



Catholic Health Australia – Aged Care Bill Submission

October 2024

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.

Section 1: 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 Senate Inquiry (Inquiry) process for the new Aged Care Act (the Act). We look forward to working with the Senate Committee during the Inquiry process to ensure the new Act 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 Bill, the rights-based approach and the broader reform agenda of Government. A new Act is essential to address the recommendations of the Royal Commission into Aged Care Quality and Safety and lays the foundation for a better quality and more sustainable aged care system that older Australians deserve. The reform will ensure all older Australians can access quality care, whether they live in major cities, regional towns or rural areas. With half of aged care homes operating at a loss,¹ funding reform is critical for providers to meet costs, as well as upgrade facilities, innovate and invest in new models of care as our population ages.

CHA appreciates the work undertaken by Government and the Department to address concerns raised by sector stakeholders on the Exposure Draft. CHA also thanks the Government and the Opposition for putting the national interest first and coming to an agreement on essential funding reform. In the main, CHA is supportive of the contents of the Bill. This submission focuses on some of the remaining concerns of our members. Some of these issues relate to the Bill itself and therefore will support the Senate Committee process. Other issues raised in this submission relate to potential unintended consequences posed by new policy settings or missing detail that will need to be included in subordinate legislation. These issues have been identified to support the drafting process of the subordinate legislation and the design of implementation activities. While recommendations have been made to strengthen the Bill and support drafting of subordinate legislation, CHA strongly supports the passage of this Bill as an urgent priority for 2024.

Key observations and issues related to the Bill articulated in our submission include:

1. **Statement of Rights:** CHA is supportive of the rights-based approach adopted under the new legislation and appreciates the changes made by Government to recognise the rights of aged care staff.
2. **Support at Home:** The Support at Home program is a much-needed reform and will be transformational for the aged care system in supporting older Australians to age in place.
3. **Systems access:** Older people should have visibility and be able to understand the timeframes they can expect when accessing the aged care system and making a complaint.
4. **Funding reform:** Funding reform will return the sector to a more sustainable footing for the time being, but important details will be contained in subordinate legislation, and more is likely to be required to encourage investment and growth to meet the needs of an ageing population.

¹ [StewartBrown - Aged Care Financial Performance Survey Report March 2024.pdf](#)

5. **Code of Conduct:** Offence provisions for aged care workers under the Code of Conduct are inappropriate and could present risks to workforce attrition in a sector which is already facing significant workforce shortages.
6. **Whistleblower protections:** Strong whistleblower protections will support people to speak up but must be received by those that have the capacity and capability to respond appropriately to disclosures.
7. **Statutory duties:** While amendments have been made to the scope of persons holding a statutory duty, the definition remains too broad and captures operational staff who are unlikely to make or participate in decisions that affect the provider. This could impact the ability of providers to recruit and retain well-qualified and skilled individuals.

The implementation and subordinate legislation observations and issues include:

1. **Equitable access for vulnerable or marginalised groups:** It is essential to monitor implementation for any unintended consequences for vulnerable and marginalised people to ensure access is equitable, and any issues are addressed as quickly as possible.
2. **Risks and unintended consequences of Support at Home:** Elements of the design of the Support at Home program present risks to the overall intent of the reform, and these risks need to be effectively managed.
3. **Supported decision making arrangements:** The new arrangements, if well designed, will empower older people to make decisions about their care and support. However, policy issues remain which could have adverse consequences for older people, their supported decision makers, and aged care providers.
4. **Transition timing and implementation support:** Implementing the Bill will require significant resourcing and investment by Government and providers. Implementation must be managed carefully, with adequate time and resources provided to support adoption.

Our list of recommendations

CHA makes the following recommendations to the Senate Committee for amendments to the Bill:

Recommendation 1: Improve transparency of timeframes for system access for older people by including clear timeframes for complaints processes and decision making by the System Governor, Complaints Commissioner, and the Aged Care Quality and Safety Commissioner.

Recommendation 2: Government continue to monitor the impact of the funding reform on the aged care sector and adjust policy settings when required to ensure the sector remains financially sustainable and investable to support an ageing population.

Recommendation 3: Remove the words 'granted by the individual' from clause 28(2)(c) in order to clearly recognise relevant state/ territory guardianship laws.

Recommendation 4: Remove the direct civil penalty for an aged care worker not complying with the Aged Care Code of Conduct by removing the civil penalty under section 173.

Recommendation 5: Remove aged care workers from the list of individuals that can receive disclosures under the whistleblower framework by removing section 547(a)(v) from the Bill and subsequently section 553(2)(a) or require providers to nominate personnel responsible for receiving disclosures.

Recommendation 6: Exclude operational roles at a facility level from the definition of responsible persons that applies to the statutory duties.

Recommendation 7: Clarify in the Bill and Explanatory Memorandum the relationship between protected information and relevant information so that information management requirements are clear.

CHA also makes the following recommendations to Government in relation to the subordinate legislation and implementation of the Bill:

Recommendation 8: Government consult on the subordinate legislation underpinning the Act, particularly Chapter 4, to support analysis of the impact of reform on consumers and providers.

