

Australian Nursing and Midwifery Federation

**SUBMISSION TO THE
COMMUNITY AFFAIRS
LEGISLATION COMMITTEE
CONSULTATION:
AGED CARE AMENDMENT
(IMPLEMENTING CARE
REFORM) BILL 2022**



Australian
Nursing &
Midwifery
Federation



Australian Nursing and Midwifery Federation / Submission to the Community Affairs Legislation
Committee Consultation: Aged Care Amendment (Implementing Care Reform) Bill 2022

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BACKGROUND

1. The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial, and political interests of more than 320,000 nurses, midwives, and carers across the country.
2. Our members work in the public and private health, aged care, and disability sectors across a wide variety of urban, rural, and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals, and achieve a healthy work/life balance.
3. Our strong and growing membership and integrated role as both a professional and industrial organisation provide us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.
4. Through our work with members, we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.

INTRODUCTION

5. With regard to the care of older people, ANMF members work across all settings in which aged care is delivered, including over 45,000 members who are currently employed directly in the aged care sector. Many more of our members are involved in the provision of health care for older persons who move across sectors (acute, residential, primary health care, in-home care), depending on their health needs. Being at the forefront of aged care and caring for older people around the clock, seven days per week in acute care, nursing homes, and out in the community, our members are optimally positioned to make clear recommendations to improve legislation that seeks to enhance the quality and safety of Australia's aged care system.
6. As such, the ANMF welcomes the Albanese Government's commitments to aged care reform and the opportunity to provide feedback to the Community Affairs Legislation Committee Consultation on the Aged Care Amendment (Implementing Care Reform) Bill 2022.
7. While the ANMF strongly supports the intentions proposed in this Bill, we note that many of the details around implementation of the Bill's intended reforms will be outlined in subordinate legislation. Without access to the subordinate legislation that will be introduced by the Government, the ANMF is limited in its ability to make full comment on the details of this Bill.
8. We also note that the subordinate legislation will be a disallowable instrument, which raises some concerns for ANMF members. We will therefore be seeking sufficient time and information for full consultation with both our members and the parliament on the draft subordinate legislation.



SCHEDULE 1 – REGISTERED NURSES

Outline

9. Schedule 1 to the Bill responds to Recommendation 86 of the Royal Commission Final Report and establishes a new responsibility in the Aged Care Act for approved providers of residential care and certain kinds of flexible care (as specified in the *Quality of Care Principles 2014* (Quality of Care Principles)) to ensure that a registered nurse (within the meaning of the *Health Insurance Act 1973*) is on site and on duty at all times (that is, 24 hours each day, 7 days each week) at each residential facility operated by them.
10. The new responsibility will complement existing approved provider responsibilities in the aged care legislation, including maintaining an adequate number of appropriately skilled staff to ensure the care needs of care recipients are met, and to provide such care and services as are specified in the Quality of Care Principles. Schedule 1 to the Bill is to commence on 1 April 2023.

ANMF Feedback

11. The ANMF welcomes the introduction of a requirement for 24 hour, on-site and on duty registered nurse presence in every Australian nursing home. Along with mandated care minutes, this requirement will strengthen overall staffing standards in nursing homes across the country and will significantly contribute to improved safety and quality in care for older Australians. The ANMF is therefore also pleased to see the Government has committed to the ensuring a minimum of 215 care minutes (including 44 registered nurse minutes) by October 2024 as recommended by the Royal Commission.
12. While supportive of the proposed Schedule, the ANMF notes the following important considerations:
 - a. The requirement for a registered nurse on site at every nursing home 24/7 sets a minimum standard not a benchmark for best practice. It will be important that providers which currently staff to ensure that there is more than one registered nurse on site and on duty to meet the specific needs of their residents are not incentivised or encouraged to reduce staffing levels and skills mix to a mandated minimum. There are many instances where one registered nurse alone would not be able to deliver safe, effective, dignified care to residents (e.g. facilities where there are many residents and a high resident to staff ratio, residents with relatively higher care needs, or in facilities with layouts that do not enable one registered nurse to provide an appropriate level of care to all residents).
 - b. As recommended by the Royal Commission, where a nursing home has a mix of residents assessed as having a higher than average proportion of high care needs, that nursing home must be required to staff to higher levels sufficient to ensure those needs are fully met.
 - c. As care needs are likely to increase over time and in line with the recommendation of the Royal Commission (86.8), the Australian Commission on Safety and Quality in Health and Aged Care should review and update the minimum staffing standard as appropriate. At a minimum, this should occur in line with significant revisions of the case mix classification for residential aged care facilities, or at least every three years. The mandated minimum standards for care minute targets for registered nurses, enrolled nurses, and personal care workers should be raised accordingly.



