

New Single Charter of Aged Care Rights

12 April 2019

Webinar Structure



Presenter/Facilitator: Troy Speirs, Principal Advisor – Home Care

Panellists: Sharyn McIlwain, Principal Advisor – Residential Care
Craig Gear, CEO, Older Persons Advocacy Network
Madeline Walsh, Partner, Hynes Legal

45 Minutes - Presentation

- Changes from the old to new
- Provider responsibilities & timeframes
- Implications for provider transition to the new Charter

15 Minutes - Questions/Discussion

- please submit your questions during the presentation

Changes from the old to the new

- There are currently four Charters relating to the rights and responsibilities of aged care recipients:
 - Residential Care
 - Home Care
 - Short-term restorative care in a residential care setting
 - Short-term restorative care in a home care setting
- The transition to a new single *Charter of Aged Care Rights* will:
 - reduce duplication between the current four Charters,
 - provide consistency in advice provided to aged care recipients regardless of care setting; and
 - reduce provider regulatory compliance burden over the long term.

I have the right to:

1. Safe and high quality care and services
2. Be treated with dignity and respect
3. Have my identity, culture and diversity valued and supported
4. Live without abuse and neglect
5. Be informed about my care and services in a way I understand
6. Access all information about myself, including information about my rights, care and services
7. Have control over and make choices about my care, and personal and social life, including where the choices involve personal risk
8. Have control over, and make decisions about, the personal aspects of my daily life, financial affairs and possessions
9. My independence
10. Be listened to and understood
11. Have a person of my choice, including an aged care advocate, support me or speak on my behalf
12. Complain free from reprisal, and to have my complaints dealt with fairly and promptly
13. Personal privacy and to have my personal information protected
14. Exercise my rights without it adversely affecting the way I am treated

So where are the care recipient's responsibilities?

- Care recipient responsibilities are currently accounted for in the existing four Charters and **security of tenure** provisions of the *User Rights Principles, 2014*.
- This will change with the transition to the new *Charter for Aged Care Rights*.
- Security of tenure provisions outlined in the *User Rights Principles, 2014* and the *User Right Amendments, 2019* transfer some care recipient responsibilities across from current to new arrangements.
- Reference to the *User Rights Principles & Amendments* will need to be accounted for in **service agreements** issued to care recipients.

Security of tenure provisions - Residential care

- *User Rights Principles, 2014* (Section 6-2)
- The approved provider may ask the care recipient to leave the residential care service only if:
 - the residential care service is closing; or
 - the residential care service no longer provides accommodation and care suitable for the care recipient, having regard to the care recipient's assessed long-term needs, and where the approved provider has not agreed to provide care of the kind that the care recipient presently needs; or
 - the care recipient no longer needs the care provided through the residential care service, as assessed by an aged care assessment team; or

Security of tenure provisions - Residential care (continued)

- the care recipient has not paid any agreed fee to the approved provider within 42 days after the day when it is payable, for a reason within the care recipient's control; or
- the care recipient has intentionally caused:
 - serious damage to the residential care service; or
 - serious injury to staff of the approved provider, or to another care recipient; or
- the care recipient is away from the residential care service for a continuous period of at least 7 days for a reason other than:
 - a reason permitted by the Act; or
 - an emergency.
- Suitable accommodation to be available before care recipient can be required to leave residential care service
- There is **no change to security of tenure provisions for residential care** in the transition to the new Charter.

Current Charter - Residential care

- Current Charter lists four **care-recipient responsibilities**
 - to respect the rights and needs of other people within the residential care service, and to respect the needs of the residential care service community as a whole;
 - to respect the rights of staff to work in an environment free from harassment;
 - to care for his or her own health and well-being, as far as he or she is capable;
 - to inform his or her medical practitioner, as far as he or she is able, about his or her relevant medical history and current state of health.

