

12 January 2026

Our ref: [SS:EL]

Dr James Popple  
Chief Executive Officer  
Law Council of Australia  
Level 1, MODE 3  
24 Lonsdale Street  
Braddon ACT 2612

By email [REDACTED]

Dear Dr Popple

### **Review of Aged Care Rules 2025 and Aged Care (Consequential and Transitional Provisions) Rules 2025**

Thank you for the opportunity to provide feedback on the Review of Aged Care Rules 2025 and Aged Care (Consequential and Transitional Provisions) Rules 2025 under the *Aged Care Act 2024* (Cth) (the **Act**). The Queensland Law Society (**QLS**) appreciates the opportunity to provide feedback.

This response has been compiled by the QLS Elder Law Committee, whose members have substantial expertise in this area.

#### **Section 14 – Aged Care Code of Conduct**

In section 14-5 (requirements), we recommend the addition of “(a) Presume capacity” to make it clear from the beginning that the presumption of capacity applies.

#### **Section 15 – Aged Care Quality Standards**

##### ***Putting the individual first***

We recommend the following amendments:

- In Standard 1:
  - paragraph 15-10(1), reorder the phrase “safety, health, wellbeing and quality of life” to “quality of life, wellbeing, health and safety”.
  - paragraph 15-10(3) reorder the phrase “needs, goals and preferences” to “preferences, goals and needs”.
- In Standard 2 paragraph 15-15(3)(c), reorder the phrase “safety, health and wellbeing” to “wellbeing, health and safety”.
- In Standard 3 paragraphs 15-20(2)(a) and 15-20(4)(a), reorder the phrase “care needs, goals and preferences” to “preferences, goals and care needs”.

## Review of Aged Care Rules 2025 and Aged Care (Consequential and Transitional Provisions) Rules 2025

- In Standard 5 paragraphs 15-30(10)(b), 15-30(13)(b) and 15-30(15), reorder the phrase “needs, goals and preferences” to “preferences, goals and needs”.

While reordering these words may appear unnecessary, these amendments reinforce the intent of the Act as a rights-based, person-centred framework by putting the individual's preferences and quality of life first rather than defaulting to safety first. In our committee members' experience, many older people's rights are reduced under the guise of 'keeping them safe'. While safety is very important, it should not be seen as the first priority.

### ***Adult's agreement***

In Standard 2 paragraph 15-15(13), we recommend the phrase “in line with their informed consent” be changed to “in line with their agreement”.

In our committee members' experience, requiring informed consent can create a significant barrier to individuals with cognitive impairment. These individuals are often able to form an opinion and provide an answer or agreement/refusal, yet they may be perceived as unable to give informed consent due to their cognitive impairment. Therefore, requiring their agreement is more consistent with the rights-based, person-centred intent of the Act.

## **Section 162 – Restrictive practices**

### ***Behaviour support plans***

The requirement to review and revise a behaviour support plan under paragraph 162-70 “on a regular basis” is vague and left to the discretion of the provider. In our view, this requirement should include some type of criteria regarding the timeframe, e.g. monthly, quarterly, or six-monthly if there has been no change in the individual's circumstances.

### ***Register of restrictive practices***

In our view, there should be an additional rule to require registered providers to maintain a register of restrictive practices. This register should provide for each provider:

- (a) the number of restrictive practices recipients
- (b) the number of incidents
- (c) the types of incidents and types of restrictive practices used
- (d) who is providing consent in each recipient's circumstances

Additionally, the register should be reviewable by the Aged Care Quality and Safety Commission or the System Governor.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [policy@qls.com.au](mailto:policy@qls.com.au) or by phone on [REDACTED] [REDACTED]

Yours faithfully,

[REDACTED]  
Peter Jolly  
President