

24 March 2025

To the Department of Health and Aged Care

New Aged Care Act rules consultation – release 2c – funding and regulation

Ageing Australia welcomes the opportunity to provide feedback on the rules relating to funding and regulation included in release 2c.

Ageing Australia is the national peak body for aged care, representing providers of retirement living, seniors housing, residential care, home care and community services. We advocate for our members, providing expert advice, resources and tailored services to ensure they deliver exceptional care to older Australians.

Ageing Australia's recommendations and key messages are provided below. Specific comments and feedback on the release 2c rules are contained in **Appendix 1**.

Recommendations

R1 Amend the banning orders provisions including to:

- **require the Commissioner to make changes to the register of banning orders in relation to an individual if information is inaccurate, out-of-date, incomplete, irrelevant or misleading;**
- **include timeframes in which the Commissioner must make decisions, so that the register of banning orders includes current information;**
- **require the Commissioner to give reasons if the Commissioner decides not to make requested corrections.**

R2 Address the feedback included in Appendix 1.

Banning orders

We have some concerns with the draft rules for banning orders including:

- Where the Commissioner considers that information included in the register of banning orders in relation to an individual is inaccurate, out-of-date, incomplete, irrelevant or misleading - the Commissioner should be required to correct the information rather than 'may' correct the information (proposed subsection 507-10(4)). This is critical, as it supports providers to make decisions related to safety based on current information.
- Where the Commissioner receives a request from an entity (other than from an individual) to make a correction to information included in the register of banning orders in relation to the entity – the Commissioner should be required to make a decision on that request within a specified timeframe, which we recommend is 14 days (proposed subsection 507-20(3)).
- Where the Commissioner decides not to make a correction to information included in the register of banning orders when requested by an entity (other than an individual) - the Commissioner should be required to give reasons and allow the entity the opportunity to ask for a review of the decision (proposed subsection 507-20(4)).

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For further feedback on the release 2c rules, please see **Appendix 1**.

Thank you again for the opportunity to provide feedback on rules relating to funding and regulation included in release 2c. Please contact Anne Liddell, Head of Policy, at anne.liddell@ageingaustralia.asn.au if you have any questions or would like to discuss this submission.

Yours sincerely,

Roald Versteeg
General Manager Policy & Advocacy

Attachments Appendix 1: Feedback on consultation draft rules – release 2c

CONSULTATION DRAFT

Appendix 1: Feedback on consultation draft rules – release 2c



CONSULTATION DRAFT

Aged Care Rules 2025

I, Anika Wells, Minister for Aged Care, make the following rules.

Dated 2025

Anika Wells [DRAFT ONLY—NOT FOR SIGNATURE]
Minister for Aged Care

CONSULTATION DRAFT

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Introduction **Chapter 1**
Preliminary **Part 1**

Section 1-5

Chapter 1—Introduction

Part 1—Preliminary

1-5 Name

This instrument is the *Aged Care Rules 2025*.

2-5 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as the <i>Aged Care Act 2024</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3-5 Authority

This instrument is made under the *Aged Care Act 2024*.

4-5 Simplified outline of this instrument

[To be drafted.]

[Amounts in this draft are approximate and subject to change before 1 July 2025.]

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Chapter 1 Introduction

Part 2 Definitions

Section 5-5

Part 2—Definitions

5-5 Definitions

Note: The following expressions used in this instrument are defined in the Act:

- (a) care and services plan;
- (b) enrolled nurse;
- (c) health service;
- (d) means testing category;
- (e) Multi-Purpose Service Program;
- (f) National Law;
- (g) nursing;
- (h) nursing assistant;
- (i) registered nurse;
- (j) service agreement;
- (k) specialist aged care program;
- (l) subsidy basis;
- (m) Transition Care Program;
- (n) transition time.