Recommendation 9: Monitor implementation for any unintended consequences for vulnerable and marginalised people to ensure access is equitable, and any issues are addressed as quickly as possible.

Recommendation 10: The implementation of Support at Home be delayed to 1 July 2026.

Recommendation 11: If the Government does not pursue recommendation 10, instead:

- Implement Support at Home on 1 July 2025
- Have the Independent Health and Aged Care Pricing Authority (IHACPA) shadow price the new pricing approach
- Providers continue to be funded under the existing pricing approach until 1 July 2026.

Recommendation 12: Irrespective of whether Support at Home is delayed or a shadow pricing approach taken, IHACPA service list prices should be implemented as a benchmark for the sector, not as price caps.

Recommendation 13: Model likely behaviour changes resulting from new funding arrangements.

Recommendation 14: Commit to a broad and sustained education campaign for older Australians to understand their co-contributions and why they are important.

Recommendation 15: Services Australia provide correspondence relating to co-contributions in electronic formats.

Recommendation 16: Simplify billing arrangements so that an older Australian's co-contribution is clearly understood upfront, with the detail available through Services Australia.

Recommendation 17: Government to ensure the Rules address key policy issues relating to Supporters i.e., the interaction with state and territory legislation and with multiple Supporters; the types of decisions that can be made by Supporters; and escalation pathways.

Recommendation 18: Implement adequate transitional arrangements to support the sector to implement the new Act.

Section 2: Observations and recommendations about the Bill

CHA is supportive of the Bill, the rights-based approach underpinning the legislation and the broader reform agenda of Government. A new Act is essential to address the recommendations of the Royal Commission into Aged Care Quality and Safety (Royal Commission) and lay the foundation for a better quality and more sustainable aged care system that older Australians deserve. The reform will ensure all older Australians can access quality care, whether they live in major cities, regional towns or rural areas. Funding reform is needed for providers to meet costs as well as upgrade facilities, innovate and invest in new models of person-centred care as our population ages. CHA strongly supports the passage of this Bill as an urgent priority for 2024.

In the main, CHA is supportive of the contents of the Bill. CHA appreciates the work undertaken by Government and the Department to address concerns raised by sector stakeholders on the Exposure Draft. Some key issues of concern to our members remain which have been presented in this submission. This section outlines key strengths of the Bills and issues that need to be addressed so that it achieves its objectives to the benefit of older Australians.

a) Statement of Rights

Overall CHA is supportive of the rights-based approach adopted under the new legislation. CHA and member organisations share common values grounded in the mission of the Gospel - for the good of all. We are committed to showing love and respect for service users and staff, providing the best care especially for the vulnerable and marginalised, and to approach every encounter as an opportunity for companionship, compassion, comfort, healing, and hope. A rights-based approach fundamentally aligns to our core values and mission.

We note that revisions have been made to the Bill (Section 24(2)) to recognise that the rights and freedoms of other individuals, including other consumers receiving care and aged care workers. CHA strongly supports the recognition of the rights of aged care staff being explicitly acknowledged in the Bill. Providers have important responsibilities under existing laws to provide for a safe work environment for their staff (this extends to protecting residents in residential aged care facilities from harm caused by other residents). The inclusion of this wording acknowledges the complexity of the care delivery environment and delivers safeguards for the aged care workforce including volunteers.

b) Support at Home – meeting the demand to age in place

CHA strongly supports the reform to Support at Home contained in the Bill. CHA and its members recognise that older Australians wish to age in place and that expanding aged care services delivered in the home is critical to meeting demand in the coming decades. Wherever possible, older Australians who wish to remain at home should be supported to do so with dignity and respect. This is to the benefit of the older person, their families, and the financial sustainability of the aged care system.

Catholic aged care providers are strongly supportive of the Government's intention that the Act support more Australians to age in place, most notably the commitment to open up 300,000 more Home Care/Support at Home packages over the next 10 years.

The intent of the reform is welcome, however with any significant reform such as this, there are significant risks of unintended consequences in implementation that need to be considered and worked through. CHA is proposing changes to the implementation approach of the Support at Home Program. As these changes can be enacted in subordinated legislation, they are contained in Section 3 of this submission.

c) Systems access

CHA is concerned about some of the timeframes (or lack thereof) within which the Aged Care Quality and Safety Commissioner, and System Governor are required to make decisions by and communicate those decisions. As a result, there is insufficient assurance to an individual that a decision, and the notification for that decision, will occur in a timely manner. There are limited provisions to this effect, and some that do exist are unnecessarily long. For example:

- Section 79 of the exposure draft allows the System Governor 14 days after a classification decision is made to give notice to the individual – while positive that this has been reduced from 28 days, it should be further reduced to 7 days.
- While clause 63 provides that an approved needs assessor must provide the System Governor with a report of the aged care needs assessment as soon as practicable after it is completed, there is no prescribed time period in the exposure draft for the completion of needs assessments and reassessments. A requirement should be added that these must occur within a period described by the subordinate legislation (Rules) regardless of location (and this should be a reasonable period of time, e.g., 14 days).
- Clause 92 should include 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. The Government should also publicly release place allocation wait times for residential aged care and Support at Home.

