



Consultation on Aged Care Act: Stage 4b release – Remaining Rules Brotherhood of St. Laurence 13 May 2025

The Brotherhood of St. Laurence (BSL) welcomes the opportunity to submit feedback on the Aged Care Act Rules (the Rules) – Release 4b: Remaining Rules – as part of the Legislative Reform of Aged Care.

1 The Brotherhood of St. Laurence and Aged Care

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 2024*, 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 aged care needs may remain unmet. This is because older people experiencing disadvantage have specific and complex needs. They require 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. The foundation to working with these cohorts is building trusted relationships and prioritising access to much needed services and supports.

We make the following recommendations on the proposed remaining rules for aged care under the *Aged Care Act 2024* (the new Act):

Eligibility for entry and access to care

Eligibility requirements

As a service provider working primarily with older people experiencing multiple forms of disadvantage, we note the significant changes to the definitions of eligibility requirements across residential care, Assistive Technology (AT) and Home Modifications and home support.

These requirements include (under Section 65) very specific criteria, particularly for home support where use of the Integrated Assessment Tool (IAT) is mandated, with identified cut-off scores for eligibility. For AT and Home Modifications, eligibility is essentially the same as for home support. That is, an individual must be assessed as eligible for home support to be eligible for AT and Home Modifications.

While this approach provides greater clarity and guidance regarding eligibility for services, it may also be unnecessarily restrictive, preventing individuals from receiving supports that would decrease, put off, or even prevent the need for a higher level of care.

The eligibility criterion for residential care in the Act is simply that ‘the individual is incapable of living in a home or community setting without support’ (Section 65-20). This is somewhat ambiguous, given that the need for support to live at home or in the community is, in essence, the overarching criterion for all levels of support.

This differs to the current *Aged Care Act 1997*, where eligibility for residential care is defined in terms of whether a person has ‘... physical, medical, social or psychological needs that require the provision of care; and (b) those needs can be met appropriately through residential care services ...’.

A further change under the new Act is that funding will be assigned to individuals (rather than providers, as is currently the case in residential care) for home support and residential care. However, the places¹ appear to be assigned separately in these two streams of care. This means the transition from home support to residential care will need to be triggered by a reassessment of care needs, followed by the allocation of a new place to the individual, and then finding a provider. This has the potential to exacerbate existing wait times, which does not prioritise the interests of an older person with escalating and often complex care needs. This lack of integration across funded services will also interfere with visibility of demand, adding further to wait times and making it more difficult for the government to monitor supply of services.

Recommendation 1: Approval for funded aged care services should be seamless across different care types to maximise access to care for older people.

A demand-driven model, and prioritisation and allocation of places

Under the new Act, places are assigned to the older person for residential care, AT and Home Modifications, and home support. However, the framework for determining the priority of allocation of aged care places to individuals seems inconsistent with a demand-driven model and unnecessarily complicated.

The importance of a demand-driven model

The recommendations of the Royal Commission into Aged Care Quality and Safety made very clear calls for a demand-driven approach to the delivery of aged care services (Recommendation 41) and a new Aged Care Act that protects the rights of older people (Recommendations 1 and 2). The new Act has retained a rationed system of aged care (where the number of places is determined by the Minister) and defines rights with respect to the receipt of eligible, funded aged care services. Under this system, older people do not have a right to access aged care services, rather, the Statement of Rights applies once they are in receipt of aged care. This is inconsistent with the recommendations of the Royal Commission that ‘the new Act must enshrine the rights of older people who are seeking or receiving aged care ... Any rights-based approach must guarantee universal access to the supports and services that an older person is assessed as needing’.²

The continuation of a rationed system will perpetuate the current waitlists for access to care for older people who are assessed as eligible. There is no provision within the new Act that compels the Minister to

¹ A ‘place’ is the language used to describe the allocation of funded aged care services, as assessed for eligibility, to an older person.

² <https://www.royalcommission.gov.au/system/files/2021-03/final-report-volume-3a.pdf>

ensure sufficient capacity in the availability of aged care services to match (eligible) demand. This point is also echoed by the Interim Inspector General of Aged Care.³

A rationed system with waiting lists for care has particularly significant implications for those individuals experiencing disadvantage or other risk factors that contribute to worsening of circumstances. It is unfair and counter-intuitive that older people experiencing disadvantage, who arguably have the greatest complexity of needs, may have to wait for access when they have already experienced delays and barriers in accessing the service system. Time spent on wait lists can exacerbate needs and lead to further decline in living circumstances, so there is potential for wait times to increase the care needs of older people. As at May 2024, the average wait time for an aged care assessment was 90 days, and 68,000 people were waiting on home care packages.⁴

Complexity

The proposed method for assessing needs and allocating places is complex. Chapter 2, Part 4 outlines the method for determining the prioritisation of an individual's care needs. Having undergone an assessment for eligibility and care needs, an individual's care is then ranked in priority of access. This considers circumstances including: the urgency of need, determined by whether a person lives alone, has a mobility impairment; if they are an Aboriginal or Torres Strait Islander person; if their residence poses a risk to health or safety; if they have waited more than six months; or if they reside in a small rural town or remote area.

The priority categories for classification types highlight some important areas of risk and disadvantage, including risk of homelessness, which is welcome. However, some items appear to restrict the type of service that will be prioritised. Notably, the inclusion of mobility impairment but no other type of impairment, such as cognitive, in the service type AT and Home Modifications. This suggests that AT and modifications will, under the rules, be prioritised to classification types that pertain to mobility.

Priority of care needs feeds allocation decisions. For home support, allocations are prioritised according to who has the longest current wait time. For residential care, allocations are prioritised by the number of people waiting (beyond the target wait time) as a proportion of the number of available places.

The key issue is the determination of the target wait time, and the determination of the number of places made available. Sections 93-13 and 93-14 outline the steps to determine target wait times, but there is no detail included on how the Minister will determine the number of places, just that a method must be developed. This leaves the supply of aged care subject to the financial and political objectives of the government of the day.

Recommendation 2: The government should continue reform of the aged care system to address the rationing of aged care services. This should ensure supply meets demand and eradicate waitlists for older people to receive services once assessed as eligible.

³ 2024 progress report on the implementation of the recommendations of the Royal Commission into Aged Care Quality and Safety | Inspector-General of Aged Care

⁴ <https://www.anglicare.asn.au/wp-content/uploads/2024/09/Life-on-the-Waitlist-Report.pdf>

Recommendation 3: Comprehensive explanatory material should be developed to ensure providers, older people and their families can understand the complexity of aged care service provision, what they are entitled to and their rights.

Classification of service groups

Under the new Rules, a more detailed classification framework is proposed to supplement the Australian National Aged Care Classification (AN-ACC) model, extending beyond residential care to other care types. While a more nuanced classification system is welcome, the framework proposed is complex and will be difficult for providers and people accessing care services to navigate. Clear explanatory material will be needed to support individuals to navigate the classification system.

Further, given the significance of the classification framework to the operation of the aged care system, we are concerned that this framework is embedded in a swathe of rules, which have been presented with limited time for stakeholders to comment. We propose that a more prudent approach would be to have the classification rules separated out into a tool that can be evaluated, reviewed and updated, as is the case for National Aged Care Mandatory Quality Indicator Program.

Recommendation 4: Clear explanatory material should be developed to support older people to understand the classification framework that applies to their assessed aged care needs.

Recommendation 5: The rules on classification of care should be separated from legislation into a tool that will allow for evaluation, review and updates.

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