



Submission on the Aged Care Bill 2024

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About UnitingCare Australia

UnitingCare Australia is the national body for the Uniting Church's community services network and an Agency of the Assembly of the Uniting Church in Australia.

We give voice to the Uniting Church's commitment to social justice through advocacy and by strengthening community service provision.

The UnitingCare Network is the largest network of social service providers in Australia, supporting 1.4 million people every year across 1,600 urban, rural, and remote communities. We focus on articulating and meeting the needs of people at all stages of life and those that are most vulnerable.

The UnitingCare Aged Care Network is the largest not-for-profit aged care provider network in Australia. Our services support approximately 102,000 older people, comprising 8% of total residential beds and 8.5% of Home Care Packages nationally.

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Introduction

UnitingCare Australia welcomes the opportunity to provide a submission to the Community Affairs Legislation Committee Inquiry into the Aged Care Bill 2024 (the Bill), and we were pleased to see the Bill introduced to Parliament.

We believe that older Australians should be able to exercise their rights as fully participating members of society. Embedding a rights-based approach into a new Aged Care Act is critical to ensuring that all Australians can experience compassion and dignity as they age.

This Bill represents once-in-a-generation reform for the aged care sector, including for older Australians, their families, aged care providers (providers) and aged care workers. To ensure the sector can benefit from this reform as early as possible, it will be crucial that the Bill passes both houses before the end of the parliamentary term.

This submission, prepared in consultation with the UnitingCare Network, provides feedback on amendments made since the release of the Exposure Draft, as well as provisions not previously included. On balance we are supportive of the Bill in its current form, and we have highlighted provisions which would benefit from adjustments, appearing under:

- Chapter 4 – Funding of aged care services
- Chapter 2, Part 5 – Place allocation

We note the Aged Care Rules (Rules), which will provide much needed clarity and supporting detail, are yet to be released. We call on the Government to release the Rules as early as possible, so that providers and the sector at large has adequate time to prepare for the transition.

KEY RECOMMENDATIONS

1. Increase the Accommodation Supplement

An immediate increase to the Accommodation Supplement is needed so providers are not disincentivised from admitting supported residents in the short-term.

2. Index the Daily Accommodation Contribution (DAC)

The DAC needs to be indexed concurrently with the Daily Accommodation Payment (DAP), to remain competitive with individuals providing Refundable Accommodation Deposits (RAD) or DAPs.

3. Undertake an Accommodation Pricing Review immediately

Note the risks on supported residents with the Accommodation Supplement not being correctly costed.

4. Allow residential aged care providers to disclose higher everyday living fees to residents before admission

Remove subclause 284(5) as this policy is likely to increase consumer confusion on residential aged care costings and undermine the delivery of additional services.

5. Ensure providers continue to meet supported resident ratios

Retain supported resident ratios and provision for a higher Accommodation Supplement (if the supported resident ratio is at 40% or above over a calendar month) to incentivise the intake of supported residents by providers.

6. Impose timeframes for place allocation decision making

The System Governor should have an imposed timeframe for the making and notifying of a place allocation decision.

7. Limit home care grandfathering arrangements to 3 years and increase home care places by 60,000

Co-contribution grandfathering provisions for individuals currently in home care should be limited to 3 years, and the number of home care places should be increased by an additional 20,000 in the Financial Year 24-25 and 40,000 in the Financial Year 25-26 to meet immediate need.

8. Implement reforms in a clear and cohesive manner

Undertake a staged approach for the commencement of reforms, noting the system upgrades and transformation efforts that will be required across the board.

9. Financially support providers to transition across to the new Act

Transitioning to the new Act will not be cost neutral for providers, who need adequate funding and support to transition to new arrangements.

Amendments since Exposure Draft

UnitingCare Australia acknowledges and supports amendments made since the Exposure Draft. In particular, we are pleased to see updates to the effect of the Statement of Rights, the Statutory duty, and supported decision-making framework.

We support a rights-based approach to aged care and believe all people should experience compassion and dignity as they age. At the same time, aged care workers and the broader community deserve mutual appreciation. Therefore, we are pleased that under clause 24 individual rights will be balanced with the rights and freedoms of other individuals, including aged care workers and other individuals accessing services.

We are particularly pleased that criminal penalties have been removed from the provider and responsible person duties. This will significantly reduce the risk of skilled staff leaving the sector and will ensure that qualified personnel remain on boards and in leadership roles. In regard to the responsible person duty under clause 180, clarity is needed as to whether subclause 12(c)(i) is also intended to be carved out, or only subclause 12(c)(ii), particularly when these provisions are drafted to be read together. On the face of the Bill, any person who has responsibility for overall management of *nursing services* would be included as a responsible person, however not any person responsible for the day-to-day *operations* of the registered provider. Greater clarity on this carve out will assist.

