



ALGA

Australian Local
Government Association

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

Joint Submission to the Community Affairs
References Committee



1. Introduction

The Australian Local Government Association (ALGA) welcomes the opportunity to contribute to the Senate Community Affairs Legislation Committee's review of the Aged Care Rules 2025 and the Aged Care (Consequential and Transitional Provisions) Rules 2025, undertaken pursuant to section 602(12) of the *Aged Care Act 2024* (the Act).

ALGA represents around 537 councils and brings a national perspective on how the delivery of aged care services impacts the community in terms of the availability of support services for the elderly, but also as an employer of community members in the care and support industry.

In structure, ALGA is a federation of state and territory local government associations. This submission should be read in conjunction with any separate submissions received from state and territory associations as well as individual councils.

This submission is made on behalf of the over one hundred local governments that deliver or oversee aged care services as approved providers, and the local government that also provide aged care supports and in home care that do not require licences or approvals and are offered as community support programs. In many cases, councils provide these services in thin or non-existent markets, particularly in regional, remote, and smaller communities where commercial providers have limited interest due to low client volumes, high fixed costs, and insufficient return on investment.

In these settings, local government provision of aged care services is often foundational to service availability, rather than part of a competitive market.

This submission addresses only those provisions of the Rules under review and their direct application to local government providers. It does not address individual service experiences, operational matters outside the Rules, or broader aged care policy settings.

The submission focuses on two areas of material relevance to the Committee's examination:

- the operation of the fit and proper person requirements under Part 3 of the Aged Care Rules 2025; and
- the transitional and funding arrangements established under the *Aged Care (Consequential and Transitional Provisions) Rules 2025*, particularly in relation to the transition to the Support at Home program.

In this context, the Committee may wish to consider whether additional administrative or compliance burden introduced by the Rules could have the unintended consequence of encouraging withdrawal by local government providers in areas where market forces are insufficient to support alternative service provision.

2. Suitability Requirements for Responsible Persons: Local Government Councillors

(Section 13 of the Aged Care Act 2024 and Part 5 of Chapter 5, Aged Care Rules 2025)

While suitability requirements are not among the provisions specified in section 602(12) of the *Aged Care Act 2024* for mandatory Senate review, ALGA submits that this constitutes a related governance matter that emerged during examination of the governing body provisions that are under review (sections 157 and 158). The inconsistent treatment of local government authorities across governance provisions, being exempted from some requirements but not others, creates regulatory coherence issues directly connected to the governance framework under review. ALGA requests that the Committee exercise its discretion to consider this related issue given the implications for local government aged care providers.

Local government councillors are already subject to comprehensive probity and integrity checks through state and territory legislation.

Section 13 of the *Aged Care Act 2024* defines "suitability matters" that apply to responsible persons of registered aged care providers. Part 5 of Chapter 5 of the *Aged Care Rules 2025* establishes provider obligations to assess the suitability of responsible persons at least annually and notify changes in circumstances affecting suitability.

Under section 12 of the *Aged Care Act 2024*, "responsible persons" include individuals responsible for executive decisions or who have authority, responsibility, or significant influence over planning, directing, or controlling the activities of a registered provider. For local government providers, this definition captures elected councillors where councils deliver aged care services or exercise governance and oversight responsibilities.

Section 7 of the *Aged Care Act 2024* defines "government entity" and specifically excludes local government authorities. This exclusion means that local government aged care providers are subject to the full responsible person framework applicable to non-government entities, including comprehensive suitability assessment requirements for elected councillors involved in aged care governance.

The treatment of local government authorities creates an internal inconsistency within the governance framework.

Governance Provision	Treatment of Local Government Authorities	Legislative Basis
Section 157 – Governing body membership	Exempt from the requirement to have a majority of independent non-executive members	Section 157(2) expressly exempts local government authorities
Section 158 – Advisory body requirements	Exempt from the requirement to establish a mandatory advisory body	Section 158(2) expressly exempts local government authorities
Section 13 and Part 5 of Chapter 5 – Suitability requirements for responsible persons	Fully apply. No exemption for local government authorities; elected councillors captured as responsible persons	Section 7 excludes local government authorities from the definition of "government entity"

This inconsistency is particularly significant because sections 157 and 158 (currently under review) treat local government authorities and government entities similarly, recognising their distinct governance structures and accountability mechanisms. However, suitability requirements apply the full responsible



person framework to local government councillors without any recognition of existing state and territory integrity regimes.

