Response to "New Aged Care Act Rules consultation – Release 1 – Service list"

31 October

Joint response by: AGED CARE REFORM NOW (ACRN) and Carers' Circle, Quality Aged Care Action Group (QACAG), and Seniors Dental Care Australia.

Our grassroots organisations have come together to draft this submission drawn on our members' collective living and lived experience of the aged care sector.

Information about the individual organisations can be found on their respective websites. Questions, requests for clarification or further information for this submission can be directed to info@agecarereformnow.com.au.

Contents – Executive summary

Overview – why the Rules need to change

This submission focuses on the proposed Aged Care Rules 2024, however to understand the wider context of our feedback, you are invited to read the submission on the Aged Care Act from some of the organisations listed above. (Available https://agedcarereformnow.com.au/wp-content/uploads/2024/10/Joint-Submission-on-the-Aged-Care-Bill-2024-to-the-Community-Affairs-Legislation-Committee.pdf). Whenever we provide feedback, we do so in the context of **how these rules will impact ordinary people living in Australia**. We of course have the **human rights of the older person receiving care at the centre** of our thinking, but we also consider the **impact on family/community (if they have one)** and the **wider implications** for Australian society including having a **sustainable funded system**. We believe the Aged Care Act and related legislation in the form of Aged Care Rules and others should be the foundation of **a collaborative, transparent and effectively regulated aged care system that is focused on the human rights and quality of life of older people as their needs change.**

Services need to be individually person centred, fit for purpose to minimise risk and ensure physical health, mental health and safety, while providing dignity and respecting the rights of the older person.

Currently the Act provides a right to be assessed for government funded aged care services, but not for the actual provision of these services. This needs to change. **The proposed Services List should foremost be focused on the provision of quality care to ensure people are at the centre.**

We see many challenges with the current proposal but if we're asked what **our number one ask issue is – it does not enable people to stay in their homes as long as possible due to the unrealistic definitions of clinical care (personal care should be included in clinical care) and the caps placed on some services (such as cleaning and gardening).** People with fixed incomes will face difficult choices if the current proposal goes ahead and caps on services is a false economy.

This is a generation of people who had no, or very little superannuation - especially women. Policymakers need to understand this, especially when people are paying rent, they may have no real general income.

Policymakers must also understand that the business model for in home support is not the replication of residential care within a home environment and planning needs to reflect this. **The aim is to provide services and support for client to remain in their home for as long as possible and to live their life to the fullest on their terms.**

We will provide more detail on this and others throughout this submission.

The language used throughout is too complex

The Rules, particularly the information about funding (e.g. Chapter 1, Part2, Section 11-19 Final efficient price) are overcomplicated and difficult to understand/interpret. **It contains complex sections and legalistic language that does not align with plain language drafting principles.**

This seems in conflict with the Government's own Australian Public Service (APS) Guidelines and the Office of Parliamentary Counsel's Plain English Manual. This manual outlines the necessity of using straightforward language to enhance comprehension, reduce administrative burdens, and improve public engagement with legal texts.

Our members come from a wide variety of backgrounds and education levels. Even some of our most educated members have had difficulty understanding the meaning of things and we are concerned that those from CALD backgrounds or with varying education levels will not understand these key concepts that heavily impact on their quality of life. **We request that the Rules be edited so they are in plain language.**

(reference - General | Office of Parliamentary Counsel)

Funding of aged care services – lack of transparency

A sentence from the first page of the Rules reads,

" The Bill enables fair co-contributions from those who can afford to contribute to the cost of their care, which are based on recommendations of the Taskforce."

There has been no transparency as to how fair co-contributions have been determined and what these will mean for the average person. The system appears to enable wealthier individuals to structure their affairs to avoid paying high co-contributions, while simultaneously creating an unfair 'even playing field' for those with little to no assets.

While the statement from the Rules suggests recommendations from the Taskforce were utilised, the Taskforce itself lacked proportionate representation from older people. Indeed, we have anecdotal evidence that dissenting views were overruled by the majority, most of whom were not directly representing the interests of those who would be directly impacted by this unfair system. It is just this sort of lack of transparency and tokenistic consultation that has led to mistrust of the Department and aged care system more broadly.

