



# Aged Care Reforms

Risk Considerations  
for Registered Providers





# The Royal Commission

The Royal Commission into Aged Care Quality and Safety found that the Aged Care Act 1997 and its related legislation is no longer fit for purpose. Since then, a number of changes to legislation and industry standards have come into force<sup>1</sup>, and will culminate with the new federal Aged Care Act 2024 (Cth) (the ‘New Act’) taking effect from 1 July 2025. Aged care providers, their management and their staff are facing a significant expansion of risk in the aged care landscape.

<sup>1</sup> For example: the Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022 (Cth) which responded to 17 recommendations of the Royal Commission, the Aged Care Legislation Amendment (Governance and Reporting for Approved Providers) Principles 2022 (Cth) which responded to 2 recommendations of the Royal Commission, and the Retirement Villages Amendment Bill 2024 (WA). The full federal roadmap of aged care reform can be found [here](#) and [here](#).





# Changes That Impact Insurance

## A New World

The federal government’s new rights-based Aged Care Act will commence on 1 July 2025, introducing a significantly broadened risk landscape that is aimed at improving the quality of care for older people and making aged care equitable, sustainable and trusted.

The New Act responds to approximately 60 of the Royal Commission’s recommendations, including:

- implementation of a number of the Aged Care Taskforce’s recommendations;
- introduction of a new Support at Home Program;
- strengthening the Aged Care Quality Standards and powers of the Aged Care Quality and Safety Commission; and
- introduction of a Statement of Rights for older people.

The New Act introduces a new registration process delineating between 6 registration categories; obligations vary between categories of Registered Provider (refer Appendix One). It also introduces several new regulated positions, including:

### Associated Providers

Associated Providers are entities that deliver services on behalf of a Registered Provider. While many types of service providers will fall within the ambit of an Associated Provider, there is particular focus on agencies who provide a labour hire workforce to Registered Providers, especially healthcare staff.

One of the most significant responsibilities under the New Act will require that Registered Providers ensure all Associated Providers comply with any relevant obligations under the legislation. Registered Providers will also be required to screen workers provided by an Associated Provider to ensure suitability to work in an aged care setting. Registered Providers cannot contract out of these responsibilities, though they can maintain contractual rights of recovery against Associated Providers.

A distinction should be made between Associated Providers and their staff/workforce. Workers of an Associated Provider will be considered aged care workers and will be personally subject to the Aged Care Code of Conduct.

### Responsible Persons

Responsible Persons are appointed positions within a Registered Provider organisation. They are required to exercise due diligence and ensure the Registered Provider complies with its statutory duties and does not negatively impact the health and safety of care recipients.

When it comes to risk transfer, existing insurance programs are largely capable of providing indemnity for the new regime with little amendment to coverage required. Long-tail insurance policies such as Directors’ & Officers Liability, Medical Malpractice, and General Liability insurance are designed to indemnify insureds for a myriad of statutory and common law duties, causes of action, and other legal exposures. We consider below certain key classes of insurance.



# Risk Transfer – Directors’ & Officers’ Liability Insurance

## Directors’ & Officers’ Liability Insurance

D&O policies are designed to indemnify Insured Persons<sup>2</sup> for their personal liability arising under statute and common law. The introduction of new statutory positions like Responsible Persons, the expansion of existing or introduction of new duties, and the granting of new enforcement powers (including the ability to issue civil penalties or require enforceable undertakings), is already contemplated for coverage by typical D&O policies and no special adjustments are needed to policy terms.

However, the role of Responsible Persons is to ensure the Registered Provider complies with its statutory duties, one of which is in turn to ensure Associated Providers comply with their obligations, and as such, it is important that Professional Services exclusions on D&O policies are written back for a failure to provide supervision. This will ensure that genuine management claims relating to oversight functions are properly captured for indemnity.

