to manage responses to non-compliance. This provides for a graduated response proportionate to the circumstances of the case, and is explained to providers in our 'Aged Care Compliance Policy Statement'. We identified managing regulatory risk as a high priority in the 2016-17 year, with plans to continue prioritising this aspect of our work in future.</p> <p>We engaged with risk across the group, reviewing and evaluating our work in targeting and validating ACFI claims, monitoring provider compliance with prudential obligations and undertaking compliance activities relating to quality issues.</p> <p>The approach for regulatory risk in the ACFI Program is re-evaluated regularly. Improvement strategies are tested with providers through trialling different review modalities and greater national consistency when structuring site visits to minimise time impost on providers.</p> <p>As committed to in the 2015-16 self-assessment, the frequency of ACFI risk modelling has been increased by the Department. Providers with a higher risk of non-compliance have been visited more frequently, with a lighter touch approach for those with a lower risk profile and a good history of compliance.</p> <p>We review and update our prudential prioritisation framework annually to ensure that our focus for assessing and monitoring prudential and financial risk is still aligned with the highest risk areas.</p> <p>A risk assessment is conducted on each ACAR, aligned to the Department's risk framework and all identified risks managed by the ACAR Project Board. Guidance is provided to ACAR officers about contact with providers, conflict of interest, completing assessment and making recommendations. Officers follow quality assurance parameters set by the terms of reference of the ACAR planning process. At least one quality review is undertaken before each decision is finalised.</p> <p>In 2016-17 we developed a new training package 'Risk in Aged Care' for staff in compliance roles. The new training package aligns our approach to assessing regulatory risk with current international best practice. Delivering the training nationally to the staff carrying out compliance roles will improve our approach to our compliance obligations, engagement and regulatory enforcement actions.</p> <p>We contribute to, and inform, the annual review of the broader risk management program within the Department.</p>
	<p>Self-assessed rating: Good</p>

KPIs/Measures/Metrics	Evidence (Performance in 2016-17)
<p>KPI 4 Compliance and monitoring approaches are streamlined and co-ordinated</p> <p><i>Measure 4.1: The Department only requests information when required by aged care legislation and in other circumstances when it is necessary for the Department to make evidence based decisions.</i></p> <p><i>Measure 4.2: The Department conducts compliance activities in a coordinated, predictable and streamlined manner which is understood by approved providers.</i></p>	<p>The Department works in a complementary and co-operative way with our partner regulators to ensure people are safe, receive good care, and any concerns are promptly resolved without unnecessary duplication of regulatory impact.</p> <p>This is supported by an improved information sharing processes with the Complaints Commissioner and Quality Agency, as committed to in the 2015-16 self-assessment.</p> <p>We seek information from providers on a range of matters only when necessary in accordance with the legislation, and afford providers the opportunity to respond to the concerns we identify. We use statutory notices to gather information only when the Department has a genuine need to investigate provider compliance.</p> <p>To ensure clarity regarding regulatory roles in aged care, we signed a Memorandum of Understanding with the Complaints Commissioner in September 2016, and signed a Memorandum of Understanding with the Quality Agency in March 2017. The memoranda outline further policy and practice for information exchanges allowed under legislation, including referrals both to and from the Department and these partner organisations.</p> <p>In addition, regular meetings occur between the Department and the Complaints Commissioner, and the Department and the Quality Agency to provide updates on regulatory activity for senior executive and operational staff. Taking this collaborative approach helps us to conduct our compliance activities in a coordinated, streamlined manner.</p> <p>When serious non-compliance is identified, the Department and the Quality Agency act to ensure that an approved provider returns to compliance with the required standards and regulations as quickly as possible. By doing this risk to the care and safety to older Australians in aged care is mitigated quickly or further action is taken as a matter of priority.</p> <p>A case management approach has been established between the Complaints Commissioner, the Department and the Quality Agency. This approach responds to the risk level and the potential harm to care recipients.</p> <p>The Department has sought to reduce the regulatory burden on ACAR applicants in recent years by removing unnecessary or duplicative requirements. We have used publicly available information and internal sources such as regulatory data from the National Aged Care Compliance Program.</p> <p>The Department continues to use the streamlined process to transfer allocations of places it implemented in 2015-16, and harnesses internal information to make decisions where it is available in preference to seeking it from providers. Information is only sought on applications where it supports departmental decision making.</p>
	<p>Self-assessed rating: Good</p>

