



Catholic Health Australia – Submission on Stage 4a Release of Rules

April 2025

Catholic Health Australia

www.cha.org.au

Catholic Health Australia (CHA) is Australia’s largest non-government grouping of health, community, and aged care services. CHA Members provide approximately 12 per cent of all aged care facilities across Australia, in addition to around 20 per cent of home care provision.

Our members account for over 15 per cent of hospital-based healthcare in Australia and operate hospitals in each Australian state and in the Australian Capital Territory, providing about 30 per cent of private hospital care and 5 per cent of public hospital care in addition to extensive community and residential aged care.

CHA not-for-profit providers are a dedicated voice for the disadvantaged which advocates for an equitable, compassionate, best practice and secure health system that is person-centred in its delivery of care.

Executive summary

Catholic Health Australia (CHA) is Australia's largest non-government grouping of health, community, and aged care services accounting for approximately 12 per cent of aged care facilities across Australia, in addition to around 20 per cent of care provision in the home. Catholic aged care providers have a vital interest in working with the Australian Government to ensure the sustainable provision of aged care and support services for older Australians meet community expectations of safe and quality of care.

CHA appreciates the opportunity to provide input into the Stage 4a Rules relating to place allocation and other provider obligations. We look forward to working with the Department during the consultation on the draft Rules to ensure the new Aged Care Act and supporting Rules achieves its intended outcomes. Our goal is to ensure it fully supports a high-quality and safe aged care system for all Australians irrespective of their wealth or geography.

Overall CHA is supportive of the draft Rules relating to provider obligations and funding for aged care services. CHA appreciates the work undertaken by the Department to address the mechanisms relating to the starting, continuing and ceasing of funded aged care services in this release of the Rules. This submission provides specific considerations for implementation of the Rules to ensure transparency and accountability in all aspects of service delivery for older Australians.

Key observations and issues related to this release of the Rules articulated in our submission include:

1. **Starting, continuing and ceasing of service provision:** CHA welcomes the drafted provisions relating to security of tenure arrangements for residential care, and similar provisions for all other funded aged care services. Recommendations outlined in this section detail specific implementation considerations to improve the applicability of these provisions for older Australians, and to enable providers to better understand how to best meet the care needs of older Australians within the remit of these provisions on service delivery.
2. **Cooperation with other persons:** CHA notes that the draft Rules prescribe the need for providers to comply with requests from Pricing Authority to facilitate access to their premises, responsible persons, and aged care workers. Specific recommendations have been set out in this section to support the implementation of these provisions in a fair and appropriate manner.
3. **Accommodation payments:** CHA is supportive of the provisions relating to the management of accommodation payments, as prescribed in the draft Rules. Specific considerations have been detailed in this section to mitigate the risk of potential misinterpretation of concepts that are not yet defined in the draft Rules nor within the associated components of the new Act.

Our list of recommendations

CHA makes the following recommendations to the Department for amendments to the Stage 4a Release of the Rules:

Recommendation 1: With reference to the security of tenure arrangements set out in section 149-60, implement additional safeguards for providers to reasonably protect their staff and other residents while alternative accommodation arrangements are sourced for an individual. This could include introducing an exemption pathway, in which independent bodies, such as ACAT or Care Finders are tasked with the responsibility of locating suitable alternative arrangements for the individual.

Recommendation 2: With reference to the security of tenure arrangements set out in paragraph 149-60(1)(f):

- Remove the word “intentionally”; and
- Add “has the potential to cause” at the end of the sentence.

Recommendation 3a: With reference to the individuals’ needs assessment arrangements set out in paragraph 149-60(4)(a) and (b), incorporate a definition for “an approved needs assessor” to ensure that individuals can readily request and complete a needs assessment where required.

Recommendation 3b: With reference to the security of tenure arrangements set out in paragraph 149-60(1)(b) and (c), incorporate flexibility for the provider to meet the care needs of an individual within the nuances of their local service delivery environment by clarifying the applicable scope of these provisions in supporting guidance material to accompany these provisions.

