Inspector-General of Aged Care

Review of Aged Care Rules 2025

Submission from the Inspector-General of Aged Care

January 2026

Microsoft copilot was used to help with rewriting or rephrasing some aspects of the submission to ensure it was written in accessible language.

Introduction

The Inspector-General of Aged Care (the Inspector-General) welcomes the opportunity to make this submission to the Senate Community Affairs Legislation Committee's review of the Aged Care Rules 2025 (Rules) and the Aged Care (Consequential and Transitional Provisions) Rules 2025 (Consequential and Transitional Provisions Rules).

The Inspector-General of Aged Care

The Inspector-General, and the Office of the Inspector-General of Aged Care (the Office) were established under the *Inspector-General of Aged Care Act 2023* (the IGAC Act) to provide independent oversight of the aged care system. The Inspector-General exercises their statutory powers to monitor, investigate and report on the Commonwealth's administration, regulation and funding of the aged care system.

As embodied in the Office's Strategic Framework, the purpose of the Inspector-General is ensuring integrity, transparency and accountability in the aged care system. The Inspector-General drives meaningful change across the aged care system by reviewing and reporting on systemic issues and identifying opportunities for positive change, in accordance with the IGAC Act. The Inspector-General's objective in delivering these functions is to ensure the government can truly administer and regulate an aged care system where every person receives kind, compassionate and high-quality care that promotes their rights, identity and independence.

The intent of this submission

The Inspector-General notes the specific provisions of the Rules that the Committee is required to review under section 602(12) of the *Aged Care Act 2024* (Aged Care Act). Rather than commenting on each of those provisions, this submission focusses on those which are the most critical in shaping the rights-based, person-centred aged care system that the legislation aspires towards. Information provided by stakeholders to assist the Inspector-General and her Office in carrying out their role, and a range of projects and research conducted over the past year, have also been important factors in informing the content of this submission.

It is worth noting that while the submission discusses the current regulation of restrictive practices, the Inspector-General is strongly focussed on overseeing serious progress by government toward their reduction and elimination. A key project within the Inspector-General's 2025–26 Annual Work Plan is a forward-looking consideration of how true reduction and elimination can be achieved within the aged care sector.

The submission does not discuss the Consequential and Transitional Provisions Rules, which are more procedural in nature.

Aged Care Rules 2025

Section 14 – Aged Care Code of Conduct

About

Part 5 of Chapter 1 of the Rules establishes the Aged Care Code of Conduct (Code). The Code is a vital regulatory tool within the overarching accountability framework. It is intended to ensure that the delivery of aged care services upholds a rights-based approach that prioritises the needs and interests of older people. It is one of the very few obligations applying directly to individual workers. Many other obligations such as the Aged Care Act's Statement of Rights, and various conditions of registration, are applied to registered providers.

Issues

The Code includes many important rights from the Statement of Rights, but it does not require providers, responsible people, or workers to follow the whole Statement. The Inspector-General believes the Code would be better if it clearly required everyone to uphold all the rights in the Statement, not just some of them.

The Inspector-General acknowledges concerns from a wide range of stakeholders regarding how workers will be held accountable for complying with the Code. It is essential that all workers receive appropriate training and support to ensure they fully understand their responsibilities and how to implement them in practice. Workers from non-English speaking backgrounds should be given particular support to ensure they fully grasp the Code and what it requires.

Section 15 – Aged Care Quality Standards

About

The Royal Commission into Aged Care Quality and Safety (Royal Commission) recommended improvements to the Aged Care Quality Standards to achieve and measure high quality care. The Inspector-General strongly supports the intent of the strengthened Aged Care Quality Standards established under Part 6, Chapter 1 of the Rules to support high quality and safe care that respects older peoples' rights, promotes their independence and identities, and enhances their quality of life.

Issues

The Inspector-General's 2025 Progress Report highlighted issues with the design of the Standards that will potentially undermine fulfilment of those objectives. In particular, the report noted that Outcome 2.9 of the Standards requires providers to deliver training and supervision to workers to enable them to support their roles.[1] While the Standards are silent on how providers are to meet these requirements, guidelines published by the Department of Health, Disability and Ageing state that they should ensure that all workers receive regular competency-based training, including in 'culturally safe, trauma-aware and healing-informed care', and in 'caring for individuals living with dementia'.[2]

[1] Office of the Inspector-General of Aged Care, 2025 Progress Report on the Implementation of the Recommendations of the Royal Commission into Aged Care Quality and Safety, p.30.
[2] Department of Health, Disability and Ageing, Strengthened Aged Care Quality Standards: August 2025, p.21.

