



Law Council
OF AUSTRALIA

Office of the President

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Senator Dorinda Cox
Chair, Legislation Committee
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

By email: community.affairs.sen@aph.gov.au

Dear Chair

**Aged Care (Accommodation Payment Security) Levy Amendment Bill 2025 and
Aged Care and Other Legislation Amendment Bill 2025**

The Law Council welcomes the opportunity to provide feedback to the Senate Standing Committees on Community Affairs inquiry into the Aged Care (Accommodation Payment Security) Levy Amendment Bill 2025 and the Aged Care and Other Legislation Amendment Bill 2025.

In our previous submissions on the Aged Care Bills—on 13 March 2024 to the Department of Health and Aged Care on the Exposure Draft Bill of the Aged Care Bill 2023,¹ and on 16 October 2024 to this Committee on the Aged Care Bill 2024²—we noted the importance of taking the time to consult on the proposed legislation. Reforming the aged care system is a complex and critical endeavour that requires careful consideration and thorough consultation with stakeholders and the public to ensure the proposed laws work as effectively and efficiently as possible.

We appreciate that many of the proposed amendments are technical and consequential amendments to bring Commonwealth legislation in line with aged care reforms due to commence on 1 November 2025. Nevertheless, the Law Council is disappointed by the short timeframe that has been provided for review, noting the Aged Care and Other Legislation Amendment Bill 2025 contains a range of reform measures. In our view, having a one-week timeframe for written submissions is unreasonable, and significantly limits the ability for peak bodies to meaningfully consult with their membership. In this context, I take the opportunity to refer to the Law Council's Best Practice Legislative Development Checklist, published on 21 July 2025, which represents best practice for design, consultation and impact assessment of the legislative development process.³

With the limited time we had available for response, I thank the Law Council's National Elder Law and Succession Law Committee for their input and guidance on the matters set out below.

¹ Law Council of Australia, [A new Aged Care Act: Exposure Draft – Consultation Paper No. 2](#) (13 March 2024).

² Law Council of Australia, [Aged Care Bill 2024](#) (16 October 2024).

³ Law Council of Australia, [Best Practice Legislative Development Checklist](#) (21 July 2025).

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Proposed amendment to section 27 of the Aged Care Act

The Aged Care and other Legislation Amendment Bill 2025 would amend section 27 of the *Aged Care Act 2024* (Cth), which sets out the various actions a supporter may do to support an individual for the purposes of the Aged Care Act. The proposed amendment will omit the phrase ‘with the consent of the individual’ and substitute this with ‘in line with the individual’s will and preferences’.

We support the removal of the requirement for consent as is currently expressed. The current consent-based framing unnecessarily invites an inquiry into the older person’s capacity, which may result in exclusionary decision-making processes. However, while the removal of consent is a step forward, the proposed substitute still leaves a potential gap.

Specifically, it remains unclear how an older person may nominate a supporter or communicate their acceptance of a supporter in a straightforward manner. A clearer and more direct mechanism could be adopted—such as enabling the person to simply inform the aged care provider or My Aged Care of their chosen supporter—without requiring an interpretive inquiry into their will and preferences. This would avoid unnecessarily complex assessments and ensure respect for the individual’s autonomy.

The Australian Law Reform Commission (**ALRC**) National Decision-Making Principles⁴ provide an important framework that should guide reforms to aged care legislation. In particular, the ALRC’s Proposal 3-1 encourages reforms that are guided by the National Decision-Making Principles to:

- promote supported decision-making;
- ensure representative decision-makers are appointed only as a last resort; and
- ensure that the will, preferences and rights of individuals direct decisions affecting their lives.⁵

The four National Decision-Making Principles are as follows:

- *Principle 1: The right to make decisions*
Every adult has the right to make decisions that affect their life and to have those decisions respected.⁶
- *Principle 2: Support*
Persons who may require support in decision-making must be provided with the support necessary for them to make, communicate and participate in decisions that affect their lives.⁷
- *Principle 3: Will, preferences and rights*
The will, preferences and rights of persons who may require decision-making support must direct decisions that affect their lives.⁸
- *Principle 4: Safeguards*
Decisions, arrangements and interventions for persons who may require decision-making support must respect their human rights.⁹

The proposed shift from informed consent being replaced with alignment with the will and preferences directly aligns with Principle 3 and indirectly with Principle 2. However, it risks omitting the emphasis of Principle 1—that individuals have an inherent right to make decisions

⁴ Australian Law Reform Commission, [Equality, Capacity and Disability in Commonwealth Laws \(DP 81\)](#) (Discussion Paper, 22 May 2014), Chapter 3.

⁵ *Ibid*, 54 (Proposal 3-1).

⁶ *Ibid*, 55 (Proposal 3-2).

⁷ *Ibid*, 56 (Proposal 3-3).

⁸ *Ibid*, 58 (Proposal 3-5).

⁹ *Ibid*, 71 (Proposal 3-8).

independently. That is, the proposed approach may not adequately recognise an older person's ability to communicate their preferences directly, including informing registered providers or My Aged Care of their decision about who their supporter is.

This individual right is also reflected in paragraphs 23(1)(a)–(b) of the Aged Care Act, which affirms that an individual has the right to:

- exercise choice and make decisions about matters such as their funded aged care services, the delivery of those services, and their financial and personal affairs; and
- be supported (if necessary) to make decisions, and to have those decisions respected.

In summary, framing supporter recognition solely through the lens of will and preference may inadvertently default to substitute decision-making where it is not necessary. It risks assuming that the older person cannot independently make or communicate decisions about their supporter. Instead, a supported decision-making model should be upheld, one that respects the individual's right to act and choose autonomously, with support only when and if it is needed.

Section 28 of the Aged Care Act

Although not part of the currently proposed amendments, we nevertheless seek to raise an important issue concerning section 28 of the Aged Care Act, which provides:

28 Role of guardians etc

- (1) *A person must not do any thing on behalf of an individual that may or must be done by the individual under, or for the purposes of, this Act unless the person is a person covered by subsection (2) who is, by reason of being such a person, authorised to do the thing on behalf of the individual.*
- (2) *A person is covered by this subsection if the person:*
 - has guardianship of the individual under a law of the Commonwealth, a State or a Territory; or*
 - is appointed by a court, tribunal, board or panel (however described) under a law of the Commonwealth, a State or a Territory, and has power to make decisions for the individual; or*
 - holds an enduring power of attorney or like power granted by the individual.*

Section 28 appears to introduce a broad category of individuals who are neither guardians nor attorneys in the traditional sense, including roles such as Centrelink nominees or Tribunal-appointed financial managers or administrators. There is usually a well-recognised distinction between those with authority over financial matters and those appointed to make personal or lifestyle decisions. However, as currently drafted, the provision appears to allow individuals with only one type of authority to access all information about the older person, regardless of the limits of their appointment or the older person's will and preferences.

In light of this, we recommend considering an amendment to paragraphs 28(2)(a)–(c) of the Aged Care Act to ensure that access to personal information is confined to the scope of authority granted by a relevant instrument or order. For example, a guardian would only be entitled to information necessary for personal and lifestyle decisions, while a financial manager or administrator would be limited to accessing financial information. Such a clarification would better reflect the principle of proportionality and respect for the autonomy of the individual concerned.

Contact

If you would like to contact the Law Council in response to this submission, in the first instance please contact Janina Richert, Senior Policy Lawyer, [REDACTED]
[REDACTED] We would be pleased to discuss any of the matters mentioned above further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'JRW', followed by a horizontal line extending to the right.

Juliana Warner
President