The provisions on supporters have improved and appear to be more streamlined, particularly with guardians and people in similar positions now able to do a thing on behalf of an individual, even without being appointed as a supporter under the Act. Noting there is a newly defined role for decision-making supporters, we query what the threshold is for *exceptional circumstances*, which are required under clause 43 to grant decision-

making authority. The note in this clause suggests an exceptional circumstance may include an emergency in relation to an individual seeking to access services, and a guardian isn't available. However, there are likely to be scenarios where a supporter may want decision-making authority granted *before* a potential emergency arises, or when their loved one's cognition has begun to decline. We would appreciate greater clarity on this point.

Above all, while we want to see a supported decision-making framework implemented, we would strongly urge for a 12-month transition period. This is a framework not previously legislated in the aged care sector and adequate time is needed for older Australians, providers, families and the Department of Health and Aged Care (the Department) to have the necessary systems and procedures in place. The Department will also need to deem across any person that is currently registered as an agent or representative under My Aged Care, which will be a large exercise.

Funding of aged care services

UnitingCare Australia is pleased to see the Aged Care Taskforce recommendations met within the fees, payments and subsidy provisions in Chapter 4. The reflection of these recommendations in the Bill is integral to the financial sustainability of the sector. The Government and Opposition are to be commended for developing Chapter 4 through bi-partisan agreement, bringing confidence to the sector and assurance of the approach going forward.

For those Aged Care Taskforce recommendations which are not appropriate for inclusion with the Bill, we recommend these are enacted quickly to complement the broader funding reforms. We also recommend the Rules for Chapter 4, including the service list for all programs, are prioritised for release.

As outlined in UnitingCare Australia's submission on the Exposure Draft, we recommend the Bill include a requirement for Government to fund the system at a level which enables it to be delivered in a sustainable way.

Accommodation Supplement

As per the Aged Care Taskforce recommendations, we note providers are able to retain a maximum of 2% of the Refundable Accommodation Deposits (RADs) for up to 5 years with an accommodation cap of \$750,000. The Daily Accommodation Payments (DAPs) will also be indexed for all residents twice annually; however, these indexation provisions are not applicable to the Daily Accommodation Contributions (DACs). While the Government has committed to an independent review of the Accommodation Supplement over a 2-year period, indexation increases in DAPs will continue to occur while this review is undertaken.

The Accommodation Supplement provides an important incentive to providers to provide accommodation to supported residents who do not have the financial ability to pay a RAD or a DAP.

Currently, the maximum Accommodation Supplement payable to providers with a supported resident ratio in excess of 40% is \$69.49 per day which, if it was a DAP would equate to an accommodation price of \$302,671. The average agreed accommodation price, based on average full RAD taken, is now almost \$500,000 and the equivalent DAP would be \$114.79 per day, significantly higher than the maximum Accommodation Supplement. This difference will further increase as an accommodation price cap of \$750,000 will lead to increased accommodation prices as well as a further gap in DAPs and DACs as the indexation increases set in.

This inequity is likely to be amplified in coming years, as providers who now have fiscal certainty may focus on capital development and will therefore prioritise individuals able to provide a RAD. This, compounded with the difference in application of indexation in DAPs and DACs, means

supported residents are likely not to be prioritised. These individuals are therefore at risk of not receiving timely access to residential aged care services.

Further, if these supplements and payments are not aligned and there is a concessional ratio put in place, this will financially penalise providers who seek to provide tenure to supported residents.

As such, we recommend the Accommodation Supplement is increased; DACs are indexed in concert with the DAPs; and the Accommodation Pricing Review is undertaken immediately.

Higher everyday living fees

UnitingCare Australia is pleased there are provisions for higher everyday living fees, providing individuals greater choice and access to other care and services they wish to receive. This is in addition to care and services required under funded residential aged care services.

It is of significant concern, however, that providers must not offer to enter a higher everyday living agreement with an individual before the individual's start day, as per subclause 284(5). Whilst we understand this provision is in place to provide greater clarity on service pricing and to protect vulnerable individuals, this mitigation does not address the associated risk and in fact increases confusion and inequity.

It may cause confusion about service costs as once the individual has entered the residential aged care home, there will be a multitude of services and activities they are not allowed to access on day one, despite co-contributions. New residents will be unable to access foundational activities other residents may be participating in, until they enter an agreement. These include on-site cafés, libraries with interactive social events, large print books, wine etc.

