Submission to the Community Affairs Committee Inquiry on the Aged Care Act 2024

Prepared **by**

COTA Australia

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About COTA Australia

COTA Australia is the peak body representing the almost nine million Australians over 50. For over 70 years our systemic advocacy has been improving the diverse lives of older people in policy areas such as health, retirement incomes, and more. Our broad agenda is focussed on tackling ageism, respecting diversity, and the empowerment of older people to live life to the full.

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INTRODUCTION 7
The Act builds a solid foundation for aged care's future 7
Ensuring the Act is a strong enough to deter poor practices and the regulator is strong enough to address them if they occur 7
An independent, timely, responsive complaints process 8
Empowering older people to have agency 8
Achieving a right based system for all older people 9
Structure of Home Support a step in the right direction towards 2027 9
Consumer protections in residential care on fees and charges need strengthening 10
Greater transparency will, over time, build greater confidence in aged care 10
Structure of our submission 10
Survey results of views on the new Aged Care Act 10
What did respondents like? 11
What were respondents worried about? 12
Ensuring robust scrutiny by Parliament to achieve the right outcomes 14
RECOMMENDATIONS 15
CHAPTER 1 – INTRODUCTION (§1-§54) 22
Tackle Ageism 22
Ensuring aged care is fit for purpose for all older people 22
Ensuring aged care is culturally safe and appropriate for all diverse populations 22
Ensuring providers actively include participants from diverse backgrounds, including as part of continuous improvement plans 23
Ensure appropriate supports for Carers 24
Make training provisions mandatory, especially on dementia 25
Security of Tenure provisions 25
Embedding principles of choice and control, consumer directed care, and self-management 26
An enforceable obligation to uphold rights 27
Striking the right balance with other rights 27
Obligations on Providers 27
Ensuring Penalties are a sufficient deterrent on rights 27
Linking Statement of Rights to other regulatory frameworks in the Act (Standards and Code of Conduct) 28
Strengthening Complaints and Statement of Rights 29
Making it clear you can complain about your Rights being ignored 29
Rights Obligations on Others 30
Entry to aged care should not prevent or limit access to services such as healthcare 30
Ensure there is an accurate definition of direct care staff member 31
Enabling distinctions between aged care workers and volunteers will strengthen the role of volunteers in the aged care system 31
Worker Screening Requirements 32
COTA Australia encourages consideration of the creation of one 'working with vulnerable persons' card and process for use in the different working environments and as evidence for an older person. 33
Better protections against use of restrictive practices 33

Immunity provisions should be removed 33
An independent authoriser (such as the Senior Practitioner model) is preferred 34
Informed Consent authorisation models are inferior to expert independent authorisation models such as the Senior Practitioner 34

Supporters and Supported Decision Making 35

Aged Care Service List 36

CHAPTER 2 – ENTRY TO THE AGED CARE SYSTEM (§55-§102) 37

Apply 37
Applicants are aged care participants and have rights 37
Exceptional eligibility pathway for people aged under 65 years 37

Assessment 37
Participant decision making must be central to assessment and service planning 37
The New Act must require assessors to develop a Service Plan 38
People should be able to make complaints to the Complaints Commissioner on their access to assessment and this should be a reviewable decision 39
The assessment workforce should always be independent from registered providers 39

Prioritisation of both in-home care and residential care should be based on the principle of individual need not geography or population group 39

The method of determining the number of, and Rules around the allocation of places should be transparent 40
Aged Care Provisioning Ratio appears to have been abolished 40
Act should require methods of allocating classification types to be in the Rules 40

CHAPTER 3 – REGISTERED PROVIDERS, AGED CARE WORKERS AND AGED CARE DIGITAL PLATFORM OPERATORS (§103-189) 40

equirements for elcome but must be extended to include visitors 40

Registration Period (§115) 41

Information to be published and searchable on Provider Register (§141) 41
All non-compliance findings should be included in the Register 42
Non-conformance with the standards must be included 42

Worker screening to cover workers from aged care digital platforms 43

CHAPTER 4 – FEES, PAYMENTS AND SUBSIDIES (§190-§337) 43

GENERAL COMMENTS ACROSS BOTH RESIDENTIAL AND HOME CARE 43
Responses from older people to survey about the Act 43
Thresholds amounts and missing Home Support information must be released ASAP 44
Compensation payments under the Act must be excluded from the income and asset test 45
Require fees, payments and subsidies to be spent on the purpose for which they are given and align transparent provider information 45
Introduce specific legislative reference to hardship 46
Act empowers Government to 'cap' any service by subordinate legislation 46
Legislate to require a quarterly wait time report 47
Real Time Availability 47
Ensuring consistent billing policies for cancellation, travel time and fractions of an hour 47

RESIDENTIAL CARE OBSERVATIONS AND RECOMMENDATIONS 49

Non-Clinical Care Contribution 49

Everyday Living 50
Rename Basic Daily Fee and Hotelling Supplement/Contribution 50
Link Hotelling Supplement to pension Rules to avert future indexation misalignment 50

Accommodation 50
Who is charged what for type of accommodation fee? 50
A 'supported resident ratio' floor must be legislated to ensure people can secure a bed in a nursing home 51
Insufficient protections against high RAD/DAP charges 52
Require rooms to be priced using the daily (DAP), and allow payment via a refundable lumpsum (RAD) 54

Higher Everyday Living 55
Higher Everyday Living regulations are a positive first step 55
Ensure transparency about higher everyday living fees 56

SUPPORT AT HOME OBSERVATIONS AND RECOMMENDATIONS 56
Amend the Act to require individual contributions rate methodology in the Act 57
Observations on the Home Support Design 57
Price signals on different types of services could lead to unintended consequence in some circumstance 58
Ensure assistive technology can continue to be used and serviced in residential care 58

ADDITIONAL COMMENTS ON FEE AND FUNDING RELATED SUBORDINATE LEGISLATION 59
Service List approach ensures an aged care guarantee irrespective of means 59
Ensure modernised aged care guarantee of basic everyday living services in the Service List (e.g. internet) 59
Quarterly budgets & subsidies need to make clear invoicing can occur more frequently 60
A national efficient price must be scoped for the 2027 model 60
Requiring all providers who are registered for 'care management' to offer Self-Management options during transition until multiple providers are implemented. 61

CHAPTER 5 – GOVERNANCE OF THE AGED CARE SYSTEM (§338-§395) 62

An Independent Complaints Commissioner 62
Clearer directions on consultation by the ACQS Commissioner is required 62
Complaints Commissioner should have explicit education responsibilities 62

Restorative justice, mediation, conciliation should be embedded in the Act as part of complaints functions 63

Complaints must be open to independent review & have transparent timeframes 63

CHAPTER 6 – REGULATORY MECHANISMS (§396-§533) 65

Removal of Criminal Penalties 65

We support the new powers in the regulator's toolkit listed in the Act (§397-507) 65

Assurance activities (§508-§513) 66

Is the value of civil penalties a sufficient deterrent to prevent neglect, uphold rights, ensure quality care and remove bad actors from aged care? 67
Does the Commission have the resources to pursue Court cases? 67
What is the value of civil penalties in the Act? 67
Commission must be able to issue Infringement Notices on all financial penalties under the Act (§448) 68
What obligations and offences incur a civil penalty or fine associated to an offence? 69
COTA observations 70

CHAPTER 7 – INFORMATION MANAGEMENT (§534-§554) 70

Narrower definition of 'protected information' to match Freedom of Information laws is needed 70

Whistleblower protections are welcome and supported, including disclosures to workers (§547-§554) 71

CHAPTER 8 – MISCELLANEOUS (§555-§602) 71

Decisions by the Commissioner, Complaints Commissioner, System Governor and Pricing Authority should be transparent, reviewable and listed 71

List all decisions in a table with a clear timeframe 71

Decisions made by automation must be transparent to individuals 72

Individuals should have greater ability to be the entity who may request a reconsideration 72

Older people shouldn't be charged a fee for applying for a reassessment (reconsideration of a classification decision) 73

Strict obligations on computerised and AI systems (§582) 73

Annual report on the operation of the Act needs more substantive requirements (§599) 74

Legislate a quarterly waiting list report, by region, for all service groups and service types 75

Ensure robust monitoring of the availability of CHSP providers during the 2-year transition to the Home Support Program 75

A 3-year review of the Act that must consider specific items (§601) 76

APPENDIX 1: CONTENTS AND STRUCTURE OF A STANDARDISED 'AGED CARE CONTRACT' 78

ALL AGREEMENTS 78

FOR RESIDENTIAL AGREEMENTS 79

FOR HOME SUPPORT AGREEMENTS 80

APPENDIX 2: FINANCIAL PENALTIES, OBLIGATIONS UNDER THE ACT & WHETHER AN INFRINGEMENT NOTICE MAY BE ISSUED 81

APPENDIX 3: WAIT TIMES AGAINST AGED CARE ENTRY STAGES 85

APPENDIX 4: ANALYSIS OF MY AGED CARE CHSP WAITLIST AND AVAILABILITY BY SERVICE OUTLET 86

Introduction

COTA Australia was pleased to see the Aged Care Act 2024 introduced into Parliament in September. The Act contains significant reforms to aged care services and implements the number one recommendation from the Royal Commission into Aged Care Quality & Safety. Ensuring older people have rights that are respected and upheld in quality services is an important step forward.

Our submission has been informed by the extensive consultation we conducted about the new aged care act in September – October 2023, consultations on the exposure draft (December – February 2024), a public webinar with older people and their responses to a short survey about the new Act after its release a survey (September 2024). In addition, we have held rapid conversations with peer organisations, grassroots advocates, our state and territory member COTAs and our national policy council.

We welcome the numerous improvements to the Act since the Exposure Draft consultation, many recommended by COTA Australia and collegiate organisations representing the views of older Australians.

It is still our view that the Act should proceed, hopefully with amendments proposed in this submission adopted, to improve its approach and implementation.

We are pleased that Government has indicated they will undertake consultations on the policy decisions and rules before they are introduced to Parliament. COTA Australia will need to undertake further analysis to give a more definitive view on some legislative issues once the details in the Rules have become available.

The Act builds a solid foundation for aged care's future

COTA Australia has advocated for this Act to be introduced and passed to ensure older people have their rights. The Act provides a solid foundation for the future decades of Aged Care. The central placement of Rights within the legislation; the focus on person-centred quality care; the availability of services to all Australians irrespective of their means; a stronger regulator to monitor and enforce provider obligations; a complaints process focused on resolution, headed by an independent Commissioner; are all a welcome reset for the aged care sector summed up by the Royal Commission with a single word – 'neglect'.

Ensuring the Act is a strong enough to deter poor practices and the regulator is strong enough to address them if they occur

Parliament must satisfy itself that this new foundation is strong enough to address the issues the Royal Commission raised. The removal of criminal penalties has seen an outcry from many older people interacting with the aged care system, fearful that the remaining regulatory framework and civil penalties in the bill do not meet the challenge exposed by the Royal Commission. While the positive duty to uphold rights on providers is welcome, more needs to be done to ensure its balance with other rights does not result in the rights

and protections introduced in the bill being ignored. Most civil penalties proposed in the Act will require the Commission to initiate and successfully prosecute poor practices by providers. We are concerned by the curtailing of the Commission's ability to issue infringement notices (fines) compared to both their powers today, and the broader powers originally proposed through the exposure draft.

While questions will linger about the Commission's resources to ensure it is an effective regulator within the new model, it is pleasing to see a wide range of monitoring, supervision and penalty powers in the bill. We welcome for example the Government's announcement that the Rules will permit Co-operatives and mutuals to operate in Aged Care as we see the opportunity of a people powered provider, owned and operated could have in the future. We also welcome the new registration categories that will enable more organisations and sole traders to support older Australians to enter the aged care system with appropriate oversight. The new registration system (including its associated conditions of registration), along with continuing provider obligations provides a robust compliance framework that complements the new Aged Care Quality Standards, whistleblower protections and the new complaints handling processes.

An independent, timely, responsive complaints process

We welcome the creation through this Act of an independent Complaints Commissioner. While we have proposed a number of improvements to ensure the implementation of this new independence is successful at meeting the needs of older people, this is an improvement to the exposure draft that many older people raised with COTA Australia. We welcome the powers for the Complaints Commissioner to secure an enforceable undertaking from the provider as part of the resolution of complaints and seek amendments to ensure that mediation and conciliation form one part of the complaints process, enshrined in the Act. We are concerned that the Act doesn't explicitly reference Complaints Determinations and propose a number of suggested amendments to improve the transparency of the complaints process.

Empowering older people to have agency

The Act places the person at the centre. The older person has the right for the first time in aged care law to make decisions for themselves. They can be supported in making those decisions, with a requirement on their supporters to consider their will and preference and not impose upon the older person the supporter's view of what is in the best interest of the older person. We are concerned that the 'will and preference' of older people will not be upheld when state and territory appointed Guardians or EPOAs don't adopt the same supported decision-making model. While we recognise the operational challenges about new mechanisms to appoint decision makers, which have improved since the exposure draft, further work is required to ensure the older person remains at the centre of their aged care decisions.

Ageism is rife in the broader community, and as seen from the recent education work within aged care by the Australian Human Rights Commission, is an unconscious bias across aged care. As we begin to practically implement rights into everyday practice in aged care, we need to ensure a clear understanding of the role ageism plays in many objections to older person's right to take risks and make choices for themselves.

Achieving a right based system for all older people

The deferral to 2027 of introducing multiple providers in Home Support will unfortunately reduce an older person ability to self-manage their services as they will continue to have to work through a single provider. Similarly, COTA Australia is concerned that complying with the Statement of Rights and a requirement to enshrine the older person's view into their service plan is not a design feature of the assessment process.

We believe that the Statement of Rights must equally apply to Government officials, or those contracted to implement their functions, in the same way it is being proposed for aged care providers. Ensuring rights education and capacity building investment to change provider culture over time will be critical.

The Act has welcome recognition of person centred, culturally safe and appropriate care and services. However, it has removed the legislated list of diverse populations in the current aged care act, and it does not implement into law today's policy guidance on how a provider may verify their claims of being a specialist to support specific diverse populations.

We are concerned that the new legislation does not have an exceptional circumstances pathway for people under 65 years of age to access the most appropriate service for them, which may be the aged care system. While supportive of the fact that for 99% of participants in aged care will be over this age, we remain concerned that some younger people could be left unsupported as there is no alternative.

Structure of Home Support a step in the right direction towards 2027

It is good to see more investment in support at home with more levels of care, and higher funding amounts, available as well as specific assistive technology and short term palliative care support available.

While we await the release of information about how the individual contribution rate will be calculated, we are concerned it is the only financial methodology relegated to the subordinate legislation. It should be enshrined in the Act, in the same way residential care contributions are, to provide confidence that the rules won't change again in the not so distant future.

Greater clarity about hardship provisions is also necessary. This must include exceptional circumstances for individuals where proposed caps of services can be considered and addressed.

Consumer protections in residential care on fees and charges need strengthening

While more methodology about how residential care is included in the Act, compared to Home Support, the explicit threshold amounts are not yet in the public domain. Until they are it is difficult to assess the impact care for individuals.

While providers will be able to increase their room charges without approval the independent pricing authority the rules around how the price is set - what a provider must consider when setting their room price - is not included in the Act. They should be to provide greater protection for older people.

We welcome stronger protections for older people asked by a provider to pay for services outside of the minimum required – higher everyday living services - to be delivered under the Act.

Greater transparency will, over time, build greater confidence in aged care

The aged care Act needs to provide increased public accountability in reporting on waiting times, decision time frames for complaints and other important decision to strengthen public trust in the system. Lack of transparency was a major issue identified by the Royal Commission and it must be addressed. Parliament must ensure we don't squander the opportunity.

Structure of our submission

The submission adopts the Act structure and comments on each of the chapters. It focusses on ways the Act can be improved to provide greater transparency and protections for the older people receiving aged care services. We have included issues and solutions on matters that will be in the Rules, which while not yet released, are linked to the Act.

The Committee should have regard for these issues in considering the legislation, including ensuring the primary legislation has the relevant hooks and balances. Clauses in the Act are referenced by use of the section symbol "§" for ease.

Survey results of views on the new Aged Care Act

OPAN CEO Craig Gear and COTA CEO Pat Sparrow, along with Val Fell, Member, OPAN's National Older Persons Reference Group and Council of Elders Annette Barbetti, Member, Australian Independent Retirees hosted an information webinar for older people about the Aged Care Act on 24 September 2024. 3000 people registered to participate were invited to participate in a snap survey to gauge the high level reaction to the bill.

The below summary analysis summarises the qualitative feedback of 270 respondents to three questions 'what did you like', 'what are you most worried about' and 'anything else'. Overall, the comments reflect mixed reactions to the new Aged Care Act, with some

expressing optimism and support, while others remain critical and doubtful about its potential impact.

What did respondents like?

- **Welcomed Reforms:** Reforms following the Royal Commission's recommendations are welcomed, with respondents hopeful for positive changes in the aged care sector.
- **Finally Tabled:** Respondents are glad that the new Aged Care Act has finally been tabled, seeing it as a long-overdue step towards better care.
- **Older Person Focused Act:** The shift towards an older person-focused approach is appreciated, as it prioritizes the needs and preferences of the older person over providers.
- **Improvement on Previous Act:** The new Aged Care Act is seen as an improvement on the previous one, with better management of funding and recognition of older people's rights.
- **Rights-based:** The emphasis on the rights of older people is praised, with respondents appreciating the focus on dignity, autonomy, and respect. Many comments emphasise the importance of a rights-based approach, highlighting the need for older individuals to have their rights respected and to be at the centre of care decisions.
- **Clear definition:** Respondents appreciate the clear definition of rights in the new Aged Care Act, emphasizing the importance of respecting the dignity and choices of older individuals. Comments praise the adoption of a human rights approach for its potential to enhance the quality of care and protect the rights of the older people.
- **Focus on Independence and Empowerment:** The promotion of independence and empowerment for older individuals is highlighted, with comments emphasizing the importance of allowing older people to make their own decisions and live autonomously.
- **Person-Centred Care:** The focus on person-centred care is highly valued, with respondents noting the shift towards prioritizing the needs and preferences of the elderly.
- **Protection of older people:** The protection of older people is a recurring theme, with many comments highlighting the need for better safeguards and measures to prevent abuse and neglect.
- **Promotion of Independence:** The promotion of independence for residents is appreciated, as it encourages older individuals to maintain their autonomy and self-reliance.
- **Transparency:** More transparency in the aged care system is welcomed, with respondents hoping it will lead to better accountability and trust.

- **Accountability:** There is a strong focus on the need for increased accountability for aged care providers. This is seen as a crucial step towards improving the quality of care and services, with calls for better regulation and oversight to ensure high-quality care.
- **Better Protection:** Better protection of older people is a key positive aspect, ensuring their safety and well-being in aged care facilities.
- **Implementation and Action:** There is a sense of urgency for the implementation of the new Aged Care Act, with comments expressing relief that action is finally being taken and hope that the changes will lead to meaningful improvements.
- **Feedback on Specific Provisions:** Several comments provide feedback on specific provisions of the Act, such as the reduction of care management fees, the introduction of new funding streams, and the inclusion of a Statement of Rights.
- **Home Support program:** Respondents saw the new Support at Home Program as a positive change, believing it will be more effective in assisting individuals to live independently at home. Streamlined processes for accessing reablement and palliative care services are seen as beneficial for both residents and providers.
- **Improved Services and Support:** Comments reflect a desire for improved services and support, including better access to home-based care, streamlined processes, and more comprehensive care options.
- **Holistic Assessment:** The holistic assessment of needs is seen as a positive change, ensuring that all aspects of an individual's care are considered.
- **Training of Staff:** Some respondents identified the opportunity for staff training is highlighted as a positive change, helping to ensure that the new requirements are understood and implemented effectively.
- **Hope for Improvement:** There is hope that the new Aged Care Act will be better than the current system, with respondents optimistic about the potential for positive change.
- **No Worse Off Rule:** The no worse off rule for older people needing care at home is appreciated, as it ensures that existing care recipients are not negatively impacted.

What were respondents worried about?

- **Need for Clarity and Information:** There is a call for more clarity and information about the new Act, with comments indicating that more details are needed to fully understand its implications and how it will be implemented.
- **Service Accessibility:** There are significant concerns about the accessibility of services, particularly in rural and remote areas, and the potential for people to slip through the cracks.
- **Workforce Issues:** Comments highlight the shortage of trained staff, the need for better workforce planning, and concerns about the impact of the new act on the workforce.