Definitions of clinical and personal care need to change – Chapter 1, Part 4, Division 2, Sections 42 / 43

People with fixed incomes will face difficult choices if the proposed services list goes through unchanged. Many older people may forego showering or assistance to eat because they cannot afford it. Our members tell us they fear this system will lead them to choose between showering, eating or their medication.

Showering, personal hygiene assistance and oral health are currently not considered clinical and will cost the consumer as they are classified as "assistance with self-care and activities of daily living", rather than "clinical care". This is despite our experience that older people living at home may simultaneously require assistance with showering, dressing, feeding, personal hygiene and oral health, due to clinical health issues, mobility issues, or a significant health event, such as a stroke, or may be in the advanced stages of dementia.

While the Rules (Chapter 1, Part 4 Division 2, Section 42 – (4) includes wound care and management of skin integrity as clinical care matters, we believe that all personal care should be considered as clinical care – particularly for funding purposes.

Definitions of residential clinical and non-clinical care need to change – Chapter 1, Part 4, Division 8, Section 59.3

Bathing, showering, personal hygiene should be considered clinical care in both home and residential settings, as should eating and drinking and feeding. People living in residential aged care who require assistance with eating and drinking to ensure adequate nutrition and hydration have clinical reasons for requiring such support.

> Example: A former nurse is in residential care and has dementia. She hasn't been showered as the carers claim "she won't let them". She now has matted unkempt hair and scabies. A lack of showering and personal care has caused a clinical issue.

Caps on hours for domestic assistance and gardening need to be removed – Chapter 1, Part 4, Division 2 Sections 36 and 38

Pages 11-13 outline that in home support allows for assistance with in-house cleaning and keeping the garden in shape. The proposed Rules say that hours allocated for assistance for in house cleaning be limited to one hour a week and gardening only be "light" gardening whatever the definition of "light" might be. It's unrealistic that even small homes can be cleaned to a proper standard for one hour per week.

Both proposals carry high risks for older people remaining at home.

For older people with underlying health issues such as Chronic Obstructive Pulmonary Disease, or asthma, it is imperative their accommodation be cleaned properly. If it isn't, the outcome is health deterioration due to dust particle inhalation requiring increased clinical services or hospital. Therefore, any suggestion of one hour a week for cleaning is both high risk and a potential false economy.

Cleanliness and tidiness of living environment are also contributing factors to continued mental health, wellness including diminishing depression arising from older people not being able to manage these activities as they had once done. It is also a safety issue to prevent falls and accidents arising when older people with frailty or reduced mobility issues try to undertake these tasks themselves.

As part of this review, the range of cleaning services should be expanded. While it's important to protect the health and safety of workers, there needs to be some flexibility in the tasks they can undertake safely. Currently the restrictions on moving things (such as furniture) or doing things at a height (e.g. cleaning above the fridge) means that older people are not getting the level of cleaning they require and are undertaking it themselves. Members report of cleaners not wanting to move dining chairs to sweep and mop under the table, or not dusting above shoulder height. No one wants to envisage an 80-year-old up a step ladder trying to do dusting of high shelves.

Many older people do not have family members who can undertake any necessary cleaning etc so **it is imperative support at home domestic services and hours are fit for purpose for the environment in which the older person lives.**

Any proposal to diminish hours allowed for gardening carries high risks for safety and mental health. If shrubs etc aren't kept in check and height of lawns isn't kept under control, the risk of older people taking a fall and ending up in hospital with a broken hip, or similar injury is increased. The opportunity to sit in the sun and enjoy their garden is an important mental health activity. This is also an opportunity to sit in the fresh air and to also ensure Vitamin D levels are retained by sitting in the sun.

The proposals to place caps on hours for the above services should be dismissed. These services need to be individually person centred, fit for purpose to minimise risk and ensure health, mental health and safety.

The Rules are missing the definition of a carer and associated qualifications

We have long advocated for professionalising the workforce and believe the Rules should include the definition of a care worker who should have a minimum qualification of Certificate 3 in Personal Support if they are to work in residential aged care. This is because more clinical care is often required in residential aged care.