Security of tenure provisions – Home care

- *User Rights Principles, 2014* (Section 17-2e)
- the care recipient has not met his or her responsibilities, as described in the “Charter of care recipients’ rights and responsibilities - home care” set out in Schedule 2, for a reason within the care recipient’s control.
- This **principle has been updated** in the *User Rights Amendments, 2019* (Section 7)

Security of tenure provisions – Home care

- *User Rights Principles, 2014* (Section 17-2e)
- ~~the care recipient has not met his or her responsibilities, as described in the “Charter of care recipients’ rights and responsibilities – home care” set out in Schedule 2, for a reason within the care recipient’s control.~~
- This **principle has been updated** in the *User Rights Amendments, 2019* (Section 7)
- The approved provider may cease to provide home care to the care recipient only if:
 - (a) the care recipient cannot be cared for in the community with the resources available to the approved provider; or
 - (b) to (d) – no change

Security of tenure provisions – Home care (continued)

- (e) the care recipient:
 - (i) has not paid to the approved provider, for a reason within the care recipient's control, any home care fee specified in the home care agreement between the care recipient and the approved provider; and
 - (ii) has not negotiated an alternative arrangement with the approved provider for payment of the home care fee; or
- (f) the care recipient has:
 - (i) intentionally caused serious injury to a staff member (as defined in section 63-1AA of the Act) of the approved provider; or
 - (ii) intentionally infringed the right of a staff member (as defined in section 63-1AA of the Act) of the approved provider to work in a safe environment.

Current Charter - Home care

- Current Charter lists eleven **care-recipient responsibilities**:
- *General*
 - (1) Each care recipient has the following responsibilities:
 - (a) to respect the rights of care workers to their human, legal and workplace rights including the right to work in a safe environment
 - (b) to treat care workers without exploitation, abuse, discrimination or harassment.
- *Care and services*
 - (2) Each care recipient has the following responsibilities:
 - (a) to abide by the terms of the written home care agreement
 - (b) to acknowledge that his or her needs may change and to negotiate modifications of care and service if his or her care needs change
 - (c) to accept responsibility for his or her own actions and choices even though some actions and choices may involve an element of risk.

Current Charter - Home care (continued)



- *Communication*

(3) Each care recipient has the following responsibilities:

- (a) to give enough information to assist the approved provider to develop, deliver and review a care plan
- (b) to tell the approved provider and their staff about any problems with the care and services
- (c) before the care recipient changes approved providers, to tell the approved provider and their staff of the day the care recipient intends to cease to receive home care services from the approved provider.

- *Access*

(4) Each care recipient has the following responsibilities:

- (a) to allow safe and reasonable access for care workers at the times specified in his or her care plan or otherwise by agreement
- (b) to provide reasonable notice if he or she does not require home care to be provided on a particular day.

- *Fees*

(5) Each care recipient has the responsibility to pay any fees as specified in the agreement.

Where are the care recipient's responsibilities?

- Any additional care recipient responsibilities that a provider wants to retain from their current Charter and not covered off under the interaction of the new Charter and security of tenure provisions need to be addressed within the revision of **service agreements**.
- Changes will be applicable under the provisions of **Australian Consumer Law**.
- Changes need to be consistent with **fair and reasonable** terms for trading (not inconsistent with legal and consumer rights – *User Rights Amendment, 2019*)
- **Consent** to any revised terms within a service agreement need to be agreed to by care recipients before they can be applied – implications for **existing care recipients** in transition to new Charter.



Provider Responsibilities



- Provide a copy of the *Charter of Aged Care Rights*
- Include the signature of the provider's staff member

Australian Government Department of Health | Australian Government Aged Care Quality and Safety Commission

Charter of Aged Care Rights

I have the right to:

1. safe and high quality care and services;
2. be treated with dignity and respect;
3. have my identity, culture and diversity valued and supported;
4. live without abuse and neglect;
5. be informed about my care and services in a way I understand;
6. access all information about myself, including information about my rights, care and services;
7. have control over and make choices about my care, and personal and social life, including where the choices involve personal risk;
8. have control over, and make decisions about, the personal aspects of my daily life, financial affairs and possessions;
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11. have a person of my choice, including an aged care advocate, support me or speak on my behalf;
12. complain free from reprisal, and to have my complaints dealt with fairly and promptly;
13. personal privacy and to have my personal information protected;
14. exercise my rights without it adversely affecting the way I am treated.