CHA welcomes subclause 357(2) providing a mechanism for timeframes for complaints resolution to be specified through the development of guidelines that will be made by notifiable instrument. Greater clarity in timeframes for decision making and complaints will establish consistent expectations that high quality, timely access to aged care will be provided through all aspects of the system, from aged care providers to the System Governor.

Recommendation 1: Improve transparency of timeframes for system access for older people by including clear timeframes for complaints processes and decision making by the System Governor, Complaints Commissioner, and the Aged Care Quality and Safety Commissioner.

d) Funding reform

CHA strongly supports the funding reform contained within the Bill. Fundamentally, meeting the future aged care needs of an ageing population necessitates a greater funding envelope to meet two of the key goals envisioned for aged care reform:

- Meeting the needs of the ageing population by attracting investment to grow aged care supply

- Ensuring the financial viability of existing aged care service providers.²

If the aged care sector does not attract investment to support growth and development, it will be unable to meet future demand from older Australians.

CHA has long advocated for fairer individual contributions to the cost of accommodation and daily living expenses for those who can afford it, while retaining a safety net for others. An increase in means-tested contributions from older Australians to their aged care is necessary to ensure high quality aged care is available in sufficient quantities across society to meet future demand. With half of aged care homes operating at a loss, funding reform will ensure providers can meet costs as well as upgrade facilities, innovate and invest in new models of person-centred care as our population ages. This will ensure all older Australians can access quality care, whether they live in major cities, regional towns or rural areas.

Although introduced on 1 July 2025, the reforms are not expected to come into full effect until the 2029 financial year due to grandfathering provisions for current residents. While a return to surplus will stabilise the operating performance of aged care homes, some initial analysis from the sector suggests more is likely to be required to encourage the building of the additional beds that are essential to meet increased demand. CHA notes the Bill contains provisions for the System Governor to produce an 'Annual report on the operation of the Act' which includes reporting on demand, supply and the financial viability of the sector. It will be important for Government to use mechanisms such as this to monitor the impact of reform on the overall financial position of the sector to ensure the funding settings support growth for an ageing population. CHA remains strongly supportive of the Act as the reform contained within the Bill establishes the right policy levers for government to adjust settings over time to ensure there is ongoing sustainability in the system.

Recommendation 2: Government continue to monitor the impact of the funding reform on the aged care sector and adjust policy settings when required to ensure the sector remains financially sustainable and investable to support an ageing population.

e) Supporters

CHA strongly believes that older people should be empowered to make decisions about their aged care, and when they need it, have assistance available to do so. It is pleasing to see that the Bill addresses many of the issues raised with the role of Supporter in the Exposure Draft. Some modifications are required to clarify arrangements in relation to state and territory guardianship/ Power of Attorney legislation.

For example Victorian legislation recognises guardianship arrangements of next of kin without requiring them to be granted by the individual or a court, tribunal, board or panel (which are the only scenarios included in the Bill currently).³ To clearly recognise relevant state/territory

² Derived from the summary of reforms in: [Once in a generation aged care reforms | Health Portfolio Ministers | Australian Government Department of Health and Aged Care](#)

³ For example in the Victorian *Medical Treatment and Decision Making Act 2016* provides that the medical treatment decision maker of an adult is the first of the following persons who is in a close and continuing relationship with the person and who, in the circumstances, is reasonably available and willing and able to make the medical treatment decision—

guardianship laws, the Bill should remove the words 'granted by the individual' from clause 28 (2) (c) 'Role of guardians.'

There are also a range of policy issues which will need to be addressed through subordinate legislation. CHA's analysis is contained in Section 3 of this submission.

Recommendation 3: Remove the words 'granted by the individual' from clause 28(2)(c) in order to clearly recognise relevant state/ territory guardianship laws.

f) Code of Conduct

CHA fully supports the implementation of the Aged Care Code of Conduct (Code of Conduct) as a mechanism to ensure older Australians receive the dignified care that they deserve and acknowledge that there needs to be a mechanism for breaches of the Code of Conduct to be disciplined.

However, offence provisions for aged care workers and responsible persons who do not comply with the Code of Conduct rely on the Code which includes standards of behaviour which are difficult to determine legality and illegality. There are also civil penalties of 250 units that translate to \$78,250, which is greater than the annual pre-tax income of many aged care workers. The maximum penalty for an aged care worker contravening the Code of Conduct is also the same as a responsible person of the provider. In this instance, both the nature of the punishment mechanism and its quantum are inappropriate. This does not align with the responsibilities of the two roles for delivering dignified care for older Australians.

