

**Senate Standing Committee on Community  
Affairs**  
***Aged Care Bill 2024 (Provisions)***

Occupational Therapy Australia

October 2024

## Executive Summary

Occupational Therapy Australia (OTA) welcomes the opportunity to provide a submission to the Community Affairs Legislation Committee on the Aged Care Bill 2024 (Provisions).

Occupational therapy services are fundamental to aged care as they enable independence, prevent functional decline, increase quality of life, and reduce care needs. Occupational therapy is key to enabling older Australians to remain at home longer and facilitate a full and meaningful ageing experience in residential care settings.

OTA made a submission on the Aged Care Act Exposure Draft in conjunction with Allied Health Professions Australia (APA). While we welcomed the intent to move from a provider-centric aged care system to a person-centred and rights based one, we identified a number of matters to be addressed.

While some of the issues we and other advocacy organisations raised have been responded to, we continue to hold concerns about several aspects of the Bill as it currently stands. OTA recognises that some of these matters will be dealt with in subordinate legislation, or the Rules, but nonetheless we are concerned that the failure to include them in the primary legislation will weaken the Act, potentially fail to ensure the best possible outcomes for older people who require aged care services, and fails to implement the vision and recommendations of the Royal Commission into Quality and Safety in Aged Care.

In this submission OTA reiterates a number of issues raised in our previous submissions as well as highlighting matters that we believe require attention:

1. Inclusion of reablement as a key aspect of aged care
2. Ensuring the Statement of Rights are enforceable
3. Ensuring High-Quality Care is more than an aspirational benchmark
4. Ensuring needs-based assessments are undertaken by qualified clinicians
5. Defining clinical care to ensure the full scope of allied health is provided in accordance with assessed need.

## Occupational Therapy and Aged Care

OTA is the professional association and peak representative body for occupational therapists in Australia. There are about 29,000 registered occupational therapists working across the government, non-government, private and community sectors in Australia. Occupational therapists are allied health professionals whose role is to enable their clients to engage in meaningful and productive activities.

Occupational therapy services are fundamental to aged care as they enable independence, prevent functional decline, increase quality of life, and reduce care needs. Occupational therapy is key to enabling older Australians to remain at home longer and facilitate a full and meaningful ageing experience in residential care settings.

Occupational therapists work with older people with age-related conditions such as poor balance and coordination, memory loss and confusion, and vision and hearing loss, which lead to changes in their ability to participate in the meaningful activities of everyday life. Occupational therapists provide services such as physical and mental health therapy, vocational rehabilitation, chronic disease management, assessments for assistive technology and the assessment of environment and safety risks.

## Getting the new Aged Care Act right

### 1. Inclusion of reablement as a key aspect of aged care

In its Final Report, the Royal Commission into Aged Care Quality and Safety ('Royal Commission') concluded that 'reablement' is critical to older people's physical and mental health and wellbeing, and

should be a central focus of aged care.<sup>1</sup> It also identified allied health service provision as being essential for reablement, and that Australia's significant under-provision and undervaluing of allied health care produces morbidity, mortality and negative quality of life impacts, including those associated with dementia, mental health, malnutrition and falls.<sup>2</sup>

OTA believes it is a failing that there is no reference to reablement in the Aged Care Bill 2024, and that this failure extends to an inadequate response to the Royal Commission Recommendations. This absence is despite the strengthened Quality Standards now referring to reablement more extensively. OTA is concerned that this results in uncertainty about how that aspect of the Quality Standards will relate to the new Act.

## **2. Enforceability of Statement of Rights**

OTA remains concerned that despite the intentions to create a right-based legislative framework, and for the Act to be underpinned by a Statement of Rights, the Bill does not provide an adequate pathway for enforceability of these rights.

We welcome changes to the Bill, which strengthen the requirement for providers to have a positive duty to uphold the rights of people using aged care services but believe the Bill still does not go far enough on enforceability, with the current arrangements relying on the adequacy of the complaints process to address breaches of rights under the Act.

Furthermore, OTA raises concern around the failure of the Bill to stipulate the right to aged care services based on assessed need, bringing it in line with other sectors, such as health, rather identifying the right to assessment for aged care services.

Along with other advocates OTA also calls for the System Governor and Commissioner to be subject to the same requirements to uphold individual's rights as providers.

## **3. Definition of High-Quality Care**

OTA highlights the proposed approach to quality care as being aspirational only. This runs counter to the Royal Commission's finding that high quality care must be the foundation and hence regulatory benchmark of aged care.

OTA reiterates its recommendation that the definition of 'high quality care' included in the new Aged Care Act should be consistent with Royal Commission Recommendation 13(2), and that high quality care, as defined in Recommendation 11 of the Royal Commission, should be embedded in the new Act as the compliance and enforcement standard, aligned with the Statement of Rights and associated recommendations.

## **4. Assessment process**

OTA welcomes the recognition of the importance of needs-based assessment under the Act and as demonstrated increasingly in the communications from the Minister and others. However, we remain concerned that Integrated Assessment Tool (IAT) is the only assessment identified for people entering aged care system.

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<sup>1</sup> Royal Commission into Aged Care Quality and Safety, *Final Report Volume 3A The new system*, 2021, 176; Royal Commission into Aged Care Quality and Safety, *Final Report Volume 1 Summary and recommendations*, 2021, 101; and Recommendations 35 and 36. See also Exhibit 20-1, Australian Association of Gerontology Position Paper, 'Wellness and Reablement for All Australians', 31 July 2020.