- **Quality of Care:** Many comments focus on the quality of care, including concerns about the adequacy of services, the need for better standards, and the potential for neglect and abuse.
- **Enforcement of the Rights and Standards:** There are significant concerns about the enforcement of the new rights and standards outlined in the act. They fear that without proper enforcement mechanisms, the new rights and standards will not lead to meaningful improvements in care quality.
- **Complexity and Bureaucracy:** There are worries about the complexity of the new system, increased bureaucracy, and the difficulty of navigating the new regulations. There is a call for more comprehensive and accessible information to help individuals navigate the new system.
- **Impact on Self-Management:** Respondents fear that the changes will limit their autonomy and flexibility in managing their care. There is also concern that the new regulations will be too rigid and give too much power to providers, making it difficult for individuals to tailor their care to their specific needs.
- **Adequacy of Support at Home:** Respondents to the survey were concerned that the program will not provide enough support to meet their needs, particularly with the caps on cleaning and gardening services.
- **Accountability and Transparency Issues:** Comments express concerns about the lack of legal recourse and accountability for providers, including the absence of criminal penalties for non-compliance.
- **Adequate Compliance Monitoring:** Respondents worry about the adequacy of scrutiny and enforcement mechanisms to ensure providers adhere to the new regulations. They fear that without strong accountability measures, providers will continue to neglect their responsibilities, leading to substandard care.
- **Complaints**: While the increased transparency of complaints about aged care is seen as a positive step, there are concerns about whether this will be sufficient to address issues effectively.
- **Cost Concerns:** Many comments express worries about the increasing costs of aged care, including fees for self-funded retirees, pensioners, and the overall affordability of services.
- **Impact on Self-Funded Retirees:** Many comments highlight the negative impact of the new act on self-funded retirees, including increased costs and the perception of being unfairly penalized.
- **Support for Carers:** There are concerns about the lack of support and inclusion for carers of older people using aged care services.

- **Implementation Challenges:** Comments highlight the challenges of implementing the new standards and regulations, including concerns about funding, resources, and the ability to ensure compliance.
- **Awareness:** Some respondents are worried about whether older Australians and their families are adequately informed about their rights and available services under the new framework.

Ensuring robust scrutiny by Parliament to achieve the right outcomes

We welcome the Community Affairs Committee's inquiry into the Aged Care Bill 2024. Ensuring the public can provide feedback through the inquiry process is an important feature of Australia's democracy. We particularly commend the committee for its initiative at implementing 'lived experience' panels to ensure it hears from a cross section of the community directly affected by these changes.

In addition to explicit recommendations for amendments, there are several matters we raise throughout this submission to alert the committee to as part of its deliberations on the Act. Striking the right balance to ensure a healthy aged care system, that protects older people and delivers quality care outcomes is vital. The importance of the committee's work on behalf of Parliament to scrutinise the bill cannot be understated.

Recommendations

Recommendation 1: Amend the Act at §25 to explicitly recognise Ageism within the Statement of Principles.

Recommendation 2: Amend the Act at Chapter 1, Part 2, Division 1 to introduce Ageism as a key concept.

Recommendation 3: Amend the Act at §350 (Engagement and Education functions of the Commissioner) to include 'Ageism' as a concept that should be embedded within training for aged care providers.

Recommendation 4: Amend the Act at §25(4) to transform the note in into a legislative clause listing those groups in the Act along with a "or any other group listed in the Rules" provision, as exists in the current Act.

Recommendation 5: Amend the Act at §141 and §544 to introduce the Specialist Verification framework within the *ACQS Commission's* Provider Register (§141) (or §544 *System Governor must publish information about funded aged care services*), including any criteria outlined in the Rules of what evidence is needed for specific diversity groups (linking to groups from §25(4)).

Recommendation 6: Amend the Act in Chapter 3 to introduce a Condition of Registration on "Supporting Diverse Populations" be inserted to require a provider comply with the requirements of the Aged Care Specialisation accreditation the provider identifies on My Aged Care they have attained.

Recommendation 7: Amend the Act at §147 to require all Continuous Improvement Plans to include a requirement to include activities to achieve inclusion of diverse populations with an explicit reference to the diverse populations proposed to be a new clause from the current note in (§25(4).

Recommendation 8: Amend the Act at §372 to make equitable access to services amongst populations listed in §25(4) a specific requirement in the annual report by the System Governor.

Recommendation 9: Amend the Act in Chapter 3 to introduce an obligation on providers to ensure appropriate training of staff.

Recommendation 10: The Rules must outline providers responsibility to residents and specify only a limited number of reasons where a provider can move a resident. COTA Australia supports the Dementia Australia position on this issue.

Recommendation 11: Amend the Act to explicitly include choice and self-determination as an objective of the Support at Home program. This addition will complement the objective's existing emphasis on faster access to services, early intervention to maintain independence and reduce decline, higher levels of care for complexity.

Recommendation 12: Recommend that Government promote self-management in Support at Home as a genuine option in 2025 as part of a continuum where participants can opt for some services to be self-managed and some managed by providers.

Recommendation 13: Amend the Act at §24(2) so that the balance with other rights and obligations test reads, that rights "may be limited only so far as can be demonstrably justified after taking into account all relevant factors".

Recommendation 14: Amend the Act at §144(1)(b) to read the provider must "have in place practices to comply with the Statement of Rights, in accordance with subsection 24(2) (compatibility with the Statement of Rights)".

Recommendation 15: Amend the Act to introduce infringement notice for breaches of a provider's conditions of registration or other obligations.

Recommendation 16: That Parliament assure itself the ACQS Commission is sufficiently resourced to proactively pursue providers for civil penalties in Court.

Recommendation 17: That the Act is amended at§23(3) to explicitly insert the definition of High Quality Care into the Statement of Rights under the Quality and safe funded aged care services in §23(3).

Recommendation 18: That the current Quality Standards and the Code of Conduct are updated to explicitly reference the Statement of Rights in the future Rules.

Recommendation 19: That supporting materials for the Quality Standards provide more direct links to the Statement of Rights to better embed rights within the Quality Standards approach.

Recommendation 20: Amend the Act at §358(a)(ii) to remove references to "incompatibly with" and replaced with as "making complaints about a registered provider acting in a way that did not comply with their obligations to take all reasonable and proportionate steps to comply with the Statement of Rights".

Recommendation 21: Amend the Act at §24(3) to insert a legislative note which refers to both the provider obligations in §144 and that individuals have the ability to make complaints about their rights being upheld to the Complaints Commissioner (§358(a)(ii)).

Recommendation 22: Amend the Act via the Statement of Principles or placing a new obligation on the System Governor and Commissioners to ensure that My Aged Care, the Single Assessment Workforce, ACQS Commission staff and any other Government employee or contractors are obligated to uphold the rights of individuals in the same way any aged care provider is required to.

Recommendation 23: Amend the Act (§23)) to Include the right to access health care services in the Statement of Rights.

Recommendation 24: Ensure the Rules retain the requirement from the current Act for providers to facilitate access of individuals to health care services outside of the aged care system, as well as facilitate access onsite.

Recommendation 25: Amend the Act at §7 to insert a definition of personal care worker and include within that definition a nursing assistant. Delete the standalone reference to nursing assistants and its standalone reference in the definition of direct care.

Recommendation 26: Review §14(4) to assess the appropriateness of defining all Volunteers as an Aged Care Worker.

Recommendation 27: Amend the Act at §379 to ensure the Worker Screening Database is required to be updated to remove any person's clearance that is subject to a banning order.

Recommendation 28: Ensure the Rules include all people entering on individual's property as requiring a worker screening clearance.

Recommendation 29: Recommend the final design of the Worker Screening process has no cost for volunteers.

Recommendation 30: Amend the Act at §163 to remove the immunity provision or introduce a sunset clause for it conclude no later than December 2026.

Recommendation 31: Amend §18 to introduce an independent authorisation model. Consider the appropriateness of §18(1)(f) when introducing an independent authorisation model in regard to ensuring the individually is fully informed of decisions taken about the use of restrictive practices on the individual.

Recommendation 32: Amend the Act at §28 to place an obligation on all Guardians etc to have regard for 'Supported Decision Making Principles' (to ensure the person's will and preferences are taking into account when supporting them to make a decision. Consider extending this principle to when acting as a substitute decision maker via state laws and whether §37(4)(b)'s criteria to request remains warranted.

Recommendation 33: Amend the Act at §27(2) to remove the power of System Governor to appoint decision-making supporters. Alternatively, insert a clause requiring Rules to outline how a decision to appoint will be made.

Recommendation 34: Amend the Act (at multiple locations) to ensure that all application, eligibility and assessment related decisions undertaken by the System Governor have maximum timeframes outlined in the Rules.

Recommendation 35: Amend the Act at §58 to permit an exceptional pathway for aged care service eligibility via criteria and procedures outlined in the Rules that include, 'but are not limited to', First Nations and people experiencing homelessness under 65 years.

Recommendation 36: Amend the Act at §62 (2)(b) to include that "when undertaking the aged care needs assessment, the approved needs assessor must consider the individual's right to independence, autonomy, empowerment and freedom of choice to the extent that it does not contravene the requirements of this Act."

Recommendation 37: Amend the Act at §63 to introduce a requirement that the Aged Care Needs Assessment Report must produce a service plan that identifies the 'plan about the delivery of funded aged care services agreed to be received by an individual'.

Recommendation 38: Amend the Act at §357 to ensure a single complaint handling front door for older people, by introducing a new function of the Complaints Commissioner to receive complaints on behalf of the System Governors pertaining to their functions at §56-§60 (applying for access) and §64 (assessment). Ensure that this is implemented in a way the original decision of the System Governor can be reconsidered/reviewed.

Recommendation 39: Amend the Act at §91 to require the method and process for determining annually the number of places to be published.

Recommendation 40: Amend the Act at §93(2) to require the Rules "must" prescribe the method or procedure for allocation of a classification type Place allocation decisions should be published.

Recommendation 41: Amend the Act at §156(1) to include "a visitor" within the list of persons a provider must "allow and facilitate access" for the residents in their care.

Recommendation 42: Amend the Act at §141(7) to require the Commissioner 'must' publish the register in whole on its website, and in a searchable format.

Recommendation 43: Amend the Act at §141 to require the Provider Register to record where a civil penalties, fines or compensation order was made against a provider.

Recommendation 44: Amend the Act at §141 to require the Provider Register to record:

- **all non-compliance findings, and**
- **all notices of non-compliance be retained on the register, including where the Commissioner has withdrawn the notice of non-compliance.**

Recommendation 45: Amend the Act at §141 to require the Provider Register to record all informal non-compliance findings such as breaches of conditions of registration and/or obligations of a registered provider or its entity, be published.

Recommendation 46: Amend the Act at §141 to require the Provider Register to record non-conformance with the quality standards including:

- **the date of last audit,**
- **a link to the latest assessment, and**
- **that all findings of major non-conformance with the standards be retained on the register for a minimum 12-month period.**

Recommendation 47: Amend the Act at §188(1) to require digital platforms to perform an additional check for all aged care workers who are not registered providers – by publishing the worker screening clearance for working in the funded aged care system.

Recommendation 48: Government should release to the Committee the thresholds and amounts ASAP (in advance of the Rules) including:

- **§319 Daily Means Tested Amount free areas, thresholds and forecasted cap above the threshold based on the amount of the Non-Clinical Care Contribution of $101.16,**
- **§314 Determination of individual contribution rate methodology and amounts,**
- **A data set outlining the means tested category amounts for each Home Support classification (using the IAT testing sample set), including a likely range, median and mode amounts, and**
- **A data set outlining population median deciles for assets and incomes of people over 75 aligned to relevant pension or aged care Rules used under the proposed new contribution calculations (i.e. including income, deemed income of financial assets, financial assets, non-home assets and other assets).**

Recommendation 49: Amend the legislation to state that any compensation payments made to individuals under the aged care act have their lump sum excluded from asset test calculations.

Recommendation 50: Amend the Act to introduce a condition of registration requirement that requires providers to spend funds for a purpose on that purpose against the five broad funding and fee categories being introduced:

- **Care (including clinical care),**
- **Non-Clinical Care (including independence),**
- **Everyday Living,**
- **Higher Everyday Living,**
- **Accommodation.**

Recommendation 51: Amend the Act to introduce a condition of registration requirement that requires providers to provide a quarterly financial report that demonstrates expenditure against each of the five categories as applicable to their service.

Recommendation 52: Government must update 'Dollars for Care' information to align to the five new fee related categories.

Recommendation 53: Amend the Act to introduce explicit reference to Hardship provisions.

Recommendation 54: Amend the Act (§8) to Ensure there is a mechanism for the System Governor to exempt individuals from the 'cap'. Criteria for exemption may be outlined in the Rules.

Recommendation 55: Recommend that by 2027 Government must mandate the real time availability of services in a particular region and deliver the capability for that information to be collected from Providers and publicly displayed.

Recommendation 56: Ensure the Act contains the necessary mechanisms within the existing Act to impose a requirement on providers via the Rules to mandate participation in real time availability once the technical implementation has concluded.

Recommendation 57: Amend the Act to introduce an explicit obligation on providers to adhere to any Billing Practice regulations outlined in the Rules.

Recommendation 58: Amend the Act to require that the Non-Clinical Care Contribution Asset threshold commences at the Single, Non-Homeowner Asset Free pension point.

Recommendation 59: Amend the Act to rename the terms 'Basic Daily Fee' to 'Everyday Living - base contribution' and 'Hotelling Supplement' to 'Everyday Living – means tested contribution'. Introduce a new term 'Everyday Living Total Contributions' to be defined as the total of these two amounts.

Recommendation 60: Introduce a term for the two fees: Everyday Living Total Contribution.

Recommendation 61: Amend the Act to define the threshold relevant to the Hotelling Supplement amount commencing to be the Maximum Income of the Single, Commonwealth Seniors Healthcare Card holder.

Recommendation 62: Amend the Act to introduce:

- **a definition of supported resident, and**
- **an obligation on providers to have a minimum ratio of the number of supported residents in their geographical area.**

Recommendation 63: Amend the Act to maintain the 25% reduction on the accommodation supplement/contribution for providers whose low means resident ratio is less than 40%.

Recommendation 64: Amend the Act to require that all accommodation contributions are used for accommodation purposes.

Recommendation 65: Amend the Act to introduce a condition of registration that providers must have regard for certain criteria in setting their room prices, as outlined in the Rules.

Recommendation 66: Legislate that IHACPA must have regard for certain criteria in approving higher room prices.

Recommendation 67: Amend the Act at §289(2) and §289(3) to require maximum accommodation payments to be expressed as a daily accommodation payment amount, with the lump sum payment of that amount called the refundable accommodation deposit to be worked out as per the Rules.

Recommendation 68: Amend the Act at §284 to require a provider to publish their higher everyday living amounts on My Aged Care and be restricted from charging amounts beyond those listed.

Recommendation 69: Amend the Act at §314 (Determination of individual contribution rate) to insert methodology steps (similar to the daily means tested amount steps outlined in §319).

Recommendation 70: Amend the Act at §8(1)(e) and relevant clauses of §209-217 – to ensure that Assistive Technology items provisioned in a home and community setting may continue to be used in residential care and funding for their servicing continue to be accessed.

Recommendation 71: Amend the Act at §375 to list the 'Complaints Commissioner' in §3as a person the ACQS Commissioner must consult on the development of the Commission's Corporate Plan).

Recommendation 72: Amend the Act at §361(2)(d) to insert explicitly include mediation and conciliation by replacing the words after "including" to read "including, but not limited to, open disclosure, mediation, conciliation and restorative practices."

Recommendation 73: Amend the Act at §357 to place a function of the Complaints Commissioner to make a 'Complaint Determination' and require the Complaints Commissioner to make a Complaint Determination on all complaints within the timeframe specified in the Rules. Ensure the Complaint Determination is subject to reconsideration and review.

Recommendation 74: Amend the bill at §179 and §180 to reinstate the fault-based offence on providers and some responsible persons, including its imprisonment penalty for that offence.

Recommendation 75: Ensure the ACQS Commission is provided with dedicated sufficient funding to initiate legal proceedings as part of its regulatory powers to create a robust deterrent for poor behaving providers.

Recommendation 76: Amend the Act at §448 to reinstate that all civil penalties in the Act may be actioned as an infringement notice.

Recommendation 77: Review the financial value of civil penalties and amend them in the Act where necessary to ensure Parliament is satisfied they provide a sufficient deterrent for both large and small aged care providers.

Recommendation 78: Review the definition of 'protected information' at §21 to ensure it is as narrow as possible, and aligns with the Freedom of Information Act.

Recommendation 79: Amend the Act to ensure all decisions under the Act are listed in §556-§558 tables, along with a comparable table for any decisions outlined in the Rules, indicating:

- **if the decision is eligible for reconsideration and review, or not,**
- **if the decision is a legislative instrument or not,**
- **if the decisions are eligible to be made by automation,**
- **the timeframe the decision must be made within.**

Recommendation 80: Amend the Act at §583 to ensure all decisions made by automation must disclose as having occurred by automation in any related documentation/advice/notice relating to the decision.

Recommendation 81: Amend the Act to remove §559(2)(c) permitting an application fee for a reassessment of a person's classification level for a classification type of a service level.

Recommendation 82: Amend the Act at §582 to require the System Governor to establish an ongoing monitoring and auditing reporting process for all uses of computer-generated decisions, with specific attention to their suitability when applied to people with diverse backgrounds and from more marginalised groups. Findings of the audit should be made publicly available and included in all annual reports regarding the operations of the system.

Recommendation 83: Recommend the Department of Health and Aged Care establish an AI Oversight Committee to ensure procedural fairness for individuals accessing aged care services.

Recommendation 84: Amend the criteria in §601(Annual report) to require information to be included for the annual activities of the System Governor, waiting times from application to service commencement (including assessment), use of specific services, achievement of Direct Care (care minute) targets, monitoring of the financial impact on older people and the use of Daily Accommodation Payments.

Recommendation 85: Amend the Act at Chapter 8 to require Government to design and publish a quarterly wait time report to monitor bottle necks in the system in different geographical regions from the time of application to having the first service delivered. The report must include monitoring of different service types by region and not simply by package/classification levels.

Recommendation 86: Amend the Act at §601 to require a legislated review after 3 years (not the current 5) and insert a specific term of reference the review must cover at a minimum.

Chapter 1 – Introduction (§1-§54)

Tackle Ageism

There is no reference to ageism in the proposed Act. Ageism is entrenched across Australian society including in our health and social support systems. It has a profound impact on people's lives. Ageist perceptions can reinforce exclusion, discrimination and marginalisation and affect the physical, mental and cognitive health and wellbeing of people. For older people, ageism is linked to poorer health outcomes, increased risk of social isolation, decreased quality of life and greater financial insecurity. The Royal Commission into Aged Care Quality and Safety and the Australian Human Rights Commission identified that ageist attitudes and culture are linked to poor outcomes in the aged care system and that this should be addressed through legislative and policy reform. Recognising and addressing ageism should be an essential element in respecting, supporting and valuing older people in a rights-based aged care system and it should be referenced in the Statement of Principles.

Ageism awareness training should be encouraged and promoted for all stakeholders in the aged care system including staff of funded aged care providers, Boards and management committees, aged care provider executives and workers, personnel of the System Governor, Commissioner and Complaints Commissioner and all aged care peak bodies and advocacy organisations.

Recommendation 1: Amend the Act at §25 to explicitly recognise Ageism within the Statement of Principles.

Recommendation 2: Amend the Act at Chapter 1, Part 2, Division 1 to introduce Ageism as a key concept

Recommendation 3: Amend the Act at §350 (Engagement and Education functions of the Commissioner) to include 'Ageism' as a concept that should be embedded within training for aged care providers

Ensuring aged care is fit for purpose for all older people

Ensuring aged care is culturally safe and appropriate for all diverse populations

The Act uses the terms "culturally safe, culturally appropriate, trauma aware and healing- informed" in a number of- sections within the Act.[1] The section on the Complaints system (§358(a) only use the term "culturally safe". it is important that its intended utility is clear and consistent throughout the Act.

