



Aged Care and Other Legislation Amendment Bill 2025

**Submission to Senate Community Affairs
Legislation Committee**

Prepared by
COTA Australia

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About COTA Australia

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

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

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Introduction

COTA Australia welcomes the introduction of the *Aged Care and Other Legislation Amendment Bill 2025*. Along with several technical amendments, the Bill will enable Services Australia to share information with older people about their fees and charges prior to the commencement of the Aged Care Act 2024. This approach ensures that all current Home Care Package participants are informed and understand their aged care fees and charges before they are asked to sign a Support at Home contract by their aged care provider.

In the Departments evidence at the hearing on Friday 8 August we were concerned to hear the implementation plan for communicating with older people about their co-contributions. There should be direct communication from Government to older people about their interim contribution determination with enough time to consider before being asked to sign an agreement. The information should not just go to providers with older people having to ring Services Australia or ask for it from their provider. While we acknowledge Governments efforts to address the issue of older people having information to support informed consent more needs to be done. The Bill would be improved by amending specific clauses to provide greater transparency and enhanced participant protections. Our recommendations in this submission include the areas of cancellation policy, ensuring substitute decision makers (Guardians etc) are not unreasonably broad, ensuring that Parliament mandates standing Higher Everyday Living Fee (HELFF) contracts are in writing, has appropriate oversight on ministerial changes to the Act in the first 24 months and ensures when determining the number of places each year that the Minister considers population changes and return the target waitlist timeframe of 90 days to 1 July 2027 (not 1 November 2027).

With these minor amendments, we support the bill being passed to ensure that adequate time is provided to give older people information about the individual contributions they are being asked to pay.

Cancellation Policy

With amendment 23, the Bill adds a new clause, 11 A, enabling a registered provider to be eligible for subsidy under certain circumstances of service cancellation or 'no show'. This is if the participant was not at home or in a pre-determined location when a worker arrives to deliver a scheduled service.

COTA Australia is supportive of an appropriate cancellation policy. 11A-5 of the Final draft of the new Aged Care Rules identifies the period of 2 business days' notice is required or else a cancellation will be deemed a late cancellation. If later than 2 business days a payment from the participant's Support at Home package will be taken. This is in line with NDIS policy.

The NDIS Policy provides for a two-business day cancellation, but it also requires certain conditions to be met that are absent from the proposed amendments for aged care, including:

- Providers may choose to waive the short notice cancellation fee at their discretion

- The provider could not find alternative billable work for the relevant worker and, if not a sole trader/partnership, are required to pay the worker for the time that would have been spent providing the support
- Providers should document the terms of short notice cancellations policies in participant service agreements.¹

There will also be emergency situations and/or extenuating circumstances (such as a person living on their own being admitted to hospital) where cancellation fees should not be charged. Particularly in the circumstance where the participant is recorded as a “no show” once but is unable to notify the provider – they will continue to be charged the no show fees. This will decrease the value of their package. The legislation should include obligations on the provider to understand the wishes and preferences of the participant after the first no show before continuing to take actions that incur a further no-show charge, along with waivers for emergency situations or extenuating circumstances.

The cancellation period should be one business day and not two. While the proposal is in line with NDIS, other services, such as GPs require from 2 hours to 24 hours’ notice cancellation. The SCHADS award, under which many workers are employed, only requires 12-hour notice for cancellation of shifts which means 24 hours should be sufficient notice period to avoid incurring costs.

Providers do need to meet their costs but there should be clear requirements to engage with participants before payments are taken from their Support at Home package.

Recommended amendments to ACOLA amendment 23

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- 1. Direct that a 1 business day, not 2 business day requirement should be included in the Aged Care Rules at item 11A-5.*
 - 2. Establish in ACOLA, that the rules must outline, a mechanism that, after the first “no show”, a pause in fees occurs with the person’s care manager to confirm the wishes and preferences about future services, and if an emergency has occurred or reasonable change is needed.*
 - 3. Require via amendment to the Bill or Rules that providers may only charge cancellations when they incur staffing costs that*

¹ National Disability Insurance Scheme Pricing Arrangements and Price Limits 2025-26. Available from: <https://www.ndis.gov.au/providers/pricing-arrangements>

cannot be reallocated to other work, may waive cancellation fees and be required to document policies in agreements.

