

Aged Care Bill (2024) Provisions

Submission by the **Australian Physiotherapy Association**

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Acknowledgement of Traditional Owners

The APA acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander Peoples today.

About the Australian Physiotherapy Association

The Australian Physiotherapy Association's (APA) vision is that all Australians will have access to quality physiotherapy, when and where required, to optimise health and wellbeing, and that the community recognises the benefit of choosing physiotherapy. The APA is the peak body representing the interests of Australian physiotherapists and their patients. It is a national organisation with state and territory branches and specialty subgroups.

The APA represents more than 32,000 members. The APA corporate structure is one of a company limited by guarantee. The APA is governed by a Board of Directors elected by representatives of all stakeholder groups within the Association.

We are committed to professional excellence and career success for our members, which translates into better patient outcomes and improved health conditions for all Australians. Through our National Groups we offer advanced training and collegial support from physiotherapists working in similar areas.

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1. Executive Summary

Introduction

The Australian Physiotherapy Association (APA) is pleased to provide feedback on the Aged Care Bill 2024 (Provisions) and acknowledges the significant undertaking in developing and producing the historic reforms proposed within it.

Our submission follows our previous feedback on the New Aged Care Act Exposure Draft.

We welcome in principle many of the intentions of the Bills but contend a lack of definition and detail in key sections and in language continue to leave much to interpretation.

The Bill

The APA supports the concept of fully funded clinical care across home and residential settings contending that the health of older people is fundamental to their quality of life and ability to live independently.

However, it is clear that concurrent reforms such as service pricing, setting of pricing caps, the services list and potential limitations of the new integrated assessment tool in Support at Home have the potential to result in unintended consequences on clinical care service quality and sustainability.

Clinical needs-based assessment supporting multidisciplinary care

All ageing Australians should have the fundamental enforceable right enshrined in the Aged Care Act to:

- timely clinical assessment and reassessment, and
- funded ongoing and reablement focused clinical care throughout the aged care continuum, including end-of-life and palliative care.

These are not explicit in the Objects, Statement of Principles or the Statement of Rights.

Clinical care funding and services must be allocated according to individual, clinically assessed need, which is not proposed within the Bill. This is an area of concern, and when coupled with an absence of definitions of critical language – including clinical care, quality care and high quality care – there remains too much room for interpretation.

While the Bill embraces the language of needs assessment, the Support at Home single assessment tool and the AN-ACC tool in residential care are mechanisms determining eligibility and classification levels, not individual clinical care needs. There is a disconnect between individual clinical care needs and funding.

The introduction of a fully funded clinical care stream and the extension of the short term restorative care pathway are positive in Support at Home. However, the reality is that older people will only be able to access funds for the services they are assessed for.

The new Integrated Assessment Tool does not assess for clinical care needs. It is an eligibility and classification tool. We need to understand more about how it will refer older people to clinical assessment and services, and what the qualifications of the assessment workforce are. We need visibility of this.

Physiotherapy, reablement and mobility

The term “reablement” is not specifically mentioned in the Bill despite the Royal Commission into Aged Care Quality and Safety’s recommendation 25(a) to: “provide a system of aged care that works to prevent or delay deterioration in a person’s capacity to function independently, or to ameliorate the effects of such

deterioration, and to enhance the person's ability to live independently as well as possible, for as long as possible.”

Similarly, there is no mention of physiotherapy, which the Royal Commission recognised as critical to the delivery of reablement services that maintain mobility, function and overall good health in older people.

According to the Department of Health and Aged Care's Quarterly Financial Snapshot report physiotherapy services provided to aged care residents continues to decline – from an average of 2.97 minutes of care per resident per day in Q2 2022-23 to just 2.63 minutes of care per resident per day in Q3 2023-24.

Despite the inadequacy of the number of minutes of physiotherapy care provided, physiotherapy remains the most utilised allied health profession in residential aged care, a reflection of its broad scope of practice, diagnostic and assessment capability, and central role in multidisciplinary teams.

