



Health, Aged Care & Retirement Living Team Briefing

April 2025

Melanie Fuss & Health, Aged Care & Retirement Living Team

New Aged Care Act update: two months to go...

With just over two months until the anticipated 1 July 2025 start date of the new Aged Care Act, we provide an update on progress as we prepare for implementation of the new law.



Draft Rules and commencement of Act – the current state of play

As we mentioned in our last briefing, the draft Rules which provide critical detail regarding the obligations under the new Aged Care Act are being released in stages for consultation.

Release 4b

The latest release was release 4b, which includes important information about service agreements (among other things). The rules for service agreements were originally scheduled for release in February, then changed to 'early March or early April' – and were finally released on 15 April 2025. We are in the process of reviewing these rules and will provide further comments on the content. The rules can be viewed at [Consultation on the new Aged Care Act | Australian Government Department of Health and Aged Care](#). Consultation on release 4b is open until 13 May 2025.

Do we have all the Rules?

The short answer is – no. There are still gaps in earlier releases which do not appear to have been included in the latest releases. Some of the detail in earlier releases has also changed – most significantly, release 1 was based on the introduction of capped prices for Support at Home, which has now been delayed. However, the rules have not been re-released to reflect that policy change. We also do not have the transitional rules – although the summary of those rules indicates that there will be provisions regarding the continuation of existing service agreements.

When will the final Rules be available?

With consultation on release 4b open until 13 May 2025 (and the Government currently in caretaker mode until the election on 3 May 2025), we do not expect the final rules to be issued before early June – although we would be happy to be proven wrong on that!

When does the Act commence?

Section 2 of the *Aged Care Act 2024* (Cth) states that the Act commences on a day to be fixed by proclamation. However, if the commencement is not fixed by proclamation before 1 July 2025, then the Act commences on 1 July 2025.

The effect of this is that it is still open to the Government (whoever that may be after 3 May) to set a different date for the Act to start. If they do nothing, then the Act will start on 1 July 2025.

Guidance material being published by the Department of Health and Aged Care continues to state that the Act will commence on 1 July 2025. So, unless we hear otherwise – we will 'keep calm and carry on'!

→ New Agreements

We are fielding many enquiries regarding the new service agreements for both Support at Home and residential care, and in particular, when the new templates will be ready. Our ability to prepare these agreements has unfortunately been impacted by the delay in the release of the draft Rules – but we are working to have drafts available as soon as possible.

Residential care service agreements

We anticipate having a draft residential care service agreement available by late May for providers to review in preparation for implementation. We will not be able to finalise the document until the Rules are finalised, because of the risk that there will be changes in the final Rules that affect the content of the agreement.

Support at Home service agreements

Similarly, we expect to have a draft Support at Home service agreement available by late May, with a final version to follow once the Rules are finalised.

However, the situation for Support at Home is complicated by the need to undertake consultation on new prices and get agreement from care recipients, and to obtain contractual agreement from care recipients to pay individual contributions (if applicable). For this reason, we have developed a Support at Home transition pack which is discussed below.

→ Support at Home Transition Pack

Home care providers will be familiar with the requirements to consult and agree new prices. This obligation still applies to care recipients who will transition from the Home Care Packages program to the Support at Home program. This process is made more difficult this year by the fact that the new prices need to be based on the Support at Home model – that is, the new service list, and with prices being inclusive of package management and travel to the care recipient.

The consultation process is time-consuming, and given that new template agreements are not yet available, we have developed a practical approach to assist with this transition.

Transition pack

The transition pack includes a Variation Agreement to obtain agreement to two key elements – the new prices, and the obligation to pay individual contributions. It also includes acknowledgements of some of the other changes that are happening automatically because of the change to the law.

The Variation Agreement is supported by a number of documents such as a letter to send out with the new price schedule (and diagrams to help explain some of the changes).

Please contact us if you would like more information about the transition pack.

→ Contractor Agreements

In addition to new service agreements, many providers are also considering what changes they may need to make to their arrangements with contractors to comply with the new law.

What sorts of changes might be required?

From a commercial perspective, the most significant issue in relation to contractors is to ensure that the prices that the contractor charges (or proposes to charge from 1 July) ties in with the price that the provider has set for the relevant service. Providers cannot charge an overhead for contractors unless the care recipient has 'directly sourced' the delivery of the service¹ – so all costs need to be factored into the price.

In relation to compliance issues, some of the key matters to consider include worker screening obligations, requiring the contractor to ensure staff hold appropriate qualifications, obligations to act consistently with the Statement of Rights and Code of Conduct, the ability to require contractors to undertake any mandatory training, and obligations to comply with relevant policies of the provider – such as incident reporting

¹ Draft rule 273-15 in release 2b.

policies. (Providers should also consider whether individuals engaged as contractors should be converted to employees – this will be the subject of a separate briefing.)

New contractor agreement template

We are preparing a template contractor agreement that reflects the requirements of the new Act and Rules. We anticipate that a draft agreement will be available by mid to late May. While it would be preferable for providers to wait until the Rules are finalised before entering into new agreements, we recognise that this will pose practical issues and providers may have to opt to start negotiations with contractors before the Rules are finalised.



Board training

One of the other key changes that will commence when the new Act comes into operation is that registered providers and some of the ‘responsible persons’ of registered providers will be subject to statutory duties.

What do providers and boards need to do to prepare?

The statutory duty on providers is a high-level duty to ensure, as far as reasonably practicable, that the conduct of the provider does not cause adverse effects to the health and safety of individuals receiving care. The corresponding duty on responsible persons is to exercise due diligence to ensure that the provider entity complies with its duty.

A critical part of that ‘due diligence’ is for the responsible persons to acquire and maintain knowledge of the requirements applying to the registered provider and ensure that the provider has processes for complying with those requirements.

We are developing detailed training material for responsible persons (board members and executives). We currently have a board training session available as a stand-alone in person or remote session and will be adding further resources as we approach 1 July 2025. Please contact us if your organisation is interested in holding a training session.



With just over two months until the anticipated 1 July 2025 start date of the new Aged Care Act, we provide an update on progress as we prepare for implementation of the new law.



Disclaimer

This newsletter is merely an overview and accordingly it is not to be relied on as legal or other advice or on any other basis whatsoever. All legal liability arising from use of information contained in this newsletter is disclaimed to the maximum extent permitted by law. Readers should obtain independent legal and other professional advice suitable to their individual circumstances.

If you require any further information, please contact a member of O'Loughlins' Health, Aged Care & Retirement Living Team:



Rebecca Barr
Partner
rebecca.barr@oloughlins.com.au



Hamish Archibald
Partner
hamish.archibald@oloughlins.com.au



Melanie Fuss
Special Counsel
melanie.fuss@oloughlins.com.au



Michael Spencer
Special Counsel
michael.spencer@oloughlins.com.au



Julie-Ann Sparkes
Special Counsel | Notary Public
julie-ann.sparkes@oloughlins.com.au



Peter Myhill
Consultant
peter.myhill@oloughlins.com.au



Alf Macolino
Consultant | Notary Public
alf.macolino@oloughlins.com.au



Helena Errey-White
Associate
helena.errey-white@oloughlins.com.au



Jacquie Rochow
Solicitor
jacquie.rochow@oloughlins.com.au

CONTACT

Level 3 South, 191 Pulteney Street
Adelaide SA 5000
+61 8 8111 4000
admin@oloughlins.com.au

SOCIAL

[Facebook](#)
[LinkedIn](#)

WEBSITE

www.oloughlins.com.au