

Submission by the Australian Nursing and Midwifery Federation

Exposure Draft - Aged Care Bill 2023
(Health and Aged Care) -
A Bill for an Act about aged care, and for
related purposes

Submission to the Department of Health and Aged Care

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Executive Summary

The *Royal Commission into Aged Care Quality and Safety, Final Report: Care Dignity and Respect* uncovered an unacceptably high level of neglect and abuse in residential care, identifying systemic failures across the sector. The report found that Australia's aged care system is understaffed, the workforce is underpaid and undertrained, and that inadequate staffing levels, skills mix, and training were the principle causes of substandard care in the current system.

The Royal Commissioners clearly stated that while there are many ingredients that enable the provision of high quality and safe aged care, this will not be achieved without the sector having enough staff with the right skills and time to care.

'A highly skilled, well rewarded and valued aged care workforce is vital to the success of any future aged care system.'

The Australian Nursing and Midwifery Federation (ANMF) acknowledges the Albanese Government's commitment to reforming aged care through the implementation of the Royal Commission's recommendations and recognises the importance of a new Aged Care Act in achieving this reform and setting the foundation for fundamental change of the system to improve access, care delivery and outcomes for older Australians.

As such, the ANMF welcomes the opportunity to provide feedback on the introduction of the Exposure Draft 'Aged Care Bill 2023 (Health and Aged Care) - A Bill for an Act about aged care, and for related purposes' (the ED) but notes however, if implemented as currently drafted, the ED will not achieve the reforms recommended by the Royal Commission and so desperately needed across the sector.

The ED, in its current form, fails to address the Royal Commission's most critical advice – that unless workforce issues are addressed, reform will not be achieved. It fails to guarantee that the system will have enough workers with the right skills, training, and qualifications to provide consistently safe, high-quality care to meet the needs of Australia's ageing population. It also fails to recognise the importance of aged care workers in the operation of the new Act.

This submission outlines in detail the amendments required to the ED to address these critical gaps in the following sections but provides an initial summary to draw attention to those key matters below:

1. Importance of workers

To deliver high-quality, safe care to older people, workers must have their rights protected through this legislation. The intersection between workers and those in their care, and care delivery, cannot be viewed as separate and the new Act, as the foundation for the aged care system, must reflect this important connection. The ED fails to make explicit provision for the setting of a workforce Quality standard outlining the basic conditions that should be provided to ensure workers are supported to deliver high quality care and achieve the objects of the Act.

2. Care minutes

Mandated minimum levels of care, in the form of care minutes, RN 24/7 and staff-mix, must be a core, and explicit, aspect of the new act. As it currently stands, care minutes, and RN 24/7 requirements, while legislated, are not subject to strong regulatory monitoring and enforcement. The ANMF is pleased to see RN 24/7 requirements moved to the primary legislation, but we are

very disappointed that, unlike the RN 24/7 requirement, care minutes are entirely excluded from the primary legislation.

A new Act presents an opportunity to protect critical, safe staffing standards, an opportunity which is currently missed. Placing care minutes in the primary legislation will signal to both the regulator and the workforce the Government's commitment to these reforms and the centrality of the workforce to a safe and high-quality aged care system.

3. Enrolled nurses and care minutes

Enrolled nurses (ENs) are essential members of the aged care nursing team whose work contributes immensely to the care of many older people around Australia. However, this valuable resource is not only insufficiently recognised but, currently, is being actively eroded.

The significant recent reduction in EN care minutes is widespread ¹across the sector. Aged care providers must be held to account to ensure this reduction is stopped. The work of ENs is essential to providing safe and high-quality care for older Australians within residential care homes. Along with the current specified care minutes for RNs and ENs/care workers, the new Act must be adjusted to include specified mandated minutes for ENs.

4. Compliance, enforcement, sanctions and penalties

Current compliance enforcement mechanisms for regulating minimum care minutes or RN 24/7, and those proposed in the ED, by both the Government and the Aged Care Quality and Safety Commission (the Commission) are seriously inadequate. Current regulatory mechanisms are not fit for purpose, they do not impose specific obligations on providers to ensure transparency regarding care minute compliance and have minimal direct consequences for providers not meeting identified legislated minimum staffing and skills mix standards in nursing homes.

The new Act must address these concerns and require aged care providers to meet their care minutes and RN 24/7 requirements. Clear sanctions and penalties must be enforced by the Commission if these targets are not met. A weak enforcement mechanism will result in poor compliance and ultimately lead to poorer health outcomes for older people.

The ANMF proposes modelling the Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015. This established Act contains compliance and reporting powers and enforcement by way of dispute resolution. The Commission should also be empowered to enforce these requirements.

5. Transparent monitoring

Ongoing effective transparent monitoring is required to ensure that aged care providers are complying with their staffing and skill mix requirements. This should encompass clear mechanisms for reporting on compliance for both care minutes and RN 24/7 per resident AN-ACC profile. It should also mandate that providers actually report to, and engage with, their direct care workforce on minimum requirements for the nursing home, changes to care minutes, allocation of care minutes across the roster and the reporting of care minutes to the regulators. The reporting should also include an acquittal of the previous quarterly staffing and skill-mix requirements. These elements of transparent monitoring need to be outlined in both the primary legislation and the rules.

6. Worker voice

The 2018 Aged Care Workforce Taskforce led by Professor John Pollaers, for the then Commonwealth Minister for Aged Care, identified the lack of engagement of the aged care workforce as a serious problem. Engagement across aged care is much lower than in the health sector generally and the economy as a whole. Lack of worker engagement and voice means there is no pressure to correct staffing and other quality/safety issues within each facility.

Workers are uniquely placed to be empowered to advocate for quality care delivery, from planning to monitoring to delivering care but the ED in its current form fails to achieve this. It is critical that legislative and regulatory settings enable the voice of the worker/worker representative (worker voice) to be heard and contribute to the continuous improvement of the sector.

A worker voice embedded in legislation will enable workers to work with the Department of Health and Aged Care and the Commission to provide real-time monitoring and solutions to ensure quality care is delivered and taxpayers money is spent for its intended purpose.

The new Act must empower workers to advocate for the interests of direct care workers in planning, monitoring, and delivering quality care, including via mandated minimum care minutes and RN 24/7. There must be a mechanism requiring providers to actively consult with workers in an open and transparent manner and enable workers to raise any concerns when required without fear of retribution. Workers must also be assured that when they speak up, there will be clear pathways for resolving issues including the regulator and system governor responding with timely, visible, and meaningful compliance and enforcement action.

Further, the proposed Act should reinforce the rights frameworks in the Fair Work Act for both Right of Entry permit holders as well as union delegates to have access to rosters and care minute and RN 24/7 information and represent workers in discussions about staffing, care minute implementation and allocation of resources.

7. Principles of aged care reform

The ANMF recognises that there are many issues in the aged care sector which are interconnected and cannot be addressed in isolation. The new Act must therefore be underpinned by the following principles:

- a) As the biggest stakeholder in the provision of aged care delivery, workers must be seen as key stakeholders, and their needs must be strongly reflected within the new Act.
- b) The new Act must acknowledge workers as crucial to providing quality care, being strong advocates for older people and key to intelligence gathering regarding care delivery. It must make provisions to ensure that workers are both afforded opportunity and relevant protections to fulfil this role.
- c) Aged care is a context of health care. It must be recognised as such, and the legislation should align with other health care contexts such as the acute sector and primary care. Any lesser requirements applicable to aged care would be inconsistent with a human-rights-based Act.
- d) Like health care, aged care is a human right and a social good not solely a market transaction involving a “consumer” and provider of care. A market-based approach to care provision is inconsistent with a human rights framework.

- e) It is essential that aged care remains the responsibility of government and is sustainably funded in a transparent manner by government for all Australians to access with providers being held accountable by government regarding the spending of all funding they receive.
- f) The new Act is required to provide a legislative underpinning for the aged care sector that clearly recognises and requires the rights of older people to safely access, receive and evaluate quality care regardless of that person's socio-economic, cultural or linguistic background.
- g) The new Act must provide a continuous improvement approach focused on ensuring quality standards of care and preventing failures.
- h) Along with the rights of older people accessing aged care, workers employed in the sector need to be protected and their rights considered and recognised throughout the new Act.
- i) Older people who access Australian aged care services in the community or in nursing homes have the right to receive safe, high-quality, person-centred health care in place. This demands a suitably sized health care workforce with the skills mix, capability, and capacity to deliver this care to the highest standard.
- j) Aged care must have a strong and effective regulator, with the capacity, capability and regulatory powers to ensure that aged care providers are accountable for the services they provide.
- k) Regulatory measures, including the quality standards, must be clear, effective, measurable, and enforceable, and must include a separate workforce standard, which provides a baseline to exceed rather than being a ceiling of compliance.
- l) The aged care sector should be driven and underpinned by high-quality, accessible data, technology, research, and evaluation to promote and sustain evidence-based care delivery with an ethos of continuous improvement.
- m) The regulation of aged care must be balanced and fair for workers. The new Act must promote workforce development, rather than penalties and additional responsibilities on individuals with limited to no control over the work and care environment.

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Introduction

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 326,000 nurses, midwives and care workers across the country. Approximately 45,000 ANMF members work in the aged care sector, including registered nurses, enrolled nurses, assistants in nursing and personal care workers.
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. The ANMF work with our members 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 trade union and professional organisation provides 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. Through our work with members, we aim to strengthen the contribution of nursing and midwifery to improving the health of our national and global communities.
4. The introduction of the Exposure Draft 'Aged Care Bill 2023 (Health and Aged Care) - A Bill for an Act about aged care, and for related purposes' (the ED) has its genesis in the recommendations of the Royal Commission into Aged Care Quality and Safety. The ANMF played an active role in making submissions to the Royal Commission based on its long-held position that reform of the aged care sector is fundamental to ensuring the delivery of safe and quality care to all older people who need support. The ANMF acknowledges that the ED gives voice to many but not all the important recommendations made by the Royal Commission.
5. We welcome the opportunity to provide feedback to the Department of Health and Aged Care on the new Act. The issues and recommendations outlined in this submission reflect those made by the ANMF to previous years' consultations on aged care reform and the new Aged Care Act and regulatory framework.

