
New Aged Care Act Rules Consultation – Release 3 – Provider Obligations

March 2025

Thank you for the opportunity to make a submission relating to Provider Obligations.

The Stage 3 release covers obligations of registered providers and conditions on registration of registered providers under Chapter 3 of the new Act. Since there is limited time and so much content, I cannot provide comments for all of the details. Therefore, the following is feedback for some of the obligations and the registration categories.

Provider obligations

The new universal provider registration will be across all aged care programs with 6 registration categories relevant to the type of services provided. The strengthened Quality Standards will be one of the conditions to comply with but not for those registered under categories 1, 2 and 3 as shown in the table below.

Provider Registration Category	Description	Service Types	Provider Obligations & Code of Conduct apply?	Aged Care Quality Standards apply?
Category 1	Home and community services	<ul style="list-style-type: none">• Domestic assistance• Home maintenance and repairs• Meals• Transport	Yes	No
Category 2	Assistive technology and home modifications	<ul style="list-style-type: none">• Equipment and products• Home adjustments	Yes	No
Category 3	Advisory and support services	<ul style="list-style-type: none">• Hearing and squalor assistance• Social support and community engagement	Yes	No

Table Relates to proposed provider registration categories. Link: How the new aged care regulatory model will work: <https://shorturl.at/q1qq1>

However, I am aware that the condition of registration on complaints, feedback and whistleblowers will apply to all registered providers. CHSP and NATSIFACP providers will also be registered providers under the new Act and will need to adhere to any conditions

of registration and obligations that apply to them. This is in addition to any other terms and conditions that are set out in their grant agreement. The Code of Conduct will apply to all providers under the new Act.

All registered providers will be required to comply with rights and principles under section 144. All existing principles under the current legislative framework, including the User Rights Principles 2014, will be replaced by a single set of Rules made under the new Aged Care Act 2024. There will not be a new and separate version of the User Rights Principles 2014. However, the details of principles have not been released yet so it is difficult to provide complete feedback.

Feedback and Suggestions

Provider Registration and Strengthened Aged Care Quality Standards

It is concerning that Providers registered under categories 1, 2, 3 especially relating to domestic support and meals will not be audited against the standards. Part 3 of the new Act will consist of rights and principles and the conditions that will apply to Providers. Until the full details are available, we will not know the strength and the extent of these conditions or obligations.

I am aware that the registration is based on the level of risk associated with the type of care that the providers wish to deliver and having a risk proportionate approach aiming to make it less onerous for providers of lower risk services to enter the market.

I understand that this is an attempt to balance oversight with the need to reduce the burden on low-risk providers but still it is concerning as some providers may not face the same level of scrutiny as others or there will be less oversight. This may lead to poor services and a lack of accountability.

The removal of strengthened aged care standards for some registration categories such as for domestic and meal services raises concerns about whether it aligns with the Statement of Rights outlined in section 23 of the new Act. The Statement of Rights is designed to ensure that aged care recipients' rights are protected and that they receive services that are safe, respectful and of high quality. Furthermore, providers must demonstrate they understand the Statement of Rights in strengthened Quality Standard 1 but this standard will not apply to registered providers under categories 1, 2 and 3 and so oversight may be less and lead to poor adherence. The removal of the standards could potentially diminish the intent of the new Aged Care Act and its Statement of Rights.

The rights to choice, equitable access, quality care, dignity, and respect could be compromised if these are removed, particularly for individuals who depend on them for daily living. It may reduce access to essential services that individuals rely on to live comfortably. It could disproportionately affect those with higher care needs or limited capacity to perform these tasks themselves, particularly in a way that aligns with cultural safety and catering to individuals living with dementia or other cognitive impairment. Removing standards may lead to inequitable access for individuals who rely on them, thereby not meeting the requirement of equitable access. There is a risk that some home aged care providers might not be held to the same rigorous quality benchmarks. This could potentially lead to variability in the quality of care, which might undermine the commitment to ensuring consistent, high-quality care for all individuals, especially those who are more vulnerable.