KPIs/Measures/Metrics	Evidence (Performance in 2016-17)
<p>KPI 5 Health is open and transparent in our dealings with providers</p> <p><i>Measure 5.1: Our decisions and advice to providers is provided in a timely manner, clearly articulating expectations and the underlying reasons for decisions.</i></p> <p><i>Measure 5.2: Our performance measurement results are published in a timely manner to ensure accountability to the public.</i></p>	<p>The Department makes decisions on a wide range of matters including entry to the industry; allocation and transfer of places; claiming subsidies; ACFI reviews; meeting prudential standards; meeting responsibilities relating to quality of care; security of tenure; and revoking the status of providers to provider care and services (approved provider status) under the Act.</p> <p>Each decision has its own established process to review, check and monitor the quality of the decision made. It draws on the expertise of quality reviewers and internal legal services to ensure decisions are legally defensible, and follow our internal guidelines to adhere to the principles of good decision making. Providers affected by a decision are given a notice of decision and direct contact for each decision.</p> <p>Timelines for decisions by the Department are generally set in legislation. Where time frames are not set in legislation for the department to make a decision on provider non-compliance, we publish time frames established under policy settings.</p> <p>In 2016-17, around 96% of applications to become an approved provider were finalised within the regulatory time frame. New Home Care provider applications impacted performance, with the number of applications received exceeding the number anticipated by the Department.</p> <p>The Department improved its rate of average days to finalise an application in 2016-17, taking an average of 64.17 days, compared to 72 days in 2015-16. Residential places allocation decisions are merit based, satisfying the conditions of the Act, with allocations being made that best meet the needs of the aged care community.</p> <p>The streamlining of the ACFI reconsideration process, committed to in the 2015-16 self-assessment, was not achieved in 2016-17 due to delays in delivering an information technology system to support the streamlining. This will be delivered in 2017-18.</p> <p>Stakeholders are given detailed information about our dealings with providers through:</p> <ul style="list-style-type: none"> • Information available on the MyAgedCare web site in relation to compliance action taken by the Department against providers of aged care. All sanctions are published on MyAgedCare. • Allocations of places are published on the Department of Health web site at the time ACAR outcomes are announced. • ROACA includes information about provider compliance with responsibilities, the imposition of sanctions, ACFI reconsideration decisions and information regarding the Accommodation Payment Guarantee Scheme. • The Portfolio Budget Statement (PBS) shows the proposed allocation of resources to government outcomes for the upcoming financial year. • The Department's Annual Report demonstrates our actual performance against the proposed aged care regulatory objectives and targets as published in the PBS.
	<p>Self-assessed rating: Fair</p>

<p>KPI 6 Health actively contributes to the continuous improvement of aged care regulatory framework</p> <p><i>Measure 6.1: We establish cooperative and collaborative relationships with providers to promote trust and improve the efficiency and effectiveness of the regulatory framework.</i></p> <p><i>Measure 6.2: We implement continuous improvement strategies across key compliance activities with providers.</i></p>	<p>The Department reviewed and updated our performance framework for undertaking provider appraisals under the ACFI.</p> <p>All ACFI site visits undertaken by the Department include an exit interview with the provider and the ACFI representatives. These interviews are part of the collaborative relationship with providers to promote confidence in the consistency of the regulatory framework. Feedback is incorporated into new system development and continuous improvement of the program such as updates to the ACFI User Guide.</p> <p>We have reviewed how we regulate quality of care matters, and in the self-assessment period, worked as a department to design a new internal delivery model for some aspects of compliance under the Act. This will be delivered and evaluated in the 2017-18 self-assessment.</p> <p>We initiated and completed an independent review of the Prudential Standards that are currently in place to regulate approved providers management and use of refundable accommodation payments. The Department is currently considering the recommendations of the review.</p> <p>As a regulator, we actively consider the ‘lessons learned’ from past regulatory action and the ACAR, and use this information to improve our internal processes. Particularly in relation to regulating prudential matters, we worked closely with the legal services section to review and improve how we apply the Act to the circumstances of particular cases.</p> <p>Each ACAR has a planning phase that precedes its commencement. Any consultation and streamlining are taken into account in the planning phase to continuously improve the process for providers.</p> <p>Engagement with providers is undertaken directly to co-design and continue to improve the STRC Programme and improve future regulation.</p> <p>We also actively contribute to several independent reviews of aged care regulation that will support strengthening the regulatory framework. The Department will consider the outcomes and recommendations of these reviews.</p> <p>Self-assessed rating: Very Good</p>
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Recommendations

The outcomes of the reviews identified in this report on aged care regulation may impact on the future direction of aged care regulation. The Government will consider the recommendations of the reviews to strengthen future regulatory strategies.

Concluding remarks

The Department has demonstrated a consistent performance against the key performance indicators and measures of the Regulator Performance Framework.

We delivered improvements against the performance improvement actions identified in our 2015-16 self-assessment.

We have regular ongoing engagement with providers to understand their operating environment to co-design solutions that seek to increase the effectiveness of aged care programs.

We make information available for providers to ensure they clearly understand their obligations, and continually improve and distribute this through a wide range of targeted media.

We continue to be committed to applying proportionate risk based responses to non-compliance, reviewing, testing and refining our approaches to compliance and enforcement activities to ensure most efficient use of resources and minimise burden on aged care providers.

We work with other agencies in a complementary and co-operative way to ensure aged care recipients are safe, receive good care, and any concerns are promptly resolved. We do not unnecessarily burden providers with requests for information unless it is required to achieve regulatory outcomes.

We provide information about our decision making to those affected by our decisions, and where it is in the public interest, publish information about our regulatory processes more broadly to provide accountability for our regulatory processes.

We are committed to continuously improving our processes and actively support and contribute to internal and independent reviews of our processes. The Department will consider the recommendations that come out of the current reviews on aged care regulation to improve our regulatory approach.