[1] See the Statement of Principles in relation to way aged care services are inclusive of the individual (s25(4); in the Statement of Rights regarding equitable access s25(2) and service (s25(3); and the Safeguarding Functions of the Commissioner (s349).

The use of these terms is contested with diverse groups. A summary of our understanding from discussions with a range of organisations is:

- "culturally safe" appears to have originated within Aboriginal and Torres Strait Islander communities, adapted to refer to 'Cultural Safety' in reference to Culturally and Linguistically Diverse communities and could be applicable to a range of populations.
- "culturally appropriate" appears to have originated within Culturally and Linguistically Diverse communities, but could be applicable to a range of populations.
- "trauma-aware and healing informed", appears to have originated within the movements to support the stolen generation, has expanded to a broader meaning amongst all Aboriginal and Torres Strait Islanders as well as amongst some Forgotten Australians (which includes people from the Stolen Generation), but could be applicable to a range of populations.

In the definition of High Quality Care, a delineation occurs where §20(c)(viii) discusses Aboriginal and Torres Strait Islander persons referring to "culturally safe, culturally appropriate and accessible care", while §20(c)(xi) refers to "culturally appropriate" for the diverse life experiences of individuals". This is further reinforced when looking at §71(4)(b) where the term "culturally safe" is again linked to Aboriginal and Torres Strait Islanders when discussing whether there was an appropriate assessor available to conduct a "culturally safe" needs assessment.

This would imply that the Aged Care Act is signalling the terms:

- "culturally safe" exclusively refers to Aboriginal and Torres Strait Islander persons,
- "culturally appropriate" may be used in a broader sense to apply to a wider range of diverse populations,
- references to language, would imply intention to be inclusive of linguistic diversity, but with no specific legislative hook to refer to English speaking members of Culturally and Linguistically Diverse.

If the above assumptions are correct, it is concerning that only the term "culturally safe" is included in the way the future complaints functions will be developed (§358(a)) Culturally appropriate also needs to be included to ensure coverage of diverse population.

Ensuring providers actively include participants from diverse backgrounds, including as part of continuous improvement plans

Recognition of Diverse Populations (called Special Needs Groups in the current Act)

The current legislative recognition of specific 'special needs groups' has been downgraded in the new Act. The current Aged Care Act has a specific clause within the legislation, referencing populations for specific programs and initiatives. The new Aged Care Act 2024 only provides for a generic recognition of diversity (§25(4)), with specific populations downgraded to a legislative note.

Ensuring that there is an ongoing focus on providers supporting people from diverse backgrounds is important. Clear expectations and consequences for providers who do not meet the expectations are required. Older people from diverse backgrounds express frustration with the lack of focus and false promises by providers on supporting their needs.

Specialist Verification Framework

The Specialist Verification Framework is a policy governing when a provider can promote themselves on My Aged Care as being a specialist for a particular group of people. The verification framework provides a soft quality assurance framework to ensure consistency of when this information is displayed.

To ensure that older people from diverse backgrounds are catered for by providers and have access to specialist services able to meet their needs COTA Australia makes the following recommendations:

Recommendation 4: Amend the Act at §25(4) to transform the note in into a legislative clause listing those groups in the Act along with a "or any other group listed in the Rules" provision, as exists in the current Act.

Recommendation 5: Amend the Act at §141 and §544 to introduce the Specialist Verification framework within the *ACQS Commission's* Provider Register (§141) (or §544 *System Governor must publish information about funded aged care services),* including any criteria outlined in the Rules of what evidence is needed for specific diversity groups (linking to groups from §25(4)).

Recommendation 6: Amend the Act in Chapter 3 to introduce a Condition of Registration on "Supporting Diverse Populations" be inserted to require a provider comply with the requirements of the Aged Care Specialisation accreditation the provider identifies on My Aged Care they have attained.

Recommendation 7: Amend the Act at §147 to require all Continuous Improvement Plans to include a requirement to include activities to achieve inclusion of diverse populations with an explicit reference to the diverse populations proposed to be a new clause from the current note in (§25(4).

Recommendation 8: Amend the Act at §372 to make equitable access to services amongst populations listed in §25(4) a specific requirement in the annual report by the System Governor.

The Act does not contain provisions for the appointment of the independent statutory appointment of the First Nations Aged Care Commissioner. our understanding is that this will form part of a future amendment to the Aged Care Act once enacted. COTA Australia supports this role becoming an independent statutory position in legislation.

Ensure appropriate supports for Carers

The Act does not provide supports for carers based on their assessed need. While access to respite and other supports that provide a carer break is within the legislation, it continues to be based on the need of the older person seeking funded aged care services. Carers needs

should be able to be taken into account given how critical they are in supporting people to remain at home and providing assistance to loved ones in residential care. It appears the only solution is for the System Governor to providing specifically targeted grants for services for Carers. COTA Australia will continue to support this approach.

Make training provisions mandatory, especially on dementia

The aged care Act does not introduce a minimum qualification or worker registration scheme into aged care. Further there is no mechanism apparent in the primary legislation that would require a provider to ensure staff have a particular certification or training. Past attempts to address training issues have allowed providers to determine what training is required for their staff and while that allows for some tailoring for specialist providers it has largely resulted in patchy implementation with workers not automatically having competencies such as dementia and palliative care.

A clear example of where mandatory training should be enabled is dementia training for all aged care workers, especially those working in residential care. While it may be possible for the generic "conditions of registration" hook in the primary legislation to be used for training requirements, it seems unlikely to be used by the ACQS Commission in this way, given the role for governance would sit with the System Governor.

Recommendation 9: Amend the Act in Chapter 3 to introduce an obligation on providers to ensure appropriate training of staff.

Security of Tenure provisions

The maintenance of strong security of tenure provision is important to protect residents right to remain in a particular room and/or facility and enable continuity of care. This is particularly important protection for people living with dementia.

The proposed Bill provides for the prescription of Rules relating to security of tenure in residential care. §149(f) states that "an individual may not have their tenure ended unless under specific circumstances" and these will be prescribed by the Rules. The Explanatory Memorandum states that this is intended to replicate current security of tenure provisions provided in the *User Rights Principles 2014* for the purposes of residential care.

The exceptional circumstances provisions in the Rules should include substantive steps to achieving conciliation outcomes with all parties and the implementation of comparable, timely alternative care and/or housing solution before suspending security of tenure for an individual. The provisions should also include access to and provision of independent behavior support services and advocacy services.

Resident to resident abuse is a key example of where suspension of security of tenure may be considered. It is appropriate that providers are prevented from automatically removing an older person who may be the aggressor of abuse, especially noting the unique challenges related to people experiencing dementia, or cognitive decline, who may not have a usual

understanding of their actions. However, there are situations where an agreed outcome is not able to be reached and the safety, health and wellbeing of other residents and staff is at risk by the aggressive behaviour of an individual.

Recommendation 10: The Rules must outline providers responsibility to residents and specify only a limited number of reasons where a provider can move a resident. COTA Australia supports the Dementia Australia position on this issue.

Embedding principles of choice and control, consumer directed care, and self-management

The principles of choice and control, consumer directed care, and self-management are reflected in some way in the objects, Statement of Rights and Statement of Principles[2]. With some exceptions, this is not reflected in the rest of the legislation, and we think it should be particularly in relation to self-management within the new Home Support program.

Recommendation 11: Amend the Act to explicitly include choice and self-determination as an objective of the Support at Home program. This addition will complement the objective's existing emphasis on faster access to services, early intervention to maintain independence and reduce decline, higher levels of care for complexity.

Recommendation 12: Recommend that Government promote self-management in Support at Home as a genuine option in 2025 as part of a continuum where participants can opt for some services to be self-managed and some managed by providers.

Under Chapter 2's discussion of Assessment we also recommend amending the Act to place an obligation on Assessors to incorporate the wishes and preferences of participants within the Service Plan

In the Rules COTA will monitor/look for

- Support at Home materials to include a focus on the2027 reforms where participants can make choices about who delivers their specific services
- Allowance for charging increments smaller than one hour (e.g. 15-minute increments)
- The ability to swap between independence and everyday living categories as required by the older person
- Capacity to smooth services and allow for carer breaks where more intensive services are required given the limitations of the rollover policy per quarter ($1,000 or 10%)
- Exceptional circumstances being considered in the service list providing flexibility and exceptions to meet genuine assessed need.
- Mandating 10% of service costs on case management – excludes Self-Management

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- [2] See 67(1)(ii) access to the funded aged care services in the service type, or the funded aged care service, will facilitate personal mobility of the individual in the manner and at the time of the individual's choice; and 179 Registered provider duty – Note: Under the Statement of Rights, an individual has a right to exercise choice and make decisions that affect the individual's life, including taking personal risks.

- Check on providers charging for administrative functions when people self-manage – enabling transparency.

An enforceable obligation to uphold rights

The Statement of Rights has been improved from the exposure draft. In particular, COTA Australia welcomes the move towards a positive duty on providers to uphold rights for both people accessing, and people seeking to access, funded aged care services, and the legislative clarification that rights are not absolute and must be balanced with other rights.

Striking the right balance with other rights

The Act introduces a clause to balance participant rights with others' rights and obligations (24(2) (e.g. worker rights, OHS requirements, the rights of other individuals) reaches). We welcome the recognition that rights are not absolute but are concerned that the current wording in the Act does limit the denial of rights only when it is justified so as to uphold other obligations or to not infringe on the right of others. A stronger balancing test should be inserted.

Recommendation 13: Amend the Act at §24(2) so that the balance with other rights and obligations test reads, that rights "may be limited only so far as can be demonstrably justified after taking into account all relevant factors".

Obligations on Providers

This test then becomes part of the positive duty on providers which is presented as a 'condition of registration' in §144(1)(b). We are concerned the wording here only requires that providers *"have in place practices" "designed to ensure*" they deliver in accordance with §24(2) (balanced with other rights).

We support the "have in place practices" language that will empower the Commission to investigate a provider's compliance with rights without a specific breach or case.

However, we are concerned by the language "designed to ensure". Simply having a procedure manual, is not an acceptable test for upholding rights. A provider's obligation should be to 'comply' with the Statement of Rights as is the language under the Code of Conduct and other obligations on providers.

Recommendation 14: Amend the Act at §144(1)(b) to read the provider must "have in place practices to comply with the Statement of Rights, in accordance with subsection 24(2) (compatibility with the Statement of Rights)".

Ensuring Penalties are a sufficient deterrent on rights

Penalties for breaches of the 'condition of registration' (§142) are a maximum of 250 penalty units $78,250 (individual), or $391,250 (corporation) unless it is a significant failure/ systematic pattern of conduct when it is up to 500 penalty units $156,500 (individual) or up to $782,500 (corporation) if issued by a Court. Infringement notices are 1/5th these amounts

and may be issued by the Commission, but as discussed below these penalties are not listed as an infringement notice in §448. Therefore, the only entity who can impose a financial penalty onto a provider for breaches of a provider's conditions of registration is a court. The Commission itself may take other regulatory actions but could only seek to take a case before the court if applying a civil penalty for an individual provider's breach of their conditions of registration. COTA Australia is concerned this approach won't be a sufficient deterrent for providers to meet their obligations. Further, we're concerned the Commission won't be adequately funded to pursue court action on matters on which they can't issue a fine.

Recommendation 15: Amend the Act to introduce infringement notice for breaches of a provider's conditions of registration or other obligations.

Recommendation 16: That Parliament assure itself the ACQS Commission is sufficiently resourced to proactively pursue providers for civil penalties in Court.

Linking Statement of Rights to other regulatory frameworks in the Act (Standards and Code of Conduct)

The Act contains important concepts – including the Statement of Rights, a definition of high quality care (§20), the Aged Care standards and the Code of Conduct. These concepts are not linked.

The definition of 'High Quality Care' continues to remain aspirational, while the Statement of Rights refers only to 'quality and safe funded aged'. The Statement of Rights should directly link to High Quality Care definition.

While in the future, the new Standards will only apply to providers in registration categories 4-6, they remain the key regulatory tool. Some rights are individually mentioned in the Standards[3], but the Statement of Rights itself is not. References within the Standards (to appear in the Rules) and their supporting material should be updated to explicitly reference the Statement of Rights.

The Code of Conduct along with any additional conditions of registration imposed by the Commissioner, will become a key regulatory tool for providers in registration categories 1-3. The current Code says, "act with respect for people's rights to freedom of expression, self-determination and decision making in accordance with applicable laws and conventions". This means some rights from the Statement of Rights may not become an obligation under the Code.

The Code of Conduct also is the only direct obligation on Aged Care Workers and a key obligation for Responsible Persons. As it is currently drafted there, is no direct obligation on a worker or responsible person to uphold the Statement of Rights, and no direct ability to

[3] See for example 1.1.3 "The provider and workers recognise the rights, and respects the autonomy, of older people".

make a complaint about an individual worker not upholding rights (§14; §145). While their employer, the Registered Provider has its own obligations, we believe all workers and Persons Responsible must have a direct obligation to build a rights-based system.

Recommendation 17: That the Act is amended at§23(3) to explicitly insert the definition of High Quality Care into the Statement of Rights under the Quality and safe funded aged care services in §23(3).

Recommendation 18: That the current Quality Standards and the Code of Conduct are updated to explicitly reference the Statement of Rights in the future Rules.

Recommendation 19: That supporting materials for the Quality Standards provide more direct links to the Statement of Rights to better embed rights within the Quality Standards approach

If these recommendations are not adopted, then:

- **amend the Statement of Rights to reference the definition of High Quality Care within a continuous improvement frame (as is done in the Statement of Principles at §25(6)(b)(i))**
- **Amend §358(a)(ii) to make explicit reference in the Complaints Functions include complaints about a worker or person responsible breaching the Statement of Rights**
- **Amend §144 to insert an obligation on providers "to take reasonable steps to ensure that the aged care workers, and the responsible persons, of the registered provider comply with the Statement of Rights" (as they are obligated to do on the Code of Conduct at §145(b))**

Strengthening Complaints and Statement of Rights

It is important that the Act requires rights to be upheld. Currently the language relates to not acting in a way that is incompatible with rights (e.g. "making complaints about a registered provider acting in a way that is incompatible with the Statement of Rights" (§358(a)(ii).) This framing of "incompatible with" has been amended elsewhere in the obligations on providers as part of the introduction of a positive duty on providers. The positive duty requires providers to take "all reasonable and proportionate steps to act compatibly with" the Statement of Rights. The legal basis for making a complaint about rights therefore should reflect a consistent approach that any complaint about a provider not taking "all reasonable and proportionate steps" is a legitimate complaint.

Recommendation 20: Amend the Act at §358(a)(ii) to remove references to "incompatibly with" and replaced with as "making complaints about a registered provider acting in a way that did not comply with their obligations to take all reasonable and proportionate steps to comply with the Statement of Rights".

Making it clear you can complain about your Rights being ignored

The Act currently retains the clause asserting that the Statement of Rights alone does not create "rights or duties that are enforceable by proceedings in a court or tribunal" (§24(3)).

The operation of this clause appears to simply reinforce that a claim of not having your rights upheld, would not provide grounds for directly seeking remedy from a court.

However, it does not seem to prevent a court action regarding the breach of a provider obligation under §142 for not meeting rights related conditions of registration under §144. Further, the explanatory memorandum clarifies that the operation of this clause does not prevent a complaint from occurring. Any regulatory action from a breach of rights, is more appropriately started with the Complaints Commissioner.

In talking to older people, it is not clear that they can make a complaint about their rights not being upheld. To make this clearer a legislative note to refer to these other sections should be included.

Recommendation 21: Amend the Act at §24(3) to insert a legislative note which refers to both the provider obligations in §144 and that individuals have the ability to make complaints about their rights being upheld to the Complaints Commissioner (§358(a)(ii)).

Rights Obligations on Others

The System Governor, ACQS Commissioner and Complaints Commissioner are bound to operate under the Statement of Principles. The wording in the Statement of Principles ("The Commonwealth aged care system supports individuals to be aware of, understand and be empowered to exercise, their rights under the Statement of Rights when accessing, or seeking to access, funded aged care services" (§25(2)(e)) does not ensure that people fulfilling these system wide functions, such as an Assessor (as a delegate of the System Governor) will be required to uphold a person's rights. There is no direct obligation on the System Governor or its delegates to uphold rights and there should be.

Recommendation 22: Amend the Act via the Statement of Principles or placing a new obligation on the System Governor and Commissioners to ensure that My Aged Care, the Single Assessment Workforce, ACQS Commission staff and any other Government employee or contractors are obligated to uphold the rights of individuals in the same way any aged care provider is required to.

Entry to aged care should not prevent or limit access to services such as healthcare

The Royal Commission into Aged Care Quality and Safety identified that many older people receiving aged care services were not able to access the full range of health services available to people in the community. The right to health care is a key human right which must be honoured when older people are receiving aged care services. Barriers to health care occur at a policy level (e.g. preventing program "double-dipping"), at an allocation level, (e.g. people receiving aged care allocated to lower level of priority to health care) and at a systemic level (e.g. aged care residents being unable to afford the cost of transport or escort to medical appointments). There have been attempts to improve and clarify the roles and responsibilities for the delivery of health care or people receiving aged care services yet

older people within the aged care system can still miss out on health care services due to uncertainty and divergent understanding of roles and responsibilities between jurisdictions.

Recommendation 23: Amend the Act (§23)) to Include the right to access health care services in the Statement of Rights.

Recommendation 24: Ensure the Rules retain the requirement from the current Act for providers to facilitate access of individuals to health care services outside of the aged care system, as well as facilitate access onsite.

Ensure there is an accurate definition of direct care staff member

The Act includes and defines a nursing assistant. This category of worker is not recognised by the AHPRA nursing board, and we understand the Fair Work Commission recently abolished recognition of this category of staff member from aged care when it made its decision on aged care awards.

Its introduction (including recognising this role's status in the service list released by IHACPA under 'nursing services') is inconsistent with other approaches to the delivery of direct clinical care. Nursing Assistants are similar to personal care workers. The Act does not have a definition of personal care worker.

COTA Australia recommends that given the similarity of the role a definition of personal care worker be included in the Act and that nursing assistant is included as a subset of personal care worker. If necessary, this could be complemented with a legislative note where the term personal care worker appears in the definition of direct care worker could make clear it includes "nursing assistants".

Recommendation 25: Amend the Act at §7 to insert a definition of personal care worker and include within that definition a nursing assistant. Delete the standalone reference to nursing assistants and its standalone reference in the definition of direct care.

Enabling distinctions between aged care workers and volunteers will strengthen the role of volunteers in the aged care system

The proposed legislation identifies the importance of volunteers, including in the Statement of Rights (§23) and Statement of Principles (§25). Volunteers perform a range of tasks and functions and have varying levels of involvement with participants.

The Fair Work Ombudsman (FWO) identifies characteristics of a genuine volunteering arrangement compared with unpaid work where there is an employment relationship.[4]

[4] The Fair Work Ombudsman observes "the more formalised that volunteer work arrangements become (for instance if the volunteer is expected to work according to a regular roster) the greater the possibility that an employment relationship will be found". A helpful summary of genuine volunteering arrangements vs an unpaid employment relationship is available at https://www.fairwork.gov.au/tools-and-resources/fact-sheets/unpaid-work/unpaid-work-unpaid-work

Volunteers may be protected under Volunteer Protection laws from paying a civil liability.[5] In short, volunteers and workers are not the same.

In the Act, volunteers are included in the definition of aged care workers (§11(4) and (§5)). Placing volunteers in the definition of aged care workers imposes a high regulatory bar and may lead to a reduction in the number of people volunteering in aged care.

Recommendation 26: Review §14(4) to assess the appropriateness of defining all Volunteers as an Aged Care Worker.

Worker Screening Requirements

While much detail of the worker screening system remains unknown the intentions is someone who "poses a risk to" an older person accessing funded aged care services will be screened. The Act defines a person who will need to receive a worker screening clearance as someone who "poses a risk" to an older person. How this is defined will be important to ensure that all persons who may have incidental occasion to be on an older person's property, whether alone or usually working in teams, would be required to have a worker screening clearance.

We understand that the worker screening system will be developed by state and territory governments in line with the current NDIS worker screening comments.

§379 of the Act which outlines the Worker Screening Database does not appear to contain any requirement to be automatically updated with any banning order. While providers have a separate obligation to follow any banning order, from a practical perspective ensuring a single source of eligibility is updated with all information.

