

April 2025

**Department of Health and Ageing
Commonwealth Government**

Stage 4a Aged Care rules release

Via upload to the Department's website

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ARAS proudly acknowledges her Excellency
the Honourable Frances Adamson AC,
Governor of South Australia, and
Mr Rod Bunten as our Patrons.

ARAS welcomes the opportunity to provide feedback on the release of rule 4a relating to place allocation, obligations and funding for providers. ARAS's submission incorporates contribution from experienced staff providing valuable perspective and insight on essential matters critical to the needs of clients in the aged care sector.

Who is ARAS

ARAS, an independent not-for-profit established in 1990, provides free advocacy, information, and education to older South Australians. Established in response to the Chris Ronalds report, which led to a national advocacy framework. ARAS started with two Advocates and has grown to a team of 50 staff, with offices in Dulwich, Berri, Nuriootpa, and Victor Harbor. As an ASES-accredited organisation, ARAS is also the sole South Australian member of the Older Persons Advocacy Network (OPAN), delivering the National Aged Care Advocacy Program (NACAP). As a national network, OPAN supported over 44,400 older Australians in 2023-2024

ARAS is an originating member of the South Australian Alliance for the Prevention of Elder Abuse (APEA) and one of five founding members of Elder Abuse Action Australia (EAAA) funded by the Commonwealth Attorney General's Department.

ARAS was one of the few South Australian organisations to participate in the national Aged Care System Navigator Trial helping individuals access aged care services and continue to provide the service under the Care Finder Program. Additionally, ARAS is one of only three organisations nationwide selected to pilot the Home Care Check-In service, connecting vulnerable older Australians with support services.

ARAS played a significant role in supporting older people during the Royal Commission into Aged Care Quality and Safety. A key recommendation, 106 from the Commission was enhanced advocacy services, advocating for increased funding to allow more older people to access advocacy support. ARAS was integral in strengthening the voices of older people during this process.

ARAS' achievements are significantly supported by a dedicated and volunteer board. Its Board is chaired by Anne Burgess AM, who also chairs the Aged Care Council of Elders, a member of the National Aged Care Advisory Committee and the recently appointed chair of the Aged Care Transition Taskforce. Through her stewardship these organisations help to ensure that the voices of older Australians can be heard by those who develop and implement national aged care policies. With over 40 years in social justice, Anne's

Regional Offices by appointment only

Dulwich

175 Fullarton Road
Dulwich SA 5065

Berri

21 Denny Street
Berri SA 5343

Victor Harbor

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Victor Harbor SA 5211
(access from Coral Street)

Nuriootpa

2/1 First Street
Nuriootpa SA 5355

leadership is supported by board members who have experience and skills in multicultural ageing, LGBTIQ+ rights, First Nations communities, law, and human rights, alongside expertise in health and governance who provide strategic direction to ARAS.

Under the operational direction of Chief Executive Carolanne Barkla, ARAS combines strong leadership with extensive sector knowledge. Our diverse team of Advocates includes Aboriginal Advocates, who provide culturally safe and appropriate supports and local staff who provide regional knowledge and insights.

ARAS Advocates are qualified professionals with degrees in social work, law, psychology, social sciences, management, and accounting, and include former SAPOL officers. The Board and staff work together to support ARAS' vision of a community where all older people are valued and respected.

Chapter 4– Conditions on provider registration. Subdivision C – Cessation notifications

ARAS supports the requirement for providers to specify in a service agreement entered between the individual and the provider the circumstances in which the provider may cease delivering funded services. Clear articulation of the respective obligations and rights between the individual and the provider aids to minimise any future misunderstandings.¹ We look forward to the opportunity to provide feedback on the rules to be drafted under paragraph 148(c) of the Act.

We are pleased to note that a written notice to cease the delivery of services to an individual must include the individual's right to: -

- (i) any other mechanisms available to address complaints; and
- (ii) independent aged care advocates.²

In the event that an individual exercises their right to pursue a grievance or a complaint process which may take longer than 14 days³ to resolve, the rules are silent as to the status of the services being provided during this period. On such occasions as this may occur, it is suggested the rules provide that the application of the ceasing notification is stayed, and that services continue to be provided until the matter is resolved. It would be unreasonable to expect the individual to source and secure alternative providers in circumstances where a grievance process may resolve in their favour.

ARAS supports the requirement that a provider in considering asking an individual to leave the approved residential aged care home, must ensure suitable alternative accommodation is available with an alternative registered provider that:

- a) Meet the individual's needs, and,
- b) Is affordable by the individual⁴

The stated focus on meeting an individual's needs and ensuring the continuity of their funded aged care services is consistent with the recalibration of the new Aged Care Act and placement of the needs and rights of older people at the centre of the system.