Consumer:	Provider:
_____	_____
Signature	Signature
_____	_____
Full Name of Consumer	Name of Provider
_____	_____
Full Name of authorised person (if applicable)	Date staff member gave a copy of the Charter to the consumer
_____	_____
	Date staff member encouraged the consumer to sign the Charter

Provider Responsibilities



- Provide a copy of the *Charter of Aged Care Rights*
- Include the signature of the provider's staff member
- **Assist the care recipient to understand the information in the Charter**

Australian Government
Department of Health

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Aged Care Quality and Safety Commission

Charter of Aged Care Rights

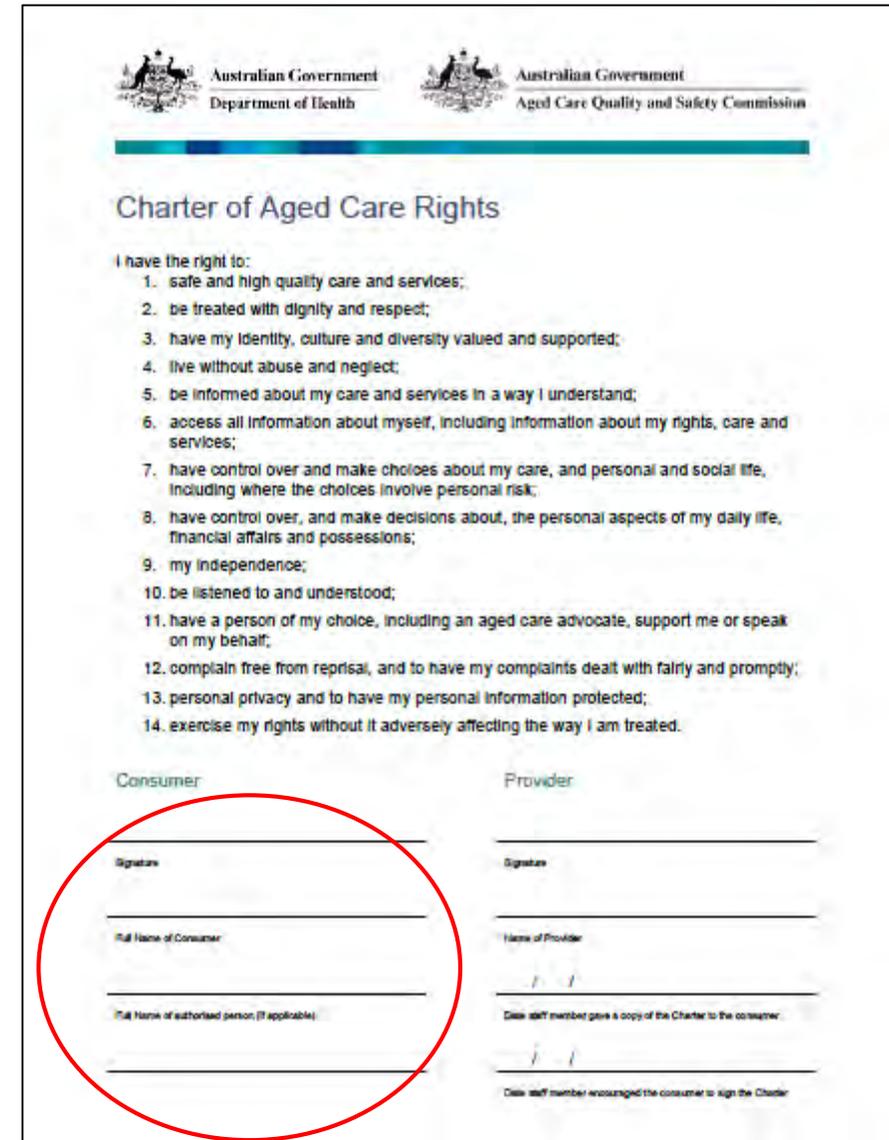
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- Assist the care recipient to understand the information in the Charter
- **Provide reasonable opportunity for the care recipient to sign the Charter**