- d. It will not be sufficient for aged care providers to measure and report on the time/hours aged care workers are rostered to work, but rather the time that workers have used to undertake activities regarded as direct or indirect nursing care, including personal care.
13. The ANMF agrees with the assertions outlined in the RIS that key challenges for implementation of the 24/7 registered nurse and care minutes reform measures are likely to be the preparedness of service providers and their ability to meet the new requirements. On this matter, we make the following comments:
 - a. Some of these challenges are intrinsically linked to the widespread and chronic staffing shortages and degradation of the sector that has been permitted to occur over the last decade, and is now exacerbated by the COVID-19 pandemic.
 - b. The Government's commitment to fund the outcome of the Aged Care Work Value Case currently before the Fair Work Commission and to engage in proper workforce planning, and training will assist in addressing some of the challenges.
 - c. However, as providers work towards meeting the new requirements, some transition and exemption mechanisms may be required in specific circumstances, e.g. for those in rural and remote settings where recruitment and retention can be particularly difficult.
 14. While the ANMF notes that exemptions as above may be necessary, the following principles must be applied:
 - a. A registered nurse must not be substituted by another nursing or care-worker – the RN 24/7 requirement is intended for the entire sector, older Australians in rural and remote areas are therefore entitled to receive care at the same standard as the rest of the community. They should not have to accept a lower standard simply because of where they live. The Government and the sector must therefore ensure the implementation of targeted and specific strategies to ensure this standard can be met in every Australian nursing home.
 - b. Any exemption must be time limited, we recommend three months, and there must be limits in the number of consecutive exemptions that can be sought.
 - c. An exemption must come with the requirement that the provider develops a plan to manage the exemption and that this plan is made publicly available and reported on regularly with progress updates also made available to the public.
 15. There should also be further consideration of the roles of enrolled nurses and personal care workers in relation to changing requirements regarding 24/7 registered nurse presence and mandated minimum time standards for resident care. The ANMF raises a concern that without proper consideration of the vital roles and contributions of particularly enrolled nurses, there might be the potential for some approved providers to look to reducing the hours or employment of enrolled nurses to accommodate requirements to staff facilities with registered nurses as a way of cutting costs.
 16. Similarly, cost cutting measures might also be employed by some providers through reducing costs for housekeeping and food services which would negatively impact the health, safety, and wellbeing of vulnerable residents.



Additional comments:

17. The ANMF recommends that requirements for approved aged care providers to ensure compliance with mandated minimum care times should be facilitated through legislation, modern awards, and enterprise agreements including provisions that encompass clinical handovers and transparency of reporting for staff, residents and their families, and other stakeholders.
18. The ANMF also recommends that legislation should include provisions relating to aged care provider compliance including right of entry, improvement notice powers, and standing for both the aged care regulator and unions to enforce legislation.

SCHEDULE 2 - CAPPING HOME CARE CHARGES

Outline

19. Schedule 2 to the Bill introduces a new power into the Aged Care Act that will enable the Government to cap charges that approved providers of home care (home care providers) may charge care recipients. It also removes the home care providers' ability to charge exit amounts. These amendments will increase consumer transparency and will ensure more funds are available to meet the direct needs of care recipients.