Local governments support strong integrity, accountability, and governance standards in aged care. However, the Committee should consider whether section 13 of the Act and Part 5 of Chapter 5 of the Rules sufficiently clarify how suitability requirements are intended to operate in the context of elected local government officials already subject to comprehensive state and territory integrity frameworks.

Elected councillors are subject to statutory codes of conduct, conflict-of-interest regimes, financial disclosure requirements, and oversight by independent integrity bodies established under state and territory legislation. Despite these existing accountability mechanisms, neither the Act nor the Rules expressly address how state and territory integrity frameworks interact with Commonwealth suitability requirements.

While section 157 of the *Aged Care Act 2024* exempts local government authorities from governing body membership requirements (such as having a majority of independent non-executive members), this exemption is narrow and does not extend to suitability assessment obligations for responsible persons.

ALGA considers it essential that clearer provisions within the *Aged Care Act 2024* or Aged Care Rules 2025 recognise existing state and territory integrity regimes as satisfying, or substantially satisfying, suitability requirements for elected councillors. Without such clarification, there is a risk of:

- Duplicative probity processes, with local government providers required to conduct annual suitability assessments of councillors despite comprehensive state/territory integrity frameworks
- Increased administrative burden on both providers and elected officials subject to multiple overlapping probity regimes
- Regulatory complexity regarding the interaction between Commonwealth suitability matters and state/territory integrity findings
- Uncertainty for both providers and regulators about compliance obligations
- Inconsistency with the governance exemptions provided in sections 157 and 158, which recognise that local government authorities operate under distinct accountability frameworks.

3. Ongoing Suitability Assessment Obligations for Elected Councillors

(Part 5 of Chapter 5, Aged Care Rules 2025; Related to governance and suitability framework under review)

While suitability monitoring obligations are not among the provisions specified in section 602(12) for mandatory Senate review, this issue relates directly to the suitability framework discussed in Section 2 above. The practical challenges of conducting ongoing suitability assessments for elected councillors connect to the broader governance framework under review and warrant Committee consideration.

Part 5 of Chapter 5 of the Aged Care Rules 2025 imposes ongoing obligations on registered providers to assess and monitor the suitability of responsible persons. While these provisions are not expressly listed in section 602(12) of the *Aged Care Act 2024* for mandatory review, they operate closely alongside the governance and suitability framework that is under consideration by the Committee.

Under the Rules, providers must:

- Assess the suitability of each responsible person at least once every 12 months, having regard to the suitability matters in section 13 of the *Aged Care Act 2024*, and be reasonably satisfied as to their suitability.
- Notify the Aged Care Quality and Safety Commissioner within 14 days of becoming aware of changes in circumstances relevant to a responsible person's suitability.

- Maintain records of the information considered and the basis on which they were reasonably satisfied as to suitability.
- Have processes in place requiring responsible persons to report changes in their circumstances.

For local government aged care providers, these ongoing obligations create distinct practical challenges when the responsible persons are elected councillors. Unlike corporate providers, where responsible persons are appointed by and directly accountable to the organisation, elected councillors hold office under state or territory law and are not employed, appointed, or removable by the provider.

This gives rise to uncertainty about what sources of information it is reasonable for a council, as provider, to rely on when assessing an elected councillor's suitability (for example, public registers, statutory declarations, or information from state and territory integrity bodies); how the provider should approach suitability assessments or notifications where state or territory integrity processes concerning a councillor are on foot, confidential, or not yet finalised; and what level of inquiry is required to satisfy the "reasonably satisfied" standard in circumstances where the councillor is already subject to dedicated state or territory oversight and the council has no supervisory or contractual control.

Without clarification, there is a risk that councils will either duplicate state and territory integrity processes or adopt inconsistent approaches to information gathering, assessment, and notification in relation to elected councillors.

ALGA supports robust, ongoing suitability oversight of those involved in the governance of aged care services, including elected councillors of local government providers. However, ALGA considers that further guidance is needed to clarify how the ongoing suitability and notification obligations should operate in the specific context of elected officials whose tenure and conduct are already governed by state and territory frameworks.

4. Interaction Between Commonwealth Enforcement Powers and State/Territory Local Government Frameworks

(Aged Care Act 2024 – Chapter 6, Parts 10–11; Related to governance provisions under review)

While enforcement provisions are not among those specified in section 602(12) for mandatory Senate review, ALGA raises this as a related matter that emerged during examination of the governance and suitability framework. The interaction between Commonwealth enforcement powers and state/territory laws governing elected councillors creates practical coordination challenges that relate to the governance provisions under review (sections 157–158) and the suitability framework discussed in Section 2 above.