The importance of workers in the operation of the new Act

6. Underpinning all commentary and recommendations in this submission is the ANMF position that the new Act must enable the aged care system to have enough workers with the right skills, training and qualifications to provide consistently safe, high-quality care to meet the independently assessed needs of our ageing population and in the face of increasing workforce pressures on Australia's health and care systems.
7. To deliver high-quality, safe care to older people, workers must also have their rights protected through this legislation. The intersection between workers and those in their care, and care delivery, cannot be viewed as separate and the new Act, as the foundation for the aged care system, must reflect this important connection.
8. The ANMF is concerned that the Act does not recognise the invaluable first-hand experiences and knowledge of direct care workers. For example, there is no reference to direct care

minutes (however titled) or how these can be monitored and enforced in real time and safe staffing practices, or the future introduction of a positive registration scheme for care workers.

9. We are concerned that the regulatory mechanisms attached to workforce clauses are either unknown (to be prescribed in the Rules) or disproportionately balanced against the workforce, such as assigning significant responsibilities and penalties to individual registered nurses (RNs).
10. The new Act also fails to make explicit provision for the setting of a workforce Quality Standard outlining the basic conditions that should be provided, to enable workers to deliver high-quality care and achieve the objectives of the Act.

Worker voice

11. The Act does not contain sufficient provisions to ensure workers are empowered to proactively contribute to continuously improving workplaces and care. It is critical that legislative and regulatory settings enable the voice of the worker/worker representative (worker voice) to be heard. Workers need to be empowered to advocate for the interests of direct care workers in planning, monitoring and delivering quality care, including through a recognised role which affords workers the ability and associated protections to voice concerns directly to the regulator where non-compliance with care minutes and RN 24/7 obligations is observed.
12. Embedding a worker's voice in the regulatory and compliance system for aged care will complement the external regulatory functions of the Commission and the Department of Health and Aged Care and enhance the safety of older Australians.
13. The Act must include a mechanism, which requires providers to actively consult with workers in an open and transparent manner and enable workers to raise any concerns when required without fear of retribution. Workers must also be assured that when they speak up, there will be clear pathways for resolving issues including the regulator and system governor responding with timely, visible and meaningful compliance and enforcement action.
14. The new Act should also reinforce the rights frameworks in the Fair Work Act for both Right of Entry permit holders as well as union delegates to have access to rosters and care minutes and RN 24/7 information and represent workers in discussions about staffing, care minute implementation and allocation of resources.
15. The ANMF proposes modelling the Worker Voice mechanism on the Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015. This established Act contains compliance and reporting powers and enforcement by way of dispute resolution.

Pay and conditions

16. It is also important that in conjunction with legislative and regulatory change, policy settings continue to address education and training, supported pathways into employment for new graduates, career progression, appropriately valued remuneration, secure employment and decent working conditions. These long-standing attraction and retention issues in aged care, and intersecting health sectors and disability, must be addressed in concert with the wider aged care reforms.

Overview

17. Our submission firstly sets out concerns related to timing and implementation of the new Act, and areas that the ANMF consider have been overlooked in the drafting of the ED, particularly as they relate to other components of reform that have not yet concluded.
18. Following these comments, our submission is structured in accordance with the Chapters of the draft Act. In addition to outlining the key issues and concerns with the current draft for each Chapter, we also provide, where possible, specific drafting recommendations to address our concerns within a table for each relevant chapter.

Timeframes and implementation

19. The ANMF supports the proposed parliamentary timeline to see the new Act take effect on 1 July 2024 but does express concern regarding the incompleteness of the exposure draft and the absence of the rules for scrutiny and feedback. The ANMF supported the recommendation of the Royal Commission into Aged Care Quality and Safety (the Royal Commission) to have a new, rights-based Act in force by 1 July 2023. The Act is fundamental to the comprehensive reform of the aged care system that the Government is committed to, and which is already underway.
20. For the sector, including the workforce, to be prepared for successful implementation of the Act, we recommend a phased approach and transition periods be put in place for sections that will require more time to implement. For example, new national worker screening requirements depend upon state and territory agreement and legislation to be operational. Unless the requisite jurisdictional infrastructure is in place and given the disparate approach to screening that currently exists across aged care and the National Disability Insurance Scheme (NDIS) screening (to which aged care is supposed to align), it will not be possible for workers or providers to meet the requirements set out in sections 91 and 166 of the Act on 1 July 2024.
21. It is important stakeholders are given sufficient time to understand their new responsibilities and requirements under the Act, and to provide them enough time and support, such as training and knowledge on transitional arrangements, to prevent any disruptions to the workforce and continuity of care.

Registration scheme for personal care workers

22. The ANMF takes this opportunity to again express our disappointment and concern highlight the issues with the Government's approach to implementation of Recommendation 77 of the Royal Commission. This recommendation called for a registration scheme for personal care workers with five elements: a mandatory minimum qualification of a Certificate III; ongoing training requirements; minimum levels of English language proficiency; criminal history screening requirements; a code of conduct and power for a registering body to investigate complaints into breaches of the code of conduct and take appropriate disciplinary action. Together, these five elements create 'positive' registration that facilitates workforce development, attraction, retention, and quality and safety assurance. Positive registration of this nature is essential to ensuring that the Objects of the Act are met. The ANMF reiterates its support for a positive personal care worker registration scheme to be administered by the Australian Health Practitioner Regulation Agency (Ahpra).²

23. Rather than implement Recommendation 77 in full, the Government has instead chosen to break up the five elements and proceed with the Code of Conduct (**the Code**) and worker screening first. It remains unclear to the ANMF when the other elements will be implemented. We are concerned that the Act has no reference to a positive registration scheme and is inconsistent in its referral to qualifications for aged care workers. Without a reference in primary legislation, the ANMF is concerned the current piecemeal and punitive approach to worker regulation will be entrenched and not fit for purpose. The ANMF's concerns regarding the Code of Conduct will be restated and detailed later in this submission.
24. The ANMF is concerned that Chapter 4 on funding and means-testing is missing in its entirety (discussed further below), and there are no provisions drafted under Place Allocation (in Chapter 2) or Critical Failure Powers (in Chapter 6)), in addition to a complete absence of the rules, which the ANMF believes should have also been available for public scrutiny. The first opportunity stakeholders will have to review and provide feedback on these sections will likely be in a Senate Inquiry process. There are significant issues with relying on this process as a means for consultation. Senate Inquiries are often held in a truncated period and as they must cover a dense amount of legislation and potentially call many witnesses, it will be difficult to ensure all elements of the Act are covered in this process.

The regulatory framework

25. Although we understand that the primary legislation needed to be drafted first, we are concerned that there has been a lengthy period of consultation and yet the new regulatory framework and single set of rules has not yet been put out for consultation. As the rules and regulations are central to the operationalisation of the Act and there are a significant number of sections in the Act that defer to prescription in the Rules, the rules should be made available for stakeholders to review in conjunction with the primary legislation and before both are tabled in Parliament.
26. The ANMF understands that having flexibility in the regulations will be important in some instances. However, as subordinate legislation can be disallowed and amended without full parliamentary and public scrutiny, the ANMF is concerned by the amount of detail to be prescribed in the rules.
27. The ANMF also reiterates that the new act, the rules, and any subordinate legislation and regulation, must direct and inform the regulatory stance of the Aged Care Quality and Safety Commission (ACQSC) and the Department of Health and Aged Care as the system manager. The Royal Commission identified that the regulator and department were far less robust in their regulatory remit than was necessary. The ANMF is concerned that this timid approach continues to persist and must cease, otherwise the problems identified by the RC will simply reoccur in time.

Care minutes

28. Given the endemically low levels of care identified by the Royal Commission in to Aged Care, the ANMF believes that mandated minimum levels of care, in the form of care minutes, RN 24/7 and staff-mix, must be a core, and explicit, aspect of the new act.
29. As it currently stands, care minutes, and RN 24/7, while legislative instruments, are not subject to strong regulation and enforcement activity by the Commissioner. The ANMF is pleased to see RN 24/7 requirements moved to the primary legislation, but we are very disappointed that, unlike the RN 24/7 requirement, care minutes are entirely excluded from the primary legislation.

30. A new Act presents an opportunity to protect critical, safe staffing standards and it is unacceptable to the ANMF that this has been applied unevenly to staffing standards. Placing care minutes in the primary legislation will also signal to both the regulator and the workforce the Government's commitment to these reforms and the centrality of the workforce to a safe and high-quality aged care system.

Compliance Enforcement, Sanctions and Penalties

31. The ANMF has serious concerns that the current compliance enforcement mechanisms for regulating minimum care minutes or RN 24/7 from both the Government and the Commission) are inadequate. The ANMF acknowledges that there are workforce challenges in some areas across the country, however, the current regulatory mechanisms are not fit for purpose and there are minimal direct consequences for providers not meeting the identified required minimum staffing and skills mix within aged care facilities.
32. The new Act must address these concerns and require aged care providers to meet their care minutes and RN 24/7 requirements. Clear sanctions and penalties must be enforced by the Commission if these targets are not met. A weak enforcement mechanism will result in poor compliance and ultimately lead to poorer health outcomes for older people.

Transparent Monitoring

33. Ongoing effective transparent monitoring is required to ensure that aged care providers are complying with their staffing and skill mix requirements. Compliance reporting needs to be simple and not depend on self-reporting by providers. Workers should be given access to real-time and transparent reporting of the care time in their nursing home.
34. This should encompass clear mechanisms for reporting on compliance for both care minutes and RN 24/7 per resident AN-ACC profile. It should also mandate that providers actually report to, and engage with, their direct care workforce on minimum requirements for the nursing home, changes to care minutes, allocation of care minutes across the roster and the reporting of care minutes to the regulators. The reporting should also include an acquittal of the previous quarterly staffing and skill-mix requirements. These elements of transparent monitoring need to be outlined in both the primary legislation and the rules.

Enrolled Nurses

35. Along with the inclusion of care minutes in the primary legislation, the ANMF recommends that there be clear specification of care minute requirements for EN's, recognising their invaluable contribution to high-quality and safe care delivery. As the Royal Commission recommended, aged care must be delivered by the right number of staff, with the mix of skills.
36. The significant recent reduction in EN care minutes is widespread³ within the sector. Aged care providers must be held to account to ensure this reduction is stopped. The work of ENs is essential to providing safe and high-quality care for older Australians within residential care homes. Along with the current specified care minutes for RN's and EN's/care workers, the new Act must be adjusted to include specified mandated minutes for EN's.