In this instrument:

key personnel of a person or body to which the Grantee Code of Conduct applies means:

- (a) if the person or body is a registered provider—a responsible person of the registered provider; or
- (b) if the body is not a registered provider—any person who:
 - (i) is responsible for the executive decisions of the person or body; or
 - (ii) has authority or responsibility for (or significant influence over) planning, directing, operating or controlling the activities of the person or body.

Note: For **responsible person** of a registered provider, see section 12 of the Act.

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Funding of aged care services—Commonwealth contributions **Chapter 7**
Grants **Part 11**

Section 268-5

Chapter 7—Funding of aged care services— Commonwealth contributions

Part 11—Grants

268-5 Purpose of this Part

This Part is made for the purposes of subsection 268(1) of the Act.

268-10 Grantee Code of Conduct

- (1) This section sets out the Grantee Code of Conduct, which applies to the following:
 - (a) a person or body to which money may be payable under an arrangement made under subsection 265(1) of the Act;
 - (b) a person or body that receives a grant of financial assistance made under subsection 265(1) of the Act.
- (2) In undertaking an activity under such an arrangement or grant, the person or body (the **grantee**) must:
 - (a) undertake the activity in a safe and competent manner, with care and skill; and
 - (b) promptly take steps to **raise** and act on concerns about matters that may affect the quality and safety of the activity; and
 - (c) promptly disclose to the System Governor, and avoid or manage, any actual, perceived or potential conflicts of interest that could affect the proper undertaking of the activity by any of the following:
 - (i) the grantee;
 - (ii) key personnel of the grantee;
 - (iii) a person who is otherwise employed or engaged by the grantee; and
 - (d) act with integrity, honesty and transparency; and
 - (e) treat the following individuals with dignity and respect, and without **bullying or harassment**, including by valuing the individual's diversity:
 - (i) any individual for whom the activity is being undertaken;
 - (ii) any family member, carer or supporter of the individual for whom the activity is being undertaken;
 - (iii) any individual engaged in, or participating in, the activity;
 - (iv) any individual administering the arrangement or grant (whether the individual is an official of the Department or otherwise); and
 - (f) not provide false or misleading information:
 - (i) when undertaking the activity; or
 - (ii) in response to a request for information made for the purposes of the Act in relation to the arrangement or grant.

Commented [A1]: What are the consequences if the Grantee Code of Conduct is not met?

Commented [A2]: Who would they raise their concerns with? The System Governor? If this is intended to create a reporting obligation it should be done more clearly. However, needing to report any concern may be overly onerous.

Commented [A3]: Recommend add other antisocial behaviour such as violence, abuse or sexual misconduct.

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Chapter 7 Funding of aged care services—Commonwealth contributions

Part 11 Grants

Section 268-10

- (3) For the purposes of subsection 268(2) of the Act, the grantee breaches the Grantee Code of Conduct because of an act, or an omission to perform an act, by another person or body if:
- (a) the other person or body is a member of the key personnel of the grantee, or is otherwise employed or engaged by the grantee; and
 - (b) the act, or the omission to perform the act, would be a breach of the Grantee Code of Conduct if it were done by the grantee; and
 - (c) the act, or the omission to perform the act, is done while the other person or body is doing any of the following (whether or not during their ordinary working hours):
 - (i) undertaking or participating in an activity for which money may be payable under an arrangement under subsection 265(1) of the Act or that is funded by a grant that has been made to the grantee under that subsection;
 - (ii) engaging with an individual or any family member, carer or supporter of the individual in relation to the individual's participation in such an activity;
 - (iii) doing anything incidental to any of the matters mentioned in paragraph (a) or (b).
- (4) In this section, the expression ***conflict of interest*** has its ordinary meaning.

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Regulatory mechanisms **Chapter 12**

Introduction **Part 1**

Section 396-5

Chapter 12—Regulatory mechanisms

Part 1—Introduction

396-5 Simplified outline of this Chapter

This Chapter relates to regulatory mechanisms under Chapter 6 of the Act.