ANMF Feedback

20. The general position of the ANMF is based on the principle that funds allocated to the provision of a particular service including care must be accountably and transparently utilised for its stated purpose. Therefore, any capping mechanism must not come at the cost of quality and quantity of services provided to meet clients' needs and preferences for care. Below we provide considerations around how these reforms could be implemented while protecting the viability of providers, particularly small and regional and remote providers, and with consideration of how best to ensure effective communication of these changes to care recipients.
21. The ANMF advises that it will be vital to ensure that the right items are identified as administration, management, care management and direct costs and that the differentiation between these categories is clear to providers and stakeholders including consumers. Without sufficient guidance and clarity, providers will find it challenging to determine what costs belong where and this will lead to inaccurate and unusable reporting and opaque oversight.
22. It will be important that costing caps be determined carefully to ensure that providers are able to deliver safe, high-quality, dignified care to recipients. If fee caps are too low, the delivery of care will be put at risk by providers seeking to reduce costs. This is because staff wages are a large component of provider costs and reducing staff time to deliver care or requiring staff to care for a large number of recipients may be implemented to save money.
23. As noted above, communicating usable and meaningful information to stakeholders including consumers is vital. Consultation with consumers and stakeholders should inform decisions regarding the content and nature of publicly reported information and should be underpinned by evidence-based methods and the expertise of communication science experts.
24. Due to the large number of home care providers, there will need to be sufficient funding provided to the regulator to effectively oversee the operation of any capping mechanism.



SCHEDULE 3 – TRANSPARENCY OF INFORMATION

Outline

25. Schedule 3 to the Bill responds to Recommendation 88 of the Royal Commission Final Report and introduces a mandatory requirement into the Aged Care Act for the Secretary of the Department of Health and Aged Care to publish information in relation to aged care services, including information about approved providers of those aged care services, in accordance with the *Information Principles 2014*. The Schedule will allow the information to be published. It is intended that this information will be published in a format that is clear and able to be understood by the public. It will increase transparency and accountability of the aged care sector and empower older Australians and their families to make more informed care decisions based on this information.

ANMF Feedback

26. The ANMF has long sought greater transparency and accountability measures across the aged care sector, so welcomes the requirements proposed in this Schedule. We note that the intention is to publish information in relation to aged care services in a format that is clear and able to be understood by the public. We agree with this intention and suggest that the information and data published must reflect the differing needs of those who use it, e.g. consumers, workers and regulators and must be accordingly structured and available.
27. The ANMF agrees with the proposal that the following information is included:
 - a. Financial information, including expenditure on care, nursing, food, maintenance, cleaning, administration and profits.
 - b. Levels of care time provided.
 - c. Details of key personnel.
 - d. Information about staffing of an aged care service.
28. While, as noted above, we look forward to the opportunity to provide feedback on the subordinate legislation, we recommend, at a minimum, the following inclusions:
 - a. The combined total number of nursing care, including personal care minutes provided by registered nurses, enrolled nurses, and personal care workers on each day during the previous roster period.
 - b. The combined total number of nursing care, including personal care minutes provided by registered nurses on each day during the previous roster period.
 - c. The total number of residents in the aged care facility on each day during the previous roster period.
 - d. The total average number of nursing care, including personal care minutes provided per resident for each day during the previous roster period.
 - e. The total average number of nursing care, including personal care minutes provided by registered nurses per resident for each day during the previous roster period.
 - f. The number of full-time, part-time and casual workers.
 - g. The number of workers from labour hire firms and agency staff.



29. A person who operates an aged care facility must ensure that the calculations referred to do not contain the names or personal details of employees working within the facility.
30. Further, an aged care facility must, as soon as practicably after the conclusion of each roster period, publish the calculations referred to above for a period of at least 12 months and retain records for a period of at least 6 years.
31. We also recommend that the providers report their payroll data alongside roster data to the regulator and the government so that compliance with staffing requirements can be accurately assessed and validated.