Recommendation 4a: With reference to the security of tenure arrangements set out in paragraph 149-35(2)(c):

- Remove the word “intentionally”; and
- Add “has the potential to cause” at the end of the sentence.

Recommendation 4b: With reference to the security of tenure arrangements set out in paragraph 149-35(2)(c), expand item (i) to include “or other individuals receiving funded aged care services delivered by the provider” at the end of the sentence.

Recommendation 5: With reference to the security of tenure arrangements set out in paragraph 149-35(2)(d), rephrase item (ii) to “the individual has not worked with the provider to negotiate alternative arrangements for payment of the fee or contribution”.

Recommendation 6: Remove the phrase “in writing” from paragraph 149-35(2)(e) and (f) to allow individuals greater flexibility for notifying the provider about changes to their services.

Recommendation 7: With reference to paragraph 149-80(4)(b), adopt a similar approach to current practices involving the transfer of clinical notes to a medical coroner, in relation to transfer of records about an individual to another provider.

Recommendation 8: Adopt a split reporting approach to home care accounts, particularly in circumstances where records are transferred to a new provider, so that differences in treatment of the two components in home care accounts can be appropriately captured and managed.

Recommendation 9: Limit the applicable scope of paragraph 177-15(4)(a) by adding “that is necessary for and/or relevant to the conduct of a Pricing Authority advice activity” to the end of the sentence.

Recommendation 10: Limit the applicable scope of paragraph 177-40(4)(a) by adding “that is necessary for and/or relevant to the conduct of a Pricing Authority advice activity” to the end of the sentence.

Recommendation 11: In line with Recommendation 3a, incorporate a clear, comprehensive definition of an “approved needs assessor” to support providers in implementing section 294-5(5) of the Rules.

Recommendation 12a: Incorporate a definition for “other evidence that satisfies the provider” referenced in paragraph 311-15(a)(ii) to mitigate the risk of unnecessary legal implications in the process of refunding an individual the balance on a refundable deposit.

Recommendation 12b: If the above is not considered, then remove paragraph 311-15(a)(ii) and only retain paragraph 311-15(a)(i) as the main provision to address these matters.

Section 1: Starting, continuing and ceasing of the provision of funded aged care services

In the main, CHA and its members are supportive of provisions outlined in section 149 of the draft Rules that support Chapter 3, Part 4 of the new Aged Care Act (the Act).

Security of tenure arrangements – residential aged care homes

The draft Rules introduce more specific conditions under which a provider can ask an individual to leave a residential care home, including the need for suitable alternative accommodation and detailed notice requirements. As set out in S149-60, a registered provider must not ask an individual to leave the residential care home unless one of the circumstances described in this subsection applies. It is also noted that these conditions are to be specified in the service agreement between an individual resident and the provider.

Need for suitable alternative accommodation

Paragraph 149-55(b) outlines a responsibility for providers to ensure that suitable alternative accommodation is available for the individual. While the intent of this paragraph is to ensure that individuals are not suddenly subjected to having no accommodation, this provision and subsection 149-60(2) are both challenging to practically implement due to a potentially lengthy needs assessment process,¹ and may be exacerbated by the need to navigate unfamiliar transition arrangements with an alternative provider. It is the experience of CHA and its members that transitioning a resident to another residential care home, with an alternative provider, may be difficult in some circumstances described in section 149-60(1), particularly that of paragraph 149-60(1)(f), whereby an individual has intentionally caused damage to the premises, or injury to others. As the requirements of alternative providers may differ in practice, it requires some level of due diligence around the circumstances necessitating a transition of an individual so that it can be appropriately communicated and deemed acceptable by the receiving alternative provider.