The provision of additional services is best enabled when providers are able to have up-front and clear discussions with individuals about services and activities available within the residential home. In practice, because of the site-wide nature of additional services these aren't negotiated per activity, but as an opt-in or out option to access the wider additional service package. It will also place a divisive and large administrative burden on providers as they ascertain who they can or cannot provide additional services to.

Further, this provision undermines the delivery of additional services through higher everyday living fees and will have a significant adverse impact on providers with additional services already in place. Providers with site-wide services, such as the café and library noted above, may need to cease these services if they are uncertain that there will be an adequate funding stream to provide them. Aged care providers have invested heavily in additional services within their sites and the UnitingCare network providers have found only extremely rarely do individuals choose to opt-out of additional services.

There are sufficient protections and limitations already in place to ensure higher everyday living fees are not used for funded residential aged care services and this provision has significant unintended consequences. We therefore recommend the removal of subclause 284(5), instead including a requirement for providers to openly disclose higher everyday living fees in a manner which is accessible to the individual.

Place allocation

UnitingCare Australia notes provisions relating to place allocation were not included in the Exposure Draft, and their inclusion in the Bill is the first time we have been able to review them.

Equitable allocation

We understand that entrance to the aged care system will now contain extra steps that have not previously existed. We are concerned this may reduce access for those without the means or support to navigate the system. Clear communication and guidance will be vital to ensuring older Australians and their families understand the relevant processes and decisions to be made by the System Governor.

We note under clause 91, the Minister is required to determine a method for working out the number of places available in each service group. We advocate for this method to incorporate equity across jurisdictions, and account for the actual capacity of providers to deliver that service in that jurisdiction (particularly residential places). There will be a balance to strike between ensuring places are appropriately and equitably distributed across the country, and distributed to the point that providers can glean demand for their services.

Supported resident ratios

Importantly, it's encouraging that individuals with a more urgent need for aged care services will be prioritised through a category system, and presumably allocated a place sooner than other individuals. However, we want to ensure providers continue to have the same requirements to meet supported resident ratios and be incentivised via the Accommodation Supplement (if the supported resident ratio is at 40% or above over a calendar month).

We are concerned if these requirements are abolished, then a low-means individual with an allocated place may have difficulty securing tenure in a residential aged care service. As a network of not-for-profit providers, we will always endeavour to provide care and services to supported residents, however without appropriate incentives and requirements across the sector, there is a risk that these individuals will be left behind.

Potential delays

UnitingCare Australia is concerned about potential delays and bottlenecks that could occur through the place allocation system. If it is at the discretion of the System Governor and their delegates to allocate places to individuals, there is little transparency, particularly without legislated timeframes, to know how long that individual may be waiting.

We recommend that clause 92 includes a requirement that a decision to allocate or not allocate a place to an individual is made within 30 days, or at least in a reasonable period prescribed by the Rules. There should also be an imposed timeframe, such as 14 days, for the System Governor to give written notice of this decision. These amendments would provide assurance to an individual that the decision, and the notification for that decision, will occur in a timely manner. We also encourage the Government to publicly release place allocation wait times for residential care and home support.

Lastly, it is not clear what would transpire if a place were not available in a particular service group, particularly within the timeframes suggested above. We recommend that the individual should be informed as early as possible in this instance and be notified of their options for accessing other forms of care and support.

Administration and funding

From a provider's perspective, the place allocation system may also frustrate the administration and funding of their services. Even if an individual is ready to enter a residential aged care home and their local provider has a room ready for them, no admission can occur until the System Governor has allocated a place to that individual and the individual accepts the place. This will create an uncertain environment for providers and individuals, and it will be difficult for providers to scope out demand for

their services. This will impact on forward planning for financial investment, refurbishments, workforce and room allocation.

Alongside these recommended amendments, we urge the Department to use systems and procedures that will ensure efficient decision-making for prioritisation and place allocation. This will give older Australians and providers the confidence that services can commence within a reasonable timeframe.

Home Care

UnitingCare Australia is pleased there is certainty on the commencement of the Support at Home Program, with further information on the model made available. The current drafting of the Bill means there is a significant amount of uncertainty around the detail and implementation of the Support at Home Program, and therefore it's difficult to know whether provisions within the Bill are in fact adequate.

We look forward to the Provider Handbook, Service Lists, Deeming Information, Chapter 4 Rules, transition arrangements and the Independent Health and Aged Care Pricing Authority (IHACPA) unit pricing. We note this information is critical for program commencement on 1 July 2025.

It is important that IHACPA unit pricing adequately reflects administration and regulatory costs, and provider transition arrangements are funded to ensure continuity of care and program sustainability.