Part 2 of this Chapter relates to the register of banning orders under Division 3 of Part 11 of Chapter 6 of the Act, and deals with:

- (a) information that must be included in the register; and
- (b) accessing and correcting information included in the register; and
- (c) publication of the register.

Part 3 of this Chapter prescribes the method for working out certain amounts in certain circumstances under Division 3 of Part 13 of Chapter 6 of the Act.

CONSULTATION DRAFT

Chapter 12 Regulatory mechanisms

Part 2 Banning orders

Section 507-5

Part 2—Banning orders

507-5 Information that must be included in the register of banning orders in relation to individuals

For the purposes of paragraph 507(1)(i) of the Act, the following information is prescribed in relation to each individual against whom a banning order has been made at any time:

- (a) the State or Territory, suburb or locality, and postcode of the individual's last known place of residence;
- (b) if the Commissioner considers that further information is necessary to identify the individual—further information, including personal information, that the Commissioner considers is sufficient to identify the individual.

Note 1: For other information that must be included in the register in relation to each entity against which a banning order has been made at any time, see subsection 507(1) of the Act.

Note 2: For the application of subsection 507(1) of the Act to banning orders, see subsection 507(2) of the Act.

Example: For paragraph (b), if 2 individuals, each of whom is or was an aged care worker or responsible person of a registered provider, have the same name, suburb or locality, and postcode, and a banning order is made in relation to one of those individuals, the Commissioner could include information in the register to identify the individual in relation to whom the banning order is made.

Commented [A4]: Recommend include an example of what information could be included in the register of banning orders in these circumstances.

507-10 Accessing and correcting information included in the register of banning orders in relation to individuals

- (1) This section is made for the purposes of subsection 507(5) of the Act.

Accessing information in the register

- (2) An individual against whom a banning order has been made may request that the Commissioner provide the individual with access to information (if any) that is included in the register of banning orders in relation to the individual.

Note: The Commissioner must, in certain circumstances, give an individual access to personal information that the Commissioner holds about the individual (see Australian Privacy Principle 12 in Schedule 1 to the *Privacy Act 1988*).

Seeking correction of information in the register

- (3) An individual against whom a banning order has been made may request that the Commissioner make a correction to information that is included in the register of banning orders in relation to the individual.

Note: The Commissioner must, in certain circumstances, take reasonable steps to correct personal information that is wrong or misleading so that the information is accurate, up to date, complete, relevant and not misleading (see Australian Privacy Principle 13 in Schedule 1 to the *Privacy Act 1988*).

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Regulatory mechanisms **Chapter 12**
Banning orders **Part 2**

Section 507-15

Corrections on the Commissioner's initiative

- (4) If the Commissioner considers that information that is included in the register of banning orders in relation to an individual is inaccurate, out-of-date, incomplete, irrelevant or misleading, the Commissioner **may** correct the information.

Note: The Commissioner must, in certain circumstances, take reasonable steps to correct personal information that is wrong or misleading so that the information is accurate, up to date, complete, relevant and not misleading (see Australian Privacy Principle 13 in Schedule 1 to the *Privacy Act 1988*).

Commented [A5]: Recommend change 'may' to 'must' as consider the Commissioner must correct information in the register of banning orders in these circumstances.

507-15 Accessing information included in the register of banning orders in relation to entities other than individuals

- (1) This section is made for the purposes of subsection 507(5) of the Act.
- (2) An entity (other than an individual) against which a banning order has been made may request that the Commissioner provide the entity with access to information (if any) referred to in subsection 507(1) of the Act that is included in the register of banning orders in relation to the entity.
- (3) If the Commissioner receives a request, the Commissioner must provide the entity with access to the requested information.