Chapter 1: Objects of the Act

37. Overall, the new Objects of the Act, Statement of Rights and Statement of Principles go some way to addressing the significant issues that nearly-thirty years of a provider and market-driven Act have created.
38. The ANMF supports the introduction of a rights-based Act and is pleased to see Chapter 1 reset the priorities and principles of the aged care legislative framework. We are particularly pleased by the inclusion of an Object of the Act specifically identifying a well-trained and skilled workforce as key to the delivery of high-quality and safe care and ultimately, to ensuring the rights of the older person are upheld. Similarly, we are encouraged by the inclusion of workforce in the Statement of Rights, noting that we have suggested amendments to ensure consistency and protect the future development of the workforce.
39. The ANMF notes that the objects of the Act are intended to give effect to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities but fail to mention the United Nations Principles for Older Persons or the United Nations Declaration on the Rights of Indigenous Peoples. We question these omissions, given the Act is specifically designed for all older people. We recommend the Objects be amended to also include the relevant United Nations Principles and the United Nations Declaration on the Rights of Indigenous Peoples.

Definitions and key concepts

40. The ANMF stresses the importance of key concepts and definitions being carefully worded and including consistent reference to health and workforce matters, for example the definition of responsible person and complex of buildings. A focus must also be placed on ensuring definitions and key concepts used throughout the Act are consistent, given that many components of the Act are contingent upon these terms.

Embedding qualifications and training

41. The ANMF notes that training and qualifications are inconsistently referred to throughout the Act, with qualifications often being omitted. Importantly, a positive worker registration scheme will introduce mandatory minimum qualifications and ongoing training requirements. It is critical the primary Act sets up the future introduction of such a positive registration scheme.

Defining care

Care needs

42. The ANMF notes that definitions such as 'care needs' do not appear to appropriately consider that aged care is a subset of healthcare. Here, and indeed throughout, there is a lack of consideration for health care and the clinical needs of those who enter aged care. This reality must be recognised as such and aligned with other health care contexts including the acute and primary health care sectors rather than the disability sector. Any lesser requirements applicable to aged care would be inconsistent with a human-rights based Act.

Clinical care

43. The ANMF suggests that the term 'clinical care' be defined in the Act. This is particularly important where clinical care is referenced in the context of how providers are to meet quality standards. Additionally, as aged care occurs in the health context, consideration must be given to the standards and practices of the Australian Commission on Safety and Quality in Health Care, regarding how safe clinical care should be delivered.

Hospice and palliative care

44. Hospice and palliative care have not been defined in the Act. There is a need to provide a definition specific to its use in this legislation as many residential care homes can be defined as primarily providing palliative care. The ANMF recommends using the definition from Palliative Care Australia: "Palliative care is person and family-centred care provided for a person with an active, progressive, advanced disease, who has little or no prospect of cure and who is expected to die, and for whom the primary goal is to optimise the quality of life".⁴

Residential care home

45. The ANMF is concerned that the definition of residential care home at section 9(3)(c) includes 'a complex of buildings.' Currently, an approved provider can apply to merge two neighbouring residential aged care facilities. The ANMF is aware of instances where this has been used to circumvent the need for a RN in both buildings. This has led to a significant reduction in the skill mix and compromises the RN's ability to safely oversee care across both facilities, which although co-located, effectively operated previously as two services not within the same building. It is essential that any building design and configuration is not detrimental to the delivery of safe care. It is unclear as to whether the term 'complex of buildings' relates to buildings on the same site, or an industrial scale complex. Clarity is essential not only for those licencing new build facilities but also those seeking to use this ambiguity to merge multiple services as a cost saving measure. Clarification on these needs to be provided within the ED. The ANMF recommends that a definition of 'complex of buildings' be included in the ED which excludes two or more RACFs being combined or a provision be added in the legislation for any merger of a nursing home to not result in reduction of the staffing profile in each.

Registered nurses as responsible persons

46. The ANMF does not support the definition and responsibilities imposed upon registered nurses as currently drafted under *Section 11 Responsible Person*. An individual worker, unlike a provider, does not have the comparable resources, control and governance structures to a corporate entity or key personnel as currently defined by the *Aged Care Quality and Safety Commission Act 2018*⁵. For example, an individual registered nurse on shift is unlikely to have influence over the systematic conduct and structure of the provider, such as the rostering and workforce practices which can directly influence clinical care and governance. A Director of Nursing who acts as Key Personnel and is involved in ongoing governance and executive decisions is, on the other hand is often, exerting a high degree of influence on the provider's conduct and therefore can be held to a higher level of accountability.
47. The ANMF is concerned about a broad application of section 11(1)(c) capturing registered nurses that do not exert control or influence over a provider's operations. We are concerned that a provider will have an ability to shift its responsibilities and liabilities to the individual worker. Our concerns are amplified because being defined as a 'responsible person' carries with it exposure to criminal prosecution and liability for significant civil penalties.

48. The amendment we have made to section 11 in the table below is intended that a registered nurse would only be a 'responsible person' if they have responsibility for overall management of the nursing services delivered by a provider or at a residential care home, or they are responsible for the day-to-day operations of the provider, but not if they only have responsibility for day-to-day management of nursing services (e.g. they are the nurse-in-charge on duty).
49. Section 110(3)(b)(c), outlines that the Commission is notified by the registered provider in case of a change to the suitability or circumstances of a Responsible Person. Given the nature of high turnover of the aged care workforce, in particular those in higher management positions, compliance with this requirement may be challenging and pose an increased risk to a registered nurse in the event of a perceived failure to promptly notify the provider of a change to responsible parties.

Quality standards

50. There must be a plan for the ongoing development of the Aged Care Quality Standards (**the Standards**) to ensure they remain fit for purpose. This plan should include an independent review every three years, including consultation with key stakeholders including the workforce, to analyse the Standard's effectiveness for improving the quality and safety of care across the aged care sector. Further, the Australian Commission on Safety and Quality in Health Care must be identified as the experts in evidence-based healthcare delivery and their expertise must be drawn upon with the development and ongoing management of health care within standard development and regulation for aged care. Regulatory measures, including quality standards, must be clear, effective, measurable, and enforceable, and must include a separate workforce standard.

Workforce standard

51. A workforce standard needs to be included under section 14(2) outlining the matters that should be prescribed in the Standards. The Workforce Standard will provide a baseline to exceed rather than being a ceiling of compliance (Appendix A).
52. The necessity for a prescribed workforce standard is also essential in the ED including at section 68 where the Commissioner will consider a provider's compliance with the Aged Care Quality Standards for provider registration. This standard will enable the Commission to transparently give specific consideration to a provider's workforce practices.

Significant failures and systematic patterns of conduct

53. The ANMF supports the introduction of the key concepts of significant failure and systematic pattern of conduct at section 18. Regulation of the aged care system has failed to examine the context and patterns of practice by providers that lead to substandard care and neglect. It is important to outline the threshold and criteria for a significant failure or systematic pattern of conduct to enable a clear understanding for both providers, workers and the regulator in particular.
54. The ANMF recommends that it be clearly stipulated that breaches of workforce requirements such as RN 24/7 and care minutes constitute a significant failure and will be counted towards a systematic pattern of conduct. This will then ensure these breaches are considered towards a *serious* failure, as set out in the definitions, by a provider to comply with its duties at section 120.

55. The ANMF considers any non-compliance with RN 24/7 or care minute requirements to be a significant failure and most-often part of a systematic pattern. A breach means that the number of staff and skills mix a provider is rostering is not safe and indicates the provider is failing to invest in workforce attraction and retention. Repeated failures to meet safe staffing standards are particularly egregious.

Statement of rights and principles

56. While the Statement of Rights and Principles will support a higher quality standard of aged care than what is currently in place, the ANMF is concerned with the lack of enforceability of such statements. For example, in section 21(2) there is ambiguity as to what may be considered incompatible with that set out in section 20. Unintended breaches may be deemed ‘necessary’ to the provision of care but otherwise be in conflict with the Statement of Rights. There is a need to establish clear criteria so that actions that are deemed ‘necessary’ may be judged appropriately, and channels established for those whose rights are breached for ‘necessary’ reasons, to appeal to the Complaints Commissioner.

57. Further, as the Statement of Rights are not enforceable by proceedings in a court or tribunal these pathways must include appropriate escalation procedures for any serious breach. Without adequate redress mechanisms when rights are breached, the concept of rights-based approach risks being seen as tokenistic or offer false hope to older Australians and their significant others that their interests are protected. Such mechanisms must be timely and without significant cost and resources to assist older Australians and their representatives.

58. The ANMF also notes that the Department of Health and Aged Care has decided not to include a Statement of Rights for workers. A Statement of Rights for workers must be included as it acknowledges the key role they play in providing safe, high-quality care. A statement of workers’ rights would also ensure workers are empowered to exercise their rights, are afforded the opportunity to do so, and have the relevant protections to carry out their work safely. Further detailed proposed statement of rights for workers is outlined below in the table regarding sections 20 and 21.

59. With regard to the Statement of Principles, the ANMF is supportive except for recommending two amendments to section 22. Firstly, it is important that for consistency the workforce is referred to as being diverse, trained, *qualified* and skilled, and that the empowerment and rights of workers is referenced.

Health care

60. As noted above, the ANMF considers aged care to occur in the context of health care and not just the care and support economy. As such, it is appropriate that the Act reference the health system and appropriate opportunities for regulatory alignment.

Suggested amendments to Introduction:

Introduction	Page	Section
Part 1 - Preliminary	2	5 Objects of the Act After (a) insert new subsection (b) in conjunction with other laws, give effect to Australia’s obligations under the United Nations Principles for Older Persons.