Removal of standards could lead to a decrease in the quality of services such as inconsistent cleaning or inadequate meal services, it could harm the dignity, health and

well-being of individuals who depend on these services. These services are essential to maintaining a dignified living environment, especially for those who are unable to perform these tasks independently. It could lead to environments that are not dignified or respectful of the individual's needs.

It could risk providers respecting the individual's right to advocate and make informed decisions about their care. It might lead a gap in accountability for providers, potentially leaving recipients vulnerable to subpar care or exploitation. This would not align well with the rights the Statement promotes.

The rights under the new Act are meant to ensure care is individualised and person centered. A complete removal of standards could potentially lead to a less tailored approach to care. If providers aren't held to the same level of scrutiny, there might be instances where the individualised care isn't as robust, thus conflicting with the commitment to protect individual rights and needs.

I am also aware that there may still be an assessment by the Commission (regulator) for Categories 1, 2 and 3 but it will be a check in terms of the other tests that are set out in the legislation relating to a provider such as understanding the services that they need to offer or if key personnel have the capability and skills to deliver those services. Evidence against those requirements will be required and making an assessment against those operating in Categories 1, 2 and 3. However as already mentioned the principles and some other relevant information have not been provided cannot rely solely on this and the confidence in compliance.

The food and nutrition standard of the strengthened Aged Care Quality Standards would not apply to meal delivery services in registration category 1, but apparently the Department of Health and Aged Care was proposing to introduce a specific obligation on meal delivery services to address the nutritional suitability of meals delivered to an older person's home, centre or community respite. This was noted in the Consultation Summary Report 2023 relating to the New Model for Regulating Aged Care here:

<https://www.health.gov.au/sites/default/files/2024-01/a-new-model-for-regulating-aged-care-consultation-paper-2-details-of-the-proposed-new-model-summary-report.pdf>

According to the Aged Care Regulation Model / Aged Care Legislative Reform Team at the Department of Health and Aged Care to ensure there are appropriate obligations on meals provided in home care and community respite settings, a meal obligation is under development that would apply to providers in category 1 and 4 who provide meals. Subject to government agreement, the meal obligation will be drafted into the Rules of the new Aged Care Act 2024 (new Act). These Rules are planned for Stage 4 release across March and April 2025 for public consultation. Again, these details are not available to provide feedback for this particular consultation in regards to provider obligations. Additionally, there is no mention if the Food Standards for Australia & New Zealand plus the Food Safety Programs for Food Service to Vulnerable Persons currently apply or in future either.

If the aim was to lessen the burden on low-risk providers, a more targeted approach could have been considered instead of completely removing them. By concentrating on upholding standards relevant to services under Categories 1, 2, and 3, a balance could be struck in ensuring quality. Certain aspects of the standards could still be applied based on the service's risk level, maintaining quality without overwhelming low-risk providers. This approach would enable a more nuanced method, where providers posing minimal risks to recipients are not faced with unnecessary obstacles but still operate within a quality-assured framework. Thoughtful implementation should have been prioritised to achieve a balance between reducing regulatory burdens and safeguarding fundamental rights.

For example, providers registered under Category 1 offering services like domestic assistance, such as cleaning and meal services, which do not involve clinical care tasks, could still be subject to certain aged care quality standards, particularly those concerning safety, dignity and overall service quality for recipients. Specific standards related to care planning, monitoring and documentation could also be applicable with room for flexibility in how these requirements are met.

By aligning the standards with the risk profile of the service it may be a more efficient and targeted approach that maintains the integrity of the care system without creating unnecessary barriers for providers.

I urge the following to be seriously considered:

The new Aged Care Act should be delayed since all content is not released to have sufficient time for feedback to be provided and changes made.