While these measures are welcome, as noted in the report, the Inspector-General considers them less robust than the Royal Commission's approach of embedding training requirements in legislation. Regular competency-based training is not the same as mandating training in specific areas. These gaps remain unresolved in the current Rules. At a minimum, the Rules should explicitly require specialised training in dementia care and cultural safety. Relining on non-legislative guidelines is insufficient. Mandatory training is essential to improving cultural safety in aged care and ensuring high-quality dementia care.

Sections 17 and 162 – Restrictive practices

About

The Royal Commission identified the over-reliance and misuse of restrictive practices as one of the most profound sources of systemic abuse within the aged care sector. The Commissioners considered the harmful effects to be so serious that they identified restrictive practices to be 1 of 4 areas in need of immediate improvement.

The Commissioners described weaknesses in the regulation of restrictive practices as a serious human rights concern and urged the urgent implementation of a strong and effective regulatory framework. They stated that regulation should be guided by respect for people's rights, dignity, and personal autonomy, while also providing clear guidance on when such practices may be authorised. Their use should require assessment by an independent expert, be subject to ongoing monitoring and reporting, and depend on a behaviour support plan being submitted to the Quality Regulator.

Issues

In the 2025 Progress Report, the Inspector-General found that the Aged Care Act fell short of the Royal Commission's vision of a rights-centric approach to regulating restrictive practices which prioritises reducing, and where possible, eliminating their use. She called for urgent action to address these shortcomings.

The use of physical restraints now affects nearly 1 in 5 aged care residents (19.8 percent), the highest it has been since the fourth quarter in 2022-23. A recent report by Aged Care Justice has revealed that the use of physical restraints has risen by 2.1 percent over the past in the last 2 quarters in 2024-25.[3]

While the Rules have positive features, such as encouraging behavioural support and limiting usage to 'last resort' scenarios, they largely carried over the previous legislative framework. As a result, the Rules are unlikely to make a meaningful difference in addressing the continued human rights abuses stemming from the use of restrictive practices.

Lack of focus on reducing and eliminating restrictive practices

As the 2025 Progress Report observed, the disability sector has long had a more enlightened approach to restrictive practices that is well ahead of the aged care sector in many respects.

One of the most important differences between the disability and aged care legislative frameworks is the clear emphasis in the former on the 'reduction and elimination' of restrictive practices. For example, section 181H of the *National Disability Insurance Scheme Act 2013* confers the National Disability Quality and Safeguards Commissioner with a 'behaviour support function', which is to

[3] Aged Care Justice, *Reducing Serious Incidences of Restrictive Practices in Aged Care Settings through Legal Education and Access to Legal Services,* 2025, p.12.

'provide leadership in relation to behaviour support, and *in the reduction and elimination of the use of restrictive practices* by NDIS providers'.

The Rules and the new Act do not include any comparable references to the reduction or elimination of restrictive practices. In the Inspector-General's view this is a serious oversight: the Aged Care Act enshrines a *right to aged care that is trauma aware and healing informed* (s20(3)(d)). At a minimum, aged care regulation should mandate the lowest possible use of restrictive practices and ideally their complete elimination. It is inconsistent and inequitable that individuals receive disability services in a regulatory environment focused on reduction and elimination, while those in aged care do not. Globally, the reduction and elimination of restrictive practices is recognized as the ethical, evidence-based approach to safeguarding human rights and advancing person-centred care across all care sectors.

Restrictive practices and the Statement of Rights

Section 162-15 of the Rules impose a range of requirements on the use of any restrictive practice. Many of these additions are positive, and in time, they could play a role in helping to address the sector's reliance on restrictive practices.

Other aspects of the requirements in this provision have significant shortcomings. In particular, one of the requirements is that the use of restrictive practices must not be inconsistent with the Statement of Rights set out in section 23 of the Aged Care Act. However, the Statement of Rights does not include rights to liberty, freedom of movement and freedom from restraint.[4] It is likely that the absence of those rights, which would provide pivotal protection against the inappropriate use of restrictive practices, will undermine the effectiveness of section 162-5 in requiring the use of restrictive practices to conform more broadly with the intention of the Statement of Rights.