	3	<p>5 Objects of this Act</p> <p>Amend subsection (g) provide and ensure for sustainable funding arrangements for the delivery of funded aged care services by sufficient numbers of diverse, well-trained, qualified and skilled diverse, trained and appropriately skilled workforce; and</p> <p>Add new subsection (h) provide and ensure the delivery of aged care services in line with an individual's assessed needs, as and when they may change, by a workforce that meets any registered nurse and care minute requirement and skill mix (however titled) as prescribed by the rules.</p>
	5	<p>5 Objectives of this Act</p> <p>(e) provide a robust and risk-based transparent regulatory framework for the delivery of funded aged care services, including accessible complaint mechanisms for individuals accessing those services, that will promote public confidence and trust in the Commonwealth aged care system; and</p>
Part 2 Definitions and Key concepts	6	<p>7 Definitions</p> <p>Amend the definition of 'aged care worker screening check' means an assessment, under an aged care worker screening law, of whether a person who works, or seeks to work, with individuals accessing funded aged care services poses a risk to such individuals and possesses any qualification and training requirements as prescribed by the rules and required to carry out their duties as an aged care worker.'</p>
	8	<p>7 Definitions</p> <p>Insert a new definition of care minutes: as defined: Care minutes can be defined as direct care activities provided by specified workers including registered nurses, enrolled nurses and care workers (PCWs/AINs). Direct care activities may include both direct in person assistance and those that are not face to face. Only direct care activities provided by a specified care worker on-site can count towards a service's care minutes targets.</p>
	8	<p>7 Definitions</p> <p>Amend the definition of 'care needs' at subsection (b) the individual requires help from another person, or the assistance of one or more aids, to maintain their health, physical, mental or social capacity to function independently.</p>
		<p>7 Definitions</p> <p>Insert a new definition of Clinical Care: Clinical care in the aged care context is day-to-day person-centred care delivered by nurses, both Registered Nurses (RNs) and Enrolled Nurses (ENs), alongside medical practitioners and allied health practitioners. This care includes direct and comprehensive nursing care that falls within the nurse's scope of practice, providing expert clinical advice relating to complex care issues, and coordinating services, including those of other disciplines or agencies, to individual patients, residents, or clients. It should be planned and delivered in partnership with the older person, involving family, carers and others in line with the older person's needs and preferences. Delivering safe, quality clinical care requires a multidisciplinary approach with a skilled workforce with clear accountabilities that are supported to deliver contemporary, evidence-based care. Allied health professionals have distinct roles in reablement and maintenance of an older person's functional capabilities.</p>
	12	<p>7 Definitions</p> <p>Amend the definition of nursing: 'nursing' means the provision of services by or under the supervision of a registered nurse acting within the registered or enrolled nurse's scope of practice.</p>
	12	<p>7 Definitions</p> <p>Insert definition of 'nursing care' (suggested use derived from Health Insurance Act 1973: Nursing care means nursing care given by or under the supervision of a registered nurse. As in the Health Insurance Act 1973</p>
	17	<p>9 Where funded aged care services are delivered</p> <p>Insert definition of 'palliative care':</p>

		<p>“Palliative care is person and family-centred care provided for a person with an active, progressive, advanced disease, who has little or no prospect of cure and who is expected to die, and for whom the primary goal is to optimise the quality of life” as outlined above.</p>
	19	<p>10 Who delivers funded aged care services <i>Aged care workers</i> (4) An aged care worker of a registered provider means: (a) an individual employed or otherwise engaged (including as a volunteer) by the registered provider; or (b) an individual who: (i) is employed or otherwise engaged (including as a volunteer) by an associated provider of the registered provider.</p>
	20	<p>11 Meaning of responsible person Remove (1)(c)(ii) (1) Each of the following is a responsible person of a registered provider: (c) if the registered provider delivers, or proposes to deliver, a funded aged care service: (i) any person who has responsibility for overall management of the nursing services delivered by the registered provider, or overall management of the nursing services delivered at an approved residential care home of the registered provider, and who is a registered nurse; and (ii) any person who is responsible for the day-to-day operations of the registered provider.</p> <p>Insert new subsection (3)(d) as follows: “Despite paragraph (1)(c), a registered nurse (including a registered nurse who is on site and on duty in accordance with section 116(1)) who only has responsibility for day-to-day management of the nursing services delivered by the registered provider, or day-to-day management of the nursing services delivered at an approved residential care home of the registered provider, is not a responsible person of the registered provider.”</p>
	23	<p>14 Aged Care Quality Standards Insert new subsection at (2) Without limiting subsection (1), the rules may prescribe standards about the following matters: ‘how registered providers must ensure care is delivered by a diverse, well-trained, qualified, and skilled workforce, including how providers must meet any registered nurse and care minute (however titled) requirements prescribed by the rules’</p>
	24	<p>15 Meaning of reportable incident Insert (i) Failures in the provision of staffing leading to an episode of missed care of an individual Insert definition of missed care within the Act as ‘any aspect of a person’s care that is omitted or delayed’ Insert new subsection ‘failure to ensure the workforce has requisite training and qualifications to facilitate safe clinical care’</p>
	25	<p>17 Restrictive practice requirements (b) require that, to the extent possible, alternative strategies, including consideration of additional staffing resources, are used before a restrictive practice in relation to the individual is used.</p>
		<p>19 Meaning of high-quality care Amend (c)(xi) worker retention, sufficient number and skills mix, qualifications, and training to facilitate the delivery of the service by well-skilled and empowered aged care workers who are able to develop and maintain a relationship with the individual.</p>
Part 3 – Aged care rights and principles	30	<p>20 Statement of Rights Amend (3)(d)(iii) ‘by <i>prescribed numbers of aged care workers</i> of registered providers who have appropriate qualifications, training, skills and experience’</p>
		<p>20 Statement of Rights</p>

		<p>Add new subsection 13 <i>'Aged care worker rights'</i></p> <p>Aged care workers are valued and respected</p> <p>(a) An aged care worker has a right to be valued and respected in the delivery of funded aged care services.</p> <p>(b) An aged care worker has a right to be supported to deliver quality and safe funded aged care services with an appropriately sized and skilled workforce, and through access to relevant training.</p> <p>(13) An aged care worker has a right to:</p> <p>(a) advocate for an individual who is accessing funded aged care services and for the rights specified in this section;</p> <p>(b) participate in governance and accountability mechanisms related to the delivery of funded aged care services;</p> <p>(c) be treated with dignity and respect in their work in the delivery of funded aged care services;</p> <p>(d) work in optimal conditions of service delivery and employment including the right to ongoing support, supervision, training and qualifications relevant to their work in aged care;</p> <p>(e) be shown how to work safely and to say no to unsafe work;</p> <p>(f) work in diversely skilled teams that meet any prescribed requirements, such as registered nurse and care minute requirements;</p> <p>(g) have their professional qualifications and capabilities acknowledged and to be delegated care that is within their scope of practice;</p> <p>(h) have their contribution to the assessment, support, care and treatment of individuals accessing aged care services recognised;</p> <p>(i) have information relevant to their work in aged care supplied to them in a way that is timely, accessible and easily understood, including in a range of formats and languages other than English;</p> <p>(j) be made aware of their workplace rights as set out in the Fair Work Act 2009 (Cth) or any other relevant industrial instrument, in a way that is timely, accessible and easily understood, including in a range of formats and languages other than English;</p> <p>(k) be consulted on their workplace conditions, how these impact service delivery, and any changes that may occur to the workplace and service delivery environment;</p> <p>(l) provide feedback, suggest measures and take actions that support innovation, continuous improvement and the delivery of safe and high-quality care;</p> <p>(m) access mechanisms of complaint and redress, with access to procedural fairness and the whistleblower protections set out at section 365, if necessary, if they experience or witness unsafe practices or serious incidents in their work; and</p> <p>(n) have timely access to information that is relevant to the rights specified in this subsection.</p>
	32	<p>21 Effect of Statement of Rights</p> <p>Add new subsection (2) 'An aged care worker is entitled to the rights specified in section 20(13) when working in the delivery of funded aged care services.'</p>
	34	<p>22 Statement of Principles</p> <p>Amend (6)(a) 'supports ensures funded aged care services are being delivered by a sufficient number of diverse, well-trained, qualified and appropriately skilled workforce who are valued and respected; and</p> <p>b) supports aged care workers of registered providers being empowered, including through timely access to relevant information, to:</p> <p>(i) provide feedback, suggest measures and take actions that support innovation, continuous improvement and the delivery of high-quality care; and</p> <p>(ii) participate in governance and accountability mechanisms related to the delivery of funded aged care services</p>

	36	22 Statement of Principles Add new subsections after 13(e) 'strives for regulatory alignment with the health system (where appropriate);
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Chapter 2—Entry to the Commonwealth aged care system

Aboriginal and Torres Strait Islander

61. The ANMF notes that the proposed access to funded aged care services for an Aboriginal and Torres Strait Islander person is 50 or over in the ED. Due to the significant health inequities experienced by Aboriginal and Torres Strait Islander peoples and the importance of closing the health gap, the ANMF recommends that this age limit for access be reduced to 45 years old.

Timely and transparent assessments

62. Entering the aged care system is a daunting time for many and often co-occurs with significant other changes and events, often unplanned, in a person's life. The assessment processes are duplicative, often subject to lengthy delays. It is the older person who bears the brunt of these issues. Timely assessment and decisions are crucial to mitigating the stressors of accessing formal aged care.
63. The ANMF is concerned that the periods in which the System Governor must make eligibility and access decisions are prescribed in the Rules. Section 39 empowers the System Governor to determine if a person is eligible for a care needs assessment. This is a significant decision yet at section 39(2), the System Governor must only make the decision 'within the period prescribed by the rules.' The ambiguity leaves no room to review the efficacy of decision-making timeframes and processes. Delayed or ill-informed decisions run the risk of exacerbating a person's condition(s), health and wellbeing, and are more likely to require additional assessment and changes to services and funding approved.

Appropriately qualified and multidisciplinary assessment teams

64. The ANMF believes that aged care assessment teams must be publicly funded and operated, including by Local Health Districts, and genuinely multidisciplinary. This means including nursing *and* allied health professionals (not one or the other). The assessment workforce must also be involved in any subsequent decision-making and review processes undertaken by the System Governor. We acknowledge that an 'approved needs assessor' is defined in Chapter 1 as having 'completed training of a kind specified by the System Governor; and meets any other training or qualification requirements prescribed by the rules'. We are concerned by the lack of detail as to what the requisite training and qualifications will be for assessors, and that the System Governor alone is not well-placed to determine appropriate clinical skills and training for assessors.
65. It is concerning to the ANMF that Part 4 - Prioritisation and Part 5 - Place Allocation have not been drafted and are not available for review and consultation. It is essential that the ANMF has time to review and provide feedback on these Parts before the Bill is introduced to Parliament.

Suggested amendments to Chapter Two:

Entry to the Commonwealth aged care system	Page	Section
Part 2 - Eligibility for entry	51	Section 39 System Governor must decide whether to make determination Amend subsection (2) 'The determination must be made within 7 days of the application being made'
	53	Section 44 Undertaking aged care needs assessments Add new subsection (2) 'The aged care needs assessment must be carried out by: (a) a suitability qualified and trained assessment workforce, including assessors with multidisciplinary and clinical expertise including nursing and allied health; and (b) approved needs assessors who are employees of the Commonwealth or relevant state/territory agency.'