Recommendation 27: Amend the Act at §379 to ensure the Worker Screening Database is required to be updated to remove any person's clearance that is subject to a banning order.

Recommendation 28: Ensure the Rules include all people entering on individual's property as requiring a worker screening clearance.

A number of older persons have reported to us that aged care entities have asked them to complete their own police check or working with vulnerable persons process today. In some states the NDIS worker screening check for a volunteer is free; while working with

[5] While many state laws encompass Community Work in their Volunteer Protection laws, the Commonwealth's Volunteer Protection laws appear to be limited to acts done directly on behalf of the Commonwealth or Commonwealth Agency. How the interaction between the Commonwealth penalty and the State based protection from civil penalties will require more time than was available for the preparation of this submission. See Volunteer protections and inclusion of Community Work within Part IX Volunteer Protection of *Wrongs Act 1958* (Vic) for example. Other state laws include *Civil Laws (Wrongs) Act 2002* (ACT); *Civil Liability Act 2002* (NSW); *Personal Injuries (Liabilities and Damages) Act 2003* (NT); *Law Reform Act 1995* (Qld) *and* *Civil Liability Act 2003* (Qld); *Civil Liability Act 1936* (SA); *Civil Liability Act 2002* (Tas); *Civil Liability Act 2002* (WA) and *Volunteers and Food and Other Donors (Protection from Liability) Act 2002* (WA);

vulnerable persons check and cards can incur a fee. We believe that volunteers should be fully funded and supported to complete their application to meet the criteria to work in aged care.

Recommendation 29: Recommend the final design of the Worker Screening process has no cost for volunteers.

The worker screening system is different to and more intensive than a police check, including investigations of non-criminal employment matters. In some states there are working with vulnerable persons cards and in others a working with children cards and now there is a NDIS worker screening check and an aged care worker screening test. Importantly, older people may want to see evidence of a person's clearance to work in aged care, including individuals who are registered providers and do not have an employee identity card from a larger organisation. The worker screening clearance should be in a format that can be produced to an older person upon request (such as a card) and older people should have the right to request proof of the clearance.

COTA Australia encourages consideration of the creation of one 'working with vulnerable persons' card and process for use in the different working environments and as evidence for an older person.

Better protections against use of restrictive practices

There are a diverse range of views about the appropriate person to authorise the use of restrictive practices on behalf of an individual who does not have the capacity to authorise it for themselves. Such approvals are deemed by state/territory Guardianship boards as a unique class of authority and therefore may not be within the powers of a Tribunal appointed guardian, or an enduring guardian document created by the individual unless restrictive practices are specifically stated. Even then the absence of clear legislation about who can authorise such matters weakens the authority of such approaches.

Within the discussion about authorising their use, the Act/Rules must provide clear guidance that some people with cognitive impairment can benefit from access to pharmaceutical interventions, that could be deemed a restrictive practice, and with appropriate protections and review timeframes in place should be able to.

Immunity provisions should be removed

It is for this reason that the Commonwealth began to talk to the States about the need to update their laws for a clearer framework a few years ago and introduced a 'restrictive practices decision maker' framework into the current Aged Care Act, along with a temporary immunity provision for providers to ensure if they followed the Aged Care Rules, they wouldn't be liable for prosecution under a state law (either because there wasn't one, or a new one changed the dynamic). To further complicate matters, the absence of clear legislation has meant that common law provisions around explicit informed consent creates

b a complex tapestry of who is authorised to approve restrictive practices based on case law.

At the time of the initial response to the Royal Commission where the restrictive practices decision maker was introduced, the immunity provision was presented as a necessary temporary solution while the permanent solution was built into the new Aged Care Act. Three years on we object to the sustained presence of the immunity provision (§163) in the bill.

Recommendation 30: Amend the Act at §163 to remove the immunity provision or introduce a sunset clause for it conclude no later than December 2026.

An independent authoriser (such as the Senior Practitioner model) is preferred

The approach to restrictive practices in disability is to move the authorisation from a representative of the individual to a specialist 'Senior Practitioner' model that ensures a person with a clear understanding of the competing interests maintain a central focus on the rights of the individual. This 'Senior Practitioner' model then requires each provider to have an 'Authorised Program Officer' working with 'Behaviour Support Practitioners' in their organisation who develop Behaviour Support Practitioner. NDIS law requires an 'Independent Person' is available to all NDIS Participants to explain the use of restrictive practices within their Behaviour Support Plan. The Independent Person cannot be related in any way to the provider. The Authorised Program Officer' liaises with the Senior Practitioner, for the Senior Practitioner to authorises the use of restrictive practices outlined in the Behaviour Support Plan.

While a complex system, you can see inherent in its design a clear balance designed to ensure that experts who understand the alternatives to the use of restrictive practices are involved in key decision making processes (both the APO within the organisation, and the Senior Practitioner external to the organisation), as well as a clear support person for the person to whom restrictive practices will be applied. Unfortunately, as Senior Practitioners are a state government system and aged care is entirely a Commonwealth regulated system, the decision has been made by Government to not implement a Senior Practitioner approach. **COTA notes its preference would be to implement a comparable independent authorisation model (e.g. Senior Practitioner approach) with its elements of an experienced professional, who is distinct from the providers but supported by individuals within the provider's organisation who maintain an independent accountability to the external authoriser.**

Informed Consent authorisation models are inferior to expert independent authorisation models such as the Senior Practitioner

§18(1)(f) require that informed consent is given to the use of a restrictive practice in relation to the individual, instead of requiring an independent authorisation model. We note our

support for the more expansive discussion of this issue by the Queensland Public Advocate and the Older Person's Advocacy Network.

While the mechanism of authorisation may be changed from 'informed consent' to 'independent senior practitioner', any changes should retain a legal requirement to inform the individual about what is happening to them and why. In achieving this objective, the concept of informed consent may be retained in a different way to the authorising approach that is currently used in aged care.

Recommendation 31: Amend §18 to introduce an independent authorisation model. Consider the appropriateness of §18(1)(f) when introducing an independent authorisation model in regard to ensuring the individually is fully informed of decisions taken about the use of restrictive practices on the individual.

Supporters and Supported Decision Making

The bill provides for the System Governor to register a person as a '**Supporter'** of an individual accessing or seeking to access aged care. Supporters will be able to receive information on behalf of the individual they are supporting in their decision making about aged care. Obligations on Supporters (§30(2)(a) require them to act in manner that "promotes the will, preferences and personal, cultural and social wellbeing of the individual" they are supporting. This is a welcome continuation of the proposals in the exposure draft.

Where it differs to the Exposure Draft is that when an individual no longer has capacity to make decisions themselves, the Act now relies on the use of state and territory issued powers to enable a person to make decisions on behalf of the individual. These are referred in the Bill as '**Guardians etc.**' (§28) and is likely to include tribunal appointed guardians (medical, lifestyle) and administrators (financial), as well as documents created by the individual when they had capacity such as enduring powers of attorney (financial), enduring guardianship (lifestyle) and medical treatment decision makers (medical). State and Territory laws operate concurrently (§33), and we welcome the change in the Act introduced to place state and territory appointment mechanisms at the centre of aged care decisions.

However, there are two areas that we are concerned about:

- There is no obligation on '***Guardians etc***' to have regard for the will and preferences of people in aged care. Accordingly, the inconsistent approach between the aged care model of 'will and preference' tests and those state laws that continue to 'best interest of' tests will still apply for people who are Guardians etc. An amendment to link Guardians etc. to supported decision making principles of 'will and preferences' is necessary. This can be achieved by either inserting an obligation into §28 to apply Supported Decision Making principles, or to require them to register as a Supporter.

- The largely unchecked power of the System Governor to appoint a ***decision making supporter*** contrasts with the rigorous processes for the appointment of Guardians etc processes. §37(5) does ensure the System Governor has regard for whether any Guardians etc. for the individual exist. §27(2) should be removed. Failing this approach the Act should be amended to require Rules that the process to review and approve 'decision making supporters' go through a comparable system of protections at the state/territory Guardianship Tribunals systems when the person does not have decision making capacity for themselves.

Recommendation 32: Amend the Act at §28 to place an obligation on all Guardians etc to have regard for 'Supported Decision Making Principles' (to ensure the person's will and preferences are taking into account when supporting them to make a decision. Consider extending this principle to when acting as a substitute decision maker via state laws and whether §37(4)(b)'s criteria to request remains warranted.

Recommendation 33: Amend the Act at §27(2) to remove the power of System Governor to appoint decision-making supporters. Alternatively, insert a clause requiring Rules to outline how a decision to appoint will be made.

Aged Care Service List

The Aged Care Service List is discussed in Chapter 1 and the Rules relating to the Aged Care Service List were released for consultation by the Department on 1 October 2024. COTA Australia will respond to the consultation but where issues relate to the primary legislation, we draw to your attention to these largely in our discussion on Chapter 4.

Chapter 2 – Entry to the aged care system (§55-§102)

Apply

Applicants are aged care participants and have rights

The Act has insufficient reference to the timeframes required to complete decisions and determinations related to eligibility, application and assessment processes. To ensure the trust of aged care participants, their families and the public, clear decision-making timeframes should be provided in the Rules.

Recommendation 34: Amend the Act (at multiple locations) to ensure that all application, eligibility and assessment related decisions undertaken by the System Governor have maximum timeframes outlined in the Rules.

Exceptional eligibility pathway for people aged under 65 years

There is no exceptional pathway for people aged under 65 years beyond First Nations and Homelessness. The proposed Act does refer to an exceptional pathway for services without an assessment. In general terms, it is understood that the age limitation is reasonable and that most people aged under 65 years will access services such as the National Disability Insurance Scheme (NDIS) and state and territory health and community service programs. However, there should be provision for some people experiencing premature ageing and significant disadvantage who could be assessed as being eligible for entry into the aged care system.

Outline a clear pathway to approve exceptional cases for anyone experiencing the early onset of aging-related chronic conditions that fall outside the arbitrary age Rules.

Recommendation 35: Amend the Act at §58 to permit an exceptional pathway for aged care service eligibility via criteria and procedures outlined in the Rules that include, 'but are not limited to', First Nations and people experiencing homelessness under 65 years.

Assessment

Participant decision making must be central to assessment and service planning

In aged care assessment and reassessment, there is no legal requirement for a service plan and no requirement for the assessor to "have regard" of the individuals view when determining the funded services.

The language of §62 on undertaking aged needs assessment is not strong enough in providing a requirement for the views of individuals to be incorporated into service planning and decision making. It does not appear to express the intentions outlined in the Explanatory Memorandum.

§62 states that the aged care needs assessment must be undertaken by the approved needs assessor using an assessment tool prescribed by the Rules and must include a discussion with the individual about:

- what the assessment has identified in terms of funded aged care services the individual may require access to and may assist the individual to maintain the individual's independence
- the individual's preferences and goals, the next steps in terms of the individual's application for funded aged care services and how the individual will be informed of the outcome of the application.

The text refers to a discussion about the individual's preferences and goals but does not indicate that the application of these preferences and goals are central to service planning and decision making.

This contrasts with a statement in the Explanatory Memorandum that links undertaking aged care assessment with the Statement of Principles that states that "when undertaking the aged care needs assessment, the approved needs assessor must consider the individual's right to independence, autonomy, empowerment and freedom of choice to the extent that it does not contravene the requirements of this Act."

Recommendation 36: Amend the Act at §62 (2)(b) to include that "when undertaking the aged care needs assessment, the approved needs assessor must consider the individual's right to independence, autonomy, empowerment and freedom of choice to the extent that it does not contravene the requirements of this Act."

The New Act must require assessors to develop a Service Plan

Assessment for the eight classifications does not determine the quantum of services needed by means tested category. Instead, a single overall budget is allocated with 10% allocated to care management and 90% allocated to services. This is an unfortunate continuation of the power imbalance between providers and participants – where providers heavily influence the design of care plans based on their view of what an older person needs (often tainted by their understanding of what their organisation has available). The assessment process is the only opportunity to provide all older people with advice from an expert that is independent of providers.

COTA would have preferred to see an assessment process enshrined in the Act that guarantees to provide individuals with an independent source of advice about the sorts of care and services that they need in the form of what is today called a 'Service Plan'. Service plans also allow for the distinction between what an assessment identified a person needs, and what a person agrees in their service plan to receive. Until the 2027 introduction of multiple providers enable care management independent of providers the assessment process must be designed to be more independent and outcome focussed.

Recommendation 37: Amend the Act at §63 to introduce a requirement that the Aged Care Needs Assessment Report must produce a service plan that identifies the 'plan about the delivery of funded aged care services agreed to be received by an individual'.

People should be able to make complaints to the Complaints Commissioner on their access to assessment and this should be a reviewable decision

Many older people seeking to enter the aged care system experience difficulties and challenges in accessing assessment appointments. We have heard examples of poor communication in booking/arranging assessment appointments and long waiting times without follow up. People applying for and seeking entry to the aged care system should be viewed as aged care participants and be able to make complaints about their experience in accessing an assessment. A rights-based aged care system should enable decisions made during the assessment allocation process to be reviewable.

Recommendation 38: Amend the Act at §357 to ensure a single complaint handling front door for older people, by introducing a new function of the Complaints Commissioner to receive complaints on behalf of the System Governors pertaining to their functions at §56-§60 (applying for access) and §64 (assessment). Ensure that this is implemented in a way the original decision of the System Governor can be reconsidered/reviewed.

The assessment workforce should always be independent from registered providers

The Aged Care Act should prevent an entity that is a registered provider, from becoming a delegate of the System Governor for the purpose of being a part of the assessment workforce. Whilst there may be exceptional circumstances, the assessment workforce should be independent. A possible exceptional circumstance could be where the System Governor can demonstrate that, in a rural and remote region, there is no other provider appropriate to provide the assessment service. Where this occurs, there must be strict criteria to ensure appropriate separation of functions and personnel to prevent conflict of interest behaviour.

Prioritisation of both in-home care and residential care should be based on the principle of individual need not geography or population group

Under §86(5)(a), the System Governor makes individual priority category decisions for residential care based on:

- a high urgency rating; or
- the individual residing in an area prescribed by the Rules; or
- the individual being an Aboriginal or Torres Strait Islander person, homeless, or in a class of persons prescribed by the Rules.

The Rules should outline in what circumstances priority decisions would be based on a geographical area. These circumstances are currently not clear.

COTA notes its general principle view that prioritisation for all aged care services should be based on the principle of individual need not geography or population group. We will consider the implications of this power further when the Rules are available.

The method of determining the number of, and Rules around the allocation of places should be transparent

Aged Care Provisioning Ratio appears to have been abolished

Historically, a clear provision ratio for residential aged care was 78.0 places per 1,000 people aged 70 years. In the 2023-24 budget this was temporarily reduced to 60.1 places per 1,000 people aged 70 years. Now the proposed Act (in §91) proposes removing the ratio entirely and requiring the Minister to determine, in writing, for a financial year a process and method by which the number of places available to be allocated to individuals for each service group is to be worked out. This means that there will not be a regular method of allocating resources to ensure the needs of an increasing ageing population are met. At a minimum the method should be made transparent.

Recommendation 39: Amend the Act at §91 to require the method and process for determining annually the number of places to be published.

Act should require methods of allocating classification types to be in the Rules

Section 93(2) states that "the Rules **may** prescribe methods or procedures that the System Governor must follow in deciding the order of allocation for a classification type for a service group." This means that it is not a requirement and appears to mean it can simply be decided by the System Governor via policies. The methods or procedures for allocating places by the System Governor must be outlined in the Rules.

Recommendation 40: Amend the Act at §93(2) to require the Rules "must" prescribe the method or procedure for allocation of a classification type Place allocation decisions should be published.

Chapter 3 – Registered providers, aged care workers and aged care digital platform operators (§103-189)

This chapter of the Act contains a number of obligations on providers, which we have summarised in a table in Appendix 2. We discuss the financial penalties associated to that obligation in the table and as part of our analysis on the regulatory mechanisms contained in Chapter 6.

Requirements for access are welcome but must be extended to include visitors

§156 is a welcome addition that makes it a condition of registration that a registered provider "allow and facilitate access" to certain classes of people in accordance with any requirements in the Rules. The Act currently includes Supporters, independent aged care

advocates, legal practitioners and the aged care volunteer visitors. However general visitors are not a group of people that providers must allow and facilitate access to.

While the inclusion of supporters arguably provides a comparable access to the named visitor scheme we proposed in our exposure draft report, we feel the obligation to facilitate access to visitors more broadly should be a condition of registration. in this location. The importance of allowing visitors at all times was clear during the COVID pandemic. The Act provides the opportunity to ensure that the social isolation and mental health impacts that residents suffered are never allowed to happen again.

Recommendation 41: Amend the Act at §156(1) to include "a visitor" within the list of persons a provider must "allow and facilitate access" for the residents in their care.

Registration Period (§115)

COTA Australia supports outstanding providers having more than a 3 year 'registration' period, as long as there continues to be annual checks along with the increased monitoring ability being provided to the Commission. However, the current provisions in §115(1)(b)(ii) contain no ceiling on the number of years a period of registration would be. **The Act would benefit from the specification of an upper limit for the period of registration.**

Information to be published and searchable on Provider Register (§141)

The Act in §141(2) empowers the Commissioner to determine the form of the Provider Register and that it *may* be published on the Commission website in whole or in part (§141(7)). We believe that it must be published in full and in a form that allows for easy searching of the register.

Recommendation 42: Amend the Act at §141(7) to require the Commissioner 'must' publish the register in whole on its website, and in a searchable format.

The Act outlines in §141(3) a number of items that must be included in the provider register, including:

- the conditions (if any) to which the registration is subject
- whether the registration is in force or is suspended
- information about enforceable undertakings
- information about compliance notices
- information about the banning order (if in force), including any aged care worker or responsible person of that registered provider

COTA Australia supports the listed inclusions but notes a number of other things are missing from this list for inclusion on the register, including informal findings of non-compliance, historical non-compliance notices, non-conformance with the standards discussed below.

In addition, the current contents of the Provider Register do not appear to require publication of any civil penalties, fines or compensation orders found against the Provider.

COTA Australia is concerned by the possibility of creating a perverse incentive for the provider to 'pay a fine' to avoid public recognition of their actions.

Recommendation 43: Amend the Act at §141 to require the Provider Register to record where a civil penalties, fines or compensation order was made against a provider.

All non-compliance findings should be included in the Register

The current method of publishing non-compliance decisions by the ACQSC is via a word document on its website in two logs Aged Care Quality Standards Non-Compliance Decision Log and the Non-Compliance Decision Log against other responsibilities. The decision logs contain all non-compliance decisions for each financial year. A service or provider remains on this list even after returning to compliance. The way in which this information is structured is not easily searchable. In the future the Act will require non-compliance decisions to be published in the Provider Register. We assume the Rules will outline how historical non-compliance decisions must be included.

There appears to be a technical distinction between a formal compliance notice (§481-§487) and an informal finding that a provider did not meet their obligations and conditions of registration (§142-§165) under the Act. The Register should include all such findings which will build transparency and trust. Formal compliance notices should be retained permanently on the provider register.

Recommendation 44: Amend the Act at §141 to require the Provider Register to record:

- **all non-compliance findings, and**
- **all notices of non-compliance be retained on the register, including where the Commissioner has withdrawn the notice of non-compliance.**

Recommendation 45: Amend the Act at §141 to require the Provider Register to record all informal non-compliance findings such as breaches of conditions of registration and/or obligations of a registered provider or its entity, be published.

Non-conformance with the standards must be included

The Aged Care Quality Standards today are assessed against a met/not met criteria and assessments against the standards are published on the ACQSC's website in a word document for each audit report. In the future, there will be a new audit methodology introducing a graded assessment approach. Including an assessment outcome of 'exceeding conformance' (for residential care homes only), 'conformance', 'minor non-conformance' and 'major non-conformance'.

Non-conformance with the standards (§146, §110) is not the same thing as a non-compliance decision on breaches of their obligations and conditions of registration (§142-§165). Providers who work with the commission to resolve major non-conformance with the standards may not be subject to a compliance notice. The Act's Provider Register

requirements has no explicit requirements to publish the audit outcomes of a provider's conformance against the Standards.

