

Aged Care Rules 2024

Consultation Draft

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Recipient

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About Speech Pathology Australia

Speech Pathology Australia is the national peak body for speech pathologists in Australia, representing more than 15,000 members. Speech pathologists are university trained allied health professionals with expertise in the diagnosis, assessment, and treatment of communication and swallowing difficulties. The Association supports and regulates the ethical, clinical and professional standards of its members, as well as lobbying and advocating for access to services that benefit people with communication and swallowing difficulties.

Speech Pathology Australia is a member of the [National Alliance of Self-Regulating Health Professionals \(NASRHP\)](#)¹. NASRHP is the body that accredits self-regulating professional associations using standards that mirror the National Registration and Accreditation Scheme under the Health Practitioner Regulation National Law (National Law).

SPA regulates the speech pathology profession through the Certified Practising Speech Pathologist (CPSP) credential, including requirements to meet ethical and professional standards, maintain recency of practice and continuing professional development and training. The CPSP credential is required for participation in a number of government funding schemes including Medicare, the National Disability Insurance Scheme (NDIS) and the Department of Veteran's Affairs (DVA). At present, aged care is one of the few sectors that does not have a consistent requirement across sectors for speech pathologists to hold the CPSP credential.

Please refer to Attachments for further information about speech pathologists and how they are regulated:

1. What is a speech pathologist and what do they do?
2. Speech Pathology Australia Code of Ethics 2020
3. Speech Pathology Australia Professional Standards for Speech Pathologists in Australia
4. Certification Program Guide for Certified Practising Speech Pathologists.

¹ For further information about NASRHP, refer to: <https://nasrhp.org.au/>

Summary

Recommendations

1. Amend the definitions in the Rules for 'allied health profession' and 'health profession' to include both registered and self-regulated allied health professionals, including speech pathologists that hold the Certified Practising Speech Pathologist credential.
2. Ensure consistency throughout the Rules to reflect that speech pathology is part of 'clinical care', with Certified Practising Speech Pathologists recognised as allied health professionals funded and authorised to provide this care.
3. Ensure Home support service types:
 - include reference to services to regain or maintain communication abilities,
 - are eligible for service provision by a speech pathologist, and
 - recognise speech pathologists as 'health professionals' and 'allied health professionals', who can provide these services.
4. Amend the definition of therapy in residential aged care to reflect 'a reablement and restorative care approach aimed at maximising an individual's physical, *functional, cognitive and communication capabilities*' to support health and wellbeing, independence and social connection.
5. Amend the Assistive Technology prescription and clinical support section to include registered and self-regulating allied health professionals to ensure speech pathologists are recognised as prescribing AT supports for communication and swallowing.
6. Amend outlined sections in home support (nutrition supports) and residential aged care (meals and refreshments) to enable prescription of thickeners by speech pathologists for people with dysphagia.
7. Ensure that the Rules reflect that reablement is a core focus of aged care and recognise that reablement and restorative care is needed for communication and swallowing in addition to physical functioning.

Aged Care Rules 2024

Executive Summary

Speech Pathology Australia (SPA) is very concerned about the consultation draft of the Aged Care Rules 2024 for the Service List (the Rules). The Rules as drafted exclude speech pathologists and speech pathology services from many aspects of aged care. This is clearly unacceptable.

Urgent and significant re-drafting of key definitions and clauses around service provision for allied health is required.

Speech pathologists are an integral part of the aged care system. Speech pathologists currently provide services to older people across all programs of the aged care system, including in the community (e.g. Commonwealth Home Support Program CHSP, Home Care Package Program HCP, Short Term Restorative Care Program STRC) and residential care (transition care program TCP, and residential aged care RAC).

Speech pathologists are university-educated allied health professionals that assess and manage communication and swallowing difficulties, particularly in older adults affected by complex conditions like stroke, dementia, and Parkinson's Disease etc. These disorders are common in older populations and have significant consequences for the older person and the people that support them. Communication difficulties can significantly impact independence, social connections, decision-making, mood, and quality of life. Swallowing difficulties (dysphagia) can lead to serious health complications such as malnutrition, pneumonia, choking, and even death.

As will be further outlined in this submission, the current draft of the Rules is not consistent with the recommendations of the Royal Commission into Aged Care Quality and Safety, the Statement of Rights in the Aged Care Bill 2024 and the Aged Care Taskforce regarding funding for clinical care. It is inconsistent with documented needs of older people with high rates of communication and swallowing difficulties in aged care settings and accepted best practice care for these older people requiring speech pathology assessment and management.