The *Aged Care Act 2024* establishes comprehensive enforcement powers vested in the Aged Care Quality and Safety Commissioner. Under section 170, the Commissioner may determine that a responsible person is not suitable to be involved in the delivery of funded aged care services. This determination power operates independently of the provider's own suitability assessments. Under section 498, the Commissioner may make banning orders prohibiting or restricting individuals from involvement in aged care as responsible persons or aged care workers. Banning orders can be permanent or for specified periods and are publicly registered on the Register of Banning Orders.

Banning orders may be made where a responsible person:

- Is not suitable to be involved in aged care
- Has not complied with the Aged Care Code of Conduct
- Poses an immediate or severe risk to older people
- Has been convicted of indictable offences involving fraud or dishonesty
- Is subject to insolvency or administration



For local government aged care providers, these Commonwealth enforcement powers create practical coordination challenges with state and territory frameworks governing elected councillors. Elected councillors who are responsible persons under the *Aged Care Act* are simultaneously subject to state/territory frameworks including codes of conduct, conduct tribunals, suspension and dismissal provisions under local government legislation, and Commonwealth frameworks including suitability determinations, banning orders, and civil penalty provisions under aged care legislation.

Several practical scenarios illustrate these coordination challenges. A councillor could face both state tribunal proceedings for code of conduct breaches and Commonwealth proceedings for Aged Care Code of Conduct breaches arising from the same conduct. State tribunal proceedings might result in suspension while Commonwealth proceedings result in a banning order, creating uncertainty about the councillor's capacity to continue in their elected role. A banning order preventing a councillor from involvement in aged care governance could effectively remove them from council decision-making regarding aged care services, potentially conflicting with their elected duties and electoral mandate. Local government providers would be required to "take reasonable steps" to prevent a banned councillor from involvement in aged care, despite that councillor holding elected office with statutory governance responsibilities.

ALGA submits that the following matters warrant clarification, either through legislative amendment, regulatory guidance, or Committee recommendation:

1. Interaction Between Frameworks:

How should Commonwealth suitability determinations and banning orders operate where the individual holds elected office under state/territory law? Is there a mechanism for coordination between the Commissioner and state/territory integrity bodies?

2. Scope of "Involvement" for Elected Officials:

Clarification is required on what constitutes prohibited "involvement in the delivery of funded aged care services" for an elected councillor who is subject to a banning order. In particular, it is unclear whether such a prohibition would extend to voting on council decisions that relate to aged care, participating in council committees with oversight of aged care services, receiving briefings on the performance or compliance of those services, or carrying out normal representative functions on behalf of constituents who access council-delivered aged care.

3. Provider Compliance Obligations:

How should local government providers comply with section 500 requirements to prevent a banned councillor from engaging in prohibited conduct, given that:

- Councils cannot remove elected councillors (only state tribunals or courts can).
- Councillors have statutory duties and democratic mandates to participate in council governance.
- Council administrative staff cannot direct elected councillors regarding their conduct.

4. Procedural Coordination:

Should the Commissioner notify relevant state/territory authorities when considering suitability determinations or banning orders against elected councillors? Is there a mechanism for state/territory findings to inform Commonwealth processes, or vice versa?

5. Natural Justice Considerations:

How are principles of natural justice and procedural fairness applied when Commonwealth enforcement action may effectively curtail an individual's capacity to fulfill an elected role conferred under state/territory law?

ALGA acknowledges and supports the Commonwealth's authority to impose conditions on entities receiving Commonwealth aged care funding, including requirements relating to responsible persons' suitability. Local governments do not contest the Commonwealth's power to establish and enforce standards for aged care service delivery.



However, ALGA submits that the practical application of enforcement powers to elected local government councillors requires additional clarity to ensure proportionate, risk-based regulation that recognises existing state/territory accountability frameworks; coordination between Commonwealth and state/territory processes to avoid duplicative or conflicting proceedings; clear guidance for local government providers on compliance obligations where enforcement action affects elected officials; and respect for democratic principles and electoral mandates while maintaining appropriate aged care safeguards.

There is a risk that continued uncertainty may contribute to further withdrawal by councils from aged care service provision as the *Aged Care Act* and Rules are perceived to be in conflict with state/territory local government frameworks.

5. Transitional and Funding Arrangements

(Aged Care (Consequential and Transitional Provisions) Rules 2025)

The Aged Care (Consequential and Transitional Provisions) Rules 2025 establish the legislative framework for the transition from block funding to individualised, activity-based payments under the Support at Home program.