Recommendation 46: Amend the Act at §141 to require the Provider Register to record non-conformance with the quality standards including:

- **the date of last audit,**
- **a link to the latest assessment, and**
- **that all findings of major non-conformance with the standards be retained on the register for a minimum 12-month period.**

Worker screening to cover workers from aged care digital platforms

The Act does not require an aged care digital platform (§187-§189) to promote whether the individual worker has a screening clearance to work in aged care. Currently provisions only require digital platforms to validate if they are Registered Providers (some of whom may be an individual) and whether there is a banning order in force.

COTA Australia recommends that the Act must require the platforms to have obligations specifically on workers. At a minimum they should be required to identify that a worker screening clearance has been obtained, where one is not required, and whether a national police check has been verified by the platform. Consideration should also be given to requiring the digital platform to verify all claims of qualifications held by a worker represented on the platform.

Recommendation 47: Amend the Act at §188(1) to require digital platforms to perform an additional check for all aged care workers who are not registered providers – by publishing the worker screening clearance for working in the funded aged care system.

Chapter 4 – Fees, payments and subsidies (§190-§337)

GENERAL COMMENTS ACROSS BOTH RESIDENTIAL AND HOME CARE

Responses from older people to survey about the Act

Older people have expressed mixed views on the fees and charges proposals these reforms will introduce.

There is support for Government continuing as the majority funder of all aged care services, paying all the costs regardless of means for clinical care and a lifetime cap across home and residential care, including a dollar and time-based cap in residential care, as well as grandparenting those who currently receive services or are approved on the waiting list for a home care package.

Generally, older people continue to indicate to COTA Australia that those who can afford to, should pay more for aged care services if the quality is better, there is a strong safety net and consumer protections are in place. This was confirmed in a small survey conducted post a COTA Australia and OPAN webinar on the new Aged Care Act for older people which resulted in 62.96% of respondents agreeing with the statement "I think older people who have a lot of wealth should pay more towards aged care costs" (consistent with surveys undertaken previously off a bigger base).

However, 79.26% then agreed with the statement "I am worried that the amount I personally will be asked to pay, will mean I won't be able to afford some services". This was particularly true for lower income pensioners (81.25%) and CHSC holders (82.98%) compared with part pensioners (75.51%) and self-funded retirees (non CHSC holders) (75.61%).

This concern is directly attributable to the lack of specific information available which means that individuals can't work out what the reforms will require them to pay. People are appreciative of the intent for there to be calculators but are anxious and looking for detail as soon as possible.

In other feedback to COTA Australia some older pensioners have told us they are concerned that even a contribution of 5% for independence services may lead to them not being able to afford service and some self-funded retirees object to the suggestion that they would be asked to pay more simply because they have saved more money throughout their lives by the time they entered aged care.

While we understand that legislation is often introduced without the Rules, which often contain the level of detail people are seeking the lack of information, in this instance it also limits COTA Australia's ability to specifically comment on the impacts of the fees and charges on individuals. As a result, our submission outlines some key areas where the Act could be strengthened to protect older people.

Thresholds amounts and missing Home Support information must be released ASAP

At its appearance before the Committee, the Department indicated it will table information to the committee ahead of formal consultations on the Rules. COTA Australia welcomes the commitment to consultation including release of:

- threshold amounts needed to calculate the daily means tested amount used to determine the Accommodation Contribution, Hotelling Contribution and Non-Clinical Care Contribution; and
- information about expected sub-budget spends across the Support at Home means test categories (Care, Independence and Everyday Living) from the Integrated Assessment Tool trial.

The method of calculating the individual contribution rate also needs to be released for the full picture to be clear.

Recommendation 48: Government should release to the Committee the thresholds and amounts ASAP (in advance of the Rules) including:

- **§319 Daily Means Tested Amount free areas, thresholds and forecasted cap above the threshold based on the amount of the Non-Clinical Care Contribution of $101.16,**
- **§314 Determination of individual contribution rate methodology and amounts,**
- **A data set outlining the means tested category amounts for each Home Support classification (using the IAT testing sample set), including a likely range, median and mode amounts, and**
- **A data set outlining population median deciles for assets and incomes of people over 75 aligned to relevant pension or aged care Rules used under the proposed new contribution calculations (i.e. including income, deemed income of financial assets, financial assets, non-home assets and other assets).**

Once the information is publicly available COTA will undertake further analysis.

Compensation payments under the Act must be excluded from the income and asset test

COTA Australia believes that any compensation payments made under the Aged Care Act should be excluded from the asset test. This in in line with the treatment of the National Redress Scheme for pension assessment (excluded from assets, but income from that money incurs deemed interest/income). Given the small number of cases where this is likely to occur, we believe this is an acceptable outcome.

Recommendation 49: Amend the legislation to state that any compensation payments made to individuals under the aged care act have their lump sum excluded from asset test calculations.

Require fees, payments and subsidies to be spent on the purpose for which they are given and align transparent provider information

As broad principle, funding given for a purpose, should be spent on that purpose. Where funding is given for Care (including Clinical Care), Non-Clinical Care (including independence), Everyday Living, Higher Everyday Living and Accommodation (including the Accommodation Supplement, Accommodation Contribution, Accommodation Payment (RAD/Retention/DAP) that is what they should be spent and reported on.

This reporting would better enable the Department to monitor the appropriate charging of fees (consumer contributions) associated to each service, the profit margin of each means tested category and more effectively monitor against inappropriate price gouging. While not a regulator of the Higher Everyday Living charges, Government does have an obligation to monitor and make transparent these amounts for prospective residents.

The translation of these outcomes will necessitate an update to the Dollars for Care displayed information on My Aged Care to better align to these services.

Recommendation 50: Amend the Act to introduce a condition of registration requirement that requires providers to spend funds for a purpose on that purpose against the five broad funding and fee categories being introduced:

- **Care (including clinical care)**
- **Non-Clinical Care (including independence)**
- **Everyday Living**
- **Higher Everyday Living**
- **Accommodation**

Recommendation 51: Amend the Act to introduce a condition of registration requirement that requires providers to provide a quarterly financial report that demonstrates expenditure against each of the five categories as applicable to their service.

Recommendation 52: Government must update 'Dollars for Care' information to align to the five new fee related categories.

Introduce specific legislative reference to hardship

We understand that the Act's reference to a fee reduction amount under the Secondary Person-Centred Supplements (§197, §214, §223, §231) is meant to include hardship provisions for when older people are unable to afford to pay for their services.

This language is incomprehensible and doesn't send a clear message that hardship is an important feature in the system. Hardship should be explicitly included in the Act either as its own provision, or by clarifying the fee reduction amount Rules will include specific provisions for hardship.

A more robust approach to what is included in the hardship categories will be necessary and we will propose how this can be achieved during the consultation on the specific parts of the Rules pertaining to Hardship. As examples, the impact of high private rental for a support at home participant and the impact of comorbidities requiring multiple medications for those in home and/or residential should be included within the hardship assessment.

Recommendation 53: Amend the Act to introduce explicit reference to Hardship provisions.

Act empowers Government to 'cap' any service by subordinate legislation

The Act introduces the ability for Government to introduce (via subordinate legislation) a 'cap' on ANY service (§8(g)(v)). This approach is being used to introduce a 52 hours per year cleaning cap (equates to a fortnightly 2-hour service) and an 18 hours per year (or 1.5 hours on a monthly basis) gardening cap. While this may be appropriate for a metropolitan home it may not suffice for a larger country property and garden. While we understand the intent of the cap, there needs to be flexibility to properly support people who require additional supports.

Recommendation 54: Amend the Act (§8) to Ensure there is a mechanism for the System Governor to exempt individuals from the 'cap'. Criteria for exemption may be outlined in the Rules.

Legislate to require a quarterly wait time report

We discuss in our comments on Chapter 8 the need for a quarterly wait time report, and the need to monitor availability of CHSP providers during the 2 year transition period.

Real Time Availability

One of the top 3 complaints older people make about accessing home care services is that there isn't real time data that tells you what services are available from which provider in your area. There is an opportunity to ensure that the IT currently being built for the operation of the Support at Home program mandates real time data must be built into the system now to be fully operational by 2027. Providers manually indicating they have capacity to take on a "Level 1" or "Level 8" client, must be replaced with an automated requirement to display availability for a specific service on My Aged Care.

Recommendation 55: Recommend that by 2027 Government must mandate the real time availability of services in a particular region and deliver the capability for that information to be collected from Providers and publicly displayed.

Recommendation 56: Ensure the Act contains the necessary mechanisms within the existing Act to impose a requirement on providers via the Rules to mandate participation in real time availability once the technical implementation has concluded.

Ensuring consistent billing policies for cancellation, travel time and fractions of an hour

Government will need to ensure the Rules provide some guardrails for providers in their billing practices to ensure older people are not price gouged or inappropriately charged for services. This includes how leave arrangements occur and when cancellations and travel times are charged and ensuring that older people can have a single shift by their aged care worker split across two means tested categories (for example house cleaning and assistance with showering) and not be charged at only the higher rate (including individual contributions).

Leave arrangements

Clarity around the provision that services can only be charged for once delivered, need to be considered through the prism of current leave Rules, which regulate that providers cannot charge for services during a leave period of up to 28 days per year. While leave arrangements may not be as important tomorrow as they are today (given the package management will be folded into the hourly rate), the current leave provisions also protected consumer from being charged for services during their periods of leave. Consideration of the Rules around leave will need to be given in the future model.

Consistent cancellation rules

In addition, rules around charging for 'cancelled' services will need to be considered. Given that beyond Care Management, providers will only receive service payment for occasions of services that can be charged to a person's package. A consistent system wide approach to this would be preferable than having all providers develop their own policies to give older people appropriate protections. Similarly, an appropriate consistent, regulated approach to the charging of travel time will be needed to ensure that providers don't seek to charge a full hourly rate for travel time. Clear guidelines about where travel time sits (separate charge, or administrative overhead) will be needed. Consideration for rural and regional service delivery will also be needed to ensure equitable outcomes.

Services must be designed to be charged in fractions of an hour

The legislation is written to assume 'an hour of service' for the charging of most services. Older people may receive different services, with different contribution rates, as part of the one hour of service delivery. Providers should be required by law to correctly apportion that shift across the two service types. Depending on the efficient price amounts there may be a tension between a provider's desire to bill the service at the higher hourly rate permitted, and the older person's desire to bill the service at the service with the lower contribution rate.

The Government has stated that a client will only pay for the services they receive, and this requires portioning service times to ensure the older person receives the maximum support they can and at the rates they have been assessed as being able to pay. **There needs to be a clear direction from Government on this point so that systems permit shorter period (15 minutes), and combination payments are developed.**

Not all providers are delivering best practice billing practices today

Recent HCP program assurance analysis by the Department[6] identified that, a year on from an earlier report identifying higher levels of the same issues, a significant number of providers in the sample were continuing inappropriate billing and pricing practices. The issues identified included:

- 11% were found to have not accurately reported the individual's unspent funds to display the total unspent funds at the end of the current and previous payment periods
- 8% of providers charged package management in months where no care or services were provided
- 7% of providers charged care recipients more than maximum 20% allowed for care management

[6] See https://www.health.gov.au/resources/publications/home-care-packages-program-assurance-review-no-4-excluded-items-public-summary-report?language=en

- 8% of providers advertised prices that were not consistent across all published information
- 17% of providers had missing, incomplete pricing information or did not link to pricing information on their websites as is required to be published on My Aged Care
- 23% of providers in the audit had incidental findings relating to pricing transparency
- 43% of providers did not separately itemise services on their monthly statements to clients. Items were bundled into a single line item making it difficult for the care recipient to understand the care or service that had been delivered, and the timeframe associated with that service delivery.

This report shows builds on the Aged Care Quality and Safety Commission's quarterly Sector Performance Report[7] showing that three of the top five reasons for complaints being made about home care related to financial issues 'Fees and charges', 'Management of finances' and 'Reimbursements'.

This just highlights why system wide consistency is required to protect older people. Without a standardised approach the situation could worsen in the confusion of providers setting up new systems and processes.

Recommendation 57: Amend the Act to introduce an explicit obligation on providers to adhere to any Billing Practice regulations outlined in the Rules.

RESIDENTIAL CARE OBSERVATIONS AND RECOMMENDATIONS

Non-Clinical Care Contribution

Currently, the Non-Clinical Care contributions kick in slightly earlier than the pension asset free amounts for non-homeowners (NCCC at $550,000 and Single Non-Homeowner Asset Free amount at $566,000.00). While this is likely due to the 20 September 2024 indexation to the pension rates COTA Australia recommends the Rules are written to peg these two amounts together, to ensure that over time they do not fall out of sync with different indexation Rules.

Recommendation 58: Amend the Act to require that the Non-Clinical Care Contribution Asset threshold commences at the Single, Non-Homeowner Asset Free pension point.

[7] See https://www.agedcarequality.gov.au/media/100018

Everyday Living

Rename Basic Daily Fee and Hotelling Supplement/Contribution

A number of older people have commented that they feel the term "hotel" is insensitive and does not reflect their actual situation. Everyday Living costs are paid through two contributions currently referred to in the at as:

- Basic Daily Contribution – set at 85% of the single basic pension ($63.57 per day)
- Hotelling Supplement – up to $14.44 per day (subject to IHACPA advice)

It would therefore be more appropriate to use this contribution and supplement with the everyday living terminology and rename them clearly:

- Everyday Living - base contribution – set at 85% of the basic (single) age pension ($63.57 per day)
- Everyday Living – means tested contribution – up to $14.44 per day (subject to IHACPA advice)
- Everyday Living Total Contribution: up to $78.01

Recommendation 59: Amend the Act to rename the terms 'Basic Daily Fee' to 'Everyday Living - base contribution' and 'Hotelling Supplement' to 'Everyday Living – means tested contribution'. Introduce a new term 'Everyday Living Total Contributions' to be defined as the total of these two amounts.

Recommendation 60: Introduce a term for the two fees: Everyday Living Total Contribution.

Link Hotelling Supplement to pension Rules to avert future indexation misalignment

We note that the income amount for the Hotelling Supplement when announced was at the same rate as the Commonwealth Seniors Healthcare Card maximum income amount, however due to 20 September indexation this is no longer the same. We recommend they are linked.

Recommendation 61: Amend the Act to define the threshold relevant to the Hotelling Supplement amount commencing to be the Maximum Income of the Single, Commonwealth Seniors Healthcare Card holder.

Accommodation

Who is charged what for type of accommodation fee?

Accommodation Supplement

People with income and assets below the income and asset free thresholds will not pay any accommodation contribution. Instead, the Government will pay an accommodation supplement on their behalf.

Accommodation Contribution

The maximum amount you pay is set at the maximum amount of the accommodation supplement and it may be paid as either as Daily Accommodation Contribution (DAC) or a lump sum – today called a Refundable Accommodation Contribution (RAC).

The impact of falling outside eligibility to pay for your accommodation through the accommodation contribution, is that you will be asked to pay for a full RAD/DAP via an accommodation payment.

Accommodation Payment (RAD/DAP)

People above this the accommodation contribution threshold will be asked to pay a Refundable Accommodation Deposit (RAD) or a Daily Accommodation Payment (DAP).

In 2022/23[8] the resident method of accommodation payment was:

- 45% DAP/DAC,
- 34% RAD/RAC,
- 21% combination of both a part DAP/DAC and part RAD/RAC.

This means that more people are currently paying a DAP/DAC two thirds (66%) than are paying a paying a RAD/RAC (55%). As the Department's report identifies "The trend has been in favour of DAPs in recent years, as low interest rates, opportunity cost of capital gains on the family home and shorter expected length of stay on entry to residential aged care have all made DAPs relatively more appealing."

A 'supported resident ratio' floor must be legislated to ensure people can secure a bed in a nursing home

Aged Care currently has two supported resident ratios:

- The first is a mandatory floor by geographical region[9] that all providers must accept a certain portion of residents within their home (Supported Resident Ratio).
- The second is an incentive that a higher accommodation contribution/supplement[10] is paid if 40% of residents live within a particular home (Low Means Resident Ratio).

[8] Department of Health and Aged Care, Financial Report on the Australian Aged Care Sector 2022-23, pg 98. Available at: https://www.health.gov.au/resources/publications/financial-report-on-the-australian-aged-care-sector-2022-23?language=en

[9] See https://www.health.gov.au/our-work/residential-aged-care/responsibilities-of-residential-aged-care-providers#supported-resident-ratios

[10] See https://www.health.gov.au/topics/aged-care/providing-aged-care-services/funding-for-aged-care-service-providers/accommodation-supplement-for-aged-care#payment-

These ratios are important as they ensure that there are places available across Australia for all supported residents and provide a further financial incentive for a provider to take a higher number of low means residents.

A low means resident ratio may be set in the creation of different accommodation supplement / accommodation contribution amounts via the Rules. This would occur by continuing the current 25% reduction of the accommodation supplement if the facility did not meet the low means resident ratio.

COTA Australia is concerned that without a definition, or obligation on providers in the primary legislation, access for supported residents will reduce across the system. Providing services to all people, including those with low means, should be part of a social compact for providers to receive taxpayer funding through the funded aged care system. It is vital that the most disadvantaged residents in Australia continue to have access to residential care.

Recommendation 62: Amend the Act to introduce:

- **a definition of supported resident, and**
- **an obligation on providers to have a minimum ratio of the number of supported residents in their geographical area.**

Recommendation 63: Amend the Act to maintain the 25% reduction on the accommodation supplement/contribution for providers whose low means resident ratio is less than 40%.

Insufficient protections against high RAD/DAP charges

There are only two protections in the bill against individuals being charged a high RAD/DAP:

- (§305) is that they cannot be asked to pay a RAD that would leave them with assets less than 2.25 times the basic age pension ($61,255.35). This protection does not appear to extend to a DAP. COTA is aware of DAPs being charged more than the individual could afford, with family members asked to make the payment to secure the room.
- An announced rule by Government (not identified in the Act, so presumed to be contained in the future Rules), that a provider must seek approval from IHACPA to charge more than $750,000 RAD.

There are a number of additional protections we would like to see to ensure that older people are protected from unjustifiably high accommodation payments (RADs and DAPs).

Accommodation amounts must be used on permitted purposes to avoid price gouging

§310 outlines permitted purposes for use of a Refundable Accommodation Deposit (RAD). These Rules do not apply to a DAP, or the retention the new Act will allow to be taken from a RAD.

Without such a requirement in place there is a potential for providers to charge higher prices and generate income directly for their profit line with no requirement to deliver a

different, higher or better service in return for those funds. While supportive of a reasonable return on investment, and all costs associated to accommodation both current and historical being a part of permitted uses, we are concerned that regulatory structures must be introduced that disincentivise price gouging practices in the setting of RADs.

Given that Rules already exist for the spending of some accommodation fees, we believe those Rules should be extended to all accommodation fees.

Recommendation 64: Amend the Act to require that all accommodation contributions are used for accommodation purposes.

Require providers to consider certain things when setting their room prices

Currently there is no criteria on providers when setting their room prices below the $750,000 threshold. IHACPA outlines what sort of considerations[11] it recommends a provider consider before applying for rooms to be priced above the current threshold.

The latest figures on median house prices[12] indicate in Australia's combined capital cities the median house price is now $997,352, however the median unit prices at $679,849 and the median dwelling value in Australia's combined regional areas at $637,660. In Darwin ($504,367) and Hobart ($655,114), median house prices are lower than the proposed threshold of $750,000 with Adelaide ($790,789) and Perth ($785,250) only marginally above. This means that for most people who own a unit across Australia, most people in regional Australia, along with most people in Darwin and Hobart, as well as close to half in Adelaide and Perth – the new maximum room price, without seeking approvals, is higher than the value of their property.

While it may not be efficient to regulate prices by regional areas, there should be some monitoring to ensure that the price charged is reasonable and reflective of the costs and local area values. The introduction of a condition of registration that providers must have regard to local area values. When setting room prices will provide some greater control on price setting and more consumer protections. In addition, it will enable an individual to make a complaint about their room price.

Further work will need to occur to determine the things a provider must have regards for, and this may not be able to be introduced by the 1 January 2024 time that rooms have been announced as able to rise to $750,000.

