New Aged Care Act Rules – Release 3 – Provider Obligations

Prepared **by**

COTA Australia

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About COTA Australia

COTA Australia is the leading national peak body supporting and advocating for older Australians since 1958. COTA (Council on the Ageing) promotes the rights, interests and good futures of older Australians over 50.

Our broad agenda is focussed on challenging ageism, respecting diversity, and empowering people to live their best life as we age.

Authorised by:

Patricia Sparrow
Chief Executive Officer
psparrow@cota.org.au

Prepared by:

David Wright-Howie
Senior Policy Officer
dwright-howie@cota.org.au

COTA Australia
Suite 17B, 16 National Circuit
Barton ACT 2600
02 6154 9740
www.cota.org.au

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Introduction

The submission is largely focused on improvements and suggested amendments related to representatives, restrictive practices, reportable incidents and complaints information.

Chapter 1: Introduction

Definitions

Individual nominee

COTA Australia objects to this term. We propose the more specific "restrictive practices individual nominee." See comments below on 'meaning of *representative'*.

Representative

COTA Australia objects to this term. We propose the more specific "restrictive practices individual representative." See comments below on 'meaning of *representative'*.

Risk assessed role

We question whether this is sufficient for the purpose of worker screening. Amendments should be made to make it clear that any roles delivering any part of their services on the property of the individual (be it in their home, or their garden) should fall within the risk-assessed role requiring a worker screening.

Supported individual

In our Submission 2B we proposed continuing use of the term 'Supported Individual' instead of "Low Means" Individual. We note this batch of rules has used the preferred term Supported Individual to refer to people from under the previous Act - we propose that that this term be changed to "transitional supported individual."

Meaning of *representative*

COTA Australia understands the intention of the concept of representative as defined here is for exclusive use in relation to restrictive practices.

However, the term 'representative' is also used in other parts of aged care law including by Services Australia for types of nominee arrangements and by providers under the current Quality Care Principles to refer to a person who may receive information on behalf of an aged care participant or resident about their care and services. The definition of 'representative' in the rules is likely to lead to confusion as it is not clear that it relates to restrictive practices only. The current rules available for consultation do not use 'representative' at all which opens the potential for a very broad application, including allowing for substitute decisions to be made. To avoid this confusion, we propose use of the term "Restrictive Practices Representative" to make it explicitly clear (across the entirety of the Rules) that it has a narrower application than the current subordinate legislation's use of the term "representative."

Recommendation 1: Change 'representative' to 'restrictive practices representative' or similar wording to more specifically define its meaning.

Nominating restrictive practices nominees

We are pleased to observe the note under this heading that indicates section '6-15 Nominating restrictive practices nominees' will be repealed with the legislative sunset clauses for Restrictive Practices effective from 1 December 2026.

The same rule has not been applied to '6-10 Meaning of representative' which it should be if representative is a temporary measure until the State/Territory laws have come into force. Then it should be clear that this will also be repealed from 1 December 2026.

Aged Care Code of Conduct

Purpose of this Part

We strongly urge a note clarifying that the Code applies to workers of associated providers and cite the relevant section of the Act that enables the tracing through to associated/subcontracted workers.

The Standards

In consultation with the Older Person's Advocacy Network (OPAN) we jointly believe the following rights from the Statement of Rights must be strengthened in the Aged Care Quality Standards by amending the Standards to address the following parts of the Statement of Rights.

While the obligation will remain in the Statement of Rights, COTA and OPAN recognise the important role of the Standards for some members of the aged care workforce, in particular clinical staff. To assist with the change culture in the sector, adopting key rights within the standards that provide a clinical framework for those staff is important.

Rights 1a iii - "the individual's financial affairs"

The Statement of Rights allows an individual to assert their rights around their financial affairs. This includes their right to decline a service because of their financial affairs and this right should be explicitly stated in the Quality Standards.

Providers and their staff will need guidance on managing the potential conflict between duty of care and the decision of participants to decline services. There will also need to be clarity about the role providers are expected to play supporting or initiating hardship applications. Clear links within the aged care standards on this issue will be necessary to provide an appropriate clinical framework.

Rights 4 (a) the words "sexual misconduct"

Explicitly include the words “including sexual misconduct” in Standard 1 so that the meaning of the phrase “free from all forms of discrimination, abuse and neglect" is inclusive of sexual misconduct.

Greater specificity is needed to ensure everyone is clear that it is included. Clarity in the Standards will play a role in changing behaviour. Given the number of incidents of sexual misconduct ensuring the requirement is crystal clear is warranted.

Right 12 - Stay connected with "pets"

Pets should have specific reference in the Standards to ensure this right is upheld. The generic reference in Outcome 3.1 to care plan requirements where pets may or may not be listed in a person’s care plan is insufficient. We are concerned that providers could cite clinical grounds (e.g. safety or hygiene) as a reason to not uphold this right. Providing a clearer clinical framework for pets within the standards will address this concern.

Recommendation 2: Ensure that rights in the Statement of Rights regarding individual financial choice and control, sexual misconduct and connection with pets and clearly referenced in the Aged Care Quality Standards.

Reportable incidents and restrictive practices

Defining and clarifying expressions relating to reportable incidents

Neglect

We object to the inclusion of the word “intentionally” in relation to negligence. If you were negligent, that can be understood as neglect. Intent should not be the test.

Chapter 4 – Conditions on Provider registration

Aged care workers

Workforce and aged care worker requirements

The Rules propose that transition does not start in any State/Territory until such time as all State/Territory laws have been prescribed. The transitional period should be applied on an individual state basis. This would mean that when one State prescribes its laws the transitional period concludes three years after that. This provides greater protection to residents as each State is ready.

Information and access

Requirements for records of complaints and feedback

Providers should be required to report the number of complaints and feedback that included an Open Disclosure by the provider. This will drive a greater focus on the use of Open Disclosure in a meaningful way.

Access by supporters

Access to individuals

The way access to individuals is worded in the Rules could potentially be used by providers to limit in-person visitation. We saw the devastating impact of this approach on individuals and their loved ones during the COVID pandemic. Over time providers found ways to facilitate access even during an outbreak. We do not want to see a backward step taken in this regard.

The requirement to provide access must be an in-person requirement and the words "visual link" should be removed from the definition of what constitutes allowing and facilitating access to supporters.

During the pandemic Victorian mental health units were required to facilitate access to nominated persons recognised under the mental health act, while the absence of such a requirement in the aged care act, led to significant lockouts. We must ensure that the drafting of these requirements does not allow future lockouts of 'Supporters'

Independent care advocates

Access should be available at any time regardless of individual request or consent.

Recommendation 3: Ensure that access by supporters to aged care participants is primarily and fundamentally an in-person requirement. References to "visual links" should be removed or referred to as a secondary option.

Governance

Membership of governing bodies

Kinds of provider to which the independent non-executive members requirement applies

We support the inclusion of cooperatives registered under Co-operatives National Law.

Advisory body requirements

Kind of provider to which the consumer advisory bodies condition applies

Our understanding is that the policy intention is that only residential care facilities will be required to establish and implement consumer advisory bodies. The inclusion of 'nursing and transition care' in this section could inadvertently be seen to include 'nursing care delivered in a home and community setting'. Clarity on the intention of this section should be provided.

Management of incidents and complaints

Complaints, feedback and whistleblowers

Managing complaints and feedback

No reference is made regarding restorative outcomes or open disclosure. This should be required and included in the complaints and feedback processes of providers.