These Rules do not uphold a human rights-based approach to aged care, recommended by the Royal Commission and espoused as the aim of the new aged care system and the underpinning principle of the new Aged Care Act.

The integrity of the aged care system would be compromised by the application of these draft Rules.

Speech Pathology Australia calls for urgent amendment of the Rules as outlined below.

1. Definitions of allied health ‘and health profession’ must include self-regulated professions such as speech pathology

Recommendations

- 1. Amend the definitions in the Rules for ‘allied health profession’ and ‘health profession’ to include both registered and self-regulated allied health professionals, including speech pathologists that hold the Certified Practising Speech Pathologist (CPSP) credential.**
- 2. Ensure consistency throughout the Rules to reflect that speech pathology is part of ‘clinical care’, with Certified Practising Speech Pathologists recognised as allied health professionals funded and authorised to provide this care.**

The definition used for ‘allied health professional’ and ‘health professional’ referenced throughout the Rules only includes those ‘registered under National Law’. This excludes speech pathologists as a self-regulated health profession. The definitions in the draft Rules mean that access to appropriate treatment and support for a vulnerable cohort of older people needing speech pathology supports would not be provided in the aged care system.

Speech pathology is an allied health profession and should be recognised as such, with the definitions in the Rules amended to include both registered and self-regulated allied health professions.

Furthermore, consistency across the Rules must be ensured. Speech pathology must be recognised as ‘clinical care’ across both home support and residential care, with Certified Practising Speech Pathologists (CPSPs) recognised as allied health professionals funded and authorised to provide this care. Attachments 1-4 of this submission provide background information about speech pathologists and the self-regulatory framework provided by Speech Pathology Australia. The CPSP self-regulatory framework is similar to requirements for Ahpra-registered professionals.

Allied health encompasses a diverse group of professions and whilst there exists no universal definition at Commonwealth level, there is basic agreement on underlying principles that must be reflected in a definition (beyond that currently included in the Rules of ‘other than dental, medical, midwife or nurse’) including:

- university qualified practitioners with specialised expertise in preventing, diagnosing and treating a range of conditions,
- who hold university qualifications at AQF Level 7 or higher, and
- who may be either registered under the National Scheme, or self-regulated, such as speech pathologists that hold the Certified Practising Speech Pathologist (CPSP) credential.

Speech pathology is a self-regulating allied health profession, upholding the framework of standards and requirements under the National Alliance of Self-Regulating Health Professions (NASRHP), which mirror those requirements under the National Registration and Accreditation Scheme (National Scheme). Speech pathologists that hold the CPSP credential are therefore regulated to the same standard as allied health professions registered under the National Scheme. This however has not been recognised in the Rules in either the definitions of ‘allied health professionals’ or ‘health profession’, which thereby exclude speech pathologists and other key members of multidisciplinary aged care teams such as dietitians and exercise physiologists, who are amongst the self-regulated professions.

2. Home Support service types must include funded speech pathology services

Recommendation

3. Ensure Home Support service types:

- include reference to services to regain or maintain communication abilities,
- are eligible for service provision by a speech pathologist, and
- recognise speech pathologists as 'health professionals' and 'allied health professionals', who can provide these services.

The following recommended amendments (indicated in red text) relate to inconsistencies in the drafting of s. 32 and s. 33 of the Rules. Refer to Ch. 1, Pt 4, Div 2. (p. 7-9), and their relationship to the definition of a 'health professional'.

s. 32 Allied health and therapy

- Amend s. 32(2)(a) of the Rules to specify that the service *is for the individual to regain or maintain physical, functional, cognitive abilities or **communication** abilities.*
- Amend s. 32(3)(e) to specify that '*the service may be delivered directly by a health professional, **or an allied health professional** or implemented by an allied health assistant or aged care worker under the supervision of the health professional **or allied health professional** where safe and appropriate to do so*', and
- Ensure that self-regulated health professionals such as speech pathologists that hold the CPSP credential are included in the '*allied health professional*' and '*health professional*' definitions, as discussed in Recommendation 1, above.

s. 33 Assistance with transition care

Within the table *Services in the service type assistance with transition care*

- Item 2 – *Transition care clinical services* – amend:
 - *(b)(i) optimising the individual's physical and cognitive functioning, **communication abilities** and independence*
- Item 3 – *Transition care therapy services* – amend:
 - *(b)(i) the individual's physical and cognitive functioning and **communication** abilities*

Without these amendments:

- There is no overt requirement to provide services to regain or maintain communication abilities (s. 32(2)(a)), s.33
- Speech pathology and diet or nutrition services would need to be either delivered directly or supervised by a 'health professional' (s. 32(2)(e)) - a definition that currently excludes speech pathologists and dietitians. It is unclear which 'health professionals' would be authorised to deliver these services within their scope of practice other than speech pathologists and dietitians.