We encourage the Department to provide clear information on the costings and management phasings, as transition and grandfathering provisions will be in place for years, with individuals accessing services across multiple arrangements.

Whilst the user contribution grandfathering provisions for residential aged care are appropriate, we do not believe this is the case for existing home

care recipients who are likely to utilise the system for many more years. This will have an impact both on the complexity of administration and financial management arrangements for providers; and the realisation of the sectoral financial sustainability measures being established.

As such, we recommend grandfathering for home care is limited to 3 years and is not applicable once an individual moves from a home care setting to a residential care setting.

Allocated funding and needs assessment

UnitingCare Australia is concerned the funding announced for 300,000 more people to enter the Support at Home Program over the next 10 years is insufficient. As of 31 May 2024, there were 68,109 people on the National Priority System waiting for a package at their approved level.

We recommend the Government release an additional 20,000 Home Care Packages in the current Financial Year 24-25 and funding for an additional 40,000 people to enter the Support at Home Program in Financial Year 25-26. This is in addition to the 300,000 places announced. This will ensure everyone needing aged care in the home receives it at an appropriate level and timeframe.

Further, access to care in the home is contingent on a timely needs assessment. There is no published data identifying the number of people awaiting assessment, however anecdotally this is often taking in excess of 12-months. It is concerning that organisations still have not been engaged to deliver assessments through a Single Assessment System workforce.

We recommend the Government immediately notify providers of the outcome of the Single Assessment tender and provide support to assessment providers to quickly stand up the required assessment workforce.

UnitingCare Australia is also concerned the Thin Markets grant will place further pressure on regional, rural and remote providers. This has been indicated to be a competitive grant process with funding capped to \$600 million over 2-years and paid in arrears. Administering funding to regional providers through this means does not provide certainty of funding for sustainable service delivery. We encourage the Department to support remote providers with capital funding which is flexible and accessible.

Transition, Funding, Education and Support

UnitingCare Australia shares the Government's ambition for aged care reform, and we emphasize the need for these reforms to be delivered in a clear and cohesive manner. We also want to ensure the sector receives appropriate funding and support to transition to these new arrangements, acknowledging that many will be operating multiple systems concurrently while grandfathering occurs. It will be critical that providers can continue to deliver high quality care to older Australians while adapting to a new Act and set of Rules.

We would welcome a staged approach to reforms commencing, noting the several system upgrades and transformation efforts that will be required across the board. For example, as already mentioned above, we recommend that the Supporter provisions commence from 1 July 2026 so older Australians, their families, providers and the Department have adequate time to prepare for this supported decision-making framework.

Transitioning to the new Act and Rules will not be cost neutral for providers, noting there are already significant administrative and regulatory costs the sector is struggling to absorb. Legislative reforms that require providers to upgrade their internal IT systems and reporting processes are particularly expensive and require significant resources across both residential care and home care. We note in the 2024-25 Federal Budget, the Department received \$1.2 billion over five years for enhance aged care digital systems,

and \$11.8 million over three years to implement the new Aged Care Act. We believe this level of investment should be reflected in the financial support given to providers to implement a new Act.

To address the financial challenges faced by residential aged care providers during the phasing-in period of increased consumer contributions, we recommend implementation of a transition supplement delivered through an adjustment to the Daily Fee. Introduction of this supplement will require an investment of \$1.34 billion in FY24-25 and provide critical financial support to ensure the immediate sustainability of aged care services.

Lastly, we encourage the Department to undertake a comprehensive education program to support the whole community to transition to the new Act and Rules. There needs to be products, webinars and information sessions tailored to older Australians and their families, with adequate resources available within the Department and Aged Care Quality and Safety Commission (Commission) to respond to queries. Current and future aged care recipients will need to understand the process for assessment and services available, and associated wait times; how their payments contribute to their services or accommodation; and what their options are if they are dissatisfied with an element of their care.

Equally, aged care workers and executives will require the necessary guidance and tools to deliver care that complies with the new Act and Rules. We urge the Department and the Commission to consider and support the significant efforts providers will undertake to transition across to new requirements. Providers in the UnitingCare network strive every day to deliver high quality care and will continue to do so under this new legislative framework.

Conclusion

UnitingCare Australia acknowledges the efforts that have gone into finalising the Bill, and the cooperation undertaken to have it introduced to Parliament. We look forward to working with Government, the Department and the Commission in reforming the aged care sector.

Noting many of the details for the new system will be contained within the associated Rules, we reiterate our calls for these to be released as early as possible, including in tranches to facilitate efficient review.

We would welcome the opportunity to discuss these matters with you or arrange for a provider in our network to appear at an upcoming hearing. We thank you for the opportunity to contribute to this important inquiry.