An objective initial approach would be to start with criteria that is simply the median unit and housing prices in the area of their nursing home. This is not to say that they must have

[11] See items 1 and 3 at https://www.ihacpa.gov.au/aged-care/refundable-accommodation-deposits-rads/refundable-accommodation-deposit-rad-approval-process

[12] See https://propertyupdate.com.au/the-latest-median-property-prices-in-australias-major-cities/

room prices below the median, but that they must have regard for those prices and be able to explain how their room is justified to be out of sync with those local values.

Further criteria may be introduced following a Departmental consultation of things to consider.

Recommendation 65: Amend the Act to introduce a condition of registration that providers must have regard for certain criteria in setting their room prices, as outlined in the Rules.

Legislate that IHACPA must consider certain things when approving a higher room price

The same criteria must be a requirement for IHACPA to consider. We note that their website for example only considers median house, not median units, or even median dwellings (that would combine the two).

Alignment between these criteria that providers must have regard for under $750,000 and that IHACPA must assess above $750,000 is necessary.

Recommendation 66: Legislate that IHACPA must have regard for certain criteria in approving higher room prices.

Require rooms to be priced using the daily (DAP), and allow payment via a refundable lumpsum (RAD)

There must always be capacity for individuals to pay a lump sum for their aged care accommodation payments, which currently occurs in the form of the Refundable Accommodation Deposit (RAD). But RADs have two purposes in the aged care system:

1. Allow the 55% of older people who want to pay a lump sum to do so. (There are also distinct pension assessment benefits as RAD's are excluded from the pension asset test.)

2. Determine the value of the room.

Using a RAD price to set the value sets up a comparison with the value of a home. Many older people express dissatisfaction that they must pay as much (if not more) than a larger entire home is worth. Other people see the RAD as just one of the costs to gain entry into aged care and the high lump sum amount becomes part of their holistic value for money assessment of their aged care experience, not just the accommodation. The cost of the room becomes linked in their view of the quality of services and the overall amount they are paying. While a RAD/DAP contributes towards shared facilities (similar to an apartment levy) understandably for some, they report to COTA they do not believe they are getting value for the high cost of entry asked for.

While supportive of the future review of RADs outlined in the legislation, the Act should require the room rate to be based on the daily accommodation payment which is the way 66% of people are choosing to pay for their accommodation.

This just brings forward a recommendation from the Aged Care Taskforce to change the basis of the calculation. This doesn't require the methodology between RADs and DAPs to change and both options would still be required to be included in accommodation agreements (§294(2)(b)) which means there would be no financial impact on aged care providers. However, the published rate mentioned in §294(2)(a), would be based on the DAP rather than the RAD.

The Government has announced that RADs will be indexed once a year, with DAPs indexed twice a year. This will lead to inconsistencies between the RAD and the DAP at different points of the year. It will be critical that the more accurate price as expressed in the more frequently indexed DAP be used to displaying accommodation payment amounts.

Recommendation 67: Amend the Act at §289(2) and §289 (3) to require maximum accommodation payments to be expressed as a daily accommodation payment amount, with the lump sum payment of that amount called the refundable accommodation deposit to be worked out as per the Rules.

289 Maximum accommodation payment amount

(2) The maximum accommodation payment amount must be expressed as a ~~refundable accommodation deposit amount~~ daily accommodation payment amount.

(3) The Rules must prescribe a method for working out the maximum accommodation payment amount expressed as a ~~daily accommodation payment amount~~ refundable accommodation deposit amount.

(4) A registered provider may charge less than the prescribed maximum accommodation payment amount.

Higher Everyday Living

Higher Everyday Living regulations are a positive first step

The proposed consumer protection in the Act effectively deals with poor practice many older people have experienced with additional services. COTA Australia has heard many stories where an older person wasn't able to enter a service unless they agreed to pay for additional services, theoretically an optional extra. These services were also often presented as a package with services that they couldn't use. Outlawing the offer and acceptance of these service contracts prior to the person's first day in the home, will mean providers cannot select people on the basis of their (or their families) willingness to pay for additional services.

The cooling off period and requirement to regularly review people's desire to continue receiving the services, and that they can continue to use and benefit from services they are paying for, provides reasonable protection.

We are disappointed that provider groups are pushing back against these consumer protections and trust that these protections will be maintained for older Australians.

Some items in today's Additional Services, should move into tomorrow's Everyday Living, in recognition of those services being funded properly through the additional hotelling contribution/supplement. Other Additional Services along with Extra Service fees, will continue into the Higher Everyday Living services and fees.

It is necessary to ensure that clear distinctions between what is part of Everyday Living and included for all people through taxpayer funding and individual contributions, regardless of means, is distinct from people who have the means to pay for a higher quality that is not included in the standard offer.

Ensure transparency about higher everyday living fees

Information about higher everyday living fees should be published on My Aged Care to ensure that individuals are aware of the services and fees that they have an option to take up y after entering that home. This isn't a conflict with the consumer protections

Recommendation 68: Amend the Act at §284 to require a provider to publish their higher everyday living amounts on My Aged Care and be restricted from charging amounts beyond those listed.

SUPPORT AT HOME OBSERVATIONS AND RECOMMENDATIONS

The Support at Home Program, will introduce packages of funding including for:

- eight ongoing classification levels for care and services ($11000-$78000), supported by two short term classifications - being for
    - restorative care – a 12-week program of more intensive supports ($6000pa),
    - end of life care – for people assessed as being within the last three months of their life to assist them to die at home ($25,000pa); and
- a separate Assistive Technology classification and Home Modifications classification (ATHM), up to $15,000.

COTA Australia welcomes the increased levels of package, the two short term classifications and the introduction of the new ATHM streams.

Each classification will have a single budget amount, with 90% for care and services and 10% for care management. Of the 90% for care and services, providers may only deliver a service in the approved Service List and charge the service at a price no more than the efficient price recommended by IHACPA and set by Government. Services will be grouped under means tested categories and different individual contribution ranges will apply for services within this category. While the assessment may identify specific service needs, the structure of the law is such that allocation of funds are tied only to the single budget, with no limitation on how those funds may be spent across the Service List unless a cap of a particular service is imposed. The only caps announced to date are 52 hours of general household cleaning and 18 hours of gardening. There appears to be no pathway for funding a service assessed as helping an individual if it not within the service list.

Amend the Act to require individual contributions rate methodology in the Act

We note the Department's advice in webinars they would set the individual contribution rate for Support at Home to align with the ranges for part pensioners and Commonwealth Seniors Healthcare Card holders.

We note that the calculation of the individual contribution rate is the only financial metric entirely left to the Rules and believe that comparable methodology should be included in the primary legislation as it is for the daily means tested amount calculation steps (§319).

Recommendation 69: Amend the Act at §314 (Determination of individual contribution rate) to insert methodology steps (similar to the daily means tested amount steps outlined in §319).

Observations on the Home Support Design

Home Support remains rationed

The design of Support at Home continues to ration services where individuals wait for:

- an assessment,
- a place allocation,
- a care manager to onboard them; and
- potentially for an available aged care worker to deliver a particular service.

The removal of the aged care ratio for the allocation of packages from the Act, downgraded to an annual determination by the minister, risks going further backwards in terms of per capita availability of care and services for older people over time.

COTA will continue to argue that no one should have to wait longer than 30 days for their care and services from the day they apply, and that funding and place allocations should be designed to meet this standard.

Care Management

Every Support at Home client will contribute 10% of the funding allocated to support them to a pooled fund their chosen provider will manage. The provider will determine how these funds are spent based on their assessment of the individual's specific care management needs that may change over time.

This is an unfortunate outcome and a step backwards for funding being tailored to the individual's needs.

Care management required by an individual should remain an individual allocation to ensure those with complex support needs receive the support they need and those with lesser care management needs don't miss out. Simply put, the pooling of care management will lead to an inefficient, uncompetitive part of the system into the future.

We are concerned that the current design over the two-year transition will significantly impact the ability of self-managed clients to receive services due to the requirement for a

primary provider to be registered in all categories in order to subcontract to delivery partner organisations.

Further work to monitor the efficacy of the care management model during the transition years towards 2027 is needed with consideration of adapting the model prior to 2027 if perverse outcomes emerge. is warranted.

ATHM Stream

The design of this stream removes the current problems where older people with technology or home modification needs were required to choose between care and services OR the technology or modification needed. The current inequity in the system particularly impacted older people with a disability and we are pleased to see these extra supports for them.

At the time of concluding our submission, the list of Assistive Technologies that will be available under the scheme was not available, but we note the Service List (currently being consulted upon) has a broader range of Service Groups including Managing body functions, Self-care products, Mobility products, Domestic life products, Communication and information management products and Assistive technology prescription and clinical support. This comprehensive framework signals access to a more comprehensive range of needs, with an Allied Health Professional enabled to prescribe the relevant technology within their scope of practice. **This is a good framework with the only unclear aspect being responsibility for Care Management in this stream.**

Price signals on different types of services could lead to unintended consequence in some circumstance

COTA Australia welcomes the Government's commitment to remain the major funder of aged care services and to fully fund clinical care services for all older Australians regardless of their means. At a principle level we acknowledge the split between Clinical Care, Independence and Everyday Living Services.

However, some services that are classified as independence services, such as showering, may well be needed because of a clinical condition. Fees can't be allowed to be a barrier for people to access these services. **The system requires flexibility to accommodate where this care is required. Links to the fee reduction supplement may be a pathway to resolve this issue.**

Ensure assistive technology can continue to be used and serviced in residential care

Assistive technology (AT) should be available for older people wherever they live. Currently the AT Support at Home pathway will only supply and fund the servicing of AT to individuals living in a home or community setting. with a mandatory cap of $15,000 on a piece of equipment. This will not be enough to support people with profound disabilities and does not meet the royal commission's recommendation 72 that people with a disability be

provided equipment "equivalent to those that would be available under the National Disability Insurance Scheme".

Assistive technology should be individualised and transportable. This would support moving from a home or community setting into residential care. The servicing budget should continue to be available in residential care.

Recommendation 70: Amend the Act at §8(1)(e) and relevant clauses of §209-§217 – to ensure that Assistive Technology items provisioned in a home and community setting may continue to be used in residential care and funding for their servicing continue to be accessed.

ADDITIONAL COMMENTS ON FEE AND FUNDING RELATED SUBORDINATE LEGISLATION

COTA Australia will contribute to the review of the fees and charges policies and Rules in a more comprehensive submission to the Department but make the below preliminary observations for the committee's information as there is a strong link between the two.

Service List approach ensures an aged care guarantee irrespective of means

The new approach under the Act is to deliver certain services on the Service List for a certain price.

In Residential Care this is paid for by AN-ACC with the amount Government pays reduced by any Non-Clinical Care Contributions that the person pays. Similarly everyday living services are funded by 85% of the single basic age pension and the hotelling supplement, reduced by any Hotelling contributions paid for by the individual.

In Home Support, the move to an efficient unit price set by Government on IHACPA's advice, will mean a provider may only charge a maximum of that price for that service.

In this way, everyone with the same assessed need has the same funding available for them (made up between Government and individual contributions) and gets the same service delivered by the provider.

Ensure modernised aged care guarantee of basic everyday living services in the Service List (e.g. internet)

The Service List, which is currently out for consultation as part of Release 1 of the Rules[13], will create a new standard of what is expected to be delivered as Everyday Living Services. We will actively encourage these services to be modern and meet the expectations of older people.

[13] See https://www.health.gov.au/resources/publications/new-aged-care-act-Rules-consultation-release-1-service-list?language=en

For example, the current everyday living services don't include access to the internet. Its welcome that Government has recognised that 'access to internet' should be an everyday living service. However, the Rules don't recognise that, unlike telephony, internet access requires a basic level of usage to be incorporated. As a result, internet access requires a base level of data, on a standard speed package, to be included as an everyday living service. Higher everyday living fees can be charged for higher levels of data usage or higher speeds. We will recommend to the review of the Rules on the Service List that this is amended.

Quarterly budgets & subsidies need to make clear invoicing can occur more frequently

The legislation outlines an assumption that all people will have fixed calendar quarterly subsidies. This means that people entering later in the calendar quarter, will only receive funds for the remaining number of days of that initial quarter.

While the system assumes a quarterly budget and its associated quarterly subsidy amount, it will be important to ensure that providers make smaller more regular invoicing to individuals for their care contribution. **In practice, we would imagine most providers would invoice both the Department and the individual on a monthly or fortnightly basis to maintain good cashflow and ease of payment amounts.**

A national efficient price must be scoped for the 2027 model

An efficient price should be set assuming the home support model in 2027. In 2027 the efficient price for a registered provider to operate, will need to consider a range of different models including subcontracted model, direct employment models, digital platforms and sole traders operating as a registered provider for single services.

The efficient price will need to be neutral about the business model providers choose to operate under as the registered provider remains responsible for all services it provides, whether that it directly and indirectly.

In 2027 the older person will be able to work with their care manager (who will get 10% of the package to manage their services) and choose one or multiple providers to deliver their services and directly charge those services to the Government.

From 2025, due to the Government's decision to delay the implementation of multiple providers, the cost of managing requests from older people to use a particular provider will be forced upon the registered provider (whereas from 2027 the consumer could simply direct them to receive funds directly from Government). This is a legitimate additional cost above the ongoing efficient price that must be considered for the transition between the 2025 model of Support at Home and the 2027 model.

A loading beyond the base national efficiency price may be required during the two year transition period while direct charging to the Government cannot occur with the multiple provider model from 2027.

To not separate out this cost will either:

- send inappropriate and inflated price signals in the ongoing efficient price, or
- force registered providers to not offer this option to clients, effectively shutting down the self-management pathway within aged care's home support system.

Neither of these outcomes are optimum.

Requiring all providers who are registered for 'care management' to offer Self-Management options during transition until multiple providers are implemented.

Currently aged care providers are only required to indicate if they offer self-management on My Aged Care, through the different price points. The Act does not specifically require all registered providers to offer a self-management option, and we believe it should in a rights-based system. A growing number of older people are taking up self-management and such arrangements should continue to be legally required for all Support at Home providers who deliver the Care Management service to offer.

This should be a legislated requirement on the condition of registration for all types of providers.

A further issue that will continue beyond 2027 is ensuring equitable access to all providers, registered and unregistered, in line with emerging policy decisions in the NDIS. COTA supports efforts to ensure quality service provision, however this must not unreasonably curtail the individual's right to self-direct their care. The NDIS Provider and Worker Registration Taskforce has recommended to Government that not all providers should be required to be registered. It specifically recommends that unregistered providers who support self-directed participants should continue to have a pathway within the NDIS system. This is a risk-based model of registration as is the new Aged Care registration. However, the NDIS recommends a category of "Self-Directed Support Registration" for participants, their guardian or legal representative who contract all of their supports *directly*. This includes through direct employment and independent contractors.

There is no 'Self-Directed Support Registration" category proposed for the Support at Home Program. Accordingly, all unregistered providers will only be able to deliver services through a subcontracting arrangement with a registered provider - there will be no pathway for funding service delivery to an unregistered provider. The Government is currently consulting on this recommendation (including on the definition of 'self-directed supports for the purpose of registration',) before finalising its response to this recommended registration category. Should it accept the recommendation, it will create an inequitable approach for regulating self-directed services between older people and people under 65 years of age accessing services via the NDIS. This would be an ageist outcome.

Registration categories for providers within aged care must be on comparable terms to the NDIS, particularly ensuring participants are able to self-manage through a Self-Directed Support Registration category.

Chapter 5 – Governance of the aged care system (§338-§395)

Chapter 5 discusses the role of the System Governor, and the ACQS Commission, including the ACQS Commissioner, Complaints Commissioner and Advisory Council.

We have referenced our comments about the System Governor and ACQS Commissioner as they interlink with other parts of the Act. We are supportive of the Advisory Council and will discuss our views on the Complaints Commissioner in this Chapter.

An Independent Complaints Commissioner

We welcome the bill's inclusion of the Complaints Commissioner as an independent statutory officer appointed by the Minister and reporting to the Minister and Parliament. The staff supporting the Complaints Commissioner remain within the Commission, ensuring effective information sharing between the ACQS Commissioner functions and the Complaints Commissioner functions.

Clearer directions on consultation by the ACQS Commissioner is required

The ACQS Commissioner has the responsibility to develop the Corporate Plan and Annual report for the Commission, including the assignment of resources for the Complaints Commissioner to do their work. This necessitates that there should be consultation with the Complaints Commissioner It is odd therefore that there is no requirement in §375. As two equal independent statutory officers, key obligations such as the Corporate Plan should explicitly recognise that the Complaints Commissioner is not a subordinate to the ACQS Commissioner.

Recommendation 71: Amend the Act at §375 to list the 'Complaints Commissioner' in §3as a person the ACQS Commissioner must consult on the development of the Commission's Corporate Plan).

Complaints Commissioner should have explicit education responsibilities

COTA Australia welcomes the inclusion of functions within complaints of promoting a culture of open disclosure, complaint handling best practice and continuous improvement amongst providers (§358(a)(f); §358(a)(g)); along with responsibility to build the capacity of individuals to pursue complaints and give feedback §358(a)(h). However, responsibility for the Engagement and Education function (§350) of the Commission (and their staff) sit with the ACQS Commissioner, including engaging and educating registered providers about the functions of the Complaints Commissioner (§350(d)(iii). The Complaints Commissioner should have its own dedicated education functions related to complaints.

While the ACQS Commissioner may delegate functions to the Complaints Commissioner (§575), the current approach in the Act does not empower the Complaints Commissioner with their own resources. There has been limited time to confirm that this will ensure the Complaints Commissioner has the resources to effectively engage with older people and

registered providers to ensure the purpose of educating about best practice in complaint handling. This will need to be monitored.

The Aged Care Quality and Safety Commission (ACQSC) should be required to deliver a capacity-building program to support aged care providers embed human rights in the design and delivery of their services. The program should be co-designed with older people, older people's representative organisations and diversity peak bodies.

Restorative justice, mediation, conciliation should be embedded in the Act as part of complaints functions

The Act lets the Rules make provisions for how complaints are deal with (§361). The long promised inclusion of 'mediation' and 'conciliation' processes as part of the new complaints handling process are not explicitly mentioned as needing to be included. It is proposed these approaches be added to §361 to ensure that these two new tools for resolving complaints will be part of the future system.

Recommendation 72: Amend the Act at §361(2)(d) to insert explicitly include mediation and conciliation by replacing the words after "including" to read "including, but not limited to, open disclosure, mediation, conciliation and restorative practices."

Complaints must be open to independent review & have transparent timeframes

The Complaints Commissioner has both the complaints function(§357(1)(a); (§358), as well as reconsidering and reviewing decisions regarding this function (§357(1)(c). In effect this suggests that a Complaint outcome cannot be reconsidered/reviewed by the Administrative Review Tribunal (ART) and instead is reconsidered and reviewed by the Commissioner of their own complaints. We note the Commonwealth Ombudsman's general power to receive complaints about any Australian Government agency's administrative actions would still apply.

Further we note the removal of reconsideration and review to the ART appear to be a downgrade to the current arrangements[14] where a decision to take no further action or to end a resolution process is a reviewable decision. The technical language between what decisions is open to reconsideration and review (as discussed in §556-566) vs what decisions are open to reconsideration and review through another mechanism is likely to lead to confusion. It is for this reason elsewhere in this submission we recommend a single table is developed. Creating multiple pathways for where complaints, reconsiderations, and reviews of decisions are directed is a poor outcome for older people. There should be a single consistent pathway for their time in, and experiences with, aged care at all touchpoints.

[14] See https://www.agedcarequality.gov.au/resource-library/rb-2021-12-reconsideration-reviewable-decisions

There is no explicit reference to a Complaint Determination in the Act, and therefore no mechanism for the Act to clearly explain how such a determination will be reconsidered or reviewed.

If such a determination were included, it is recommended that clear timeframes for resolving different types of complaints are developed in order to require those timeframes to be met in the Act. The Rules may outline what the timeframe is for different types of complaints.

Recommendation 73: Amend the Act at §357 to place a function of the Complaints Commissioner to make a 'Complaint Determination' and require the Complaints Commissioner to make a Complaint Determination on all complaints within the timeframe specified in the Rules. Ensure the Complaint Determination is subject to reconsideration and review.

Chapter 6 – Regulatory mechanisms (§396-§533)

Removal of Criminal Penalties

We were dismayed by Governments decision to remove the criminal penalties which older people felt were necessary to hold providers accountable for systemic and ongoing neglect, as the Royal Commission exposed. Removal of criminal penalties also meant that the highest financial penalty proposed in the exposure draft, for fault-based offences associated to the providers statutory duty, has been removed. Many older people remain concerned that the new regulatory settings are not enough of a deterrent to prevent provider poor behaviour and that a greater reliance on the efficacy of the regulator to detect and take action on poor behaviour will be necessary.