The aged care workforce does not exist in a vacuum. The typical aged care worker is a skilled, compassionate individual who has chosen to make a positive difference in the lives of older Australians through their work. These skills are broadly applicable across care industries, particularly health and disability. Significant civil penalties that are out of step with the rest of the care industry will lead to elevated attrition in the aged care workforce and an exodus of key talent to adjacent sectors, further exacerbating aged care workforce shortages. There are also other formal disciplinary pathways that are more appropriate to deal with breaches of the code of conduct by workers including the loss of employment and potential loss of career through the worker banning orders.

CHA recommends that there be no direct civil penalty for an aged care worker not complying with the Code of Conduct by removing the civil penalty under section 173.

Recommendation 4: Remove the direct civil penalty for an aged care worker not complying with the Aged Care Code of Conduct by removing the civil penalty under section 173.

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- (a) the spouse or domestic partner of the person;
(b) the primary carer of the person;
(c) the first of the following and, if more than one person fits the description in the subparagraph, the oldest of those persons—
 (i) an adult child of the person;
 (ii) a parent of the person;
 (iii) an adult sibling of the person.

g) Whistleblower protections

CHA believes that a strong whistleblower protection regime is an important inclusion in the Bill. However, we are concerned with the scope of individuals able to receive a disclosure.

The Bill allows for a disclosure to be made to a range of people including the Commissioner or their staff, the System Governor or other officials of the Department, a provider, a responsible person of a provider, a police officer and an independent aged care advocate. This range is appropriate.

However, the Bill currently also includes an aged care worker of a provider as a person who can receive a disclosure. Once a disclosure is made, providers have certain responsibilities under section 553(2). CHA does not believe that all aged care workers should be responsible for formally handling disclosures and management of disclosures under a whistleblower framework. This role should be held at a management and governance level of a provider, or designated to individuals who are trained in and have the capacity to appropriately manage disclosures. This will ensure those individuals who have the necessary training and understanding of how to act and receive disclosures, and are able to respond appropriately.

Recommendation 5: Remove aged care workers from the list of individuals that can receive disclosures under the whistleblower framework by removing section 547(a)(v) from the Bill and subsequently section 553(2)(a) or require providers to nominate personnel responsible for receiving disclosures.

h) Statutory duties

CHA supports the Royal Commission's recommendations, in particular the policy objectives of a statutory duty to provide safe care and for this duty to apply to both providers and officers (like the model Work Health and Safety Laws (WHS Law)).

CHA acknowledges the work undertaken by the Department and Government to address concerns raised by stakeholders in relation to this section of the Bill. CHA strongly supports key revisions made to the Bill to better align the statutory duties with WHS Law and reduce risk of skilled and qualified board members, executives and staff from exiting the aged care sector. In particular, we support:

- The removal of criminal penalties which were out of step with existing laws on professional liability and penalties applicable to like sectors (disability, health)
- Removal of strict liability elements to ensure 'proof of fault' is included for penalties.

While amendments have been made to the definition of 'Responsible Persons' for the purposes of holding a statutory duty, we remain concerned that the definition is too broad and could impact the ability of providers to recruit and retain well-qualified individuals as governing body members and senior managers. In particular, we recommend excluding operational roles at a facility level.

The revised statutory duty continues to capture operational staff who are unlikely to have significant influence or control over the operation of the provider and, therefore, should not be subject to the section 180 duty. While the reference to clause 12(1)(c)(ii) carves out certain '*responsible persons*' from the statutory duty and associated civil penalties, we consider it also appropriate to extend the carve out to those responsible persons caught by section 12(1)(c)(i) who have overall management of nursing services delivered in a residential care home but are unlikely to be able to exercise the '*due diligence*' required by the statutory duty. For example, it is not clear how a Registered Nurse who is responsible for nursing services in a particular residential care home will be able to '*ensure that the*

registered provider has, and implements, processes for complying with any duty or requirement of the registered provider under this Act'. In our view, the scope of the duty should be narrowed to exclude responsible persons in clause 12(1)(c). Further, nurses whose roles will be covered by the statutory duty are already subject to a registration scheme under the Health Practitioner Regulation National Law which is the appropriate forum for responding to issues involving a breach of professional practice standards.

Recommendation 6: Exclude operational roles at a facility level from the definition of responsible persons that applies to the statutory duties.

i) Information management

The Bill and Explanatory Memorandum should also clarify the relationship between protected information and relevant information. Clause 534 provides that the unauthorised use and disclosure of certain information (*protected information*) obtained or generated for the purposes of this Act, such as personal information, is subject to criminal penalties.

It notes that chapter 7 authorises the use and disclosure of protected information in certain circumstances, and also authorises the use and disclosure of a broader class of information (*relevant information*). It is not clear how the two concepts of protected information and relevant information relate to each other.

Recommendation 7: Clarify in the Bill and Explanatory Memorandum the relationship between protected information and relevant information so that information management requirements are clear.