3. Residential aged care must include funded speech pathology services

Recommendation

4. Amend the definition of therapy in residential aged care to reflect ‘a reablement and restorative care approach aimed at maximising an individual’s physical, functional, cognitive and communication capabilities’ to support health and wellbeing, independence and social connection.

Current wording of the Rules preclude access to speech pathology services within residential aged care. There are two significant issues with wording, and both must be addressed to uphold the rights of older people that live with communication and swallowing needs affecting their health and wellbeing:

1. the definitions used for ‘*allied health*’ and ‘*allied health professionals*’ in the key definitions section of the Rules (Chapter 1, Part 2, Section 5, pages 2-3) (refer to Recommendation 1, above), and
2. the wording around what is provided by allied health in residential aged care.

Specifically:

Part 4 Div. 8 s. 60 Residential Clinical Care (p. 34 - 36):

Within the ‘*Services in the service type residential clinical care*’ table:

- Item 2, Column 1 - Service: only includes ‘*allied health and fitness therapy*’, excluding speech pathology on current definitions,
- Item 2(a) – Column 2 - Description: only includes therapy ‘*designed by health professionals*’, excluding speech pathologists on current definitions,
- Item 2(d) – Column 2 - Description: only includes therapy ‘*aimed at maintaining and restoring the individual’s fitness and physical ability to perform daily tasks for themselves*’, excluding interventions provided by speech pathologists for swallowing and communication disabilities,
- Item 7 – Column 1 – Service: ‘*General access to allied health services*’ - appears to exclude speech pathology services on current definitions, and
- Item 7 (a) – Column 2 – description: “*making arrangements for allied health professionals to visit the individual for any necessary allied health appointments (but not the cost of the appointments or any gap payments charged for the appointments)*” excludes access to speech pathologists on the current definition of an ‘*allied health professional*’.

The consequences of this wording are that older people with communication and swallowing difficulties will not be provided with the speech pathology support they need.

Current definitions of ‘*allied health and fitness therapy*’ in residential care indicate it is only to be provided for support with ‘*fitness and physical abilities*’ (Ch. 1, Pt. 4, Div 8, s. 60, p. 34). This contrasts with the provision of ‘*allied health and therapy services*’ to ‘*regain or maintain physical, functional or cognitive abilities*’ in the Home support service types (Ch. 1, Pt. 4, Div 3, s. 32(2), p. 7), leading to a discriminatory restriction of services for people in residential aged care.

Amendment of Item 2(d) of the ‘*Services in the service type residential clinical care*’ table is required to overtly include support for communication and swallowing difficulties. Specifically, wording of this description must reference therapy ‘*using a reablement and restorative care approach aimed at maximising* an individual’s fitness, physical, functional, *cognitive and communication capabilities*’ to support enhanced health and wellbeing, independence and social connection.

The Rules as they stand are in conflict with the strengthened Aged Care Quality Standardsⁱⁱⁱ and their associated guidance materialsⁱⁱⁱ (e.g. which specifically name speech pathologists as needing to be referred to under Clinical Care Standard 5). The Aged Care Bill 2024^{iv} currently before the Senate

outlines that all registered providers must meet the Aged Care Quality Standards (e.g. Chapter 1, Part 2, Div 2, 15 (page 40.)) The current version of the Rules conflict with this legal requirement. The Statement of Rights also contained in the Aged Care Bill 2024 will not be upheld for older people with complex communication needs within current wording of the Rules (e.g. (8) 'a right to communicate in the individual's preferred language or method of communication, with access to interpreters and communication aids as required') given that speech pathologists are required to prescribe and implement these communication aids.

Furthermore, the Rules do not uphold the recommendation of the Royal Commission into Aged Care Quality and Safety^v for speech pathology to be an essential allied health service provided in residential aged care (e.g. Recommendation 38. '*Residential aged care to include allied health, including ... a speech pathologist*').