Mobility is also not specifically referred to in the Bill despite being a key indicator of health in older people. As the Royal Commission recognised: “Mobility is closely linked with people's health and their quality of life. However, we heard numerous examples of aged care providers not supporting people to maintain and improve their mobility—including limited access to allied health professionals critical to promoting mobility, such as physiotherapists. Poor mobility increases the risk of falls and fall-related injuries due to deconditioning and reduced muscle strength.”¹

Lack of mandated service provision obligations, ring-fenced funding and clinical care benchmarks

This Bill does not address our concerns about the lack of mandates and accountability measures to ensure taxpayer funding is spent on critical healthcare services, such as physiotherapy, in residential aged care as recommended by the Royal Commission² and intended under the AN-ACC model.

The introduction of substantial co-contributions in residential aged care may free up more funds for clinical care but there continues to an absence of measures in place to direct spending to clinical care that addresses the assessed clinical needs of residents.

The time extension of short term restorative care in the Support at Home program to address rapid deterioration in health or injuries will be key to delaying entry to residential aged care if it is sufficiently funded to support the intensive therapy required by this cohort.

The introduction of separate assistive technology and home modification funding streams are positive, noting however that a \$15,000 cap on home modifications may mean that major renovations are less likely to be covered. This may leave those unable to afford larger scale modifications in high-risk areas such as bathrooms at risk of falls and injury, impacting their ability to live independently at home as per the intention of the Bill.

Given the APA has made a previous submission to the Draft Aged Care Act consultation earlier this year and is contributing to concurrent consultations on the services list and pricing, this submission is limited to key recommendations.

We welcome further opportunity to work with the Commonwealth on refining the Support at Home program to ensure appropriate clinical referral and building in individual clinical needs assessment in to aged care.

The APA supports and directs the Australian Government to the submission of the Allied Health Professions Association.

The APA calls on the Australian Government to conduct further consultation with the APA to ensure the impact of concurrent reform pieces conducted at pace on the quality and workforce sustainability is fully understood.

2. Recommendations

Section	Content	Suggested amendment
5 Objects of the Act	a) in conjunction with other laws, give effect to Australia's obligations under the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities;	<p>Recommendation 1</p> <p>That the Act is expanded to specifically reference:</p> <ul style="list-style-type: none"> • International Covenant on Civil and Political Rights (ICCPR) • Convention against Torture and Other Forms of Cruel Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention Against Torture • United Nations Declaration on the Rights of Indigenous Peoples • Universal Declaration of Human Rights, and • Convention on Elimination of All Forms of Discrimination against Women. <p>Comment: The Bill makes no reference to reablement despite Royal Commission recommendation 25(a) to 'provide a system of aged care that works to prevent or delay deterioration in a person's capacity to function independently, or to ameliorate the effects of such deterioration, and to enhance the person's ability to live independently as well as possible, for as long as possible'.</p> <p>Recommendation 2</p> <p>That the Act includes an Object that aligns with the aforementioned recommendation and specifically references reablement.</p>
Part 2 Definitions and key concepts	7 Definitions	<p>Recommendation 3</p> <p>The Act is expanded to include on of definitions for:</p> <ul style="list-style-type: none"> • Needs assessment • Clinical care • Palliative care • End-of-life care <p>We would like to see the terms quality care and high quality care more clearly defined to:</p> <p>a) differentiate between obligation and aspiration.</p> <p>b) enshrine the right of older people to access evidence-based healthcare according to their clinically assessed need and delivered by the appropriately qualified professionals.</p> <p>High quality care cannot be delivered in the absence of clinical assessment to meet the individual health needs of the older person – as distinct to assessment for classification.</p> <p>The definition should also include the delivery of services according to individual care plans as determined by clinical assessment and multi-disciplinary care teams.</p> <p>Recommendation 4</p> <p>That the Bill include a definition of 'high quality care' aligning with Royal Commission Recommendation 13(2).</p>