Earlier legislative amendments requiring the creation of new governing and advisory bodies<sup>3</sup> are typically dealt with under D&O policies in the following ways:

- Members of the Governing Body are covered as members of a management committee constituted by the board of directors of the organisation;
- Members of the Quality Care Advisory Body (overseeing quality of care in the home) are covered as members of a management committee constituted by the board of directors of the organisation.
- Members of the Consumer Advisory Board are not subject to the same duties as members of the Governing Body or the Consumer Advisory Board – their primary function is not in the management of the organisation, but in giving care recipients and their representatives formal opportunity to provide feedback on the quality and standard of care. Consumer Advisory Board members can sometimes be endorsed for coverage under D&O policies, though many organisations choose not to insure such members given they are not involved in organisational management.



<sup>2</sup> Definition varies from policy to policy, but typically includes directors, officers, senior managers, and employees when involved in the management of the organisation.

<sup>3</sup> Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022 (Cth).



# Risk Transfer – Medical Malpractice and Public & Products Liability Insurance

## Medical Malpractice Insurance (including Public and Products Liability Insurance)

Medical Malpractice insurance and General Liability insurance provide indemnity for the operational risks of Registered Providers and Associated Providers, such as the provision of healthcare services (Medical Malpractice) or day to day business operations (General Liability). Both classes of insurance are well positioned to provide indemnity for organisations facing new and expanded duties.

The New Act also introduces personal liability for aged care workers, including a civil penalty regime for breaches of the [Aged Care Code of Conduct](#)<sup>4</sup> (the Code). Even labour hire workers and volunteers are bound by the Code. Because these obligations relate to the provision of professional healthcare services, aged care workers are less likely to be afforded indemnity under a D&O policy, which is intended to provide cover for management exposures and is likely to carry an exclusion for the provision of professional services.

Medical Malpractice and General Liability insurance policies provide cover for Insured Persons<sup>5</sup>, which by definition typically includes employees but may not include contractors. Agency staff will need to be explicitly endorsed or noted for coverage as insured persons – we note that many aged care organisations already do so, as the agency agreement between Registered provider and Associated Provider typically requires that the host organisation insure such personnel. Registered Providers who do not currently insure their labour hire workforce should revisit this conversation with their brokers.



Some Registered Providers are moving to endorse their Medical Malpractice and General Liability policies to cover Associated Providers. While it makes sense to insure the workers of such agencies, who will be deemed aged care workers under the New Act, Registered Providers should consider whether they wish to open up their policies coverage to agency entities, keeping in mind that:

- Associated Providers, whether they are Registered Providers or unregistered providers, are third party entities who presumably have their own insurance program to rely upon;
- Some Associated Providers may be sole traders, in which case it may be beneficial to insure them under the Registered Provider's insurance program;
- Naming an Associated Provider as an insured party may prevent the insurer from subrogating against them (depending on exact policy terms); and
- There may be premium and deductible implications for the increased exposure that comes with adding third party Associated Providers to insurance policies.

Registered Providers should carefully review the contractual arrangements they have in place with Associated Providers, reviewing not only the insurance requirements but also the ability to pass any loss through to the Associated Provider, rather than bearing that risk under its own insurance program.

Notwithstanding the above, Medical Malpractice and General Liability policies have restrictions that may result in partially unpaid amounts – most notably, in respect of civil penalties.

<sup>4</sup> See also [Approved Provider readiness checklist](#).

<sup>5</sup> Definition varies from policy to policy, but typically includes directors, officers, senior managers, employees and, where appropriately endorsed or tailored, agency staff.



# Risk Transfer – Statutory Liability Insurance

## Statutory Liability Insurance

An often-overlooked class of insurance, Statutory Liability insurance is capable of providing indemnity to both the organisation and its staff; the policy provides cover where a Regulatory Authority conducts a formal investigation, or institutes formal proceedings seeking imposition of an insurable penalty.

Statutory Liability insurance has utility beyond the purview of Workplace Health and Safety risk, and may fill important gaps in a Registered Provider's insurance program against investigations and claims brought by the Aged Care Quality and Safety Commission (the national regulator of funded aged care services):

- D&O policies can indemnify an Insured Person against the costs of representation at a formal investigation or proceeding, and can indemnify insurable civil penalties. However, aged care workers may find they do not fall within the ambit of the policy's definition of Insured Person if they do not have management responsibilities.