Section 3: Observations and recommendations about subordination legislation and implementation

The majority of issues raised in this submission relate to potential unintended consequences posed by new policy settings or missing detail that needs to be contained in subordinate legislation. These issues have been identified in this section to support the drafting process of the subordinate legislation and the design and timing of implementation activities.

a) Access to aged care for vulnerable and marginalised people

Fundamentally, the aged care system needs to be accessible to all older Australians. CHA notes that First Nations people or people who are homeless or at risk of homelessness aged 50 to 64 years will be formally recognised as younger people needing access to aged care early due to their specific life experiences. This recognition is supported.

CHA members strongly support a safety net for people who are unable to afford to contribute to the costs of their care. The Aged Care Taskforce recommended that there be a strong safety net for low means participants to meet aged care costs. We support the Government's response to base co-contribution amounts on a person's income and assets.

Under the current arrangements for the Home Care Packages program, there are hardship provisions in place for people who cannot afford to contribute to the costs of care. Under the new arrangements, full pensioners will be required to contribute to the costs of services categorised as Independence or Everyday Living. However, some older people on the pension are vulnerable and already experience significant stress from cost-of-living pressures and may be at risk of homelessness.

The Government's response identified that a hardship process will be introduced for Support at Home. While the Bill contains the legislative framework to enact key funding reforms, much of the detail on the reform, including a hardship process for Support at Home, will be contained in subordinate legislation.

We understand there are plans to consult and engage with the sector on subordinate legislation once it is drafted. CHA supports robust consultation on the subordinate legislation for funding reform to ensure there are appropriate safety nets for vulnerable and marginalised communities and providers can comprehensively understand the impact of reform. It will be critical for older people who cannot afford to contribute to the cost of their care to be captured by any hardship provisions and for hardship processes to be easy to access.

It is also important that as part of monitoring and review activity of the operation of the new Act, the System Governor or the Inspector General monitor any unintended consequences for vulnerable and marginalised people as it is implemented, to ensure that access to aged care is equitable and real or perceived barriers to access for those with limited means are addressed as quickly as possible after they are identified.

Recommendation 8: Government consult on the subordinate legislation underpinning the Act, particularly Chapter 4, to support analysis of the impact of reform on consumers and providers.

Recommendation 9: System Governor or Inspector General monitor implementation of the Act for any unintended consequences for vulnerable and marginalised people to ensure access is equitable, and any issues are addressed as quickly as possible.

b) Significant risk of unintended consequences in the Support at Home funding model

This section reiterates CHA's support for the Act's Support at Home reform. It highlights:

- Key requirements to prevent significant unintended consequences during implementation; and
- The necessity of understanding pricing impacts through shadow pricing before full implementation.

The Support at Home model will feature eight standard packages, an increase from the four standard packages currently available under home care. Grandfathering arrangements will result in different fee structures for participants of the same generation, potentially causing confusion. To achieve the goals of this transformative reform, it is crucial to mitigate unintended consequences.

While the intent of the reform is commendable, the Government has not provided modelling on potential changes in provider or consumer behaviour resulting from this Act. It is reasonable to expect that changes in consumer co-contributions and restrictive price caps for providers will influence what services older Australians choose and what is available. Providers will face increased clinical risks as Support at Home packages are designed to support high-acuity older Australians aging in place. However, it remains unclear if providers will have the funding flexibility to deliver these services effectively at scale.

The cost of implementing these reforms, particularly for smaller providers and those in regional, rural, and remote areas, is likely to be substantial. The home care market is diverse, and not all providers have the infrastructure or resources to adapt to the proposed changes. Smaller providers, often the sole providers of critical care support in less accessible areas, will need additional time to implement the new Act. Even larger providers will face significant operational and funding changes.

Ensuring a sustainable transition for older Australians

To mitigate these risks to service availability, CHA recommends:

- Delaying the start of Support at Home by 12 months to July 1, 2026; and
- Using IHACPA prices for service lists as benchmarks rather than caps.

This delay would recognise that providers will receive the final list of services and prices in February 2025, leaving little time to adapt. Implementing a new pricing regime based on this timeline presents logistical challenges, including workforce training, software development, and client communication.

CHA believes that risks can be effectively managed by modifying the implementation schedule of certain elements of the Act. A parallel can be drawn to the reform pathway for residential care funding, which defers the most significant redesign (removal of RADs) for future review. Pricing approach mechanisms proposed for Support at Home that are similar in their scale include:

- Reducing the care management cap from 20% to 10%; and
- Imposing price controls on service lists.

Adjusting how these changes are implemented would help mitigate the risks associated with expanding capacity and introducing extensive price controls.

CHA is particularly concerned about how price caps may interact with consumer behaviour in response to increased co-contributions. The Government has not released modelling on the behavioural economics likely to drive these changes. In a system where prices are controlled based on a list of services, competition among providers may focus primarily on reducing costs, limiting high-quality service offerings.

CHA hopes that prices released by IHACPA in February 2025 will support high-quality service provision and genuine competition. However, the uncertainty surrounding price caps could deter investment in the sector. Potential negative outcomes of capping prices include:

- Hindering specialised providers focused on high-quality services from entering the market;
- Providers cherry-picking clients based on profitability, further impacting less profitable providers; and
- Older Australians making service choices influenced by their experience with the co-contribution regime to minimise out-of-pocket costs.