¹ R149-35 *Notation*

² R149-40 (1)(d)

³ R149-40 (2)

⁴ R149-60 (2)

ARAS particularly supports the requirement that in assessing the individual's needs, it is to be undertaken by at least 2 medical or allied health practitioners one to be chosen by the individual.⁵ Choice and control is central to a rights based system and when decisions are being made that fundamentally impacts on the care and wellbeing of an individual accessing the funded aged care system, it is essential that they are actively involved.

Being fully informed is also a hallmark of any rights-based system, and when requested to do so, a registered provider delivering to another registered provider records relating to individual⁶, should also provide copies to the individual. copies of such records to be delivered should also be provided to the individual. The process of managing and ensuring continuity of care must be transparent and the information to be relied upon by an incoming registered provider upon transfer, should be known to the individual, so enabling them and their supporters/family to fill in any gaps that may be identified in the information provided.

Chapter 7 – Information and access. Division 1 – Personal information and record keeping. Subdivision C – Quality Indicators

The requirement to retain clear and accurate records for an individual is supported to facilitate the continuity of funded services.

ARAS notes with interest that Rule 154-3100(1)(h), provides that records must be kept of the name and contact details of any supporter registered in relation to the individual. This provision may not fully capture all lawfully appointed and relevant legal representatives, as not all may be registered supporters. Tribunal or Board appointed Substitute Decision Makers may not become registered supporters but nevertheless are important spokespersons for the individual that may be missed if not recorded.

Quality Indicators are a useful tool to determine the level and nature of care an individual may require from time to time. ARAS supports the inclusion of the details previously contained in the program manual into the rules.

ARAS proposes that additional details be considered for inclusion into the rules and they are: -

- **Quality indicator – medication management**

Individuals prescribed antipsychotic medications may on occasion be subject to a Community Treatment Order and this should be noted and recorded. The responsibility of administering prescribed antipsychotic drugs in these circumstances can often fall on allied health professionals not employed by the registered aged care provider who we submit, must facilitate and support the delivery of these medications to the individuals by third parties

ARAS has known of occasions where the anticipated smooth delivery of Tribunal ordered medical treatment by external allied health professionals has faced obstacles at the doorstep of registered aged care providers. Failure to record State based medical treatment orders can result in misunderstanding, and at times reluctance to comply.

Tribunal/Board ordered medical treatment under the relevant State based Mental Health legislation relates to medical treatment to be provided without the consent of the individual. Registered aged care providers who may be unaware of such orders, can resort to inquiring from the individual whether they consent to the medical

⁵ 149-60 (4)(b)(i).

⁶ 149-80 (3)

treatment being requested to be administered by external allied health professionals. Unsurprisingly, a proportion of these individuals would not provide consent resulting in breaches of orders. These situations can result in the individual being subjected to a detention order which is not desirable and entirely avoidable.

- **Quality indicators – Consumer Experience Assessment and Quality of Life Assessment**

Consumer based assessments as to their experience and quality of life are important and necessary to maximise general wellbeing. The means by which these assessments are to be provided are stated to be: -

- i. A self-completion assessment,
- ii. An interviewer facilitated assessment,
- iii. A proxy assessment⁷

It is submitted that these options do not fully reflect the supported decision-making principles endorsed by the new Aged Care Act. Further, there is no clear definition of the “proxy” to guarantee that the assessment accurately reflects an individual’s likely response to the assessment. It is submitted that further details be incorporated in the rules to ensure that the true voice is gathered and reflected in these assessments.

Part 6 – Obligations relating to aged care workers etc. Subdivision B – Process for granting exemptions

The rules enable the System Governor to revoke a registered provider’s exemption from subsection 175(1) of the Act in relation to a registered nurse in a residential aged care home if...

- (b) the System Governor is not satisfied that the clinical needs of the care recipients in the home:
 - (i) are being met; or
 - (ii) will be met during the period of exemption would otherwise be in force⁸.

Before the intended revocation can be implemented, the rules provide that notice must be given to the registered provider who is able to make submissions⁹ in response and should the System Governor ultimately revoke the exemption, this decision is reviewable¹⁰.

It is appropriate that a grievance process is available for registered aged care providers with respect to these types of decisions. ARAS however, expresses concern and inquires, that in circumstances where the System Governor identifies that the clinical needs of residents are not being met as a result of the exemption, ARAS would expect safeguards such as oversight by the Aged Care Quality & Safety Commission to be put in place to address this concern during the period that a registered aged care provider is exercising their review rights. ARAS would welcome the clarification of this process and reiterates the focus must always be on the care needs of the residents and must not be lost while the review rights are being pursued which could take some time.

⁷ R166-165 (a) and 166-170 (a)

⁸ R175-50 (1)

⁹ R175-50 (4)

¹⁰ R175-60

Thank you for the opportunity to comment on the release 4a of the rules.

Carolanne Barkla
Chief Executive Officer

