

# Exposure draft - Aged Care Bill 2023

**Response to consultation  
February 2024**

## **Recipient**

Department of Health and Aged Care - New Aged Care Act Consultation

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## About Dietitians Australia

Dietitians Australia is the national association of the dietetic profession with over 8500 members, and branches in each state and territory. Dietitians Australia is the leading voice in nutrition and dietetics and advocates for the profession and people and communities it serves.

The Accredited Practising Dietitian (APD) program provides an assurance of safety and quality and is the foundation of self-regulation of the dietetic profession in Australia. Accredited Practising Dietitians play an important role in aged care, such as in the assessment and dietary management of older Australians with chronic diseases and malnutrition, in the planning and coordination of food service within aged care homes and home delivered meal programs, and in the training of aged care sector staff.

This submission was prepared by staff of Dietitians Australia with input from members following the [Conflict of Interest Management Policy](#) and processes approved by the Board of Dietitians Australia.

## Recommendations

### Objects of this Act:

Expand 'Objects of this Act' (Chapter 1 – Introduction) to clearly articulate the objective for aged care services to support/enhance health, wellbeing, reablement and quality of life.

### Statement of Rights:

Acknowledge and include the human right to a standard of food, nutrition and nutritional care that supports health, wellbeing and quality of life within the Statement of Rights for the new Aged Care Act. These rights must apply to the standard of food, nutrition and nutritional care provided in Commonwealth funded residential aged care homes, as well as apply to community-dwelling older adults receiving home-delivered or centre-based meals, as part of Commonwealth Home Support Services.

Acknowledge and include the rights of individuals to have their assessed needs addressed, to support/enhance wellness, reablement and quality of life. This means providing equitable access to evidence-based clinical care and reablement from allied health professionals. The right to evidence-based clinical care and reablement must be explicitly stated, in addition to the already stated right to have each individual's need for funded aged care services assessed, or reassessed.

### Delivering funded aged care services:

Include 'allied health professionals' within the list of definitions (Part 2, Division 1) of the Aged Care Act, as defined by Allied Health Professions Australia. Also clarify/expand the definition of an 'aged care worker' (subsection 10(4) and (5)) by explicitly listing, among others, allied health professionals.

### Reform timelines:

Commence the new Aged Care Act without delay on 1 July, 2024 and review every 3 years.

## Discussion

### **Objects of this Act: Services to support/enhance health, wellbeing, reablement and quality of life**

In the 'Objects of this Act' (Chapter 1 - Introduction), there is no mention or emphasis that services should support/enhance health, wellbeing, reablement and quality of life.

Reablement is now extensively referenced in the strengthened Aged Care Quality Standards (and associated draft guidance material). What's more, the Exposure Draft includes health, wellbeing and quality of life in the safeguarding functions of the Commissioner (i.e. 'to uphold the rights under the Statement of Rights, and protect and enhance the safety, health, wellbeing and quality of life, of individuals accessing funded aged care services, including through encouraging the delivery of culturally safe, culturally appropriate, trauma aware and healing informed funded aged care services' (subsection 142(a)).

Given the importance of wellness, reablement and quality of life in the aged care reforms, it is important that the 'Objects of this Act' clearly articulate and include the objective for aged care services to support/enhance health, wellbeing, reablement and quality of life.

### **Statement of Rights: The human right to a standard of food, nutrition and nutritional care**

Dietitians Australia welcomes a Statement of Rights within the new Aged Care Act. While we welcome the draft proposed Statement of Rights outlined in the consultation paper, we highlight there is no reference to the human right to a standard of food, nutrition and nutritional care that supports health, wellbeing and quality of life. This was highlighted in our [earlier submission](#) on the 'Foundations of a new Aged Care Act'.

Everyone has the right to a standard of living, including food and housing, to support their health, wellbeing and quality of life. Access to a variety of safe and nutritious food/beverages is a fundamental human right and essential for the physical, mental, social and emotional wellbeing of all older Australians receiving residential aged care and in-home aged care services.

'The International Declaration on the Human Right to Nutritional Care'<sup>1</sup> (Vienna Declaration) is a framework document to promote access to nutritional care for all people who are malnourished or at risk of malnutrition, based on a human rights-based approach. It sets a shared vision and five principles for implementation of actions, with one of those being: 'Public health policy must make the fulfillment of the right to nutritional care a fundamental axis in the fight against disease-related malnutrition'<sup>1</sup>.

Given the plethora of issues identified in the Royal Commission into Aged Care Quality & Safety by older people and their families with regards to food, nutrition and access to nutritional care within residential aged care homes, Dietitians Australia considers it vital that the Statement of Rights within the new Aged Care Act explicitly acknowledges and includes the human right to a standard of food, nutrition and nutritional care that supports health, wellbeing and quality of life.

These rights must apply to the standard of food, nutrition and nutritional care provided in Commonwealth funded residential aged care homes, as well as apply to community-dwelling older adults receiving home-delivered or centre-based meals, as part of Commonwealth Home Support Services.

A Statement of Rights on a standard of food, nutrition and nutritional care is necessary as part of the holistic approach to prevent and treat malnutrition, improve clinical outcomes and improve quality of life among older people accessing funded aged care services.