We note that the entire *Fault-based offence—death or serious injury or illness* was removed *(Exposure Draft §120(6) Registered Provider Duty; Exposure Draft §121(7) Responsible Person Duty;)*. These provisions should be reintroduced into the bill.

Recommendation 74: Amend the bill at §179 and §180 to reinstate the fault-based offence on providers and some responsible persons, including its imprisonment penalty for that offence.

We support the new powers in the regulator's toolkit listed in the Act (§397-507)

There are a number of improvements to the regulator's powers compared to the original 1997 Act, some of which were also introduced into the current legislation following the royal commission. We support inclusion of :

- **Required action notices** (§474-§480) – A written notice that may be given to a Registered Provider relating to a matter raised in a complaint, notification or other information given to the Commission, relating to the Rights of an individual or relating to the provider's conditions of registration or obligations under the Act. Failure to comply with the action notice incur a civil penalty of 30 penalty units which may also be subject to an infringement notice.
- **Compliance notice** (§481-§487) – A written notice that may be given to a Registered Provider by the Commissioner or the System Governor if they are satisfied the provider has not complied with the Act. Failure to comply with the action notice incur a civil penalty of 60 penalty units which may also be subject to an infringement notice.
- **Enforceable undertakings** (§458-§465) that is an upgrade to a continuous improvement plan, in that it is a legally binding obligation the provider consents to in order to guarantee that certain activities will be taken within a certain timeframe, as agreed by the provider and the regulator. This is an important power that both the Complaints Commissioner and the Commissioner will have.

- **Banning orders** on a registered provider, a responsible person and an aged care worker. This is an important tool in the regulator's toolkit for the most egregious cases of abuse where it is felt the individual or entity should no longer be able to work in aged care.
- **Injunctions** (§466-§473) - An injunction is a Court order directing a person to do a specific thing or, more commonly, to not do a specific thing.
- **Warrant to enter a premises** – a magistrate may issue a monitoring (§397-§411) or investigation (§412-§426) warrant that enable the Commission to enter a premises to conduct its business.
- **Entry without warrant or consent** (§427-§434) – in the most serious of cases where there is felt to be a 'risk to the safety of an individual' or individuals, the Commission may enter a residential aged care home without consent or a warrant. This is an important new power that ensures that the safety of people accessing aged care services is central to the activities of the Commission.
- **Civil penalties** (§440-§447) – under the Act both the Commissioner and the System Governor may apply to a Court for a civil penalty to be applied. We note however that the value of the civil penalty alone (without a criminal penalty included) may be an insufficient deterrent.
- **Infringement notices** (§448-§457) – It is COTA Australia's view that all civil penalties should form part of the infringement notice framework and support their full inclusion in the regulator's toolkit.

The suite of regulatory powers listed above provides the Commissioner with a range of actions that they can take to address a provider's non-conformance / non-compliance with their obligations under the Act. It will be necessary for the Commission to have sufficient resourcing to effectively utilise the full range of these powers to be a sufficient deterrent to incentivise providers to meet their obligations.

Assurance activities (§508-§513)

The Act outlines the power of the System Governor to conduct assurance activities about any purpose of its listed functions (listed in §339). This includes investigating how providers are using their subsidies or grants, justifications for amounts charged to individuals, structures of a providers financial accounting, how providers are delivering funded aged care services and the accuracy, completeness and reliability of information and documents provided by registered providers.

While we support these powers, we note that some consumers have become concerned by the impact of such assurance activities in the home care package space and the potential for such activities to lead to unintended consequences by providers seeking to ensure they comply. This has led to a number of consumers identifying they believe their providers have become too cautious in the approval of aged care services requested in the home care system, where such services are not explicitly listed in the inclusions list of the current

program. **We will monitor the implementation of the Service List approach with the Support at Home regime to ensure that after a period of adjustment a fair and appropriate balance is achieved within the sector.**

Is the value of civil penalties a sufficient deterrent to prevent neglect, uphold rights, ensure quality care and remove bad actors from aged care?

Does the Commission have the resources to pursue Court cases?

If the majority of civil penalties can only be enforced through a court case, then the regulator must be funded and supported to pursue such cases. The Commission needs to be able to take action on regulatory breaches to ensure it is effective and providers know that they will be taken to court if they don't meet regulatory requirements.

Recommendation 75: Ensure the ACQS Commission is provided with dedicated sufficient funding to initiate legal proceedings as part of its regulatory powers to create a robust deterrent for poor behaving providers.

What is the value of civil penalties in the Act?

A summary of the 43 penalties that apply, along with the associated provider obligations are listed in Appendix 2 to this submission. Unless the contrary intention is stated in the Act:

- all penalty units listed in the Act are the penalty units for a natural person (noting that individuals can now become registered providers, and the Act sometimes seems to refer to the natural person as an entity),
- A court may impose a maximum penalty on a corporation that is up to five times the amount that can be imposed on a natural person,
- A regulator may impose via an infringement notice, a maximum of 1/5th the value of the amounts that a court may impose.

One penalty unit is currently $313[15]. For example, a breach of a condition of registration (which includes a provider's obligations about Rights) The maximum penalties by a court are:

- for a provider who is an individual (natural person) – the amount listed in the Act:
    - up to 250 penalty units = $78,250, or
    - if it is a significant failure/systematic pattern of conduct up to 500 penalty units = $156,500;
- for a provider who is a corporation – 5 times the amount listed in the Act:
    - up to $391,250, or
- if it is a significant failure/systematic pattern of conduct - up to $782,500.

[15] See https://asic.gov.au/about-asic/asic-investigations-and-enforcement/fines-and-penalties/

Commission must be able to issue Infringement Notices on all financial penalties under the Act (§448)

In the exposure draft of the Act, infringement notices applied to all 43 civil penalty and offence provisions that were to be included. The Act introduced to Parliament now appears to have limited the ability of the Commission to 'fine' a provider on only 9 of the 43 civil penalties contained in the Act (when listed in §448). This is a further downgrading to existing powers of the Commission where today infringement notices could be applied on aged care workers and responsible persons who did not comply with the Code of Conduct or contravention of a banning order [16].

In its current form the new Act will require the Commission to a Court process to enforce a civil penalty against aged care workers or persons responsible; as well as for all breeches of conditions of registration by a provider, along with a majority of other obligations by a registered provider (not listed in §448).

The guide for *Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*[17] recommends that:

- infringement notices apply only to strict liability and absolute liability offences, along with civil penalties (pg55;) and
- a civil penalty should not exceed 12 penalty units for a natural person or 60 penalty units for a "body corporate" (pg56).

This equates to civil penalty units in the bill of 60 penalty units, and 300 penalty units when specifically limited to a body corporate.

The term body corporate does not appear in the Act, but the term entity appears. At times the term entity appears to mean a body corporate, however we note the registration of an individual as a registered provider may mean that when a registered provider is a natural person the term entity may also apply to the individual. Appendix 2 assumes the term entity means a body corporate. It would be possible for the Act to list two penalty levels for a registered provider who is an individual vs a registered provider who is a body corporate, if necessary to introduce infringement notices below the recommended levels, although this would limit the maximum amount a Court could fine a body corporate to that amount, which may also have an impact on its deterrent factor.

While the guide is not a requirement for Parliament to follow it should be considered in determining whether the regulator should have more powers to fine providers for not following their obligations. It is COTA Australia's view that a fine on conditions and

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[16] See page 5 https://www.agedcarequality.gov.au/resource-library/regulatory-bulletin-rb2024-25-infringement-notices

[17] See https://www.ag.gov.au/sites/default/files/2024-05/Guide-Framing-Commonwealth-Offences.pdf

registrations and most non-compliance with obligations under the Act would be necessary to provide a deterrent.

Recommendation 76: Amend the Act at §448 to reinstate that all civil penalties in the Act may be actioned as an infringement notice.

What obligations and offences incur a civil penalty or fine associated to an offence?

The civil penalties in the Act include:

A summary of the 43 penalties that apply, along with the associated provider obligations are listed in Appendix 2 to this submission.

- 4 penalties that can apply to any 'person' with penalties ranging from 30-120 penalty units. Two of these penalties also include a potential jail term for breaches of protected information and/or not providing assistance to a Commission official when asked during an inspection.
- 6 further penalties apply to any 'entity' with penalties ranging from 30-500 penalty units. These penalties would also apply to any other corporation type entity.
- In addition to the above 10 general penalties there are a number of penalties against specific people operating in aged care. This includes workers, responsible persons, digital platforms and registered providers. A standalone penalty on financial institutions not providing requested information about the investment of RADs applies.
- 2 penalties for aged care workers that breach the code of conduct (250 penalty units), or contravening banning orders (1000 penalty units) exist.
- 6 penalties apply specifically on responsible persons ranging from 30 – 1000 penalty units.
- 2 penalties apply to digital platforms contravening their obligations with penalties from 250 – 500 penalty units.
- There are several obligations or conditions on a registered provider in a range of sections across the Act including:
    - 12 sections where a provider obligation has specific penalties ranging from 30 penalty units ($9390) to 500 penalty units ($156,500);
    - 18 sections that outline 'conditions of registration' with financial penalties of 250-500 penalty units applying;
    - Breaches of the Provider's Statutory Duty resulting in death or serious injury, or illness is subject to 500 Penalty Units for an individual ($156,500), or for an entity 4800 Penalty Units ($1.5M);
    - Contravening a banning order is subject to 1000 penalty units ($313,000); and
- 3 sections outline obligations without financial penalties associated.

COTA observations

On their own the financial penalties listed do not seem to be a sufficient deterrent for large organisations receiving millions of taxpayer dollars each year for delivering aged care services. Significant additional funding has been provided to improve the quality of care. The recent analysis of compliance with required care minutes highlighted that 6 in 10 aged care providers, particularly for profit providers and those in metropolitan areas, were not meeting the requirements but kept the increased funding provided to meet them. Strong regulatory action is required to ensure compliance.

What constitutes a sufficient deterrent need to be considered as part of this Inquiry. Following the Department's findings Parliament must assure itself that the penalties are sufficient to ensure quality service delivery.

Recommendation 77: Review the financial value of civil penalties and amend them in the Act where necessary to ensure Parliament is satisfied, they provide a sufficient deterrent for both large and small aged care providers.

Chapter 7 – Information management (§534-§554)

Narrower definition of 'protected information' to match Freedom of Information laws is needed

The Royal Commission criticised the lack of transparency in the aged care sector. This lack of transparency is partly contributed to by the wide definition of 'protected information'. Though, the Act does give Government officials a broader capacity to release 'protected information' in the course of their duties (§537-§541). This is an important outcome to increase transparency within aged care as noted by the Royal Commission.

The definition of protected information in the Act (§21) has been strengthened as a result of the consultation on the Exposure Draft by linking the definition to a breach of a duty of confidence (though in practice it is unclear if the higher bar intended by this meaning will be routinely understood or adopted given the tests involved).

The definition still allows too much information to be classified as "commercially sensitive information" and as a result we fear the system will not be as transparent as it should be. We remain of the view it would be more appropriate for the Act to use the more widely understood definition from *Freedom of Information Act 1982* and bring the aged care system in line with that existing approach to protected information.

Recommendation 78: Review the definition of 'protected information' at §21 to ensure it is as narrow as possible, and aligns with the Freedom of Information Act.

Whistleblower protections are welcome and supported, including disclosures to workers (§547-§554)

We welcome the addition of whistle blower protections for people disclosing information about the operations of aged care. COTA Australia supports the broad list of people where a disclosure qualifying for protection (§547) can be made.

This breadth is necessary as it needs to be as easy as possible for an older person or a family member to disclose if they have to. It is unreasonable to expect that an older person, or family member, would l know who is authorised to receive a disclosure for which they would be protected. Any disclosure to a person in the aged care system should grant the individual the status of whistleblower protections.

COTA Australia understands there is concern from some provider groups about the practicalities of having to train all staff to ensuring they can exercise the role properly and in a way that doesn't expose them to breaches. While we can understand the concern it is more important that an older person is able to disclose information as and when needed to someone they trust. Support for training of workers should be provided.

Chapter 8 – Miscellaneous (§555-§602)

Decisions by the Commissioner, Complaints Commissioner, System Governor and Pricing Authority should be transparent, reviewable and listed

List all decisions in a table with a clear timeframe

A single table should include all decisions

All aged care governance decisions should be reviewable and clearly listed in primary legislation. Any decisions that are not open to reconsideration should be identified.

In the Act, §556 outlines reviewable decisions by the Commissioner or Complaints Commissioner, §557 reviewable decisions by the System Governor and §558 reviewable decisions by the Pricing Authority. All of these are in a table format.

A small handful of decisions do have requirements to make the decision within the timeframe in the Rules. However, the majority do not but should be determined and added to the table.

A table listing of reviewable governance decisions is useful, but we feel there are some missing decisions from the table. This includes timeframes to complete assessments, allocation of places to individuals, varying or revoking individual contribution rate determination following an event or change in circumstances, complaints determinations (that we propose is included in the Act at Recommendation 73:

Some decisions may be detailed in the Rules, but our view is that decisions themselves should all be listed in the primary legislation. For example, decisions related to complaints determinations should be in the primary legislation

Decisions should have a timeframe

Items that are decisions related to an application, or action including those that trigger an investigation must have a clear timeframe. It may be permissible, by notice in writing, for the decision maker to lengthen their timeframe for the decision once, by the same timeframe assigned to each decision.

It is noted that reconsideration of decisions by an internal decision reviewer do include a timeframe. They must be completed within 90 days of application (§560(5)(c)) and this period does not include any periods where further information was requested up until the day the information is received (usually no more than 28 days). A small handful of other decisions have requirements to make the decision within the timeframe in the Rules This clearly demonstrates the Commonwealth's capacity to set a timeframe for some decisions but has elected to not do so for the majority of decisions contained in the Act.

We believe all decisions should have a clear timeframe associated.

Recommendation 79: Amend the Act to ensure all decisions under the Act are listed in §556-§558 tables, along with a comparable table for any decisions outlined in the Rules, indicating:

- **if the decision is eligible for reconsideration and review, or not,**
- **if the decision is a legislative instrument or not,**
- **if the decisions are eligible to be made by automation,**
- **the timeframe the decision must be made within.**

Decisions made by automation must be transparent to individuals

It is noted that the Act allows for some of these decisions to be made by automation (§583). These decisions should be transparent, and all stakeholders particularly older people and their families made aware when a decision has involved an automation process.

Recommendation 80: Amend the Act at §583 to ensure all decisions made by automation must disclose as having occurred by automation in any related documentation/advice/notice relating to the decision.

Individuals should have greater ability to be the entity who may request a reconsideration

When a decision is made against a provider, we note that the tables in §556-§558 only list the provider as being the affected entity. However, when those decisions relate to an incident involving an individual it would seem to COTA Australia that the individual should have grounds to object to the decision or outcome being inappropriate. In this regard we note the submission of Professor Wendy Lacey for the committee's attention.

Older people shouldn't be charged a fee for applying for a reassessment (reconsideration of a classification decision)

§593 prevents the System Governor for charging individuals, or people supporting individuals for services they conduct. However, §559(2)(c) allows the Rules to outline the application fee for a reconsideration of a decision relating to subsection 78(1) to establish a classification level for an individual for a classification type for a service group. In effect this would allow the System Governor to charge for reassessments requested by the individual. COTA Australia is not supportive of fees being charged for reassessments of an individual's needs, nor for reconsideration of decisions.

Recommendation 81: Amend the Act to remove §559(2)(c) permitting an application fee for a reassessment of a person's classification level for a classification type of a service level.

Strict obligations on computerised and AI systems (§582)

There are insufficient safeguards in the Act, and supporting detail in the Explanatory Memorandum, to support the use of automated administrative action by the Commissioner.

§582 states that the System Governor may arrange for the use of computer programs to take relevant administrative action.

The Explanatory Memorandum states that computer decision making will support implementation of streamlined processes. For example, it will enable immediate classification of an individual for a service group upon the System Governor's receipt of a classification report (or other relevant information) for the purposes of that decision.

The safeguard that exists is to allow a decision substitution by the System Governor where a computer program is not operating correctly or has made a decision that the System Governor considers is wrong. In this instance there is no need for formal review.

It is important that any or all computerised and AI systems used now or in the future to generate decisions are subject to strict obligations including:

- adequate risk assessment and mitigation systems,
- high quality of the datasets feeding the system to minimise risks and discriminatory outcomes,
- logging of activity to ensure traceability of results,
- detailed documentation providing all information necessary on the system and its purpose for authorities to assess its compliance,
- clear and adequate information to the user,
- appropriate human oversight measures to minimise risk, and
- high level of robustness, security and accuracy.

Recommendation 82: Amend the Act at §582 to require the System Governor to establish an ongoing monitoring and auditing reporting process for all uses of computer-generated decisions, with specific attention to their suitability when applied to people with diverse backgrounds and from more marginalised groups. Findings of the audit should be made publicly available and included in all annual reports regarding the operations of the system.

Recommendation 83: Recommend the Department of Health and Aged Care establish an AI Oversight Committee to ensure procedural fairness for individuals accessing aged care services.

Annual report on the operation of the Act needs more substantive requirements (§599)

The annual report is a critical, publicly available reporting mechanism on the effectiveness of the Act and the aged care system. The annual report should sit alongside an effective quarterly wait list report (as recommended on page x), and the Commission's annual report for the operations of the ACQS Commissioner and Complaints Commissioner. The annual report must provide the necessary data to monitor the aged care workforce, the availability and delivery of services, the effectiveness of the assessment process, the efficiency of obtaining services (including waiting periods) and the financial impact of the system as a whole for both providers and older people accessing or seeking to access services.

The annual report should include the following:

- equitable access amongst populations listed in §25(4) to services
  - annual activities of the System Governor (who seemingly has no other annual report specifically related to the Act, unlike the ACQSC and IHACPA)
  - the period of waiting for an assessment to be completed
  - a breakdown of waiting times by regional area
  - analysis of the delivery of Direct Care (care minutes)
  - the use of services at all (it should be required that all Services in the Service List are reported on annually)
  - the financial impact of the reforms on older people (yet the financial viability of the sector is to be reported on annually)
  - the use of Daily Accommodation Payments (only Refundable Accommodation Deposits)
  - the annual requests for reconsideration of all decisions, annual reviews of the reconsidered decision and a summary of the outcomes of those reconsideration and review processes.

Recommendation 84: Amend the criteria in §601(Annual report) to require information to be included for the annual activities of the System Governor, waiting times from application to service commencement (including assessment), use of specific services,

achievement of Direct Care (care minute) targets, monitoring of the financial impact on older people and the use of Daily Accommodation Payments.

Legislate a quarterly waiting list report, by region, for all service groups and service types

It is necessary to monitor the period between application and service commencement. To understand if a particular region's assessment team is taking longer than other regions, or if a particular service is unavailable in a particular region in a timely fashion. Without an accurate wait time from the start with seeking an assessment to receiving services the system won't improve access to services for individuals. by individuals due to the lack of available data.

COTA's long standing target is that older people receive the care & support they need within 30 days of application. This means from their first call to register with my aged care, through to the commencement of their services should be no longer than 30 days. Currently people wait months or years for support and will either enter hospital or residential care before they should as a result or they die waiting.

The reporting on aged care commencement timings is complex and opaque, derived from sources often not published by Government unless requested and with inconsistent approaches.

A transparent a fit for purpose report should be introduced at the same time as the new Act and commencement of the Support at Home program (1 July 2025). This should replace the current HCP program report which only provides data on how long an individual waits from the time they have been assessed and allocated a package to the time service delivery commences. The report should be used to:

- support Government achieve its stated 3 month waiting target
- inform investment and
- drive waiting times down for all services around the country.

Recommendation 85: Amend the Act at Chapter 8 to require Government to design and publish a quarterly wait time report to monitor bottle necks in the system in different geographical regions from the time of application to having the first service delivered. The report must include monitoring of different service types by region and not simply by package/classification levels.