The planned reduction of the care management cap is significant, as care management currently constitutes about 17% of packages. Effective care management is crucial for delivering services to high-acuity older Australians. The Department notes that care management ensures “that aged care services contribute to the overall wellbeing of an older Australian.”⁴

A sudden halving of care management caps could lead to serious unintended consequences, including:

- A reduced focus on care management, which is essential for maintaining wellbeing⁵;
- A decrease in service availability due to inadequate compensation for lost care management revenue;
- Providers potentially avoiding higher-acuity patients to protect their service mix; and
- Experienced care managers leaving the sector.

⁴ <https://www.youtube.com/watch?v=xu7CpmPug0A&t=1611s>

⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3508812/>

Shadow Pricing as an Alternative Approach

CHA strongly endorses the transition to Support at Home to sustainably meet the needs of older Australians. If the Government does not view a delay as feasible, CHA suggests adopting a shadow pricing approach from 1 July 2025, to 1 July 2026, to assess the impact of the proposed changes.

Shadow pricing has been effectively used by IHACPA for over a decade to model changes in hospital funding. While shadow pricing in healthcare typically spans two years, CHA believes a 12-month period could suffice for Support at Home (noting further analysis and exploration is required).

IHACPA uses shadow pricing⁶ in public hospitals to ensure accurate data collection and reporting, which helps mitigate undesirable consequences during funding model transitions.⁷ A similar approach in the aged care sector could provide valuable insights as it shifts from the existing funding model to Support at Home.

Shadow pricing would involve maintaining the current pricing model for actual provider funding while collecting data to understand the potential impact of the new pricing approach.

IHACPA should develop and implement a 12-month shadow pricing framework for Support at Home. Below is an indicative timeline for the shadow pricing period:

Date	Activity
February 2025	IHACPA releases service list prices as planned.
1 July 2025	Support at Home commences as planned.
1 July 2025 – 1 July 2026	Providers funded at FY 2025 prices; submit data for shadow pricing. IHACPA provides ongoing advice on new pricing implications.
February 2026	IHACPA advises the Government on pricing arrangements post-shadow pricing.
1 July 2026	Providers transition to the new Support at Home pricing approach, informed by shadow pricing insights.

Throughout this period, IHACPA and the Department would gather crucial data to understand:

- Changes in consumer or provider behaviour due to adjustments in co-contributions; and
- The impact of care management and service price caps on provider viability.

Importantly, consumer contributions would proceed as currently scheduled, simultaneously with the shadow pricing approach.

The Government may consider introducing controls during this period to ensure any provider price increases under the existing pricing approach are appropriate. CHA is available to collaborate on developing suitable limits.

⁶ IHACPA ordinarily uses a 'shadow pricing' period prior to implementing a new funding mechanism. This shadow pricing period is intended to ensure robust data collection and reporting and to accurately model the financial and counting impacts of changes. Shadow pricing involves continuing to price and fund services using the existing system while concurrently pricing the same services using the new funding model. These two prices are then compared to understand the impact of moving to the new system.

⁷ https://www.ihacpa.gov.au/sites/default/files/2024-06/Shadow_Pricing_Guidelines_V3.0_IHACPA_update.PDF

Potential outcomes of a 12-month transition period with shadow pricing include:

- Implementing the reduction in care management and price caps with better sector preparedness.
- IHACPA recommending adjustments to the care management cap for Government consideration.
- IHACPA altering service price caps or recommending they instead act as a benchmark.

These outcomes would significantly reduce the risk of unintended negative impacts on service delivery for older Australians resulting from this reform.

Recommendation 10: The implementation of Support at Home be delayed to 1 July 2026.

Recommendation 11: If the Government does not pursue recommendation 10, instead:

- Implement Support at Home on 1 July 2025
- Have IHACPA shadow price the new pricing approach
- Providers continue to be funded under the existing pricing approach until 1 July 2026.

Recommendation 12: Irrespective of whether Support at Home is delayed or a shadow pricing approach taken, IHACPA service list prices should be implemented as a benchmark for the sector, not as price caps.

c) Co-contributions to care costs

It is noted that the Act is designed so that rates are set at an affordable level according to people's capacity to pay. Participant co-contributions will vary based on the type of service and will be based on people's capacity to pay using their age pension status, Commonwealth Seniors Health Card (CSHC) status and asset or income levels. It is further noted that there will also remain in place, as is the case now, a robust hardship process to ensure those who are unable to pay fees do not have to go without services.⁸ It is important that the impact of the reforms is monitored and any barriers to access by vulnerable or marginalised groups that are identified are addressed as soon as possible.

The changes put forward in the Act will be significant for both providers and older Australians accessing aged care. Community engagement with the core concepts of the Act – including that those Australians who can afford to pay for amenities they have always paid for such as accommodation and everyday living expenses should continue to do so in the aged care system – will be fundamental to the success of this reform. Education is critical in this. Research indicates that Australians mistakenly believe they contribute a greater proportion of their aged care resourcing than is actually the case, underscoring the challenges in implementing this reform.⁹ It is important that older Australians are comfortable in their understanding that they are contributing more to a system of care that better supports their needs and the needs of their peers.

