

**Colin
Biggers
& Paisley**

Care economy webinar series.

**The new Aged Care Act:
Estate planning, decision-making and
compliance**

Wednesday 29 April



Background and purpose

The Aged Care Act 2024 (Cth) (**the Act**)

Introduced as a response to the Royal Commission into Aged Care Quality and Safety and came in to force on 1 November 2025.

Shift to a rights-based framework with a focus on:

- Dignity and autonomy for residents
- Supported decision-making
- Transparency and accountability for providers

Includes:

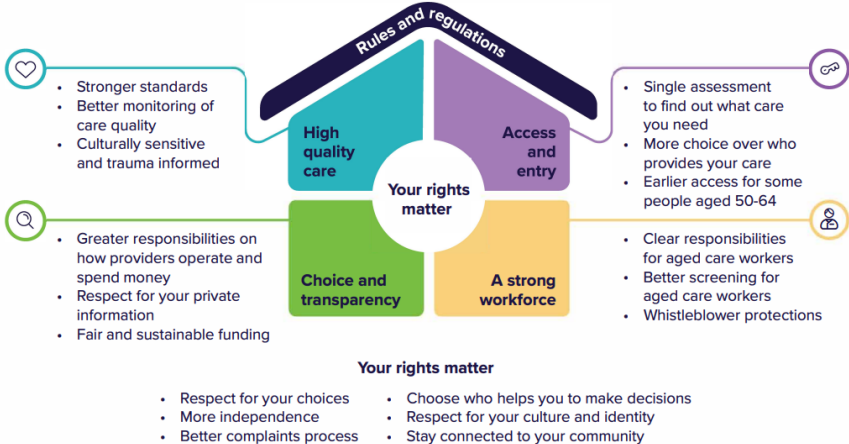
- Statement of Rights - Part 3 of the Act
- Aged Care Rules 2025



Key changes

The new Aged Care Act puts you at the centre of your aged care

It will make aged care safer, fairer and more respectful.
This infographic outlines the main parts of the new Act and how they work together.



Aged Care Act 1997

Aged Care Act 2024

Provider-focused

Consumer-focused

Compliance-based

Rights-based

Process-driven

Outcomes-driven

Substitute decisions

Supported decisions

Refundable Accommodation Deposits

What is a Refundable Accommodation Deposit (RAD)?

- Lump sum paid by or on behalf of the resident
- Held by the provider
- Refundable to the resident or their estate

Provider obligations to refund

- Timing of refund
- Identifying legal authority of recipient

Red flags and disputes

- Estate disputes and delays
- Urgent requests from family members and attorneys

Key documents

- Grant of Probate
- Letters of Administration



Refund of RAD on death

Provider obligations

When does the obligation to refund arise?	Death of resident + confirmation of legal authority
What is the legal authority?	LPR - Executor or Administrator
What is the required documentation?	Grant of Probate or Letters of Administration
What is the timing of payment?	Must pay within 14 days of receipt
What is the amount payable?	RAD less permitted deductions as agreed

Relevant Provisions

The Aged Care Act

Section 311 - Refund of refundable deposit balances

The Aged Care Rules

Division 7 - Refundable deposits

311-5 - Refund of refundable deposit balances - death of individual - circumstances and period

Red flags and disputes

"I paid the deposit; it needs to be refunded to me"

- The RAD is payable to the estate, regardless of who paid.
- Important that this is considered in estate planning.

"We need the money now to pay for funeral and estate expenses"

- The executor or administrator of the estate is responsible.
- Payment required 14 days after receipt of appropriate authority.

"Mum never agreed to this, the attorney arranged everything"

- Lump sum paid by or on behalf of the resident
- Held by the provider

"We thought the balance was higher"

- Ensure deductions agreed and documented
- Appropriate disclosure of permitted deductions



Key documents



Probate
Supreme Court of NSW

Verify a digital grant

Please enter the case number and click "Search" to verify a digital grant.

Search by case number (yyyy/xxxxxxx)

 /

Search



Supreme Court of Queensland
Electronic Grant

Registry: Brisbane
Number: S 12345 of 2020
The estate of: MARCEL CITIZEN
Late of: 363 GEORGE STREET,
BRISBANE, Queensland
Date of death: 18 October 2020
Grant of: **Probate of the Will (copy annexed)**
Is granted to:
Name: MARY CITIZEN
Address: 363 GEORGE STREET,
BRISBANE, Queensland
As executor



Given under the seal of the
Supreme Court of Queensland

R. Registrar

Registrar
18/02/2021

GRANT OF PROBATE
AND ADMINISTRATION JURISDICTION
Prepared and filed in the registry.
Form 121

LAWYER & LAWYER, 240
ROMA STREET, BRISBANE
QLD 4000

Decision-making

Recognising the important of autonomy

New model for supported decision-making across the aged care system that aims to recognise the role of families and carers.

Registered supporters are now formally recognised under the Act and can be registered with consent to:

- help an older person make their own decisions
- access information to help the person they are supporting
- communicate on behalf of the older person

Not the same as a substitute decision-maker and cannot make decisions on behalf of the older person.

Legal authority to make decisions, particularly where an older person has lost capacity, still requires an Enduring Power of Attorney or Appointment of Enduring Guardian.



Key differences

Registered supporter's duties:

- providing notification about anything that may affect their ability to be an appropriate supporter
- acting in a way that promotes the wishes, preferences and wellbeing of the older person
- acting honestly, diligently and in good faith
- supporting the older person to make decisions while promoting and maintaining their ability to make decisions
- avoiding or managing conflicts of interest

The purpose of the role is to provide assistance, particularly when navigating the aged care sector, without removing autonomy and do not replace the critical role of substitute decision-makers.

Registered Supporter	Attorney
Formal role recognised under the Act to provide support	Legal appointment under state/territory law
Support to make decisions	Substituted decision-making
Older person retains full capacity and authority	Attorney may act when person lacks capacity
Act in accordance with older persons preferences	Act in older persons best interests

Red flags and disputes

Registered Supporters

Unverified authority:

- Supporter not registered
- Resident capacity in question

Acting beyond authority:

- Signing documents
- Managing finances

Excluding resident from decisions:

- Dominating discussions
- Preventing engagement

Conflict between decision-makers:

- Duly appointed attorney overrides authority

Attorneys

Resident capacity in question:

- Check commencement
- Is the document enduring?

Best interests of resident:

- Speaking for the older person
- Acting with self-interest

Conflict between attorneys:

- Check appointment - jointly?
- Making decisions without notice where required

Practical strategies

1. Slow down decisions where appropriate
2. Verify legal authority and review documentation
3. Ensure the resident is at the centre of decisions
4. Be aware of the risks of RADs
5. Identify and escalate red flags early
6. Document reasoning for decisions
7. Stay neutral in disputes
8. Ensure adequate internal processes

Slow down,
verify authority and
document

Questions



**Colin
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& Paisley**

Thank you.

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