



# New Aged Care Act: Protections for whistleblowers

The new Aged Care Act will introduce a new broad whistleblower framework. It will aim to protect those who disclose information about suspected breaches of aged care legislation.

## Current arrangements

Under the current aged care legislation, protection for whistleblowers is limited to disclosing information about reportable incidents in the context of the Serious Incident Response Scheme (SIRS).

Protections are available where a person or body discloses information, in good faith, to the Aged Care Quality and Safety Commissioner, an approved provider (including key personnel and staff members), or a police officer, in circumstances where they have reasonable grounds to suspect that a reportable incident has occurred.

## Royal Commission recommendations

Recommendation 99 of the Royal Commission into Aged Care Quality and Safety seeks to broaden the scope of protections available for whistleblowers. The Royal Commission recommended that the new whistleblower provisions should be based on similar provisions in other legislative schemes, such as the *National Disability Insurance Scheme Act 2013* (see section 73ZA).

*‘Aged care whistleblowers should be protected from criminal prosecution, administrative action or civil litigation, such as breach of employment contract or duty of confidentiality. It should also be an offence to cause or threaten detriment to someone because they have made, may have made, or could make a whistleblower disclosure.’*

## Proposed changes

The proposed whistleblower framework is based on existing Australian Government whistleblower and anti-victimisation laws (such as the *National Disability Insurance Scheme Act 2013*, *Public Interest Disclosure Act 2013* and *Corporations Act 2001*), and the recommendations of the Royal Commission.

The proposed changes broaden the whistleblower protections to any suspected breach of aged care legislation, in any setting. Broader protections for whistleblowers intend to empower people to come forward with information about suspected breaches of aged care legislation, without fear of repercussions.

It is proposed that the new scheme will include obligations for providers to have an internal whistleblower policy.

The new scheme also proposes:

- that it would be an offence to disclose a whistleblower's identity (including information that may lead to their identification), and
- to maintain the existing obligation of providers to ensure disclosers, including staff members and other individuals, are not victimised for any qualifying disclosures.

## What does this mean for older people?

Under the proposed new scheme, anyone could make a whistleblower report to a person specified in the new Act about a suspected contravention of aged care legislation. If they do so in good faith, they will be protected from any civil, criminal or administrative liability. No contractual or other remedy may be enforced against the whistleblower, and no contractual or other right may be exercised against them.

## How can I have my say about the proposed disclosure protections?

An Exposure Draft of the Bill for the new Aged Care Act is expected to be released for public consultation later in 2023 and there will be opportunities to have your say about the draft Bill.

You can also [subscribe to Your Aged Care Update \(for providers\) or EngAged \(for older people, their carers, and families\)](#) to stay up to date with reforms to aged care.

### Let's change aged care together

We invite Australians to continue to have their say about the aged care reforms.



Visit [agedcareengagement.health.gov.au](https://agedcareengagement.health.gov.au)



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