Ensure robust monitoring of the availability of CHSP providers during the 2-year transition to the Home Support Program

Significant numbers of CHSP providers indicate they have no availability or wait lists available for services with only 32.9% of service outlets reporting availability for new clients. This is a deeply concerning and growing problem, particularly with the extension of CHSP until 2027.

Appendix 4 demonstrates our analysis of the Aged Care Service Information December 2022's waitlist and availability of CHSP provider data.

The availability data is often out of date. Older people regularly report to COTA Australia that often when they contact a service- listed as having availability, they are informed there is no longer availability. Real time availability of services is a critical component needed to create effective navigation and seamless access to aged care.

A limitation of the available data is the ability to map the location of the service outlet, with the regions that outlet provides services within. Such an analysis would be easy for My Aged Care given their ability to link each service outlet with the areas they operate within. Such an approach would quantify the increasing reports COTA Australia receives that some CHSP service types are simply not available in some parts of the country.

It is unlikely that the proposed waitlist report will cover services delivered under the Specialist Aged Care Program known as CHSP today. The only data insights into access barriers for these clients during the 2-year transition period appears to be monitoring the Provider indication of their 'availability' and whether they are accepting people onto their 'waitlist' entered into My Aged Care.

A 3-year review of the Act that must consider specific items (§601)

The Act legislates a 5-year review of the reforms it introduces along with broad guidelines for its content.

It is good that the need for a review is acknowledged however COTA Australia believes that 5 years is too long a timeframe given the significance of the changes, including financial impacts on individual older Australians.

COTA Australia recommends that the review occur after 3 years, be focussed on the reforms introduced rather than the aged care system generally, with a specific Terms of Reference (as the 2013 Living Longer Living Better Act did).

The Terms of Reference should include:

- Whether the Act has been successful in embedding rights and supported decision making as the foundation of aged care delivery in Australia;
- Whether the fees and charges regime has created any unintended consequences, particularly in relation to older people accessing the aged care services they are assessed as needing;
- Whether the levels of support (including the 2 short term program initiatives) and greater investment in Support at Home has improved access and wait times for individuals to receive care in their own home;
- Whether further steps could be taken to change key aged care services from a provider-driven model to an older person driven model, with a particular focus on self-management within the Support at Home Program;

- The effectiveness of the Supporters, Guardians and 'decision making supporters' regime;
- The effectiveness of arrangements for facilitating access to aged care services, including the streamlined assessment service, assessment tool, and utility of the service plans created by assessors;
- The effectiveness of arrangements for regulating aged care and its impact on the overall quality of services provided, with a particular focus on the real time monitoring of service provider performance, the greater independence of the Complaints Commissioner and the penalties regime;
- The effectiveness of arrangements for protecting equity of access to aged care services for different population groups;
- Whether greater transparency of the performance of system governance, provider performance, including use of taxpayer and individual co-contributions has improved service quality for older people; and
- Any other related matters that the minister specified.

Recommendation 86: Amend the Act at §601 to require a legislated review after 3 years (not the current 5) and insert a specific term of reference the review must cover at a minimum.

Appendix 1: Contents and Structure of a standardised 'aged care contract'

The below structure summarises the types of things we would like to see in the Rules.

ALL AGREEMENTS

- Summary of key information (top sheet)
- Standard Terms and Conditions (that all providers must include)
    - The Standard Terms and Conditions should include:
        - a commitment that all services delivered under any schedule in the contract will comply with the ACQSC Standards
        - a commitment that all fees and contributions will be charged in accordance with the requirements of the act, and that no fee or charge not included in the schedule to the contract may be charged without written consent
        - Alternative Dispute Resolution pathways
        - Explicit reference to Australian Consumer Law applying including reference to:
            - services must be fit for purpose [s. 61];
            - services must be delivered with due care and skill [s. 60];
            - services must be delivered in a reasonable time [s. 62];
            - the Provider must not act in an unconscionable way [ss 20,21,22];
            - no force must be used in the delivery of services [s. 50].
        - Explicit reference to the right to have your contract reviewed by a legal professional
        - Explicit reference to common law requirements for informed lawful consent (including specifically in relation to restrictive practices)
- Mandatory annexures to be included
    - A copy of all fees and charges that may be issued
    - A copy of the Statement of Rights
    - Information about restrictive practices
        - if they're used how informed lawful consent will be obtained
        - that in the absence of consent explanation of the common law requirements of 'imminent harm to the person or to others', including explanation of common law Minimisation of Restraint Principles
        - what steps may be taken if there is doubt or concern about the restrictive practices used by the Provider and its employees.
    - A mandatory information memorandum about their aged care contract that outlines:

        - their rights and recourse to consumer law protections, beyond those in aged care law
        - their right to seek a legal practitioner to review their contract and issue a certificate of advice to confirm they have had the terms of the contract explained to them
        - their right to resolve issues under this contract including
            - making a complaint to the provider and how they'll handle complaints
            - how to make a complaint to the Complaints Commissioner and to request a reconsideration of any complaint determinations
            - seek a review of a Complaints Commissioner's complaint determination from the ART / Ombudsman
            - that the Complaints Commissioner, or the ACQS Commissioner may lodge a compensation claim in the Federal Court following their investigation on behalf of individuals who are seriously harmed or injured
            - how to seek remedy for breaches of consumer law via the state trade practices regulator
            - to seek an alternative dispute resolution through mediation or arbitration clause in the contract
- reminding individuals that they have common law rights to seek remedy for breaches of the contract, breaches of consumer law or breaches of the aged care act directly with tribunals and local courts

FOR RESIDENTIAL AGREEMENTS

- Schedule of accommodation
    - Special terms and conditions relating to accommodation
- Schedule of care and services
    - Special terms and conditions relating to care and services
- Schedule of higher everyday living and any other private services delivered
    - Special terms and conditions relating to Higher Everyday Living
        - As per Act - schedule cannot be offered before Day 1 of receiving accommodation services, must have a regular review of services no less than 6 monthly, agreement to these services must have a cooling off period after it commences of no less than 21 days.

FOR HOME SUPPORT AGREEMENTS

- Schedule of Commonwealth funded aged care services
    - Special terms and conditions relating to home support services
- Schedule of Assistive Technology (if applicable)
    - Special terms and conditions relating to Assistive Technology
- Schedule of Home Modifications (if applicable)
    - Special terms and conditions relating to Home Modifications
- Schedule of private services
- Special terms and conditions relating to private services

Appendix 2: Financial penalties, obligations under the Act & whether an infringement notice may be issued

Obligations with financial penalties	Does the Act allow infringement notice?
OBLIGATIONS AND PENALTIES AGAINST ANY PERSON (30-120 penalty units) (seemingly can apply to any person relevant to the provision – so includes workers, responsible persons and potentially older people)	
490 Failing to comply with notice (30 penalty units);	Yes
491 Attending before authorised officer to answer questions—making oath or affirmation (30 penalty units)	No
495 Failing to comply with notice (30 penalty units)	Yes
430 Responsibility to provide facilities and assistance etc. 30 or 100 penalty units, or 6 months imprisonment	No
535 Unauthorised use or disclosure of protected information (Imprisonment for 2 years or 120 penalty units, or both)	No
OBLIGATIONS AND PENALTIES AGAINST ANY ENTITY (30-500 penalty units)	
550 Confidentiality of identity of disclosers (30 penalty units);	No
543 Retention of records by former registered provider (60 penalty units);	No
591 False or misleading information or documents in applications, claims and requests (60 penalty units);	No
529 Civil penalty provision for false or misleading information (100 penalty units);	No
530 Civil penalty provision for false or misleading documents (100 penalty units);	No
551 Victimisation prohibited (Whistleblower protections) (Actually causing detriment – 500 penalty units; Threatening to cause detriment – 500 penalty units)	No No & is a

	current ACQSC Infringement[18]
A FINANCIAL INSTITUTION (300 penalty units): 518 Recovery of amounts from financial institutions (300 penalty units)	No– Eligible?
AGED CARE WORKER OBLIGATIONS (250-1000 penalty units)	
173 Aged care workers of registered providers must comply with Aged Care Code of Conduct (250 Penalty Units); 500 Penalty for contravening banning orders (Entity: 1000 penalty units)	No & is a current ACQSC Infringement[19] No & is a current ACQSC Infringement[20]
RESPONSIBLE PERSONS OBLIGATIONS (30 - 1000 penalty units)	
169 Responsible persons of a registered provider must notify of change of circumstances relating to suitability (30 Penalty Units); 178 Offences relating to non permitted use of refundable deposits (2 years jail) 174 Responsible persons of registered providers must comply with Aged Care Code of Conduct (250 penalty units); 180 Duty for certain responsible persons (Serious failures: 150 Penalty Units; Death or serious injury or illness: 500 Penalty Units);	Yes No No & is a current ACQSC Infringement[21] No

[18] Victimising by causing harm to a person who has disclosed that they suspect a reportable incident has happened. (These people are called the discloser.) Maximum penalty units* 500 units section 54-6(1) Aged Care Act; Threatening to harm a discloser to deliberately cause fear or not caring about the fear you are causing. section 54-6(2) Aged Care Act

[19] Aged care worker not complying with the Code of Conduct. section 74AC Commission Act 250 units

[20] A person contravening a banning order. section 74GD(1) Commission Act 1000 units

[21] Governing person of approved provider not complying with the Code of Conduct. section 74AD Commission Act

500 Penalty for contravening banning orders (1000 penalty units)	No & is a current ACQSC Infringement[22]
AGED CARE DIGITAL PLATFORMS (250-500 penalty units)	
189 Other obligations of certain operators of aged care digital platforms (250 penalty units); 188 Duty of operators of aged care digital platforms: (500 penalty units)	No No
OBLIGATIONS WHERE IMMUNITY FROM CIVIL OR CRIMINAL LIABILITY APPLIES	
162 Restrictive practices; 163 Immunity from civil or criminal liability in relation to the use of a restrictive practice in certain circumstances	n/a
CONDITIONS OF REGISTRATION (Penalties range from additional condition of registration being imposed, to registration being revoked, to civil penalties of 250 penalty units or 500 penalty units for serious or systematic breaches **(under §142 - Conditions of registration)**: 144 Rights and principles; 145 Aged Care Code of Conduct; 146 Compliance with Aged Care Quality Standards; 147 Continuous improvement; 148 Delivery of funded aged care services; 149 Starting and ceasing the provision of funded aged care services and continuity of those services; 150 Compliance with Financial and Prudential Standards; 151 Fees, payments, contributions and subsidies; 152 Workforce and aged care worker requirements; 153 Vaccination; 154 Personal information and record keeping; 155 Provision of information to individuals; 156 Access by supporters and independent aged care advocates etc.; 157 Membership of governing bodies; 158 Advisory body requirements; 162 Restrictive practices; 164 Incident management; 165 Complaints, feedback and whistleblowers.	No
PROVDIER OBLIGATIONS WITH SPECIFIC PENALTIES (30-4800 penalty units)	

[22] Governing person of approved provider not complying with the Code of Conduct. section 74AD Commission Act

167 Change in circumstances (Entity: 30 Penalty Units);	Yes
177 Cooperation with other persons – (Entity: 30 Penalty Units);	Yes
480 Penalty for contravening required action notices (30 penalty units);	Yes
512 Registered providers must provide facilities and assistance for assurance activities (30 penalty units);	Yes
487 Penalty for contravening compliance notices (60 penalty units);	Yes
166 Reporting (Entity: 250 Penalty Unit);	Yes
171 Offence relating to failure to take action as required by determination (Entity: 300 Penalty Units);	No
172 Offence relating to failure to comply with responsibility to consider suitability matters relating to responsible persons (Entity: 300 Penalty Units);	No
178 Offences relating to non-permitted use of refundable deposits (Entity: 300 Penalty Units)	No
168 Protection of personal information (but penalties apply under §535 for all persons);	No
170 Determination relating to suitability of responsible persons of a registered provider (but penalties apply under §167 if changes in suitability are not notified);	No
179 Registered provider duty – *Serious failures:* Individual (150 Penalty Units), Entity (1000 Penalty Units); *Death or serious injury or illness:* Individual (500 Penalty Units), Entity (4800 Penalty Units);	No No
PROVIDER OBLIGATIONS WITHOUT STAND ALONE PENALTY	
175 Registered nurses (requires an RN 24/7);	n/a
176 Delivery of direct care (Care Minutes);	n/a
553 Registered providers' obligations in relation to disclosers	n/a
OFFENCES ON SUPPORTERS	
36 Offence for abuse of position as supporter (30 penalty units)	No

Appendix 3: Wait times against aged care entry stages

The below data is aggregated from a series of sources including the Department of Health and Aged Care's appearance in October 2023 before Senate Estimates and their response to Senate Question on Notice 2845 on 29 January 2024[23].

AGED CARE COMMENCEMENT STAGES		*Screening & Eligibility*	*Assessment (incl. Approval)*	*Place/Service Allocation*	*Service Referral Accepted*	*Service Commencement*
MAC Stages, Responsibilities and whether included in current HCP report	**MY AGED CARE Approx Status Codes[24]**	**Registration– Eligibility Screening – Assessment Referral Accepted**	**Assessment Referral Accepted – Assessment Completed**	**Assessment Completed – Place Allocated**	**Services Approved – Service Referral Accepted**	**Service Referral Accepted – 1st Service commenced**
	Who should be responsible	My Aged Care	Assessment Team	Dept of Health	Aged Care Provider[25]	Aged Care Provider
	Included in current[26] report?	No	No	Yes	No	No
Stated current timeframe Department		~6-13 months (median of ~1-11 months), depending on the service(s) required by an individual[23]				
What is known as at Jan 24: CHSP		MAC/RAS: <3 days MAC/ACAT: <1.9 days	RAS: 16.5 days ACAT: 35 days (Range of different locations is 4 –94.8 day)[27]	RAS: 341 days[28] ACAT: 303 days		13 to 46 days[29]
HCP				14-161 days [28,30]		28 days
Residential				2 -273 days[28,31]		
Transition Care				Unknown		Unknown

[23] Response by Department of Health and Aged Care to Senate Question 2845 (29 January 2024). Available from: https://www.aph.gov.au/SenateQON Attachments to responses include an indication of times by ACPR.

[24] Data should, in the future, be driven by clear status codes out of My Aged Care – a clear list of statuses in MAC and how they associate to the report should be published.

[25] In October 2023 Estimates Mr Herald responded to a question identifying "when they are assigned their package, they have 56 days to find a provider to take up those services. Obviously, that comes down to their ability to find a provider". No data on actual timeframes were identified. Data supplied to Senate QoN 2845 did not break down between Place Allocation and Service Referral Accepted.

[26] See Home Care Packages Report, Transcript to October 2023 Estimates and Senate QoN 2845.

[27] Attachment F to QoN 2845 indicates that different assessment outlet locations have a range of 4-94.8 days

[28] The Department advises in response to Senate QoN 2845 that "The term 'elapsed time' is sometimes used instead of 'wait time', as there are other factors that come into play such as client choice, which impacts on the time between certain stages of the client journey. This is especially the case from the point of when an approval for Commonwealth subsidised care is provided. Often clients are approved for many forms of care, and it is up to them to decide the best form of care they take up to suit their situation and care needs." (response to question 3b)

[29] Current system limitations about how long between CHSP service referrals being accepted in My Aged Care and the first service commences remain. A proxy indicator using data mapping algorithms to match information stored in the Department of Social Services' Data Exchange (DEX) system with the My Aged Care assessment information was developed

[30] Depending on priority and package level.

[31] 2022-23 Report on the Operation of the *Aged Care Act 1997* (ROACA) indicates "≤ 2 days (1.4%); ≤ 7 days (4.3%); ≤ 1 month (17.4%); ≤ 3 months (42.6%); ≤ 9 months (60.8%)"

Appendix 4: Analysis of My Aged Care CHSP Waitlist and Availability by service outlet

The table below analyses Aged Care Service Information December 2022 published on My Aged Care. A limitation of the available data is the ability to map the location of the service outlet, with the regions that outlet provides services within. Such an analysis would be easy for My Aged Care given their ability to link each service outlet with the areas they operate within. Such an approach would quantify the increasing reports COTA Australia receives that some CHSP service types are simply not available in some parts of the country.

Table No1: CHSP Service Type by Availability Status

CHSP Service Type	Not Available	Maybe Available (Waitlist)	Available
ALL SERVICES	**30.1%**	**36.9%**	**32.9%**
MEALS	**13.2%**	**34.8%**	**52.0%**
ALLIED HEALTH	**26.6%**	**48.1%**	**25.3%**
CARE MANAGEMENT	**14.3%**	**0.0%**	**85.7%**
NURSING	**13.0%**	**42.1%**	**44.9%**
DOMESTIC ASSISTANCE	**59.1%**	**20.7%**	**20.2%**
TRANSPORT	**32.9%**	**30.9%**	**36.2%**
SOCIAL SUPPORT (GROUP & INDVIDUAL)	**26.5%**	**39.0%**	**34.5%**
GOODS, EQUIPMENT AND ASSISTIVE TECHNOLOGY	**22.4%**	**61.6%**	**16.0%**

	No Availability	Yes Availability
Waitlist Available	?	?
Waitlist Not Available	×	a

	Number of outlets offering this service					Percentage of availability/waitlist		
ALL SERVICES	No Availability	Yes Availability				No Availability	Yes Availability	
Waitlist Available	*673*	*6,604*	**7,277**		Waitlist Available	*3.4%*	*33.5%*	**36.9%**
Waitlist Not Available	**5,937**	**6,486**	12,423		Waitlist Not Available	**30.1%**	**32.9%**	
	6,610	13,090	**19,700**					**100%**
MEALS	No Availability	Yes Availability				No Availability	Yes Availability	
Waitlist Available	21	458	**479**		Waitlist Available	1.5%	33.3%	**34.8%**
Waitlist Not Available	**181**	**715**	896		Waitlist Not Available	**13.2%**	**52.0%**	
	202	1,173	**1,375**					**100%**
ALLIED HEALTH	No Availability	Yes Availability				No Availability	Yes Availability	
Waitlist Available	28	885	**913**		Waitlist Available	1.5%	46.6%	**48.1%**
Waitlist Not Available	**506**	**481**	987		Waitlist Not Available	**26.6%**	**25.3%**	
	534	1,366	**1,900**					**100%**
CARE MANAGEMENT	No Availability	Yes Availability				No Availability	Yes Availability	
Waitlist Available	-	-	-		Waitlist Available	0.0%	0.0%	**0.0%**
Waitlist Not Available	**1**	**6**	7		Waitlist Not Available	**14.3%**	**85.7%**	
	1	6	**7**					**100%**
NURSING	No Availability	Yes Availability				No Availability	Yes Availability	
Waitlist Available	18	396	**414**		Waitlist Available	1.8%	40.2%	**42.1%**
Waitlist Not Available	**128**	**442**	570		Waitlist Not Available	**13.0%**	**44.9%**	
	146	838	**984**					**100%**

DOMESTIC ASSISTANCE	No Availability	Yes Availability				No Availability	Yes Availability	
Waitlist Available	100	261	**361**		Waitlist Available	5.7%	15.0%	**20.7%**
Waitlist Not Available	**1,029**	**352**	1,381		Waitlist Not Available	**59.1%**	**20.2%**	
	1,129	613	**1,742**					**100%**
TRANSPORT	No Availability	Yes Availability				No Availability	Yes Availability	
Waitlist Available	39	409	**448**		Waitlist Available	2.7%	28.2%	**30.9%**
Waitlist Not Available	**476**	**525**	1,001		Waitlist Not Available	**32.9%**	**36.2%**	
	515	934	**1,449**					**100%**
SOCIAL SUPPORT (GROUP & INDVIDUAL)								
	No Availability	Yes Availability				No Availability	Yes Availability	
Waitlist Available	189	1,561	**1,750**		Waitlist Available	4.2%	34.8%	**39.0%**
Waitlist Not Available	**1,187**	**1,546**	2,733		Waitlist Not Available	**26.5%**	**34.5%**	
	1,376	3,107	**4,483**					**100%**
GOODS, EQUIPMENT AND ASSISTIVE TECHNOLOGY								
	No Availability	Yes Availability				No Availability	Yes Availability	
Waitlist Available	18	232	**250**		Waitlist Available	4.4%	57.1%	**61.6%**
Waitlist Not Available	**91**	**65**	156		Waitlist Not Available	**22.4%**	**16.0%**	
	109	297	**406**					**100%**