The Royal Commission emphasised that older people should have equitable access to allied health services, including at home in residential care, tailored to their needs. The draft Rules disregard these recommendations, limiting allied health in residential care to maintaining or restoring physical abilities. The exclusion of cognitive, communication and swallowing support needs is discriminatory. It is not consistent with the espoused human rights-based approach of the Aged Care Act and the intent to meet obligations under international conventions (e.g. the Convention on the Rights of People with a Disability^{vi}). The Rules thereby fail to acknowledge the documented needs of older people in residential care, where there are high rates of swallowing difficulties (up to 50% of residents^{vii,viii}) and communication support needs (>95% of residents)^{ix} that significantly affect residents' health and wellbeing.

4. Assistive technology in Home Support must include speech pathology prescription and clinical support

Recommendation

5. Amend the Assistive Technology prescription and clinical support section to include registered and self-regulated allied health professionals to ensure speech pathologists are recognised as prescribing AT supports for communication and swallowing.

SPA is deeply concerned that the current Rules preclude speech pathologists from prescribing and implementing Assistive Technology (AT) under Home Supports.

Ch. 1, Pt. 4, Div. 4, s. 51 (p. 25 - 26) of the Rules:

Within the table '*Services in the service type equipment and products*' (p. 26):

- Item 6 – '*Assistive technology prescription and clinical support*': the description states '*The following, delivered by an allied health professional*', which excludes speech pathologists on current definitions. This means older people with swallowing and communication needs would not receive the assistive technology they need, prescribed by speech pathologists.

The Rules must be amended to ensure the definition of '*allied health professional*' is changed as per Recommendation 1, and the aforementioned '*assistive technology prescription and clinical support*' section recognises speech pathologists as allied health professionals, who are able to prescribe and provide clinical support for assistive technology.

Speech pathologists have the expertise to prescribe and implement assistive technology that assists people with complex communication needs (also known as Alternative and Augmentative Communication),^x and swallowing support needs. People with complex communication needs may have little or no speech, or speech that others find difficult to understand and use assistive technology to assist them to communicate or understand others. Access to communication aids is crucial for

independence, information exchange and social connections. It is a core right under the Aged Care Bill 2024, Statement of Rights (no.8), that people have access to the communication aids they need.^{xi} People with swallowing difficulties may experience significant difficulties such as choking, aspiration, malnutrition and dehydration, and reduced quality of life without appropriate supports.

5. Nutrition supports must include prescription of thickeners by speech pathologists

Recommendation

6. Amend outlined sections in home support (nutrition supports) and residential aged care (meals and refreshments) to enable prescription of thickeners by speech pathologists for people with dysphagia

The use of 'thickeners' is not appropriately included in the Rules.

In home support, (Ch. 1, Pt. 4, Div. 2, s. 43 (p. 16) the following amendments are required (indicated in red text):

Services in the service type nutrition

1. "Nutrition Supports – Supply of:

a) *Supplementary dietary products (enteral and oral)*

b) *Aids (e.g. thickeners)*

that are

c) *Required for conditions related to age-related functional decline and impairment, and*

d) *Prescribed by a dietitian, speech pathologist or health professional"*

In Residential care service types, Ch. 1, Pt. 4, Div. 8, s. 59 (p. 32), Meals and Refreshments should identify the inclusion of thickened fluids:

Services in the service type residential everyday living

9. *Meals and refreshments*

(b) special diets and drinks, if needed to meet the individual's medical, cultural or religious needs, including but not limited to enteral feeding, nutritional supplements, texture-modified meals, thickened fluids, gluten-free, lactose-free, vegetarian.... etc"

Prescription of these thickeners in residential aged care will also rely on amendments outlined in Recommendation 3 to enable speech pathology service provision in this setting.

Swallowing difficulties are prevalent in older people accessing aged care and inextricably linked to nutrition. More than one in two older people in residential aged care^{xii,xiii}, and up to one in three older people living in the community live with dysphagia^{xiv}. Being unable to safely swallow food and drink can significantly impact oral intake with a resulting effect on being able to consume sufficient nutrition. A common difficulty with dysphagia is the inability to safely swallow drinks, which due to a delayed or uncoordinated swallow reflex, flow quickly into the throat and enter the windpipe causing aspiration. Thickening of drinks is often required to avoid this aspiration and the risk of aspiration pneumonia, as well as ensure the person can safely consume enough fluids to meet their nutrition and hydration requirements.

Thickening of drinks is part of a swallowing management plan prescribed by a speech pathologist, that results from a detailed clinical assessment of swallowing. Thickening of drinks is achieved by the

use of specially prescribed ‘thickeners’ or thickening agents. These are not medications and not covered on the PBS or other schemes. Just as someone may need a nutritional supplement to aid their nutritional intake, prescription of thickeners to thicken fluids is also prescribed by speech pathologists.