Missing services from the Service types list - Chapter 1, Part 3, Section 26 and 32 Service types

We believe one of the objectives of aged care service provision in the home should be to keep people at home as long as possible in line with their wishes, and because it costs the Commonwealth less money, therefore the list of service types on page 5 should expand to include the following:

Osteopathy

Osteopathy complements existing allied health services like physiotherapy, which is already mandated under the Aged Care Act. Both professions focus on enhancing physical health but employ different techniques and philosophies. Integrating osteopathy would enrich the multidisciplinary approach to care, ensuring that residents receive comprehensive treatment tailored to their specific needs.

Heating and cooling requirements

There should be provision for the maintenance and service of heating and cooling services if people have a GP confirmed medical condition which requires thermo-regulated ambient temperature or has asthma.

Carpet cleaning

There should be provision of specialized carpet cleaning services in addition to regular cleaning services for people who have a GP confirmed medical condition such as incontinence or asthma.

Transport

We believe people in regional and remote areas should have a different classification to reduce the cost burden. We recommend consideration be given to developing a particular formula for setting travel charges for delivery of in-home support and taking seniors to services outside the home. The current proposed per kilometre transport charges are eating up home support package funds, particularly for rural, remote and regional areas.

Non-PBS medications

Currently there is no provision for non-PBS medications under the Aged Care Act, unlike Veterans and NDIS recipients.

Many of our members rely on non-PBS items for their daily living and wellbeing. Non-PBS items play an important role in maintaining an individual's health or function. They can act as a preventative, helping avoid issues down the track that would cost the government more to treat. For example, proper skin care products such as soap-free wash can help prevent rashes that would require further medical intervention. Supplements such as magnesium, help stop cramping and improve sleep. If funding for these stopped, they would have devastating health and wellbeing consequences for thousands of older Australians.

Many of our members rely on non-PBS items for daily living and wellbeing. Many are expensive, some are not, but it's the number of items they need which accumulates, eating into the little money they have. It would be a tragedy if our older Australians would have to choose between eating or treating one of their conditions. We strongly urge the Department to ensure the payment of non-PBS items in the reformed in-home care. To cut them would have shockingly dire consequences.

Supporting assistance animals

There is currently no recognition of assistance animals within the Rules. Given we believe that a person's home care package should include the services that support their physical and mental wellbeing, we suggest that services that the older person cannot do themselves safely such as dog washing, should be an allowable expense.

Online service access

We would like to see older people living in Australia have the ability to use their home support package funds to acquire a current iPad or laptop hardware and corresponding software on an "as needs assessment" basis. Funding should also be available to maintain and update the software on the related technology. This access, particularly to health-related services, would be extremely important to those wishing to remain in their homes, with relevant support, rather than enter residential care. It is also relevant for older people in rural, remote and regional areas, reducing the need for unnecessary travel.

Access to current model hardware and corresponding software would ensure optimal user experience and quality performance and reliability, particularly for health related interactions such as telehealth. They can also help reduce loneliness.

Expansion of home maintenance and repairs provision

Chapter 1, Part 4, Division 2, Section 38-2 (page 12) discusses home maintenance and repairs.

a) The examples given are limited. We would like it to be more flexible and expansive to enable the provision of services that support people to live at home as long as possible. Not just restricted to what in the operations manual.

d) While these services may have used to have been paid for the individual, those on a full or part pension will struggle to pay for professional services to help them **stay safely at home, and enjoy their home and gardens.**

> Example: An older lady lives alone and used to enjoy her garden for both the physical and mental health benefits it provides. However without annual professional pest control services, she's unable to enjoy her garden safely as she's quite anxious about the red back spiders that reside there.

Definition of "age-related decline" needed

In various sections of the Bill and Rules, the concept of "age-related safety" has not been defined. (Chapter 1, Part 4, Division 2, Section 38-2 (page 12) and Section 46 (page 19). Greater clarification needs to be provided so consumers can be confident that they are fit for purpose.

Clarification required on meals provision

The table relevant to Chapter 1, Part 4, Division 2, Section 40 Meals (page 14) says meal provision does not include the cost of ingredients. However, the cost of a meal is determined by the cost of ingredients so these costs cannot be differentiated. Additionally, the cost of purchasing ingredients will vary by location, subject to cultural considerations and needs and also dependent on the provider of that service. These factors will need to be accounted for.