Thus, CHA recommends that practical flexibility and additional safeguards are made available to providers through an exemption pathway, where providers can request support from an independent assessment team, such as the aged care assessment team (ACAT) or Care Finders to locate suitable alternative accommodation for the individual. A qualifying criterion for this pathway could be extenuating circumstances that hinder a providers' ability to deliver services that meet the care needs of an individual, or that the continued delivery of services negatively impacts the safety or wellbeing of staff and/or other residents.

Recommendation 1: With reference to the security of tenure arrangements set out in section 149-60, implement additional safeguards for providers to reasonably protect their staff and other residents while alternative accommodation arrangements are sourced for an individual. This could include introducing an exemption pathway, in which independent bodies, such as ACAT or Care Finders are tasked with the responsibility of locating suitable alternative arrangements for the individual.

¹ Refer also to subsequent section titled: *Assessing the individual's needs*.

Legal implications of 'intent'

Paragraph 149-60(1)(f) describes that an individual can be asked to leave an approved residential care home if they have “intentionally caused...serious damage [or] injury”. It is unclear how ‘intent’ should be assessed or demonstrated in practice given the subjective nature of ‘intent’. This introduces a risk of increasing the burden of proof required to demonstrate that an individual has intentionally caused harm or damage. It is the experience of CHA and its members that an individual may demonstrate reckless behaviour that is unintentionally causing serious harm to others and/or serious damage to the residential care premises. While providers have an obligation to maintain safety of their staff and that of other residents, it is challenging to implement preventative measures to do so given the subjectivity of ‘intent’ in this context. Therefore, CHA recommends that the scope of this paragraph is expanded to include preventative actions being taken to mitigate the risk of potential adverse behaviour that could cause serious damage or injury. This could be implemented by rephrasing the paragraph to be:

“(f) the individual has ~~intentionally~~ caused, or has the potential to cause:

- i. serious damage to the approved residential care home; or*
- ii. serious injury to an aged care worker of the provider, or to another individual accessing funded aged care services at the approved residential care home;”*

Recommendation 2: With reference to the security of tenure arrangements set out in paragraph 149-60(1)(f):

- Remove the word “intentionally”; and
- Add “has the potential to cause” at the end of the sentence.

Assessing the individual's needs

Paragraph 149-60(4) sets out that the needs of an individual must be assessed by (a) an approved needs assessor; or (b) at least 2 medical or other health practitioners who meet the criteria set out in this paragraph. While the intent of the paragraph is clear, it is the experience of CHA and its members that it is practically challenging to organise and carry out a needs assessment for the purposes of asking an individual to leave a residential care home. For example, in regional, rural and remote areas, it can be extremely difficult for providers to organise general practitioners to undertake a needs assessment in a timely manner due to the shortfall of GPs in these areas.^{2,3} It is equally challenging to meet the requirement to request at least 2 medical or other health practitioner that is competent in assessing the aged care needs of the individual, given the dynamic nature of an older person's care needs. To address these concerns, it is important that there is a definition of

² Ho, Cason. (2025). GP shortage contributing to 'bidding war' as regional towns struggle to attract doctors. ABC News. Accessed at: https://www.abc.net.au/news/2025-01-22/regional-remote-gp-shortage-bidding-war/104837214?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web

³ Department of Health and Aged Care. (2024). *Supply and Demand Study: General Practitioners in Australia*. Accessed at: <https://hwd.health.gov.au/resources/primary/gp-supply-and-demand-study-compendium-august-2024.pdf>

“an approved needs assessor” to supplement paragraph 149-60(4)(a) and ensure that individuals are able to readily request and complete a needs assessment where required.⁴

Recommendation 3a: With reference to the individuals’ needs assessment arrangements set out in paragraph 149-60(4)(a) and (b), incorporate a definition for “an approved needs assessor” to ensure that individuals can readily request and complete a needs assessment where required.

