Brotherhood of St Laurence
Working for an Australia free of poverty

Consultation on Aged Care Act Rules

Release 3: Provider Obligations

Brotherhood of St. Laurence

13 March 2025

BSL welcomes the opportunity to submit feedback on the Aged Care Act Rules – Release 3: Provider Obligations – as part of the Legislative Reform of Aged Care.

The Brotherhood of St. Laurence and Aged Care

The Brotherhood of St. Laurence (BSL) is a social justice organisation working alongside people experiencing disadvantage to address the fundamental causes of poverty in Australia. We believe no one should live in poverty. Our purpose is to advance a fair Australia through our leadership on policy reform, our partnerships with communities and the quality of our services.

BSL welcomes the passage of the Aged Care Act into law, and the redressing of some of the critical issues raised by the Aged Care Royal Commission into Quality and Safety in Aged Care. We remain concerned, however, for the most vulnerable older people whose needs may still be unmet. Our experience supporting the most disadvantaged older people in our community, demonstrates that this cohort has specific and complex needs, requiring assistance to navigate services, support to connect with service providers and hands-on support to resolve crises and presenting issues. Further, many clients experience multiple forms of disadvantage and the compound effects of older age. Critical to successfully meeting these needs is having the time to build trusted relationships and prioritising access to much-needed services and supports.

As a service provider working primarily with older people experiencing multiple forms of disadvantage, we have drawn on our expertise to provide the following feedback on the proposed provider obligations for aged care under the 2024 Aged Care Act:

Complexity, reporting and risk management requirements

The density and complexity of the Rules themselves, particularly those included in the Stage 3 release, make it extremely difficult for providers to fully consider their implications and provide input within the timeframe allowed for the consultation process. Some areas remain to be written – such as the requirements relating to quality indicators. This is a significant issue, given the intersection between reporting requirements and supporting improvements in quality of care and meaningful outcomes for individuals.

We recommend that the consultation timeframes be extended, and the Stages be further spaced and made less complex and lengthy to allow the sector to meaningfully contribute.

Further, the new Rules appear to increase administrative burden for providers. The documentation and reporting requirements for providers under the current system are onerous, adding to cost constraints and moving effort away from delivering direct care. . While careful documentation and regular reporting are essential parts of quality oversight and management, the new Rules appear to further increase this burden, particularly when coupled with additional fees for administration. This will compound existing issues and create risks to sustainability for an already burdened sector.

While each area for documentation and reporting is important, we recommend that the scope and/or required frequency of these be revised to enable providers to comply. Alternatively, additional funded support should be offered to allow providers to meet increased requirements.

Recommendation 1: Extend consultation timeframes. Space, simplify and shorten the Stages to allow the sector to meaningfully contribute.

Recommendation 2: Revise scope and/or required regularity of documentation and reporting to enable providers to comply and offer funded support to allow providers to meet increased requirements.

Consumer voice and control

Consumer advisory roles

The legislated requirement for consumer advisory roles in organisational governance structures is a welcome addition to ensure people using care services have a voice. However, further guidance and clarity on consumer advisory committees, including their role in governance, would support both providers and people using care services to understand what is expected.

BSL supports consumer involvement and considers there is also a need to engage consumers beyond legislated groups to ensure continuous engagement by consumers that feed into organisational improvement systems. Additionally, the requirement for only some care service types to offer the opportunity to form a consumer advisory group implies that consumer input is relevant only to certain aspects of care services. We regard this as a missed opportunity to engage with all clients regardless of the service they access. Further, while the requirements under the Act relating to formal advisory bodies may suit a proportion of individuals and their representatives, a large amount of care consumers will require different approaches to appropriately support their involvement.

We are concerned that there are no requirements about the support for and roles of consumer advisory groups if they are formed. Clear expectations for the ways such groups are supported by providers to meaningfully contribute to services are needed to ensure both providers and individuals understand their rights and obligations. In addition, structural support – including advocacy and other facilitation, as well as government funding where necessary - will be needed for both providers and people using care services to ensure engagement in service development and governance is adequate and appropriate. This support will need to be accompanied by clear guidance around the expectations for consumer involvement in organisational governance more broadly in the sector, in addition to legislated advisory groups.

Clarity on risk

The explicit recognition of the importance of supporting dignity of risk is an essential inclusion in the Quality Standards. A system that is able to facilitate this effectively is vital to ensure that the needs of people and good care, rather than the needs of systems and providers, determine how and what choices are made. In a person-centred system where planning and decision making are based in strong and respectful relationships at the point of care, risk must be negotiated case-by-case, moment-by-moment, and in context. This approach needs to be supported by the regulatory system so both providers and individuals fully understand their rights and obligations.

In previous submissions to the care reforms, we have highlighted that service providers working with people experiencing severe and persistent disadvantage require a greater tolerance for risk than mainstream providers. Greater focus is needed on harm minimisation, and behavioural and social supports. We welcome the openness in the Standards and Rules to supporting individuals to exercise dignity of risk. However, clearer guidance for providers and people using care services would aid in understanding how risk will be managed, and what support can and should be provided to enable this.

Meaning of ‘Representative’

We welcome the flexibility allowed in recognising representatives for people using care services. However, we are concerned about the vague nature of the criteria, given the prevalence and potential for elder abuse. This presents risks to both individuals and providers. While it is important to ensure that people from within an individual’s support system can be included, we recommend tightening the requirements and guidance around a provider being ‘satisfied’ of a person’s relationship and status. This should include, at a minimum, guidance regarding assurance that the individual receiving care actively consents to the proposed level of involvement.

The roles and rights of Representatives should be clarified in relation to the requirements outlined in Chapter 1 regarding Supporters.

Recommendation 3: Provide greater guidance regarding the requirements around consumer advisory bodies and other opportunities for consumer involvement. Provide more practical support for both providers and consumers to engage.

Recommendation 4: Provide clearer guidelines on the management of risk and support for individuals to exercise dignity of risk, that include negotiated, person-centred approaches to risk and harm at the point of care.

Recommendation 5: Strengthen requirements around the recognition of representatives to ensure that individuals receiving care services remain in control of this process to the extent possible and to align with the intent of the roles of supporters in Chapter 1.

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