Assistance to maintain personal affairs – protections from elder abuse required

Under Chapter 1, Part 4, Division 2, Section 45 – Services in the service type social support and community engagement (page 22), part 6 relates to assistance to maintain personal affairs. While we do not disagree with this being a service provision, we question how this will be regulated. As part of this we must change the definition of elder abuse which currently only applies in community settings, while abuse under the aged care system is classified as substandard care.

Broadening art therapy to cover music therapy and craft

Chapter 1, Part 4, Division 2, Section 47 – Services in the service type therapeutic services for independent living includes Art Therapy which we welcome. We ask that the Rules be changed to reference Art and Craft as it's very common for older people to be involved in craft activities (it's covered under residential care) so should be covered in the community setting with the Case Manager able to monitor craft supplies from packaged funds.

Missing services from the Service types list – Chapter 1, Part 4, Division 8 Residential Service types

Missing from the list of services in residential care is communication with the individual receiving care and family or appointed person about their care. Too often our loved ones go into residential aged care and we lose contact with their day to day care. We believe proper communication with families should be enshrined in the Rules as they are in other sectors such as childcare. Communication should be included the service of care and services plan oversight as well as Nursing.

Dental practitioners should be included in services list

In the new Aged Care Act Rules, the only mention of a dental practitioner is that we are not part of the allied health professions (Chapter 1, Part 2, section 5 definitions, page 2). Dental practitioners, dentists, oral health therapists, dental hygienists, dental therapists and dental prosthetists are not mentioned as providing any services to persons in aged care. Oral health and general health are connected. Poor oral health leads to illness, hospitalisation and death from sepsis, aspiration pneumonia and infective endocarditis.

Under Nursing, nurses are required to provide assistance with, or provision of support for, personal hygiene, including oral health management and considerations for bariatric care needs (Chapter 1, Part 4, Division 8 - page 35). Without hands-on training by dental practitioners, nurses or carers are unable to assess and plan for the needs of older persons who are suffering from pain and dental neglect. Nurses are also not able to accurately identify and plan for older persons who have had complex dental procedures, including veneers, crowns, crown and bridge, implants, implant-over-dentures, and fixed and removable orthodontic retainers.

Dental practitioners must be included in the services list in order to provide best-practice and evidence-based oral health assessments, oral health care plans, oral health instructions / education, recommendation of dental products and aids, and referral to appropriate dental treatment (dentist, oral health therapist or dental prosthetist).

Twice-daily oral health care is integral to well-being, quality of life, eating, talking and smiling.

Dental practitioners must therefore be included as providing services under the new Aged Care Act and Rules.

Strengthening the quality of care – changing "may" to "must"

In Chapter 1, Part 4, Division 2, Section 32 – Home support service types Allied Health and therapy – part 3a, we believe the word "may" should change to "must" to ensure a high quality standard of care. So the service MUST include clinical intervention, expertise, care and treatment, education (including techniques for self-management), and advice and supervision to improve capacity.

Untrained care staff should not be delivering allied health services

We are concerned that providers may try to cut costs and improve margins by having care staff carry out work that should be conducted by allied health professionals under Chapter 1, Part 4, Division 2, Section 32 – Home support service types Allied Health and therapy – part 3e.

Lack of clarity on responsibility for monitoring the individual's regular health care appointments in residential aged care

Within Chapter 1, Part 4 Division 8, Section 60 – there is lack of clarity regarding who is responsible for the older person's health care. Under part 6 is says "making arrangements for health professionals to visit the individual for any necessary health professional appointments", but it is difficult to know what is deemed "necessary". Similarly, we question whether co-ordination of specialist appointments also take place under this, or if this is captured under 'nursing'. For example, it is unclear who would be monitoring the individual's regular health care appointments.

Beyond the Rules - additional funding required for consumer assistance

While the current Rules address costs associated with specific service provisions, there is a significant gap in funding for consumer assistance. We urgently need government funding to establish a dedicated support line for aged care services recipients, providing comprehensive information on all aspects of their packages or contracts. Additionally, funding is required for legal support to help negotiate contracts with providers and resolve disputes related to service provision, such as bathroom renovations or wheelchair ramps that fail to meet building guidelines or standards.

Conclusion – significant amendments required

The current proposed Rules require significant amendments before they should be able to be passed in Parliament.

Given the short timeframe, in the interests of meaningful engagement with older people we would welcome further opportunity to be consulted and submit further comment.