The image shows a document titled "Charter of Aged Care Rights". At the top, it features the Australian Government logo and the Department of Health logo on the left, and the Australian Government logo and the Aged Care Quality and Safety Commission logo on the right. Below the logos is a blue horizontal bar. The title "Charter of Aged Care Rights" is centered. Underneath, it states "I have the right to:" followed by a numbered list of 14 rights. The list includes: 1. safe and high quality care and services; 2. be treated with dignity and respect; 3. have my identity, culture and diversity valued and supported; 4. live without abuse and neglect; 5. be informed about my care and services in a way I understand; 6. access all information about myself, including information about my rights, care and services; 7. have control over and make choices about my care, and personal and social life, including where the choices involve personal risk; 8. have control over, and make decisions about, the personal aspects of my daily life, financial affairs and possessions; 9. my independence; 10. be listened to and understood; 11. have a person of my choice, including an aged care advocate, support me or speak on my behalf; 12. complain free from reprisal, and to have my complaints dealt with fairly and promptly; 13. personal privacy and to have my personal information protected; 14. exercise my rights without it adversely affecting the way I am treated. Below the list, there are two columns of signature lines. The left column is for the "Consumer" and the right column is for the "Provider". Each column has a line for the signature, a line for the full name, and a line for the full name of an authorized person (if applicable). A red circle is drawn around the signature and name lines for the Consumer. At the bottom right, there is a line for the date and a note: "Date staff member gave a copy of the Charter to the consumer." and another line for the date and a note: "Date staff member encouraged the consumer to sign the Charter."

Australian Government
Department of Health

Australian Government
Aged Care Quality and Safety Commission

Charter of Aged Care Rights

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Consumer

Signature

Full Name of Consumer

Full Name of authorised person (if applicable)