While this submission does not comment on the broader policy intent of funding reform, consideration should be given whether the transitional arrangements established by the Rules are adequate to support continuity of service delivery during the transition period for all approved providers, including local governments operating in thin or highly constrained service markets.

In assessing the impacts of the transitional arrangements, the Committee needs to consider the broader fiscal context in which local governments operate. Councils are being asked to deliver an expanding range of essential services and infrastructure while managing increasing disaster frequency, mounting asset renewal backlogs, and growing community expectations for social services. Long-term funding for local government has not kept pace with these pressures. Financial Assistance Grants, the main mechanism for funding for local governments, have fallen from 1% of Commonwealth taxation revenue in 1996 to just 0.5% today, limiting councils' ability to keep up with rising costs and these increased service expectations.

Historically, block funding has enabled councils to manage fixed costs, workforce stability, and service continuity in circumstances where client volumes are low and operating costs are high. In many of these settings, local governments provide aged care services in the absence of effective market competition, and there is limited capacity for alternative providers to enter or replace services.

The transition to activity-based funding introduces cashflow volatility, increased administrative requirements, and exposure to unrecoverable costs where payments do not reflect the true cost of service delivery. In thin markets, these transitional settings risk compounding financial pressures in a way that could discourage continued participation by local government providers.

In this context, additional administrative complexity and financial risk associated with the transition to activity-based aged care funding may further constrain councils' capacity to sustain service delivery. The Committee may therefore wish to consider whether the Rules provide sufficient transitional flexibility or adjustment mechanisms to support providers operating in locations where service withdrawal would be unlikely to be offset by market substitution, and where continuity of aged care services depends on sustained local government involvement.

6. Recommendations

Aged Care Rules 2025

Recommendation 1

That the Australian Government amend section 7 of the *Aged Care Act 2024* to include local government authorities within the "government entity" definition in order to ensure consistent treatment across all governance provisions (sections 157, 158, and suitability requirements), or alternatively amend Part 5 of Chapter 5 of the Aged Care Rules 2025 to create an express provision recognising state and territory integrity frameworks as satisfying specified suitability matters for elected councillors.

Recommendation 2

That the Aged Care Quality and Safety Commissioner issue targeted regulatory guidance clarifying reasonable information sources, assessment methodologies, and notification expectations for registered providers when applying ongoing suitability requirements to elected councillors of local government aged care providers.

Recommendation 3

That the Aged Care Quality and Safety Commissioner develop guidance on the application of enforcement powers, including suitability determinations, banning orders and section 500 obligations, to elected councillors of local government providers, addressing the meaning of involvement in aged care delivery for councillors and the reasonable steps councils are expected to take when they cannot remove or direct elected officials.

Recommendation 4

That intergovernmental protocols be established between the Aged Care Quality and Safety Commissioner, state and territory local government departments, and state and territory integrity and conduct bodies to support information sharing, procedural coordination, and consideration of state and territory findings in Commonwealth enforcement decisions affecting councillors.

Recommendation 5

That the Committee note in its report the regulatory inconsistency in how local government authorities are treated across the governance and suitability framework, the practical implementation challenges created for local government providers by ongoing suitability and enforcement provisions, and the need for clearer legislative, regulatory and intergovernmental arrangements to provide a proportionate and workable compliance pathway for local government aged care providers.

Aged Care (Consequential and Transitional Provisions) Rules 2025

Recommendation 6

The Australian Government consider whether the transitional arrangements established under the Aged Care (Consequential and Transitional Provisions) Rules 2025 adequately address the financial and administrative impacts on local government approved providers arising from the transition to activity-based funding under the Support at Home program.

Recommendation 7

The Australian Government consider whether additional transitional flexibility or adjustment mechanisms are required within the Aged Care (Consequential and Transitional Provisions) Rules 2025 to manage cashflow volatility, increased administrative requirements, and unrecoverable service delivery costs during the transition period.

Recommendation 8

The Australian Government consider recognising the disproportionate impact of the transitional funding arrangements on regional, remote, and First Nations councils, particularly where low client volumes, high fixed costs, and limited alternative providers heighten risks to service continuity.

7. Conclusion

Local governments play an important role in aged care service delivery, particularly in communities with limited alternative providers. The Rules under review introduce significant changes to governance, compliance, and funding arrangements for council providers.

The joint local government sector supports the objectives of improved integrity and accountability. However, there is need for clearer articulation within the Rules of how these objectives are to be applied in the local government context would strengthen the regulatory framework and reduce the risk of unintended consequences, including provider withdrawal from the sector.

Sincerely,



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