5.Reablement must be a core focus of aged care

Recommendation

7. Ensure that the Rules reflect that reablement is a core focus of aged care and recognise that reablement and restorative care is needed for communication and swallowing in addition to physical functioning.

The Rules must be amended to reflect reablement as a core focus across both home support and residential care. Amendments to Pt. 4 Div. 8 s. 60 *Residential Clinical Care* (p. 34 – 36) should explicitly include ‘*reablement and restorative care*’ as function of allied health service provision in this context. Reablement must be recognised to be broader than just focussing on physical skills, and therefore amendment to wording in this section must also refer to physical, functional, cognitive and communication needs.

The Royal Commission into Aged Care Quality and Safety recommended that the new aged care system should include a focus on reablement and restorative care^{xv}, including as a key underpinning principle in Recommendation 3 (b) xi (*care and supports should as far as possible, emphasize restoration and rehabilitation with the aim of maintaining or improving older people’s physical and cognitive capabilities and supporting their self-determination*). In their final report, the Commissioners outlined a vision for what this reablement looked like in practice, e.g.:

“the care and support to be provided in the new system should enable older people to continue to find hope, enjoyment and meaning, as far as possible, at all stage if their life regardless of poor health or physical or cognitive impairment. Older people who experience ill health or injury should be supported to learn or relearn the skills they need to function in everyday life. The aged care system must focus on supporting them to re-establish or maintain living skills and to restore or maintain their connections with their communities. As a matter of principle, aged care must focus on older people being supported to live their lives in dignity, wherever they choose to do so”^{xvi}

It is clear the intent of the aged care system was for a reablement approach for older people’s physical **and** cognitive capabilities. Despite this, the Aged Care Bill 2024 and now Aged Care Rules 2024 do not adequately mention ‘reablement’ or restorative care as a principle, particularly in the residential care.

Reablement and restorative care does not only target physical skills or function. Speech pathologists work to enhance, restore or maintain communication skills through various therapies and strategies. The current Rules only refer to “assistance with communication” under the service type ‘residential non-clinical care’ (Chapter 1, Part 4, Div 8, section 59, page 33). Care staff need clinical assessments and education from speech pathologists to help those with complex communication support needs.

Amendments to the Residential Clinical Care section must recognise clinical care provision for both physical **and cognitive / communication** difficulties that includes speech pathologists.

References

- ⁱ Australian Government Department of Health and Aged Care (2023) [The strengthened Aged Care Quality Standards – Final draft \(November 2023\) | Australian Government Department of Health and Aged Care](#), accessed 28 October 2024.
- ⁱⁱ Australian Government Department of Health and Aged Care (2023) [The strengthened Aged Care Quality Standards – Final draft \(November 2023\) | Australian Government Department of Health and Aged Care](#), accessed 28 October 2024.
- ⁱⁱⁱ Australian Government, Aged Care Quality and Safety Commission, Guidance Material for the strengthened Aged Care Quality Standards. Jan 2024 [Draft: Standard 5 - Clinical Care](#) page 56-57
- ^{iv} The Parliament of the Commonwealth of Australia. House of Representatives. Aged Care Bill 2024. See page 47 Statement of Rights. https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r7238_first-reps/toc_pdf/24104b01.PDF;fileType=application%2Fpdf#search=%22legislation/bills/r7238_first-reps/0000%22. Accessed 28 October 2024
- ^v Royal Commission into Aged Care Quality and Safety Final Report Volume 1 Summary and recommendations See e.g. Royal Commission Recommendations 36, 38 and 58, [Royal Commission into Aged Care Quality and Safety Final Report - Care, Dignity and Respect: Volume 1](#)
- ^{vi} [Convention on the Rights of Persons with Disabilities | OHCHR](#)
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- ^x Speech Pathology Australia (2020). *Augmentative and Alternative Communication Clinical Guideline*. Melbourne: Speech Pathology Australia.
- ^{xi} https://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r7238_first-reps/toc_pdf/24104b01.PDF;fileType=application%2Fpdf#search=%22legislation/bills/r7238_first-reps/0000%22. Page 47
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- ^{xv} Royal Commission into Aged Care Quality and Safety Final Report Volume 1 Summary and recommendations [Royal Commission into Aged Care Quality and Safety Final Report - Care, Dignity and Respect: Volume 1](#)
- ^{xvi} Royal Commission into Aged Care Quality and Safety Final report Volume 3a pg 5-6 <https://www.royalcommission.gov.au/system/files/2021-03/final-report-volume-3a.pdf>