Provider

Signature

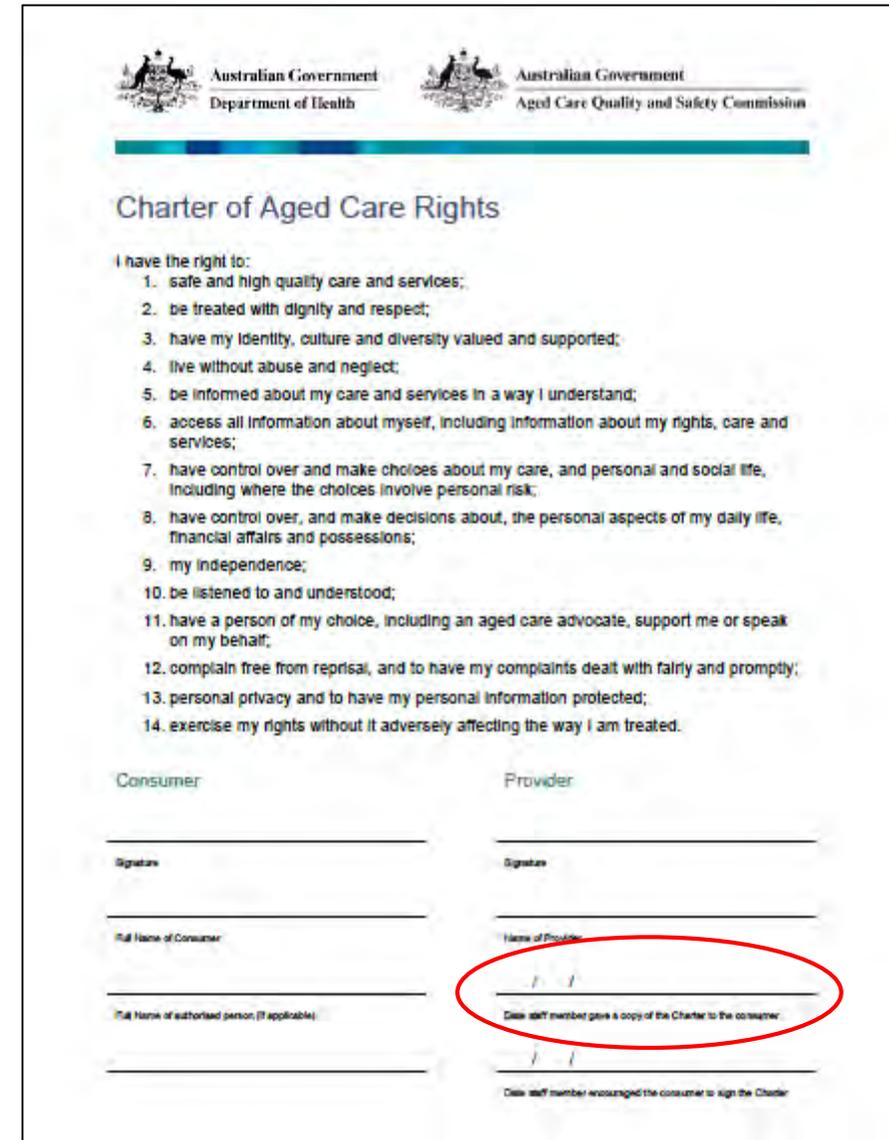
Name of Provider

Date staff member gave a copy of the Charter to the consumer.

Date staff member encouraged the consumer to sign the Charter

Provider Responsibilities

- Provide a copy of the *Charter of Aged Care Rights*
- Include the signature of the provider's staff member
- Assist the care recipient to understand the information in the Charter
- Provide reasonable opportunity for the care recipient to sign the Charter
- **Include the date on which the provider gave the care recipient the opportunity to sign it**



Australian Government
Department of Health

Australian Government
Aged Care Quality and Safety Commission

Charter of Aged Care Rights

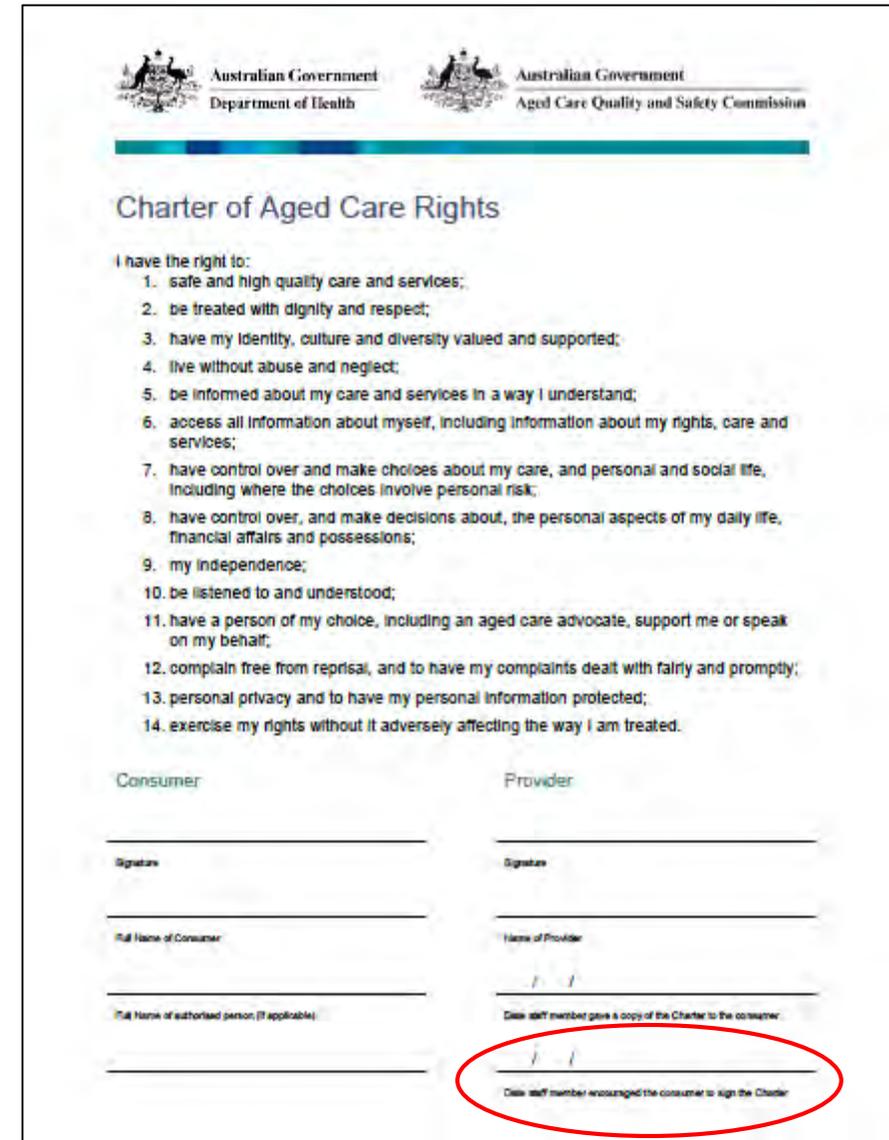
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- Include the date on which the provider gave the care recipient the opportunity to sign it
- **Include the date on which the provider gave the care recipient opportunity to sign it if they do not sign**