Furthermore, it is the experience of CHA and its members that some individuals do not want to engage in a needs assessment process at the request of the provider. Practical guidance on how to manage these circumstances should be developed and detailed in these provisions. This guidance could reflect similar practices in acute care settings, in which a provider meeting all required criteria (i.e., conditions of registration, and circumstances set out in section 149-60) that will need to go beyond their clinical capability to provide care for an individual, is deemed to be no longer able to provide suitable funded aged care services of the kind that the individual presently needs. This would expand the applicable scope of the drafted provisions in paragraphs 149-60(1)(b) and (c) and incorporate flexibility for the provider to meet the care needs of an individual, within the nuances of their local service delivery environment.

Recommendation 3b: With reference to the security of tenure arrangements set out in paragraph 149-60(1)(b) and (c), incorporate flexibility for the provider to meet the care needs of an individual within the nuances of their local service delivery environment by clarifying the applicable scope of these provisions in supporting guidance material to accompany these provisions.

Security of tenure arrangements – other aged care services

Similar to the above section relating to security of tenure arrangements for residential care, as set out in S149-35, a registered provider must not cease service delivery to an individual unless one of the circumstances detailed in this section applies. These circumstances include non-payment of fees or intentional harm caused by the individual and requires written notice to be given at least 14 days in advance. In the main, CHA and its members are supportive of these provisions that ensure practical financial flexibility and safeguards for providers to support the ongoing delivery of quality aged care services to care recipients. This section contains detailed feedback to improve specific elements of these provisions and should be read in conjunction with the previous section on security of tenure arrangements for residential care.

⁴ Refer also to a subsequent section titled: Non-voluntary moves within residential care homes.

Legal implications of 'intent'

With reference to paragraph 149-35(2)(c), CHA reflects previous comments on ensuring that references to 'intent' is removed from these provisions, and that these provisions are expanded to allow preventative measures to be taken against potentially serious injury.⁵

Recommendation 4a: With reference to the security of tenure arrangements set out in paragraph 149-35(2)(c):

- Remove the word "intentionally"; and
- Add "has the potential to cause" at the end of the sentence.

As some home care providers also provide other types of care, such as respite care, to their clients, it is important that this paragraph is expanded in scope to cover circumstances relating to the individual contributing to potential and/or actual serious injury to other clients in community settings, such as day centres. While specific care settings (i.e., respite care) does not necessarily need to be specified in the Rules, it is important that the wording of item (i) is expanded to include "or other individuals receiving funded aged care services delivered by the provider", or something to a similar extent.

Recommendation 4b: With reference to the security of tenure arrangements set out in paragraph 149-35(2)(c), expand item (i) to include "or other individuals receiving funded aged care services delivered by the provider" at the end of the sentence.

Negotiations of alternative arrangements

CHA and its members welcome paragraph 149-35(2)(d) as it provides practical financial flexibility to ensure that providers can continue service delivery to care recipients. However, it is the understanding of CHA and its members that item (ii) in this paragraph could refer to an individual commencing a negotiation process but is not obligated to complete this negotiation process with the provider, which would introduce the risk of significant delays with finalising service agreements. The current wording in this paragraph may be difficult to demonstrate and/or practicably implement. As such, CHA recommends that paragraph 149-35(2)(d)(ii) is rephrased to: "the individual has not worked with the provider to negotiate alternative arrangements..."

Recommendation 5: With reference to the security of tenure arrangements set out in paragraph 149-35(2)(d), rephrase item (ii) to "the individual has not worked with the provider to negotiate alternative arrangements for payment of the fee or contribution".

⁵ Refer to Recommendation 2.

Withdrawal of consent

It is the experience of CHA and its members that individuals may withdraw their consent on certain matters at any time, through any available means. In practice, this means that individuals may withdraw their consent verbally, and not just in writing. To allow for greater flexibility for individuals to notify the provider about their wishes in relation to the services received, remove the phrase “in writing” from paragraph 149-35(2)(e) and (f). It is the expectation of CHA and its members that any expressed changes from the individual will be documented in the service agreement and consented to by the individual. This means that there are existing safeguards in place without requiring an individual to notify the provider in writing of their wishes in these circumstances.