Chapter 3 - Registered providers, aged care workers and aged care digital platform operators

Support at home and registration categories

66. The ANMF wishes to put on the record our concerns that stakeholders are without pertinent information on the future of home and community care, to be introduced as Support at Home on 1 July 2025, when assessing the ED. We are particularly concerned that information on the registration categories for providers (section 66 and throughout) is not available for consultation. The delivery and regulation of Support at Home will rely heavily on this section of the Act, as well as being closely interconnected with Chapters 2 and 4.
67. The ANMF has previously shared its concerns on the proposal to categorise domestic assistance in the lowest-level provider registration category, meaning these providers would be subject to a less rigorous registration process. Older persons would not have the same level of quality assurance, despite a person’s home being a particularly intimate and high-risk setting. Workers providing domestic assistance in a lesser-regulated environment are potentially not eligible for the same level of training, qualifications and support as those working for providers in higher registration categories. Despite the obvious risks this poses to client and worker safety, it also has the effect of suppressing wages and career progression by giving providers an opportunity to classify their services, and therefore the workforce, in lower-level categories.

Provider registration

68. The ANMF is largely supportive of the new registration process and obligations for providers. We support the requirements set out in section 68 however, we note there is no registration requirement for a provider to demonstrate compliance with workforce requirements, nor is there a reference to a provider’s previous compliance history under the existing Act. The Commissioner must not register an entity unless they are satisfied the provider is not in breach of 24/7 RN or care minute requirements, and the Commissioner is also satisfied the provider was not subject to sanctions or other adverse regulation outcomes if they were an ‘approved provider’ under the current system.

Provider audit

69. The ANMF recommends that the Commissioner undertake a planned program of random compliance auditing of registered providers (across all categories) in addition to any self-reporting that providers undertake as part of the registration process.
70. Continuous improvement should be a key factor in the random audits of all aged care providers. The Board of each provider should have a workforce plan which matches the clinical profile of residents (as reflected in AN-ACC classifications and the required minimum care minutes). Continuous improvement should be demonstrated at both the provider and facility level, especially when clinical and resident/staff safety risks are identified. This cycle of continuous improvement should involve engagement with the workforce as well as the representatives of the workforce (delegates and Health and Safety Representatives).

Provider registration period

71. The ANMF does not support the Commissioner being able to extend a provider's registration beyond three years. We are particularly concerned that section 74(2) allows the Commissioner to extend registration only if they are satisfied and without any threshold or criteria being stipulated. This undermines the rigour of ongoing assessments of a provider's appropriateness to be registered.
72. In the interests of transparency and public safety, all registers should be kept in the same format with the same search functions. The ANMF is concerned by discrepancies between the types of registers (provider and worker) and information that will or will not be publicly available. Section 87 requires the Commissioner to establish and maintain a Register of Registered Providers and can keep the register in any form they deem appropriate. The Act is silent as to the public availability and search function of the register. In contrast, section 166 'Aged care worker screening database' states the database must be kept in electronic form and will contain personal and sensitive information about the individual worker. The ANMF recommends that the Registered Provider list is publicly available.

Conditions of provider registration

73. The ANMF supports the Commissioner being able to impose conditions, variation, suspensions, and revocation on a provider's registration. We support the imposition of penalties on providers that breach conditions of registration, as outlined at section 88. It is imperative that the penalties imposed upon providers act as a deterrent to poor and unsafe behaviour. Applying a penalty regime to providers is appropriate and the penalties must reflect that providers are ultimately in control of the safe and high-quality delivery of care.
74. Regarding the conditions the Commissioner may impose on providers, we recommend section 89 be amended to broaden the workforce matters that can attract a condition. The ANMF recommends that beyond the Code at s89(e), a condition should be able to be imposed regarding a provider's compliance to ensure any qualifications and training requirements of its workforce are met, and to align with reference to training and qualifications at section 91, and that it meets any registered nurse and care minute requirements. These important inclusions ensure the Commissioner can fully consider a provider's workforce practices, as well as allow for penalties to be applied to any breach of workforce conditions.

75. We also recommend that the condition relating to financial and prudential standards, at section 91(d) be expanded with an additional subsection including the expenditure of funding for its intended purposes. For example, providers received additional funding specifically for the aged care work value wage increase. Providers must be required to demonstrate that such funding is used for its intended purposes and if this has not occurred, the Commissioner must be able to make this an enforceable condition of registration.

Procedural fairness

76. The ANMF emphasises the importance of procedural fairness in incident management. We are pleased that section 95 has a provision to protect against victimisation and discrimination for anyone reporting an incident, however this does not go far enough and is not extended to anyone subject to an incident report. Aged care workers must be empowered and protected to make incident reports. Equally, if they are subject to an incident report, they must have access to fair processes and protections, including right of reply and representation of their choosing.

Suitability determinations and thresholds

77. Section 112 gives the Commissioner powers to, at any time, determine a responsible person of a provider is no longer suitable to be involved in the delivery of aged care services. While the ANMF understands the Commissioner must, for example, be able to intervene in circumstances where there is an imminent threat to safety, we are concerned that the threshold and criteria against which the Commissioner can make such a decision is unclear and could lead to subjective and inconsistent determinations.
78. In addition to our concerns above and outlined regarding registered nurses as responsible persons, we also believe that section 112 will apply an additional layer of regulation to RNs administered by an additional party (the provider) and regulators (Ahpra and the Commission). RNs are already subject to Ahpra registration, which determines their suitability and is the appropriate regulator of their profession, as well as the Code of Conduct and banning orders in aged care. The ANMF recommends regulatory duplication be avoided.

Registered nurses

79. The ANMF supports section 116 (1). It is essential that registered nurses are both on site and on duty at all times at an approved residential care home. However, the ANMF does not support subsection 2 (a) or (b). The ANMF initially supported exemptions to RN 24/7 while the sector transitioned to meeting this requirement, particularly in rural and remote areas where it may have been difficult to recruit and retain RNs. The ANMF also held the clear position that an exemption must only be granted if the safety of residents and workers providing care is assured and the clinical care requirements of care recipients were met. The ANMF considers the transition period for RN 24/7 to be completed with the introduction of this Act and as such any reference to exemptions should be removed. Enabling exemptions within the Act would allow for long-term consideration of exemptions to RN 24/7 which is not consistent with the Royal Commission recommendations and is unacceptable to ANMF members. Ongoing exemptions disincentivise providers from addressing attraction and retention issues for workers, such as improving wages and conditions. Exemptions also fail to protect residents and are inconsistent with a rights-based Act.

Care minutes and enrolled nurses

80. The ANMF has emphasised throughout this submission the importance of care minutes being protected in the primary legislation. Given staff time standards (now referred to as care minutes) and RN 24/7 were part of the same Royal Commission recommendation (86), it is appropriate that care minutes are defined in the Act and set out in their own section, akin to section 116. We suggest the current legislative instrument (section 9 of the *Quality of Care Principles 2014*) provide the basis of wording for the new section in the Act, and that it be amended to also specifically reference ENs.
81. The significant recent reduction in EN care minutes is widespread⁶ within the sector. Aged care providers must be held to account to ensure this reduction is stopped and reversed. ENs are highly trained, regulated health professionals and possess extensive experience working in health and aged care. The work of ENs is essential to providing safe and high-quality care for older Australians within residential care homes. Along with the current specified care minutes for RNs and ENs/care workers, the legislation must be adjusted to include specified mandated minutes for ENs.
82. The ANMF understands that the System Governor is currently responsible for managing the care minute calculation system, under the Quality of Care Principle. The ANMF recommends that the Independent Hospital and Aged Care Pricing Authority be tasked with the ongoing research and development of care minute requirements and therefore, have control of assessing that the quantum of funding attached to care minutes under the AN-ACC model is adequate.

Code of conduct

83. The ANMF has long held the position that the introduction of the Code is not the most appropriate instrument to ensure safe and quality outcomes in aged care. The ANMF has and continues to recommend a comprehensive positive registration scheme for care workers administered through Ahpra to be the most effective approach.
84. The Code imposes an overlap of existing codes and standards of practice for registered health professionals. Both registered and enrolled nurses and nurse practitioners are already subject to a registration scheme under the Health Practitioner Regulation National Law (**the National Law**), administered by Ahpra. Inclusion of registered and enrolled nurses in the Code, on top of their registration scheme, results in unnecessary duplication and regulatory burden. Additionally, the Code does not acknowledge the various state-based Codes for unregistered health workers which creates a duplication in processes and powers and may result in potentially conflicting and inconsistent outcomes.
85. The ANMF maintains its opposition to the civil penalty attached to the Code at sections 118 and 119. The ANMF considers the penalties of up to 250 units that can be imposed on individuals to be manifestly excessive, particularly when considered that aged care workers are often low-paid and in insecure work. The penalty has the potential to act as a deterrent to working in the aged care sector and for RNs to take on a responsible person role for fear the penalty at section 119, and additional duties and responsibilities already discussed, will be applied to them. In addition, it may act as a deterrent to reporting matters because of concern of exposing individuals to unreasonable consequences. The civil penalty attached to the Code for workers should be removed.

Duties imposed on providers and individuals

86. The ANMF supports a duty being imposed on a registered provider at section 120. As we have outlined at (55), providers have greater responsibilities, control, governance, and resources than an individual RN not working in the role of responsible person. The ANMF does not support a duty being imposed on an individual RN under section 121 unless our concerns regarding RNs as responsible persons are addressed. The ANMF is also concerned an individual may have a duty imposed on them without necessary action being taken against the provider.