The strengthened Aged Care Quality Standards should apply to all registered providers considering at least the following:

- **Including Standard 1: The Individual:** Providers must demonstrate they understand the Statement of Rights in the Standard 1 so therefore it makes sense to include this standard for category 1,2 and 3 as they are expected to understand the rights too. It ensures that the care provided is person-centred, tailored to the individual's needs, preferences and goals. For example, with domestic assistance such as cleaning services it ensures when providing these services there is an understanding how the individual likes their space cleaned (e.g., frequency or areas of focus). Some may prefer a focus on certain areas like bathrooms or kitchens, while others may need assistance with specific tasks such as dusting or vacuuming. It encourages engagement about their priorities for cleaning. It champions providers considering any physical, cognitive or medical conditions the person has that may affect their ability to maintain their home or require a different level of assistance. For example, for someone with cognitive impairments taking extra care to ensure the cleaning process does not cause confusion or distress. Additionally, it helps with considering the dignity and privacy of the recipient such as if they have particular preferences about where they are comfortable with cleaning occurring (e.g., respecting personal spaces such as bedrooms and honouring those boundaries. It also recognises respecting the diversity of recipients, including their cultural backgrounds, values and beliefs such as specific expectations or customs related to cleanliness or cleanliness rituals and respecting preferences about areas of the home that should be cleaned in a certain way, such as spaces used for religious or cultural purposes. This standard applies to meal services also such as ensuring that providers understand the recipient's dietary preferences, cultural needs and any relevant requirements. This includes asking for feedback regularly about what the recipient likes or dislikes, adjusting the meals according to their evolving preferences. Auditing providers help to ensure that the domestic assistance and meal services meet the individual needs of recipients.
- **Including Standard 2: The Organisation:** As this focuses on ensuring that services are well managed, responsive to the needs of individuals and can contribute to improvements to care and services for home care providers who offer services. This has a role in ensuring that the service is structured and managed in a way that delivers quality care in line with best practice and

regulatory requirements. It ensures checking procedures are in place for monitoring the quality of meals and addressing any concerns as well as actively seeking ways to improve the service. It assures compliance with workforce capacity and training plus services are coordinated with the overall care plan of the recipient and good risk management. Auditing providers will enhance the confidence in the system.

- **Including Standard 3: The Care and Services:** As funded aged care services, providers and aged care workers must draw on Standard 1, I believe this Standard relates also.
- **Include other standards** relating to Categories 1, 2, and 3.

Details of the meal obligation should be mentioned in any consultation papers and on the website to inform people that it is planned. If the Food Standards for Australia & New Zealand plus the Food Safety Programs for Food Service to Vulnerable Persons apply this should be mentioned also.

Confidence in Monitoring Providers

I am not confident with the new regulatory model or the monitoring system as it is now and any upcoming new changes. It does not seem that concerns about potential conflicts of interest and if feedback has been adequately considered, especially when it comes to ensuring that the system is truly independent and accountable. It's important that any monitoring body operates without any real perceived conflicts of interest to maintain public trust and ensure that providers meet their obligations.

I am in agreement with concerns raised with having the Aged Care Complaints Commissioner within Aged Care Quality and Safety Commission and not completely separate. Having an independent Complaints Commissioner within the ACQSC does not promote the independence, transparency and accountability of complaints. This gives me low confidence in the monitoring of provider obligations. This includes doubts with the new strengthened aged care quality standards and if they are too tempered.

Aged Care Reform Consultation Process

The consultation process surrounding the upcoming Aged Care Act reforms is concerning, particularly regarding the rushed timeframes and the lack of detailed information provided. It is unacceptable that consultations have been conducted with such limited time to review and give feedback before the new Act comes into effect on 1 July 2025.

The current process and the way information has been released do not allow for adequate input from stakeholders, as significant details are missing. This lack of clarity and the hurried nature of the consultations make it impossible to offer complete and informed feedback.

In my view, the new Aged Care Act should not have been passed and would have been more appropriate to delay its passage until all content was fully finalised, ensuring a thorough and transparent consultation process was completed. The Act should be passed only when the details are fully available, allowing for comprehensive feedback and ensuring that it truly serves the needs of those in the aged care system.

Moreover, I am deeply concerned by the lack of transparency in the consultation process. I have noticed that some submissions and feedback are not publicly released, even when permission is granted. This lack of transparency is unacceptable, as the public has the

right to see the survey responses and written submissions provided during the consultation. The Government or department should be committed to openness, and only releasing a summary of feedback is inadequate. Full disclosure of submissions would ensure that all viewpoints are considered and allow for a more comprehensive understanding of the concerns being raised by stakeholders.

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