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Consumer: _____
Signature: _____
Full Name of Consumer: _____
Full Name of authorised person (if applicable): _____

Provider: _____
Signature: _____
Name of Provider: _____
Date staff member gave a copy of the Charter to the consumer: _____
Date staff member encouraged the consumer to sign the Charter: _____

Other updates to note - Responsibilities of approved providers



- *User Rights Amendments, 2019*
- Residential, home care & all short-term restorative care (STRC)
 - Not to act inconsistently with the legal and consumer rights of care recipients
- Home care & STRC in home care setting
 - To prevent damage to a care recipient's property
 - To provide information to assist care recipients to choose best care and services
 - To provide a written plan of care and services
 - To provide clear and understandable invoices
 - To review fees on request by care recipients (and periodically – home care)

Other updates to note - Responsibilities of approved providers



- *User Rights Amendments, 2019*
- Record keeping
- Approved providers are required to keep a record relating to each copy of the Charter given to a care recipient including a copy of the signed Charter given to each care recipient.

Provider Timeframes

- **1 July 2019 onwards** – Requirements apply for all ***new*** care recipients across aged care programs



Provider Timeframes

- 1 July 2019 onwards – Requirements apply for all **new** care recipients across aged care programs
- **1 July 2019 – 30 September 2019** – Requirements must be completed for **existing** care recipients in **residential care** and short-term restorative care in a residential care setting



Provider Timeframes

- 1 July 2019 onwards – Requirements apply for all **new** care recipients across aged care programs
- 1 July 2019 – 30 September 2019 – Requirements must be completed for **existing** care recipients in **residential care** and short-term restorative care in a residential care setting
- **1 July 2019 – 31 December 2019** – Requirements must be completed for **existing** care recipients in **home care** and short-term restorative care in a home care setting



Transition to the new Charter

- Providers must comply with the current relevant charters until 30 June 2019, with the new *Charter of Aged Care Rights* starting from 1 July 2019.
- Service providers are encouraged to use the transition period to:
 - align their systems, policies and practices with the new Charter and the provider responsibilities including the requirements.
 - support staff to understand the new Charter.
 - support care recipients and their families, carers and representatives to understand what the changes mean for them.

Implications & Considerations



LASA
LEADING AGE SERVICES
AUSTRALIA
The voice of aged care



Polling Question



Do you believe you are adequately prepared to transition your aged care services to the new single Charter of Aged Care Rights, commencing 1 July 2019?

Contact Information



Older Persons Advocacy Network

Phone: 1 800 700 600

(8am - 8pm Monday to Friday)

www.opan.com.au



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madeline.walsh@hyneslegal.com.au

www.hyneslegal.com.au



LASA contacts: homecare@lasa.asn.au or residentialcare@lasa.asn.au

Thank you



Leading Age Services Australia (LASA)
is the national peak body representing all providers of age services
across residential care, home care and retirement living.