Acknowledging this human right is consistent with the need to address high rates of malnutrition among older people in Australia. In residential care, Australian studies have identified a prevalence of malnutrition from 22% up to 50%.<sup>2</sup> Malnutrition is widespread in those with dementia living in long-term care, with the prevalence of malnutrition ranging from 6.8 to 75.6%, and the risk of malnutrition ranging from 36.5–90.4% in industrialised countries<sup>3</sup>. Among community-dwelling older adults living in Australia and New Zealand, between 1%-17% of adults are malnourished and between 4%-63% are at risk of developing malnutrition.<sup>4</sup>

The World Health Organization recognises malnutrition as one of six contributing factors to the declining physical and mental capacity of older people.<sup>5</sup> Malnutrition increases the risk of falls, osteoporosis and fractures, slow wound healing, morbidity, mortality and contributes to poor quality of life.<sup>6</sup> Malnutrition is an accelerator to entry to residential aged care.

Most importantly, the acknowledgement of a standard of food, nutrition and nutritional care in the Statement of Rights aligns with recent reforms in aged care, including:

- the strengthened Aged Care Quality Standards, specifically Standard 6 (Food and Nutrition). The Exposure Draft of the Aged Care Act (pg: 23) states that the Quality Standards may prescribe rules about 'how registered providers must deliver food and drink to meet the nutritional needs and preferences of individuals'. Dietitians Australia welcomes this ruling, however considers it vital for the Statement of Rights to also acknowledge the right to food, nutrition and nutritional care.
- the Quarterly Financial Report (QFR) for approved aged care service providers now includes reporting requirements for expenditure on food, nutrition, oral nutrition supplements (ONS), dietetic care and foodservice staff. Acknowledging the right to food, nutrition and nutritional care in the Statement of Rights will help to justify the importance of tracking and reporting on food, nutrition, ONS, dietetic care and foodservice staff expenditure in the QFR.
- the new Food, Nutrition & Dining Hotline and Advisory Support Unit within the Aged Care Quality & Safety Commission, which aims to improve food, nutrition and the dining experience for older people in aged care, and support continuous improvement in the delivery of quality aged care. Incorporating the right to food, nutrition and nutritional care in the Statement of Rights will help providers to elevate/prioritise these important aspects as part of their care and seek assistance from the Hotline & Unit when assistance or advice is required.

### **Statement of Rights: Equitable access to reablement and clinical care**

The section on the right to equitable access (section 20(2)), states an individual has a right to assessment, reassessment and palliative care. There is however no mention of the individual's right to have their assessed needs addressed, or attended to.

It is vital for the Statement of Rights to acknowledge and include the rights of individuals to have their assessed needs addressed, to support/enhance health, wellbeing, reablement and quality of life. This means providing equitable access to evidence-based clinical care and reablement from allied health professionals. The right to evidence-based clinical care and reablement must be

explicitly stated, in addition to the already stated right to have each individual's need for funded aged care services assessed, or reassessed.

On the issue of assessment, the Act should require the use of a nationally consistent, evidence-based, assessment and care planning tool, to identify, plan for and deliver the allied health needs (including dietetic service needs) of individual aged care residents and consumers receiving home care.

### Delivering funded aged care services

Allied health professionals (unlike other professions such as nursing) are not included in the list of definitions in Part 2, Division 1 of the Exposure Draft. Furthermore, it is only assumed (not stated) that allied health professionals are included in the definition of an 'aged care worker' (subsections 10(4) and (5)).

Dietitians Australia recommends including 'allied health professionals' in the list of definitions (Part 2, Division 1) of the Aged Care Act, as defined by [Allied Health Professions Australia](#). Further, we recommend clarifying/expanding the definition of an 'aged care worker' (subsection 10(4) and (5)) by explicitly listing, among others, allied health professionals.

In the absence of an expanded definition, there is scope for misinterpretation and/or confusion as to who falls into the category of an 'aged care worker'.

### Reform timelines

Dietitians Australia considers it important for the new Aged Care Act to commence without delay on 1 July, 2024 and be reviewed every 3 years. The time to act is now. It has been 5 years since the Aged Care Royal Commission began and 3 years since it delivered its landmark report recommending the creation of a new rights-based Aged Care Act. The rights of older people receiving aged care services need to be respected and upheld without delay.

## References

1. Cardenas D, Correia MITD, Hardy G, Gramlich L, Cederholm T, Van Ginkel-Res A, Remijnse W, Barrocas A, Ochoa Gautier JB, Ljungqvist O, Ungpinpong W, Barazzoni R. The international declaration on the human right to nutritional care: A global commitment to recognize nutritional care as a human right. *Clin Nutr.* 2023 Jun;42(6):909-918.
2. Dietitians Australia's submission to the Royal Commission into Aged Care Quality and Safety, March 2019. Available from: <https://dietitiansaustralia.org.au/advocacy-and-policy/submissions/royal-commission-aged-care-quality-and-safety-submission-2019>
3. Perry, E.; Walton, K.; Lambert, K. Prevalence of Malnutrition in People with Dementia in Long-Term Care: A Systematic Review and Meta-Analysis. *Nutrients* **2023**, *15*, 2927.
4. Roberts S, Collins P, Rattray M. Identifying and Managing Malnutrition, Frailty and Sarcopenia in the Community: A Narrative Review. *Nutrients* 2021; 13: 2316.
5. World Health Organization (WHO) Guidelines, 2017. Integrated Care for Older People - Guidelines on community-level interventions to manage declines in intrinsic capacity. Available from: <https://www.who.int/ageing/publications/guidelines-icope/en/>

6. Moreira NCF, Krausch-Hofmann S, Matthys C, Vereecken C, Vanhauwaert E, Declercq A, Bekkering GE & Duyck J. Risk factors for malnutrition in older adults: A systematic review of the literature based on longitudinal data. *Advanced Nutrition* 2016; 7:507-22.