507-20 Correcting information included in the register of banning orders in relation to entities other than individuals—corrections sought by entities

- (1) This section is made for the purposes of subsection 507(5) of the Act.
- (2) An entity (other than an individual) may request that the Commissioner make a correction to information that is included in the register of banning orders in relation to the entity.
- (3) **If the Commissioner receives a request, the Commissioner must:**
- (a) **make the requested correction; or**
 - (b) **decide to not make the requested correction.**

Note: The Commissioner is not required to make a correction or decision on the request unless any further information or documents requested by the Commissioner are provided (see section 589 of the Act).

Commented [A6]: There should be a timeframe stipulated for the Commissioner to make the decision within. We recommend 14 days.

- (4) **The Commissioner must notify the entity of a correction or decision made under subsection (3).**

Commented [A7]: The Commissioner should be required to give reasons if the Commissioner decides not to make the requested correction. The entity should also be allowed to ask for the decision to be reviewed.

507-25 Correcting information included in the register of banning orders in relation to entities other than individuals—corrections on the Commissioner's initiative

- (1) This section is made for the purposes of subsection 507(5) of the Act.
- (2) This section applies if:
- (a) the Commissioner becomes aware of a matter; and

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Chapter 12 Regulatory mechanisms

Part 2 Banning orders

Section 507-30

- (b) based on the matter, the Commissioner considers that information that is included in the register of banning orders in relation to an entity (other than an individual) requires a correction.
- (3) The Commissioner must give a written notice to the entity:
 - (a) setting out the details of the matter and the proposed correction; and
 - (b) inviting the entity to give written comments on the matter and the proposed correction within the period specified in the notice.
- (4) The period specified for the purposes of paragraph (3)(b) must not end earlier than 28 days after the day on which the notice is given.
- (5) As soon as practicable after the earlier of:
 - (a) when the Commissioner receives comments from the entity; or
 - (b) the end of the period specified for the purposes of paragraph (3)(b);the Commissioner must consider any comments given by the entity and:
 - (c) make the proposed correction; or
 - (d) make a different correction; or
 - (e) decide not to make a correction.
- (6) The Commissioner must give the entity written notice of a correction or decision made under subsection (5).

Commented [A8]: “As soon as practicable” is open ended. The proposed correction could be quite important for the public and/or the entity concerned. We recommend a 14 day time limit be stipulated.

507-30 Publication of register of banning orders

- (1) This section is made for the purposes of paragraph 507(6)(a) of the Act.
- (2) The Commissioner may publish the register of banning orders, in whole or in part, on the Commission’s website.

Note: For the information that must be included in the register, see subsection 507(1) of the Act and section 507-5 of this instrument.

Commissioner may decide not to publish part of register or particular information
- (3) The Commissioner may decide not to publish a part of the register or particular information that is included in the register if the Commissioner is reasonably satisfied that it is not in the public interest to publish that part of the register or that information, taking into account all relevant matters including:
 - (a) the interests of individuals whose interests may be affected by publishing that part of the register or that information; and
 - (b) the interests of individuals who are accessing, have accessed, or may access, funded aged care services.

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Regulatory mechanisms **Chapter 12**
Recoverable amounts **Part 3**

Section 523-5

Part 3—Recoverable amounts

523-5 Circumstances for waiver—settlements between Commonwealth and debtors—method for working out present value of unpaid amount

For the purposes of subsection 523(6) of the Act, the method for working out the present value of an unpaid amount mentioned in subsection 523(5) of the Act in relation to a recoverable amount is to use the following formula:

$$\frac{\text{annual repayment}}{\text{interest}} \times \left[1 - \frac{1}{(1 + \text{interest})^{\text{repayment period}}} \right]$$

where:

annual repayment is the amount of the recoverable amount that the System Governor believes would be recovered under Division 2 of Part 13 of Chapter 6 of the Act in a year if subsection 523(4) of the Act did not apply in relation to the recoverable amount.

interest has the same meaning as in subsection 1237AAB(6) of the Social Security Act.

repayment period is the number of years needed to repay the unpaid amount if repayments equal to the annual repayment were made each year.