<p>Part 3 – Aged care rights and principles</p> <p>Division 1 Aged Care Rights</p>	<p>23 Statement of Rights</p> <p><i>Independence, autonomy, empowerment and freedom of choice</i></p> <p>1 (a)(i) the funded aged care services the individual has been approved to access.</p> <p><i>Equitable access</i></p> <p>2(a). An individual has a right to equitable access to have the individual's need for funded aged care services assessed, or reassessed, in a manner which is:</p>	<p>Comment: The Statement of Rights focuses on eligibility rather than access and, as they are written in the Bill are not enforceable. Upholding the Rights is deferred to the Complaints Commissioner whose authority is limited to serious violations. The responsibility for identifying breaches is deferred to the complaints system with responsibility for making complaints remaining with vulnerable older people or their families, who are often reluctant to complain about those delivering/overseeing their care. We contend this is a fundamental flaw of the Bill.</p> <p>Recommendation 5</p> <p>That Clause 24 of the Bill should be amended so that the rights in the Statement of Rights are legally enforceable via a court or tribunal.</p> <p>Recommendation 6</p> <p>That the wording be amended to:</p> <p>the funded aged care services according to the individual's need-based assessment.</p> <p>Recommendation 7</p> <p>That additional clauses/Rights be included:</p> <ul style="list-style-type: none"> • Timely individually clinical assessment or reassessment • Right to access the care and services individuals are assessed as needing.
<p>Division 2 Aged Care Principles</p>	<p>25 Statement of Principles</p> <p>3 (d) The Commonwealth aged care system supports individuals to Commonwealth aged care system supports individuals to... maintain and improve the individual's physical, mental, cognitive and communication capabilities to the extent possible (if the individual so chooses), except where it is the individual's choice to access palliative and end of life care</p>	<p><i>Comment</i></p> <p>The Bill retains wording that misrepresents palliative care as inconsistent with the maintenance and improvement of function.</p> <p>Recommendation 8</p> <p>That the wording be amended to:</p> <p>Commonwealth aged care system supports individuals to... maintain and improve the individual's physical, mental, cognitive and communication capabilities to the extent possible (if the individual so chooses), <i>including</i> where it is the individual's choice to access palliative and end of life care</p> <p>Recommendation 9</p> <p>That the Principles be amended to include specific reference to physiotherapists as key providers of clinical care.</p>

386 Appointment of Advisory Council members	(3) A person is not eligible for appointment to the Advisory Council unless the Minister is satisfied that the person has substantial experience or knowledge in at least one of the following fields: (e) aged care nursing or an allied health profession	<p>Recommendation 10</p> <p>An addition of an additional standalone point:</p> <p>(f) Aged care physiotherapist</p>
Division 2 Registered provider, responsible person and aged care worker obligations	175 Registered nurses	<p>Comment: While the Bill includes a specific section related to registered nurses and provider obligations relating to nursing care, it completely omits mention of physiotherapy and provider obligation to deliver physiotherapy services.</p> <p>Recommendation 11</p> <p>That the Bill includes a dedicated section to physiotherapy provision and registered provider obligations as they pertain to physiotherapy provision.</p>
Further feedback comment		<p>Comment: Concurrent reforms being undertaken at pace such as service pricing, setting of pricing caps, the services list and potential limitations of the new integrated assessment tool in Support at Home have the potential to result in unintended consequences.</p> <p>Recommendation 12</p> <p>Australian Government to conduct further consultation with the APA to ensure the impact of concurrent reform pieces conducted at pace on the quality and safety, and workforce sustainability is fully understood.</p>

References

¹ Care, Dignity and Respect, Royal Commission into Quality and Safety, Final Report, Summary and Recommendations, page 70

² Recommendation 38: Care, Dignity and Respect, Royal Commission into Quality and Safety, Final Report