Substitute decision-making framework

The Rules include a framework of substitute decision-makers who can give informed consent to the use of restrictive practices when an individual lacks capacity to consent themselves.[5] As experts in the field have pointed out, the process of determining who can perform the role of a substitute decision-maker under the Rules is inherently complex.[6] Applying the framework in practice is also likely to be cumbersome to administer, and more concerningly, subject to misuse and inconsistently applied in practice.

The implementation of the substitute decision-maker framework is contrary to the Royal Commission, which recommended a 'senior practitioner' model, where approval for using restrictive practices would be granted by an independent clinical expert.[7] The Inspector-General echoed the Royal Commission's findings in the 2025 Progress Report, and many eminent individuals and peak bodies have championed this model, ranging from COTA, the Australian Human Rights Commission Age Discrimination Commissioner, Robert Fitzgerald AM, and the Queensland Public Advocate, Dr John Chesterman.

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[4] Office of the Inspector-General of Aged Care, 2025 Progress Report on the Implementation of the Recommendations of the Royal Commission into Aged Care Quality and Safety, p.37.

[5] See primarily sections 6-20, 162-15, 162-35, 162-55, and 162-65.

[6] See for example, Dr John Chesterman, *The Public Advocate*, Proposal for the future regulation (and reduction in the use) of restrictive practices in Queensland: Discussion Paper, March 2025. See also Aged Care Justice, *Reducing Serious Incidences of Restrictive Practices in Aged Care Settings through Legal Education and Access to Legal Services,* 2025, p.10.

[7] Recommendation 17: Regulation of Restraints.

The limitations of the substitute decision-maker approach, compared to the clear advantages of the senior practitioner model, are well documented and have been repeatedly raised with the Department of Health, Disability and Ageing. It is therefore of grave concern that the expert advice of many respected authorities in the sector has been disregarded.

Issues arising from the definition of chemical restraints

The Royal Commission strongly supported a consistent approach to managing restrictive practices across both the aged care and disability sectors. However, the Commissioners acknowledged that some elements of the NDIS framework are not suitable for aged care. In particular, under the NDIS chemical restraint is not considered a 'regulated restrictive practice' if it involves 'the use of a medication prescribed by a medical practitioner for the treatment of, or to enable the treatment of, a diagnosed medical disorder, a physical illness or a physical condition'. This means that medications commonly used to treat forms of dementia, such as Alzheimer's disease, are not classified as restrictive practices under the NDIS. As the Royal Commission noted, applying this model to aged care would exclude many psychotropic medications prescribed for people with dementia, a condition far more prevalent in aged care, from being regulated as restrictive practices.

It is therefore problematic that subsection 17-5(1) of the Rules defines chemical restraint in almost identical terms to the NDIS legislation. The Inspector-General believes this approach carries significant risks. Dementia is highly prevalent in residential aged care, and older people with a genuine therapeutic need should be able to access prescribed medications without being considered subject to a restrictive practice. However, under the current Rules, antipsychotics and other medications that impact a person's mental state may continue to be overly relied upon as an easy way to sedate people, rather than investing in adequate numbers of properly trained staff who can reduce distress by providing quality care. Reducing the sector's over-reliance on chemical restraint remains one of the biggest challenges in addressing restrictive practices in aged care. As currently drafted, the Rules do not resolve this critical issue.

Conclusion

The Aged Care Rules, including the provisions that the Senate Community Affairs Legislation Committee is required to review under 602(12) of the Aged Care Act, are a vital part of the new legislative framework. There are positive features within the Rules, and overall, they and the new Aged Care Act represent a significant improvement over the previous legislative framework.

However, there are still several significant issues and gaps in the relevant provisions of the Rules. The Inspector-General believes these must be addressed not only to fulfil the Government's commitment to a fully effective, rights-based framework that promotes kind, compassionate, and high-quality care – but also to ensure it is not undermined in practice. The Inspector-General therefore recommends amending the Rules to resolve the concerns outlined in this submission, ensuring they better support the Act in achieving its objectives.