



## AGED CARE HOMES AND THE LAW

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This article will discuss the laws and functions associated with aged care homes in NSW, and the positive and negative impacts of government schemes.



### A. INTRODUCTION

The laws regarding aged care homes are varied throughout the states and territories, with one primary federal legislation governing their function: the Aged Care Act 1997 (Cth) (the 'Act').<sup>1</sup> There are additional legal functions established to aid the internal workings of aged care homes, which predominantly impact the wealth distribution of residents, in addition to the aftermath of COVID-19.

### B. Aged Care Act 1997 (Cth)

The Aged Care Act 1997 (Cth) has been in operation since 1997 and has been subject to various amendments and repeals. Its primary aim is to protect residents of government-funded aged care homes with respect to discrimination and diversity, whilst simultaneously ensuring the providers of such services are approved and abide by the appropriate legislation.

Throughout NSW, there are both government-funded and private aged care homes, both of which differ regarding in-house features and pricing. The Act is only applicable to government-funded homes through the subsidies put in place to support the centres and create an eligibility criterion for those who may financially struggle to find a home.<sup>2</sup> The primary difference between the two types of aged care homes is that government-funded homes typically receive subsidies to ensure affordability for those with lower financial ability.

<sup>1</sup> *Aged Care Act 1997(Cth).*

<sup>2</sup> Australian Government Department of Health, *Aged Care Laws in Australia* (26 November 2020).



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The Act determines the eligibility of aged care providers in Chapter 2, Division 5.<sup>3</sup> The approval of providers may also impact the type of payment that is accepted - whether it is a residential care subsidy, a home care subsidy, or a flexible care subsidy. These subsidies are elaborated on in Chapter 3 of the Act, describing who is eligible to receive which payments and the differing requirements/restrictions of each. Under Division 3 (1), the Act enables the Commonwealth to give financial support through subsidy payments and additional grants that coincide with the aims of aged care.<sup>4</sup> Furthermore, section 52C of the Act highlights the maximum daily amount of resident fees that is payable by the individual receiving the aged care service. It outlines the steps for calculating the resident fees and elaborates on how the payment conclusions are reached.

### C. WEALTH IN AGED CARE HOMES

The varying levels of wealth amongst the residents in aged care homes is an additional factor explored in this article. As there are differing levels of luxury and quality within each individual aged care home, there are certain accommodations that only a higher level of wealth can purchase. This is profoundly evident through the types of suites available at multiple aged care facilities which offer a variety of suites at a range of prices, with the most luxurious being the most expensive.

Regarding the pricing of various aged care homes, some operate with prices over \$150.00 per day for a 'Single Room Courtyard' whilst others charge slightly over \$40.00 per day for 'Spacious Living' style accommodation.<sup>5</sup> This creates disparity between those living in the same aged care centre as those who can afford more, receive more. Although government-funded homes do obtain subsidies to improve accessibility for those in financial strife, it does not repair the inherent wealth differences and consequently, those who struggle financially cannot expect to receive the same luxuries as individuals who don't face such challenges. Thus, the quality of one's accommodation is very dependent on the aged care home itself in conjunction with the income levels of the resident.

### D. COVID-19 AND STATISTICS OF AGED CARE HOMES

Moreover, there is a growing issue regarding population statistics in aged care homes. Previous research has established that there are high numbers of residents in such centres, yet the recent crisis of COVID-19 has caused a drastic drop in numbers of those seeking aged care accommodation. This is most likely due to the stringent restrictions imposed on NSW residents during the peak pandemic period in 2020. This is predominantly evident through the fewer numbers of people admitted into residential aged care in 2020 in comparison to 2019; the statistics

<sup>3</sup> *Aged Care Act 1997(Cth).*

<sup>4</sup> *Ibid* div 3(1).

<sup>5</sup> *My Aged Care, Aged Care Home Costs and Fees (N/A).*



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highlight that the number dropped by almost 6,000 individuals.<sup>6</sup>

Clearly COVID-19 placed a great strain on residents across the country, as this drop in admissions was most noticeable in the second and third quarters of 2020, aligning with the first restriction era in NSW.<sup>7</sup> As rules regarding the pandemic ease slightly, there will likely be a surge of residents admitted once again into aged care homes. This will not only serve to increase the population within these centres but more significantly, intensify the struggle of finding the right home that has both space and financial flexibility.

Statistically, over one million Australians received support from aged care services, with approximately 65% of aged care service users being female. Additionally, the Home Care Packages Program supported around 175,000 Australians going into aged care homes by providing a customised package of care services.<sup>8</sup> Those seeking short term accommodation in aged care homes amounted to roughly 67,000 individuals. Further, almost two thirds of women and nearly

half of men living in permanent residential care were aged 85 years and over, indicating that the majority of the aged care residents are classed as elderly.<sup>9</sup>

### E. CONCLUSION

Thus, it is evident that the legal frameworks supporting aged care facilities are broad and contain many benefits, particularly for those who are financially challenged. However, there are various concerns in relation to the demographic and distribution of wealth and lifestyle in such homes. This demonstrates how more current measures should be implemented to ensure fairness and equity amongst all aged care residents, particularly due to the strain Covid-19 placed on the facilities.

Comasters can advise you on legal issues regarding aged care homes and their policies.

<sup>6</sup> Australian Institute of Health and Welfare, *Aged Care* (3 September 2021).

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

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