Role of Guardians etc.

Amendment 26 of the Bill inserts a paragraph to allow the Minister to prescribe certain types of people who should be seen to be a substitute decision maker. This new power negates the need for the broad paragraph 28(2)(a) regarding guardianship of the individual under a law of the Commonwealth, a State or a Territory, and it should be removed. The current construct of paragraph (a) may become too broad and capture unintended people, including NDIS representatives or state based Medical Treatment decision makers. It is inappropriate to give unintended decision makers the authority to override the wishes and preferences of the aged care participant/resident, because they have powers to make decisions in an alternative narrower context.

The new 28(2)(d) provides the ability to recognise appropriate Guardians etc by prescribing “a class of persons prescribed by the rules”. The removal of the broader catch all in paragraph (a) and allowing paragraph (d) to identify specific cases where it is appropriate will ensure the rights of older people are upheld. In addition, paragraph (d) may assist the Government in responding to any future changes to state and territory law in this area.

Recommended amendments to ACOLA amendment 26

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- 4. *Introduce an additional amendment to remove ACA24’s 28(2)(a) [“has guardianship of the individual under a law of the Commonwealth, a State or a Territory”] acknowledging the new introduction of paragraph (d) will still allow specific intended scenarios.***
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Allocation of places

ACOLA amendment 53 replaces the current ACA subsections 91(1) and 91(2) and outlines the things that may be considered to determine the number of places for allocation each year. A particularly welcome inclusion in these changes is that a “target average wait time” may be considered as part of determining the number of places.

We welcomed the Government’s announcement when introducing the Aged Care Act that it would target a 3 month wait time by 1 July 2027. While this is longer than COTA Australia’s target of no one waiting more than 30 days, it represents a significant step forward towards providing timely care.

This Bill extends the commencement date to reach the 3 months wait time from 1 July to 1 November 2027 in in 93-14(b)(ii) of the Rules. This should be amended either in legislation,

or the Rules to reflect the original 1 July 2027 commitment. While the deferral of the commencement of the Act was necessary, there is no reason why efforts cannot be accelerated to meet the 1 July 2027 deadline over a 20 month, rather than 24 month period.

Missing from the criteria that must be considered for developing package allocation is an objective comparison between years that controls for changes in populations. The number of packages/classifications allocated each year should also have regard for a ratio of how many packages/classifications are available per 1,000 people of the relevant eligible population (65 years and older, 50+ for ATSI and homelessness). This will ensure year on year comparisons that do not just look at the total number of packages, but whether the allocation of the number of packages is keeping pace with population changes.

Recommended amendments to ACOLA amendment 53

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- 5. Amend the proposed 91(2) in Amendment 53 to require the first target date for wait times to be 1 July 2027, or secure agreement that section 93-14(b)(ii) in the rules will be amended from 1 November 2027 to the 1 July 2027.***
 - 6. Introduce a new amendment to 91(2) to require a population based ratio to be both published and a criteria that may be considered when determining the number of places.***
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Fees for higher everyday living

This Bill removes the requirement for written Higher Everyday Living Fee (HELFF) agreements from the primary legislation. COTA Australia does not support this occurring (amendment 180 in ACOLA25, amending Clause 284 of ACA24).

Written HELFF agreements are a significant aged care participant protection agreed to in the initial Aged Care Taskforce work. It is essential this requirement remains in primary legislation to strengthen transparency and embed consumer rights.

It's our understanding that HELFF agreements have been moved to the rules to distinguish between regular and ongoing HELFF services (referred to in the Rules as "standing HELFF") and point of sale/one off services (referred to in the rule as "ad hoc HELFF").