The Department also needs to model likely behaviour changes resulting from new funding arrangements and use this in implementation planning and messaging to older people.

⁸ [Aged Care Bill 2024 Impact Analysis Equivalent, Certification Letter and Supplementary Analysis.pdf \(pmc.gov.au\)](#)

⁹ <https://www.health.gov.au/sites/default/files/2024-03/consumer-contribution-to-aged-care-services-report.pdf> (pg 15)

Recommendation 13: Model likely behaviour changes resulting from new funding arrangements.

Recommendation 14: Commit to a broad and sustained education campaign for older Australians to understand their co-contributions and why they are important.

d) Cost recovery impact on service viability and relationships with older Australians

Under the current home care system, older Australians may need to make income-tested care fee (ITF) contributions for their own care. To ensure efficiency and manageability, cost recovery mechanisms associated with the expanded co-contribution arrangements in the new Act must be designed with the needs of aged care recipients, providers, and the government in mind.

Providers raised concerns around:

- **Recouping ITFs:** Significant administrative burden in collecting ITFs from older Australians who either refuse to pay or have been incorrectly assessed as able to pay.
- **Ethical dilemmas:** The challenge of having care providers, responsible for delivering high-quality services, also handle debt collection, especially given the vulnerability of many older Australians.

With the Support at Home program, there is expected to be a significant increase in co-contributions from older Australians who can afford to pay more for their care. This change is likely to:

- Raise the percentage of ITF-equivalent funds that need to be collected, increasing administrative burdens.
- Intensify conflicts between providers' roles in ensuring older Australians' wellbeing and their need to collect payments from those same individuals.
- Create confusion regarding varying co-contribution amounts for different types of services.

Table 1 - Case Study - Geoffrey's Home Care Package

Geoffrey, a client of a Catholic provider, receives a fortnightly pension but has been assessed as liable for an ITF due to a family trust. The provider lacks oversight of the family trust and its effect on Geoffrey's ITF obligations.

Currently, Geoffrey has an outstanding ITF debt of \$11,750. He refuses to pay, citing his limited income after essential expenses. The Catholic provider has:

- Engaged with Geoffrey and his financial advisors multiple times to explain the ITF process, but without success.
- Requested clarification from Services Australia about their calculations and the impact of the family trust, but received no response.
- Contacted the Australian Commission on Safety and Quality in Aged Care and the Department of Health and Aged Care, again with no success.

Despite Geoffrey's refusal to pay, the provider continues to deliver services under its duty of care. This not only incurs costs for the services but also strains the provider's resources as they attempt to track, report, and educate Geoffrey about his debt.

This Catholic provider currently manages 51 clients like Geoffrey, who are not meeting their ITF obligations, representing about 15% of their caseload. Geoffrey's situation is not unique; many older Australians deemed by the government liable for an ITF do not pay in full, shifting the burden onto providers. Beyond the actual costs of unpaid ITFs, there is a significant organizational burden in managing these cases.

Mitigation Strategies for Services Australia

To address these challenges, Services Australia could implement several measures. Transitioning to electronic billing for both older Australians and providers would significantly reduce delays, missed communications, and administrative costs. Additionally, ensuring that bills are straightforward and prominently display the total amount due is crucial.

Recommendation 15: Services Australia provide correspondence relating to co-contributions in electronic formats.

Recommendation 16: Simplify billing arrangements so that an older Australian's co-contribution is clearly understood upfront, with the detail available through Services Australia.

e) Supporters

It is noted that some key issues relating to Supporters will be provided for in the Rules, and this will be important to avoid any adverse outcomes for older people, their supported decision makers and aged care providers. These key issues include:

How these roles will work within existing state and territory legislative frameworks: The Bill has somewhat clarified the relationship between the requirements relating to supporters and current state and territory Power of Attorney and Guardianship arrangements. However, the landscape of representative arrangements at a state and territory level is diverse and complex. Establishing a

framework that aligns to these arrangements will take time and it is unclear whether the current legislation adequately aligns and represents best practice in relation to state-based legislation. The new model for substitute decision-making in addition to the existing state and territory arrangements creates complexity for staff and families. Section 33 allows for the concurrent operation of state laws which supports state formal appointment hierarchies to operate. Some issues that arise are:

- how the responsibilities of decision-making Supporters work in practice in relation to the responsibilities of Guardians and others who hold decision-making powers under state or territory systems.
- competency to appoint a Supporter and mechanisms for dispute resolution between a Supporter and other carers or family members.
- a decision-making Supporter may be appointed if the System Governor determines. It is not clear how this process will operate and what the exceptional circumstances will be in which a Supporter is appointed.
- Supporters are not able to consent to restrictive practices creating a further decision-making category if as it appears they cannot be aligned with State decision makers in all states and territories.
- It appears burdensome for a Guardian or Enduring Power of Attorney under state legislation to need to also request to be registered to undertake this function under this Act.