Online platforms

87. Disruptions to the way work is organised and in turn how care is delivered have created new challenges with which regulation has not kept pace. A new approach is needed. We appreciate the limits of the Commonwealth in regulating online platforms and support the attempt, within these confines, to remedy the current lack of visibility and regulatory capture.
88. Gig-workers operating on online platforms are highly vulnerable to exploitation. By deeming these workers independent contractors rather than employees, they are not afforded the same rights and protections as other workers, including training and supervision, workers' compensation, and guaranteed superannuation. For consumers contracting services via online platforms, they are essentially assuming the role of 'employer' and the associated responsibilities and liabilities. These additional responsibilities are rarely understood by the individual worker or the consumer.
89. The recent NDIS Review highlighted the issues with inconsistent regulatory capture and made pertinent recommendations for a genuinely risk-proportionate regulatory model whereby an online platform would have to 'enrol' or attain 'basic' registration. This approach seems to establish a link between government funding and service providers, and would give the regulator oversight of online platforms, improve integrity, enable two-way information sharing and ensure regulatory responsiveness to quality and safety issues. The ANMF suggests that the Act draw further from these recommendations in the registration and function of online platforms in aged care.
90. The ANMF supports a duty (s129) being applied on digital platform operators to ensure they engage, and display that they have done so, appropriately screened, trained and qualified workers. We support this change as a means to assure quality and safety for the older person, and to shift the responsibilities of screening away from the individual worker or older person using the platform, as happens now, and to the platform operator.
91. This said, it is unclear who the 'operator' of the platform is and therefore who the duty will be applied to. We do not support a duty being imposed on an individual where the individual has an ABN and is working as an 'entity' via the platform and could be deemed an operator. The characterisation of a worker as a business/business operator is inaccurate and inappropriate. As such, (s)129 must be amended to clarify that the operator of a digital platform is the platform entity and/or its responsible persons (however titled under relevant legislation).
92. The ANMF supports the requirement under section 130 for digital platforms that are constitutional corporations to implement complaints management and incident management systems. When things go wrong under the gig-model of care provision, as the NDIS experience demonstrates, there are very limited channels for complaints and little recourse options for the worker and client. The responsibility of making and managing a complaint falls to the worker or participant. For workers on online platforms, the protections of employment and industrial laws do not apply. This leaves the worker exposed and often without representation or access to procedural fairness. Where a party is able to make a formal complaint, there is no

standing for the regulator(s) to act. Liability is shifted between the individual worker and the consumer while the online platform remains outside of any consequence.

93. We are concerned that online platforms outside the reach of the Act will not have the same duties applied or have to implement the same systems as those not captured. The ANMF is concerned that these provisions do not ensure an even playing field i.e. genuinely universal registration, in provider registration. They may inadvertently encourage providers to only offer services subject to 'lighter touch' regulation or to offer aged care services outside the formal aged care system. This could in turn potentially leave a dearth of services for higher and complex care needs individuals, as well as removing safety and quality guarantees.

Suggested amendments to the Act:

Registered providers, aged care workers and aged care digital platform operators	Page	Section
Part 2 - Provider registration process, Division 1 – Applications for registration and registration decisions	76	<p>Section 66 - Registration of providers Add new subsection after 3(g) 'any service the entity intends to deliver via the associated provider or online platform arrangements'</p>
		<p>Section 68 Registration requirements Add new subsection after (1)(b)(v) 'if the entity has been subject to any sanction while operating as an approved aged care provider under previous legislation' Add new subsection after (1)(c) 'the entity satisfies the screening requirements set out at section 91 and the entity satisfies any future mandated training and qualification requirements for its workforce' Add new subsection after (2)(c) 'the entity satisfies the registered nurse requirements set out at section 116 and the care minute requirements set out at (new) section 117.'</p>
Part 2- Provider registration process, Division 3- Notice of decisions and other provisions	85	<p>74 Registration period Amend: (1) For the purposes of paragraph 71(2)(c), the registration period for a registered provider is the period that starts on the day the decision is made to register the provider under section 67 and ends at: (a) the end of the period of 3 years; or (b) if the Commissioner determines a shorter or longer registration period under subsection (2)—the end of that 21 period; or (c) the end of the day that the entity's registration is revoked.</p>
		<p>89 Conditions imposed by the Commissioner Add new subsection after 3(d) 'any additional requirements to ensure funding is expended for its intended purpose(s); Add new subsections after 3(e) 'requirements relating to the training and qualifications of aged care workers'; and Requirements relating to compliance with registered nurse and care minute requirements.</p>
	101	<p>95 Incident management Add new subsections after (c): 'notify anyone if they are subject to an investigation or actions arising from an incident report; and Apply procedural fairness to anyone making or subject to an incident report, including right of reply and access to representation of the individual's choosing</p>
		<p>112 Determination relating to suitability of responsible persons of a registered provider Amend (1): The Commissioner may, in certain circumstances where there is a risk to the safe delivery of aged care services, at any time,</p>

		<p>determine that a person who is one of the responsible persons of a registered provider is not suitable to be involved in the delivery of funded aged care services.</p> <p>Add new subsection after (1): In making a determination relating to the suitability of responsible persons of a registered provider, the Commissioner will consider any other applicable professional registration standards.</p> <p>Remove Subsection (2) does not limit the matters the Commissioner may consider in deciding whether to make the determination under 22 subsection (1) in relation the person.</p>
		<p>Section 116 Registered Nurses</p> <p>Remove subsection (2)(a)</p> <p>Remove subsections (3)-(5) inclusive and in entirety.</p>
		<p>After 116 Insert new Section Care Minutes and Enrolled Nurses</p> <p>(1) A registered provider must ensure that it meets its care minute requirements at all times at an approved residential care home of the registered provider.</p> <p>Add into this an additional subheading and provisions for '<i>Required enrolled nurse average amount of direct care</i>'</p>
Part 4	118	<p>118 Aged care workers of registered providers must comply with Aged Care Code of Conduct</p> <p>Remove: Civil penalty: 250 penalty units.</p>
Part 6	127	<p>128 Meaning of aged care digital platform</p> <p>Remove (3):</p> <p>(3) An aged care digital platform does not include an online application, website or system prescribed by the rules.</p>

Chapter 4—Fees, payments and subsidies

94. The ANMF understands the Aged Care Taskforce has examined aged care funding and provided a report to Government. We assume the findings of this report will determine the drafting of Chapter 4. In the complete absence of Chapter 4 in the draft Act, the ANMF is concerned that the Government intends to propose fundamental changes to the aged care funding landscape, including increasing consumer contributions and eroding the principle of universality that underpins Australian health and social care funding. As we have made clear in previous submissions, we categorically reject any move away from universal access to publicly funded health care in aged care.
95. Although there have been improvements to financial transparency within the sector, there is still much work to do. Greater focus should be placed on the way funding is used by providers, how this is reported, and most importantly, how this is regulated. It must be an obligation on providers that any funds received for care be transparently and accountably used for the purposes it was provided. Failure to expend funds for their intended purposes, such as to meet staffing requirements or to deliver training to workers must result in penalties against the provider. The ANMF has made recommendations in other sections of the Act that would compel providers to spend funding for its intended purposes, report on expenditure practices and, critically, enable the regulatory mechanisms in Chapter 6 to be applied to misappropriation of funding by providers.

Chapter 5—Governance of the aged care system

System governor

96. Chapter 5 sets out the wide range of important functions of the System Governor. The ANMF does not have any recommendations for additional key functions beyond those in Section 132. Given the diverse range of functions the System Governor is responsible for, the ANMF recommends that it must be a requirement of the System Governor to employ an appropriate and diversely skilled workforce that will allow for effective delivery of its functions, including expertise in health and clinical care delivery.
97. The ANMF is concerned that there are limited mechanisms for independent review of the functions of the System Governor and Commissioner, and that there is a significant degree of self-evaluation throughout the proposed legislation for both. There must also be suitable provision within the Act to ensure the Inspector-General is able to adequately assess, identify, and report on issues relating to the performance of the System Governor and the Commissioner as they deliver on their obligations as set out in the Act. The ANMF points out that a lack of independent review of the activities of both the aged care regulator and the Department as system manager likely contributed to the appalling state of the sector that ultimately triggered the need for a Royal Commission.

Aged Care Quality and Safety Commission

Drugs and poisons legislation

98. ANMF members have ongoing challenges relating to the gaps between jurisdictional legislation and Commonwealth regulation of the appropriate handling and administration of medicines in aged care. Medication administration clearly falls within the scope of practice of both RNs and ENs, however there is an increasing practice of aged care providers requiring care workers to undertake this role and require RNs to delegate this role to care workers. The lack of clear guidance and consistency in a number of state and territories regarding medicines administration by care workers further complicates the requirements. However, this practice is inconsistent within some jurisdictional drugs and poisons legislation and also the professional obligations of the Nursing and Midwifery Board of Australia requirements.
99. The Commission has lacked capacity to understand jurisdictional legislation and how it relates to the administration of medicines in residential care homes. This has led to non-compliance with jurisdictional legislation within some nursing homes being left unchallenged by the Commission. This knowledge gap remains a significant risk not only for older people, but the RNs, ENs and care workers working within the system.
100. While the ANMF appreciates that the Act cannot resolve the issue of unaligned legislation for drugs and poisons across the jurisdictions, we take this opportunity to highlight the risks this poses to the safe delivery of aged care services and the need for the Commonwealth to consider how it might intervene in this area as a matter of priority. The Act must require the regulator to have capability to identify non-compliance and make referrals to the relevant state or territory regulator. We recommend that the Commission's Safeguarding functions at s142 be amended to include reference to ensuring a provider's compliance with relevant legislation regarding drugs and poisons and the administration of medicines in aged care.

Safeguarding

101. In regard to s142 'Safeguarding functions' the ANMF has made several suggestions for technical amendments in the table below. These changes are intended to ensure the Commissioner is:
 - a. able to monitor the use of funding by providers, thereby providing some reassurance that the entirety of subsidised funding is being used for its intended purposes; and
 - b. monitor and enforce compliance with regulatory requirements relating to the workforce. This includes maintaining staffing levels that meet a RN and care minute requirements.
102. The ANMF would also like to highlight that the intention throughout this section should be to ensure that the Commissioner is not subjectively determining what is appropriate to respond to, but rather is appropriately responding to incidents as required and using clear criteria and thresholds. Most importantly this includes ensuring clinical advice is sought when needed, and not only at the discretion of the Commissioner.

Worker voice in complaints and continuous improvement

103. The ANMF welcomes the inclusion of s144 outlining the complaints functions of the Commissioner. It is important that there are clear and protected procedures that allow for raising of issues relating to the provision of aged care services, particularly by members of the public and the people receiving care throughout the sector. The ANMF would like to highlight the importance of a worker voice in driving ongoing improvement throughout the sector and highlighting areas in need of improvement and change. It is critical that this voice be clearly defined and protected within the complaints process and that there is no recourse or adverse impact against workers filing complaints within the legislative framework.