Rather than weaken the requirement for a written agreement by removing it from the primary legislation, a clearer distinction should be made in the legislation to distinguish ongoing HELFF services from ad hoc HELFF services. If the distinction was added the requirement for a written agreement could remain in the legislation.

Recommended amendments to ACOLA amendment 180

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7. *Remove amendment 180 and retain the requirement that (standing) Higher Everyday Living Fee agreements must be in writing.*
 8. *Introduce new amendments to the legislation to distinguish the existence of standing HELF and adhoc HELF arrangements.*
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Timeframe for individual contribution rate determinations

ACOLA amendment 212 replaces ACA24's Section 314(2) and in doing so removes a 14-day determination period for individual contribution rates to a specified period prescribed by the rules. Such timeframes shouldn't be delegated to the Rules. Parliament should be involved in setting expectations and timeframes on Government processes.

There are timeframes for other players in the system, and this discipline should also be applied to Government entities.

Recommended amendments to ACOLA amendment 212

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9. *Reinsert time periods for individual contribution rate determinations in Section 314(2).*
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Transparent reporting of star ratings performance

ACOLA amendment 260 amending ACA24's Section 541(2) regarding the disclosure of star ratings has removed the appropriately broad requirement for the System Governor to publish information about the "performance of registered providers" in relation to "obligations and requirements under this act" and replaced it with a narrower set of actions relating to "quality of services", and compliance in relation to "delivery of those services".

The proposed amendment to section 541 of the *Aged Care Act 2024* would significantly narrow the scope of information the System Governor must publish about residential aged care services. Rather than publication of information on "the performance of registered providers... in relation to obligations and requirements under this Act," there will only be a requirement to publish information about "action taken under this Act" to ensure quality or compliance, or because of a failure to comply.

This shift means that only instances where the regulator intervenes formally would be published. For example, areas such as workforce planning requirements, transparency in fees and charges, consistent low levels of compliance that don't trigger enforcement actions

or obligations to involve participants in care planning would not be covered. This type of information will help older people make informed choices about care. Criticism of the star ratings systems has focussed on the lack of compliance information, and this amendment narrows this further.

The original “performance” wording should be retained, ensuring that the public record reflects the complete picture of a provider’s quality and compliance, not just when government action is taken.

Recommended amendments to ACOLA amendment 260

10. Retain paragraph 541(2)(b) and disagree with its removal as part of amendment 260 so that disclosure of information for star ratings to ensure that public information is provided about the performance of registered providers in relation to obligations and requirements under the Act is maintained.

Ensuring parliamentary oversight of any modifications to Aged Care Law

Amendment 30 in Schedule 2 of ACOLA introduces powers for the Minister to “**modify the operation of** the provisions of an Act or instrument” during the first 24 months of the new aged care laws being operational.

While supportive of these time limited powers to manage the transition, we believe they must be accompanied by additional oversight measures beyond the standard *Scrutiny of Delegated Legislation Committee* processes of the Senate. We want to ensure that any decision made under the proposed ‘Schedule 6—Modification of operation of Commonwealth aged care system during first 24 months’ within the ‘*Aged Care (Consequential and Transitional Provisions) Act 2024*’ (C&T Act) had additional oversights, this could include:

- Amend the bill to ensure that the same process as Aged Care Act Rules is followed. That is mimic Section 602(13) of the Aged Care Act 2024 which requires all Rules made under the Aged Care Act be reviewed by the Community Affairs Legislation Committee.
- Suggestions by other organisations to amend the Inspector General of Aged Care Act to ensure they were required to report to Parliament about use of these powers, if used.

Recommended amendments to ACOLA Sch2 amendment 30

11. Require that all Ministerial decisions made under the proposed Schedule 6 of the C&T Act be subject to additional review processes – either by the Community Affairs Legislation Committee (replicating ACA24s 601(13) for ACA Rules process) or requiring the Inspector General of Aged Care to report to Parliament within the disallowance period about these powers, if used.