How to work with multiple Supporters, particularly where conflicting views exist: Under the new Act, older people can appoint multiple Supporters in recognition that they may want more than one person to support them in making decisions. In principle, this concept is sound. However, in practice not all people who support older people to make decisions may be in agreement about how an older person's preferences and interests are applied. Not all decisions related to a person's aged care are documented or communicated in circumstances where a person no longer has capacity to make decisions. There is a need for a hierarchy of decision making or clear processes to support providers to manage conflicting views between supporters where they exist.

The types of decisions that can be made by Supporters: The Act specifies that a Supporter can do anything that may or must be done by the individual under or for the purposes of the Act. However, the Rules will need to outline how delegations and responsibilities will be split (if at all), such as financial and health decisions, and how delegations will apply when for example an older person enters a hospital setting and there is a Guardian or Power of Attorney who is not a Supporter under the Act appointed. A hierarchy must be accompanied by clear processes and rules to manage a variety of circumstances which may arise in delivering care to an individual.

What escalation pathways exist for providers where a Supporter is not acting in the best interest of an individual: In certain circumstances, a provider may become aware that a person is not acting in the best interests of an individual, taking advantage of an individual, acting in a way that causes great harm or disruption to a service. In these circumstances, the provider may need to make an application for guardianship, inform the police, issue a banning notice or place limitations on the support person. While the Bill provides for the System Governor to suspend a registration as a support person of an individual, there is a need for escalation pathways and/or complaints processes to manage these types of circumstances including when a support person is not meeting their duties. This could also cover circumstances when a conflict of interest is identified.

The Government also needs to acknowledge the increased costs that providers will incur from adhering to these new requirements. For example, there are costs associated with providing data and information to enable Supporters to undertake their role in supported decision-making, consistent with the Information Management provisions of Chapter 7.

Adherence to the privacy principles and the distribution of this information to supporters also generates risk and costs to manage potential information breaches. The Bill contains penalties for data and information breaches, which is considered fair by some members, but acknowledgement that these situations do indeed happen and is confronting for those involved. Costs will also be incurred from Clause 29, which sets out the arrangements for sharing information with a Supporter at the same time and in the same form as that which is shared with the individual themselves.

Recommendation 17: Government to ensure the Rules address key policy issues relating to Supporters i.e. the interaction with state and territory legislation and with multiple Supporters; the types of decisions that can be made by Supporters; and escalation pathways.

f) Transition timing and implementation support for the Act

The Bill states that the new Act will commence on 1 July 2025. The new Act contains a range of new provisions which will have a material impact on providers. This includes revisions to whistle-blower protections, new supported decision-making arrangements, new registration and reporting requirements.

CHA notes that the majority of the subordinate legislation is yet to be released. This detail is needed to plan for and implement reform underpinning the Act. There is also a lack of information on how the sector will be practically supported to transition to the new system and to deliver rights-based care and supports to older people.

Careful consideration must be given to the potential unintended consequences of some of the changes proposed in this Act and how they will be managed. Specific risks and issues that will need to be considered and addressed through implementation activities include:

- **Digital capability and readiness for change:** Reform proposed under the Bill will require significant changes to Departmental and provider ICT systems. These changes will take time and require consultation with the sector and vendors. Not all vendors have the same capacity to implement changes and not all the detail required to implement change is available (and will be contained in subordinate legislation).
- **Cost of implementing reform, particularly for smaller providers and those operating in regional, rural and remote areas:** The aged care market is diverse. Not all providers have the same infrastructure or resourcing capability to adapt to the proposed policy and regulatory changes. Smaller providers are also often the sole provider of critical care support to older people in regional, rural and remote areas, will require additional time to embed changes introduced by the new Act. CHA recognises and supports the transition support offered by the Government to rural and remote providers and look forward to receiving further details about this support. CHA also notes that the broader aged care market will require support to ensure the successful adoption of these very significant reforms.
- **Consumer education and support:** The reform supported by the Bill will change the way older people interact with the aged care system and receive and pay for care. With

grandfathering arrangements of funding reform, two systems of fees and contributions arrangements will be in operation for some time. Information, education and support will be needed to support older people navigate these arrangements.

- **Transition arrangements for workforce:** The aged care workforce is diverse and includes many people from non-English-speaking backgrounds. Careful consideration needs to be given by the Department support the workforce to transition to the new requirements.
- **Potential unintended consequences of imposing civil penalties on volunteer board members.** While the need for statutory duties to apply equally to paid and unpaid board positions is recognised, monitoring should occur to ascertain whether volunteers are deterred from taking on these roles, particularly in rural and remote areas which may face challenges attracting board members.
- There also needs to be adequate resources available within the Department and Aged Care Quality and Safety Commission to respond to queries from aged care recipients and their families and from aged care providers and stakeholders.

Recommendation 18: Implement adequate transitional arrangements to support the sector to implement the new Act.