Chief advisors and advocates with the right qualifications and expertise

104. The appointment of a Chief Clinical Advisor to the Commission is set out in s148. The ANMF notes that the Act requires the appointment to be either a member of the staff of the commission or a consultant engaged under s159. Neither of these requirements satisfactorily ensures that any appointed Chief Clinical Advisor has adequate qualifications and experience within the aged care sector to most effectively conduct themselves within the role. This is particularly pertinent when considering that there is no stipulation for a consultant engaged by the commissioner to have any clinical experience, whether in regard to the Chief Clinical Advisory role, or any other. The ANMF requires that amendments be made to the Act that make certain any appointee to the role of Chief Clinical Advisor has the necessary clinical qualifications and experience in aged care delivery.
105. Further to the appointment of a Chief Clinical Advisor, the ANMF proposes the inclusion of a position titled 'Chief Nursing Advocate'. Although the appointed Chief Clinical Advisor may well be a registered nurse, having a designated subject matter expert and protected role within the legislation such as Chief Nursing Advocate (or as titled) will be crucial for advising on clinical nursing implications, such as those that contribute to or arise from sentinel events. Their expertise in nursing practice and understanding of clinical diagnosis and complexities can provide invaluable insights and guidance in addressing and mitigating such events effectively, as well as informing methods for the improved delivery of nursing care across the sector.

106. In regard to s160, the 'Annual Report', and the concerns raised above in relation to self-evaluation of the Commissioner, the ANMF proposes the Inspector-General also receive a copy of the Annual Report with an ability to analyse and respond to the Commissioner annual report. The Minister should also require the Inspector-General to produce its own annual report and evaluation on the Commission's performance.

Worker screening

107. In regard to section 166, the ANMF does not oppose a worker screening database; our RN and EN member who are Ahpra registrants are well-versed in the purposes of such a system. However, the ANMF finds that in its current form the database is an exclusionary model for workers, particularly when applied in conjunction with the Code and banning orders. These approaches do not build the capacity of or professionalise the unregistered aged care workforce. It is critical that a new subsection be included in the legislation under 'information in the database' that refers to qualifications undertaken by the individual, to reflect future requirements under a positive care worker registration scheme.
108. The ANMF also reiterates its concerns that already registered professions will be subject to multiple databases and screening checks. It is not clear how the various systems will work together and how repetitive processes will be avoided for these workers. It is also not clear why pending applications are to be included in the database. The application outcome and any adverse finding would be a more appropriate inclusion.

Diverse and appropriate expertise on the Aged Care Quality and Safety Advisory Council

109. The ANMF is concerned that in relation to s172(3) that the requirement to have a member of the Advisory Council with clinical expertise is either a nurse *or* allied health professional, not both. Nursing and allied health are distinct professions with different experiences and knowledge. and are not able to speak on behalf of each other. This section must be amended to ensure the Council has both a nurse *and an* allied health professional. It must also be amended to ensure that both these appointees have clinical experience working in aged care.
110. Additionally, the ANMF notes that there is no requirement for the Advisory Council to have a member with industrial relation and workforce expertise. We make a recommendation to include a member with this experience, in recognition of the importance of the aged care workforce to a strong, safe and high-quality aged care system.
111. The ANMF is supportive of an Aged Care Quality and Safety Advisory Council as set out in Chapter 5, Part 4 but again raise concerns that under the proposed legislation this Council would also be self-evaluating. The ANMF supports a further function requiring review of the council and its activities through a role held by the Inspector-general.

Procedural fairness

112. Section 183(2)(h) details procedural fairness for the review or reconsideration of decisions. The ANMF strongly suggests that the provision for procedural fairness needs to be required in the investigation process. Procedural fairness needs to be included throughout the Act in order to ensure investigations, complaints and reviews have to follow principles of natural justice. This would ensure there is full regulatory alignment with the National Law ⁷and the

procedural fairness guidelines that currently exist as a legislative instrument for the NDIS Code. Requiring the Commission to apply procedural fairness will improve the transparency and operation of incident reporting for providers and workers and send a positive message to the workforce. It would also contribute to empowering and protecting workers.

An independent and empowered Complaints and First Nations Commissioner

113. The ANMF welcomes the appointment of a Complaints Commissioner. However, we are concerned that section 188 places the Complaints Commissioner reportable to the Commissioner. We recommend this role be independent of the Commissioner, given the potential for conflict of interest and bias when handling complaints. The ANMF argues that the Complaints Commissioner should have its own independent statutory powers and that its complaints framework should be included in the Act. This is necessary to ensure that complaints are considered independently and have their own framework that is legislatively protected.

114. The ANMF is strongly supportive of the establishment of a First Nations Aged Care Commissioner. As with the Complaints Commissioner, we believe this role upon being moved from interim to permanent, should have its own statutory powers and framework. This would protect it in legislation and ensure independence and transparency.

Suggested amendments to the Act:

Chapter 5 – Governance of the aged care system	Page	Section
Part 2 – System Governor	133-134	Section 132 Functions of the System Governor Amend: (i) collecting, maintaining and providing accurate information about the Commonwealth’s administration of the aged care system, including on expenditure by registered providers on the delivery of funded aged care services and aged care workforce expenditure; (e) to monitor and help providers to facilitate, including through the provision of funding, the attraction, retention, training and development of aged care workers;
	139	141 Functions of the Commissioner Add: a new subsection after 5(d) ‘the NDIS Quality and Safeguards Commission or its successor, and other relevant care and support sector authorities’
	140	142 Safeguarding functions Amend: (h) to oversee the notification and management of reportable incidents and respond where appropriate required; (j) if the Commissioner considers it appropriate to do so, to seek and consider clinical advice relevant to functions of the Commissioner;
	140	142 Safeguarding functions Add subsection b(iv) ‘monitoring the expenditure of funding by providers to ensure it is used for its intended purposes’ Add subsection b(v) ‘taking proactive steps to ensure providers expend funding for its intended purpose(s)’ Amend: (c) to promote enforce Add subsection c(iv) ‘the delivery of safe care by registered providers through monitoring and enforcing compliance with regulatory requirements including any requirements relating to workforce’ Add subsection after (f) ‘registered providers compliance with all relevant state and territory legislation regarding drugs and poisons and the safe handling and administration of medicines in aged care services’

		Add subsection after (g) 'to apply the principle of procedural fairness and transparency to the management of reportable incidents'.
	141	144 Complaints functions Add subsection after (f) 'to promote and apply procedural fairness for any provider, responsible person or worker making or subject to a complaint' Add new subsection (g) 'to provide training and education to aged care workers on incident reporting, complaints management and their rights and responsibilities when making a report or complaint, or when subject to a report or complaint' Add subsection after (i) 'to monitor the effectiveness of registered provider and online platforms (if applicable under Section 130) incident reporting and complaints management systems.
	149	Add new Section 160 Composition of the Staff of the Commission The staff of the Commission must be appropriately and diversely skilled, including holding any relevant training and qualifications required to effectively carry out the roles and functions of the Commission.
Part 3 Division 5 – reporting and planning	150	160 Annual report Amend (1) to include 'given to the Minister and the Inspector-General...' Add new subsection after (g) 'analysis of the registration of providers and any suspensions, revocations or variations, particularly where they have occurred alongside any reportable action taken under subsections (f) and (g)'
Part 3 - Division 6 - Financial and Prudential Standards	152	Section 163 Commissioner may make Financial and Prudential Standards Add new subsection d(iii) 'monitor a provider's expenditure of funding for its intended purposes'
		Section 166 information in database amendment to be added Remove 5(d) Remove 7(b)
		Section 172 Advisory Council – add new subsections (e) and (f) separating aged care nursing and allied health profession.

Chapter 6 — Regulatory mechanisms

115. Chapter 6 outlines a range of regulatory mechanisms that are available to the Commissioner and System Governor in relation to their functions. The ANMF is supportive of the new monitoring and regulatory powers that can be taken to ensure compliance under section 185, including those relating to the powers of entry, search and seizure, when investigating breaches of the Act and when there is a severe risk to the safety, health and wellbeing of an individual to whom funded aged care services are being delivered. However, there are several points that require further explanation or strengthening.
116. Under s section 220 'Monitoring authorisations' it appears the Commissioner will be allowed to enter a residential care home without consent when there is *severe* risk to the safety, health, or wellbeing of an individual or groups of individuals. However, it is not clear as to how this might be triggered, and what training the officers of the Commission will have to identify and activate the authorisation.
117. The ANMF also notes that under section 236 infringement notices can be issued in relation to breaches of the Act. Given the importance of adequate and safe staffing in the provision of safe and quality care, it is particularly important that the required care minutes, training,

and qualification requirements of staff are clearly described and referenced in the provisions set out within the Act, and that there is no ambiguity in relation to what constitutes an absolute safe minimum in regard to staffing, and when those conditions are breached. This point extends to s section 246 when considering ‘Enforceable provisions’.

Enforceable staffing standards

118. Chapter 3 part 4 includes obligations placed upon providers, including s section 116 requiring registered providers to ensure at least one registered nurse is on site, and on duty, at all times (RN 24/7). As previously stated, the ANMF argues that to ensure safe staffing levels are protected, the required care minutes should also be included within this primary legislation. Within the context of s section 246 this would ensure that any breach in the provision of care minutes is subject to an enforceable undertaking. It would also allow for potential staging related to the severity of a breach wherein failure to meet the absolute minimum care minutes as outlined within the primary legislation would attract greater penalties, review, and enforceability, and would dissuade serious and systemic instances of understaffing. Such an approach would make clear within the Act that adequate staffing is integral to a safe and respectful aged care system. Ensuring safe staffing levels are in place across the sector could not be more critical; as the Royal Commission emphasised, if the aged care workforce and staffing are not right, all other reforms will fail.

Expanded grounds for action notices

119. In regard to s section 264, ‘Grounds for giving required action notices’, the ANMF notes that the grounds for action notices are largely limited to financial and prudential reasons. This highlights the importance of appropriate financial expenditure that is referenced elsewhere, e.g., section 109, s section 142, and s section 163, however, it is not clear why the grounds for action notices cannot be expanded further to include other matters, for example, staffing. The ANMF recommends that further provisions be included within the legislation to reflect broader grounds for action notices. These provisions should then work in conjunction with the provisions listed above and section 116, as well the ANMF’s recommended new section on care minutes and EN requirements.
120. Further, the ANMF also seeks clarification regarding the threshold and process for action notices, and other details such as how they might be displayed, how the Commissioner and System Governor will report on them, and the grounds for any variation or revocation. It should be that, in the spirit of the Act, accessible information and transparency of action notices with aged care consumers and the broader public is always upheld. Similar to action notices, details relating to compliance notices as set out in section 271 should also be publicly accessible.