<sup>2</sup> Royal Commission into Aged Care Quality and Safety, *Final Report Volume 2 The current system*, 2021, 83; and Recommendations 35–37. See also Royal Commission into Aged Care Quality and Safety, 'Hospitalisations in Australian Aged Care: 2014/15-2018/19', 2021.

The IAT is essentially a needs identification tool, and OTA argues that in order to meet people's needs with appropriate interventions and supports, a clinical assessment undertaken by a qualified clinician is required.

The Royal Commission recommended that aged care provided to people at home and in residential care facilities includes a level of allied health appropriate to each person's needs.<sup>3</sup> This level of service provision requires needs-based assessment, so the Royal Commission recommendations also emphasise clinically assessing each person, ideally via a multidisciplinary team, against the full range of potentially available allied health services that could help maintain their wellbeing and assist reablement.

OTA has been calling on the need for a nationally consistent, evidence-based process for older people to have their allied health needs not only identified promptly but then individually assessed for by a suitably qualified clinician so that needs based and tailored care can be delivered, as recommended by the Royal Commission. This is required across the aged care system, but particularly in residential aged care, where this is currently a significant gap resulting in a lack of appropriate services for residents.

Additionally, OTA is concerned that under the new Support at Home model and the introduction of price caps under the new categories of care recipient, the provision of allied health services will be limited regardless of assessed need. We urge the Committee to ensure comprehensive clinical assessment and care plans are mandated to meet people's needs, with sufficient funding available for appropriate services.

OTA reiterates its previous recommendations:

- That a needs assessment and planning process undertaken by a qualified clinician be included in the Act, for both Support at Home and residential care,
- that the Statement of Purpose, Objects, Statement of Rights and Statement of Principles in the new Act should all clearly embed the concept of needs-based care. The Act should require use of a nationally consistent, evidence-based process that ensures older people have their allied health needs identified promptly, and
- that they then receive individually tailored clinical assessments, based on identified needs, that inform the design and implementation of care across both residential and home-based aged care.

It is again worth noting that the findings of the Independent Assessment Tool (IAT) live trial conducted in 2023 identified overwhelming feedback from assessors (who are largely of non-clinical backgrounds) that they

- don't always have the skills/confidence to refer to allied health,
- don't want to be responsible for making decisions on the frequency of services required for allied health referrals, asserting that this should be done by the allied health professional themselves upon meeting and assessing the individual, and
- don't have the skills or confidence to assess for assistive technology or home modifications at the point of assessment (again, they assert this is out of their scope and should be done by the allied health professional upon meeting and assessing the individual).

## 5. Definition of clinical care

OTA welcomes the commitment of Government to fund 100% of clinical care, including OT and other allied health services. We note, however there is no definition of clinical care, and we hold concerns

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<sup>3</sup> See for example Recommendations 36 and 38.

that people will not receive the full range of OT services required as per a comprehensive assessment of their therapeutic and support needs.

Information provided by the Department of Health and Aged Care indicates that under the new Support at Home program, Independence level services will include 'therapeutic services for independent living' without clarification of what this includes and how it is distinguished from clinical care provided by OTs, and other allied health professionals.

OTA urges the Committee to seek clarification in the Act on what constitutes 'clinical care' and that it encompasses the full range of OT services that will support the maintenance and improvement of functioning and independence for aged care recipients of in-home and residential care services. This includes, as is the case under the current National Disability Insurance Scheme, funding for not just face to face service delivery but for indirect care delivered in the pursuit of clinical and individual goals.

## 6. Other Issues

### • Eligibility criteria

OTA supports the notion that aged care is not always the appropriate setting for younger people requiring care, however we hold concerns about the lack of an appropriate system response to meet the needs of people under the age of 65 years for whom aged care may be appropriate but are excluded by the eligibility criteria. This is particularly relevant for people diagnosed with younger onset dementia or those people living with other degenerative conditions like MS or Parkinson's Disease. Their care requirements are likely to be significant and potentially warrant their use of bedded care services like those offered in residential aged care.

### • Deficit focus

OTA joins with other advocates and peak bodies in raising concerns about the provision of aged care as a response to 'sickness', and that the language is largely deficit focussed.

With this focus in the assessment and eligibility process, there is a risk that people who would benefit from preventative services to maintain their function and independence may be unable to receive these through the aged care services. OTA believes the aged care system should be supporting people to access services ahead of significant physical, cognitive or psychological decline through preventative and reablement approaches and that the Aged Care Act should incorporate this.

### • People with disability

In addition, OTA believes that there should be greater clarity concerning supports for people with disability who are aged over 65 and call for the Act to clearly reference supports for disability under access eligibility.

## Conclusion

While OTA welcomes some improvements in the Aged Care Bill 2024, we continue to hold a number of concerns about the Bill in its current form. We recognise that some of these matters will be dealt with in subordinate legislation, or the Rules, but believe that the failure to include them in the primary legislation will weaken the Act, potentially failing to ensure the best possible outcomes for older people who require aged care services and missing the opportunity to implement the recommendations of the Royal Commission into Quality and Safety in Aged Care.

We would be happy to discuss these issues with the Committee and provide further evidence in support of the matters we have identified.