Recommendation 6: Remove the phrase “in writing” from paragraph 149-35(2)(e) and (f) to allow individuals greater flexibility for notifying the provider about changes to their services.

Continuity of services

Section 149-75 outlines that registered providers must prepare a detailed continuity of care plan if they intend to cease services for an individual residing at a residential care home, ensuring that alternative arrangements are in place. Section 149-80 builds on from these concepts to ensure that records are transferred appropriately between registered providers.

It is the understanding of CHA and its members that, specifically in relation to paragraph 149-80(4)(b), all records pertaining to the individual that are retained and managed by a provider will need to be transferred to the new provider as set out in section 154-3100. In practice, this is challenging to implement as providers are required to keep records made under section 154-3100 for 7 years starting on the day the record is made, and therefore, the provider would be required to transfer up to 7 years’ worth of records relating to the individual to another provider. CHA recommends that a caveat be added to paragraph 149-80(4)(b) to note that clinical information, such as those detailed in paragraph 154-3100(1)(i) on quality indicators, is not required to be automatically transferred to another provider. It is the experience of CHA and its members that providers are only required to provide a medical coroner with up to 2 years’ worth of clinical notes and information, and therefore, a similar approach should be taken in this context.

Recommendation 7: With reference to paragraph 149-80(4)(b), adopt a similar approach to current practices involving the transfer of clinical notes to a medical coroner, in relation to transfer of records about an individual to another provider.

Section 2: Reporting and recordkeeping requirements

Reporting of client balances

As part of the requirements to cease service delivery, providers are required to give sufficient notice to new registered providers about account balances. It is the view of CHA and its members that the requirement to report “notional home care account” in paragraph 149-46 (2)(e) requires further clarification on what exactly should be reported. CHA and its members understand that a home care account is comprised of quarterly rollover of available funds and any grandfathered HCP unspent funds. As the Rules pertaining to how each of these two components are used in practice differ from one another, CHA and its members recommend that the reporting requirement around home care account balances adopts a split reporting approach. For example, there are separate line items for both (1) rollover of available funds, and (2) any unspent funds, in the notice provided to the new provider. This approach to reporting of client balances, when transferring records to new providers and in other applicable circumstances, should be incorporated into supporting guidance material where appropriate.

Recommendation 8: Adopt a split reporting approach to home care accounts, particularly in circumstances where records are transferred to a new provider, so that differences in treatment of the two components in home care accounts can be appropriately captured and managed.

Cooperation with other persons

It is the understanding of CHA and its members that section 177 of the new Act introduces an obligation on registered providers to cooperate with any person who is performing functions, or exercising powers, under the Act. It is noted that the draft Rules only refer to Pricing Authority in this context.

Allowing access by Pricing Authority to certain persons

Section 177-15 of the draft Rules outlines that providers must facilitate access for Pricing Authority officials to specified persons (responsible persons or aged care workers) for advice activities. As set out in Section 11 (4)(a) of the Act, an aged care worker of a registered provider refers to an individual employed or otherwise engaged (including as a volunteer) by the registered provider to deliver funded aged care services.

It is the understanding of CHA and its members that this definition of an ‘aged care worker’ would include agency workforce as well as volunteers. Given this definition of aged care workers, the drafted scope of section 177-15 appears to be broader than the intent of these provisions, which is to ensure that Pricing Authority officials are able to seek information required to progress advice activities. It is also the understanding of CHA and its members that the current wording in subsection (4) only limits the Pricing Authority personnel that is undertaking a Pricing Authority advice activity with access to persons referred to in subsection (6), but does not limit this person to only speak with, or have facilitated access to any aged care worker or registered persons of a provider.