- D&O policies do not indemnify organisations.
- Medical Malpractice policies provide cover for aged care organisations and aged care workers who face investigations or claims relating to alleged breaches of professional standards. However, cover for formal investigation is typically sub-limited (often to a very low amount), and the policy excludes cover for fines and penalties.
- General Liability policies are similarly capable of indemnifying both the organisation and aged care workers for defence of allegations alleging as breach of professional standards, but similarly exclude cover for fines and penalties.

As with Medical Malpractice and General Liability policies, labour hire workers and volunteers will not be covered unless expressly endorsed under the Statutory Liability policy. Aon's Stat Protect+ insurance policy can be tailored to offer such coverage where required by a Registered Provider.





# Risk Management

While ensuring optimal risk transfer is in place ahead of 1 July, Registered Providers are also heavily focussed on updating their risk management frameworks and reviewing their operations to ensure compliance with the new regime.

## Advisory

Registered Providers are turning to consultants to assist with risk management solutions, including:

- Restructure of governance functions to ensure mandatory committees and Responsible Person positions are in place;
- Review and restructure of pay structures, remuneration and benefits (including for board members and executives), and particular focus on the new requirement to screen all aged care workers (including labour hire and volunteers) for suitability;
- Review and restructure of contractor management procedures, noting the new responsibility to ensure Associated Providers comply with their statutory obligations; and
- Review of current work health and safety procedures.





# We're Here to Help

The New Act ushers in a new era of risk for Registered Providers. As organisations navigate the complex legal landscape and statutory duties imposed by the regime, Aon recommends that focus is given to review and optimisation of the following key areas:

- 1

Risk management frameworks and job structures
- 2

Contractual arrangements with Associated Providers
- 3

Insurance risk transfer arrangements

Aon is pleased to offer broad depth and expertise in advisory, risk management, and risk transfer solutions for Registered Providers. Please don't hesitate to get in touch with your local Aon broker.





# Appendix One – Summary of Aged Care registration categories and applicable Quality Standards

Registration category	Service description	Aged Care Quality Standards
<b>Registration category 1:</b> Home and community services	<ul style="list-style-type: none"><li>• Domestic assistance</li><li>• Home maintenance and repairs</li><li>• Meals and nutrition</li><li>• Transport</li></ul>	Not applicable
<b>Registration category 2:</b> Assistive technology and home modifications	<ul style="list-style-type: none"><li>• Goods, equipment and assistive technologies (non- digital)</li><li>• Home modifications</li></ul>	Not applicable
<b>Registration category 3:</b> Advisory services	Assistance with care and housing	Not applicable
<b>Registration category 4:</b> Personal and social care in the home or community (including respite)	<ul style="list-style-type: none"><li>• Allied health</li><li>• Personal care</li><li>• Social support and community engagement</li><li>• Flexible, centre based and cottage respite</li></ul>	<b>Standard 1:</b> The Person <b>Standard 2:</b> The Organisation <b>Standard 3:</b> The Care and Services <b>Standard 4:</b> The Environment
<b>Registration category 5:</b> Nursing and care management	<ul style="list-style-type: none"><li>• Nursing</li><li>• Care management</li><li>• Restorative Care Management</li><li>• Transition Care Management</li></ul>	<b>Standard 1:</b> The Person <b>Standard 2:</b> The Organisation <b>Standard 3:</b> The Care and Services <b>Standard 4:</b> The Environment <b>Standard 5:</b> Clinical Care
<b>Registration category 6:</b> Residential care	<ul style="list-style-type: none"><li>• Accommodation and everyday living</li><li>• Care and services</li><li>• Residential respite</li></ul>	<b>Standard 1:</b> The Person <b>Standard 2:</b> The Organisation <b>Standard 3:</b> The Care and Services <b>Standard 4:</b> The Environment <b>Standard 5:</b> Clinical Care <b>Standard 6:</b> Food and Nutrition <b>Standard 7:</b> The Residential Community





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