To ensure that the scope is appropriate for the intent of these provisions, CHA recommends that paragraph 177-15(4)(a) is drafted as follows: “allow and facilitate access by an official of

the Pricing Authority undertaking a Pricing Authority advice activity to a person referred to in subsection (6) that is necessary for and/or relevant to the conduct of a Pricing Authority advice activity”. While paragraph 177-15(5)(a) sets out similar parameters in which a notice for access should be “necessary for the conduct of a Pricing Authority advice activity”, it is important that similar provisions are made available to the registered persons and aged care workers of a registered provider.

Recommendation 9: Limit the applicable scope of paragraph 177-15(4)(a) by adding “that is necessary for and/or relevant to the conduct of a Pricing Authority advice activity” to the end of the sentence.

Allowing access by Pricing Authority to residential care homes

Similar to the previous section, it is important that access by Pricing Authority to residential care homes should be limited to the scope of necessary activities that relates to the undertaking of a Pricing Authority advice activity. For example, Pricing Authority officials should only be able to view records or speak with persons directly relevant to a Pricing Authority advice activity. It is the understanding of CHA and its members that the current wording in subsection (4) only limits the Pricing Authority personnel that is undertaking a Pricing Authority advice activity with access to the home, but does not limit this person to only view, speak with, or have facilitated access to all other aspects of the home.

Recommendation 10: Limit the applicable scope of paragraph 177-40(4)(a) by adding “that is necessary for and/or relevant to the conduct of a Pricing Authority advice activity” to the end of the sentence.

Section 3: Accommodation payments

Non-voluntary moves within residential care homes

In the main, CHA and its members are supportive of the provisions relating to accommodation agreements, including the circumstances where a non-voluntary move within an approved residential care home can occur. However, as described in a previous section, providers are required to navigate specific nuances within the context of their local service delivery environment. This means that identifying an appropriate “approved needs assessor” may be challenging without a clear, comprehensive definition of what this role means in practice. For example, where residents require a higher level of care, such as access to a memory support unit within a residential care home, an approved needs assessor is able to undertake a needs assessment in a timely manner, without risking the individual’s condition deteriorating. To do so, the approved needs assessor could include the following people: someone that is part of the ACAT assessment team, a dementia specialist, a registered nurse, or a relevant allied health practitioner.

Recommendation 11: In line with Recommendation 3a, incorporate a clear, comprehensive definition of an “approved needs assessor” to support providers in implementing section 294-5(5) of the Rules.

Circumstances to refund collected refundable accommodation deposit (RAD) payments

As set out in section 311-15, it is the understanding of CHA and its members that a RAD should be refunded in the instance of the death of an individual, where the provider is not shown the probate or letters of administration but is shown other satisfactory evidence. Currently, only probate or letters of administration are used as satisfactory evidence in circumstances relating to the necessary refund of RADs. It is important that there is a definition to support the “other evidence that satisfies the provider” referenced in paragraph 311-15(a)(ii) to mitigate the risk of extensive discussions between solicitors and other legal representatives of an individual. This definition could incorporate a minimum financial threshold amount that would not normally require the probate of the will or letters of administration to be provided to a registered provider. For example, if there is less than \$5,000 remaining on refundable deposit balances, then it would be appropriate for “other evidence that satisfies the provider” as a more efficient alternative to having the probate of the will or letters of administration shown to a provider. Alternatively, remove paragraph 311-15(a)(ii) and only retain paragraph 311-15(a)(i) as the main provision to address these matters.

Recommendation 12a: Incorporate a definition for “other evidence that satisfies the provider” referenced in paragraph 311-15(a)(ii) to mitigate the risk of unnecessary legal implications in the process of refunding an individual the balance on a refundable deposit.

Recommendation 12b: If the above is not considered, then remove paragraph 311-15(a)(ii) and only retain paragraph 311-15(a)(i) as the main provision to address these matters.