Banning orders

121. The ANMF is supportive of the intent of section 286 “Banning orders on current and former registered providers’ however it is unclear why a provider banning order system be established separate to the registration process and register. In regard to s287, and banning orders on individuals, the ANMF finds there is a lack of detail relating to how an individual also registered with Ahpra may meet varying threshold requirements between their professional registration and responsible persons requirement as established under this proposed Act.

122. In relation to section 288 which sets out requirements relating to Notice of intention to make a banning order, the ANMF requires that if applying to individual workers, there must be provision to enable 14 days within which an individual may make a written submission, with procedural fairness applied and with respect to exceptional circumstances, e.g., immediate harm to a care recipient.

Suggested amendments to the Act:

Chapter 6 – Regulatory mechanisms	Page	Section
Part 12 Banning orders Division 2 Varying or revoking banning order	240	287 Banning orders on individuals as aged care workers and responsible persons Add new subsection 2(d)v ‘the Commissioner reasonably believes the individual cannot undertake training, qualifications or other remedying actions’
	246	294 Varying or revoking banning order on application Add new subsection (h) ‘and the 14 day period in which a submission for reconsideration must be made’ with note to also indicate if exceptional circumstances apply and no review available
Part 13—System Governor functions assurance activities	249	297 System Governor may conduct assurance activities Add new subsection after (d) ‘how registered providers are expending funds and grants provided for specified purposes’ Add new subsection after (d) ‘how registered providers are meeting registered nurse and care minute (however titled) requirements’
	250	299 Reports by System Governor on assurance activities Amend: 1) The System Governor may will prepare and publish quarterly reports on assurance activities, dealing with any findings, conclusions or recommendations made as a result of the activities.

Chapter 7 - Information management

123. As outlined in section 322, the ANMF is concerned with the definition of protected information. While there is a need to protect workers and other individuals due to the wide range of information that is considered protected under this definition there is the potential for this to diminish transparency and accountability by providers. Further the emphasis on protecting financial viability is a step away from the rights basis of the act and may hinder transparency of enforcement and compliance actions taken against providers. It is important that terms used, such as ‘reasonably’ are defined, and clear thresholds are put in place.

124. Further, the ANMF has concerns that the proposed definition of protected information as the potential to diminish transparency of provider activity. While it is important to protect confidential information at an individual level, particularly information pertaining to aged care clients and workers, this protection should not hinder the accountability of entities such as providers. Including protections for the financial viability of providers (e.g., section 322(2) b,i) that in its current form is likely to result in important information, such as breaches or rights or quality of care, being ‘hidden’ as protected information. This in turn affects the transparency of providers and ‘hides’ important information that consumers use to make informed decisions, such as any disciplinary, enforcement, or compliance actions taken by the Commissioner.

125. The ANMF raises concerns regarding section 338 - Disclosure for maintenance of professional standards. We understand the importance of the ED containing a provision to enable the Commissioner to report for unprofessional conduct. However, many of our members cite situations within their working environment which professionally compromise the regulatory obligations required by the Nursing and Midwifery Board of Australia but have little to no control to change or adjust working conditions. To embed a provision in the Act which allows the Commissioner to refer a nurse to their regulatory body must also provide for nurses to directly report matters to the Commissioner where their working environment does not allow them to operate safely, and/or compromises their professional obligations. A provision should be included in the new Act enabling workers to make direct reports to the Commissioner when their practice has been compromised.

Whistleblowers

126. Further to protecting disclosures, as outlined in subsection 355 Disclosures qualifying for protection, the ANMF has a particular interest in ensuring appropriate whistleblower protections are in place for aged care workers. Here, the ANMF suggests that the protections be expanded to cover disclosures to any advisory body including any future worker voice body, and disclosures to union representatives. Disclosures to these and all other parties should be escalated wherever necessary to the Systems Governor or Commissioner on the workers behalf, but with the assurance of whistleblower protection.

127. Further, it is important that Work Health and Safety (WHS) regulators and Work Health and Safety entry permit holders (officers of unions who hold a WHS permit) also be included within the framework.

128. It is important that all aged care workers receive appropriate training and education in whistleblower disclosures, procedures and protections. This training should include procedures should they be disclosed to or disclose. The whistleblower framework needs to be clear and transparent and workers need to understand the provisions. Workers need to feel empowered to speak up when necessary and know who they can trust to safely make disclosures and be assured of protection from adverse consequences. We suggest an amendment to section 360 that registered provider obligations include training and education on the whistleblower provisions.

129. The ANMF notes that the proposed expanded provisions for the framework outlines that workers will be required to disclose their name before raising an issue in good faith. The ANMF does not agree that workers should be required to establish their bona fides by being required to identify themselves. Unfortunately, even with the best legislative protections, at times it is unlikely for workers to feel sufficiently safe to raise issues directly and disclose their identity. In addition to ensuring the identity of a whistleblower is protected, workers should also be able to nominate unions as organisations that may receive disclosures and raise issues on behalf of workers. This provides a legal pathway that is both non-threatening for the worker but facilitates the giving and receiving of information to the regulator to achieve resolution.

Suggested amendments to the Act:

Chapter Title	Page	Section
Part 2 Confidentiality of information, Division 1 Introduction	269	322 Definition of <i>protected information</i> Amend: (1) Information is <i>protected information</i> if it is covered by subsections (2) and (3). (2) This subsection covers the following: (a) personal information

		(b) information that: (i) is information whose disclosure could reasonably be expected to prejudice the financial interests of an entity; and (ii) is not public; and (iii) is not readily discoverable.
Division 3 Authorisation of recording, use or disclosure of protected information	276	339 Disclosure to receiving Commonwealth body for its functions, duties or powers Add new subsection after 2(p) 'Worker Screening Units' Add new subsection after 2(p) 'Australian Health Practitioner Regulation Agency'
	278	Add section: Disclosure for banning order register The Systems Governor may record, use or disclose protected information for the purpose of working out or publishing a banning order register of funded aged care services.
		355 Disclosures qualifying for protection Add new subsection 355(a)(vii) a Union Representative; and Add new subsection 355 (a)(viii) another worker; Add new subsection 355(ix) a member of any aged care advisory or governing body
		360 Registered providers' obligations in relation to disclosers Insert new (1) a registered provider must ensure its aged care workers, responsible persons and members of any advisory bodies receive training and education in the whistleblower provisions set out in sections 355-358 of this Act.

Chapter 8 – Miscellaneous

130. Noting that Part 2 of Chapter 8 is yet to be drafted, along with many subsections of this chapter, the ANMF is once again highlighting the importance of releasing the missing legislation sections and the Rules for consultation and feedback.
131. As outlined in section 392, the ANMF is supportive of the powers prescribed to the Systems Governor to administer financial assistance grants, however, notes some concerns regarding transparency of the use of such grants. Here, with particular interest to subsections b, d and e that relate to workforce issues, it is important that appropriate oversight and transparency measures are put in place to ensure that providers use funds for the purpose they were awarded.
132. As outlined in subsection 398, the ANMF highlights the need for transparency when using computer programs to make decisions. This is of particular importance for any decision that may impact the level of clinical care provided to an individual. The use of computer programs and the removal of human input may lead to loss of clinical consideration, limiting review processes and considerations. Decisions not directly made by the Systems Governor should be advertised as such and parties who are affected by this decision should have the opportunity to dispute the decision and question the use of the computer program for decisions making should the outcome be considered aversive for them.
133. As outlined in subsection 411, noting that an independent review of the operation of this act will be conducted after 5 years, the ANMF suggests that to ensure that the Act remains fit for purpose this review period should be adjusted to a shorter period of three (3) years on a recurring basis and may reduce the need for further sector inquiries or Royal Commissions in the future. This allows adequate time for sector adjustment to the Act and a period of review following this adjustment to review its efficacy.

Suggested amendments to the Act:

Chapter Title	Page	Section
Part 10 Reports on and review of this Act	322	<p>Add:</p> <p>(1) The System Governor must give the Minister, for presentation to each House of the Parliament, a report on the performance of the System Governor’s functions during each financial year.</p> <p>(2) Without limiting subsection (1), the report must include information about the following matters:</p> <p>(a) the extent of unmet demand for funded aged care services;</p> <p>(b) the duration of waiting periods for funded aged care services;</p> <p>(c) the number of registered providers entering and exiting the market for the delivery of funded aged care services;</p> <p>(d) the financial viability of registered providers in that market;</p> <p>(e) usage of the bond guarantee scheme;</p> <p>(f) the amounts of contributions paid;</p> <p>(g) the amounts of those contributions paid as refundable deposits;</p> <p>(h) the amounts of accommodation bonds and accommodation charges charged;</p> <p>(i) the extent of building, upgrading and refurbishment of residential care homes;</p> <p>(k) the number of registered workers engaged sector-wide;</p> <p>(l) the extent of workforce shortages as calculated by demand over supply;</p>
Part 7—Use of computer programs to make decisions	398	<p>Amend:</p> <p>1) The System Governor may arrange for the use, under the System Governor’s control, of computer programs for making the following decisions:</p> <p>(a) decisions on the classification of individuals under section 59;</p> <p>(b) decisions on the priority of individuals under section [to be drafted].</p> <p>(2) A decision made by the operation of a computer program under such an arrangement is taken to be a decision made by the System Governor. A decision made by the operation of a computer program under such an arrangement should be advertised to all affected parties as a decision made by a computer program and not the System Governor directly.</p> <p>(3) The System Governor may, under section 59 or [to be drafted], substitute a decision for a decision the System Governor is taken to have made under subsection</p> <p>(2) of this section if the System Governor is satisfied that the decision made by the operation of the computer program is incorrect.</p> <p>(4) Subsection (3) does not limit any other provision of this Act that provides for the review or reconsideration of a decision</p>

Conclusion

134. The ANMF reiterates its support for a new aged care Act. The current system does not uphold the rights of older people, struggles to deliver consistently high-quality and safe care, and occurs in a regulatory vacuum without transparency. Most importantly to ANMF members, the aged care workforce has been undervalued, unheard and subject to poor pay and conditions that limit the capacity of workers and the ability of the sector to attract and retain the right number of people across a diverse skill and qualification mix.
135. The ANMF recognises the ED is resetting the framework for the aged care system and we welcome many of the proposed changes. However, as the new Act presents an historic moment in aged care reform, it is essential that we get it right. This is why the ANMF has called out the absence of critical workforce reforms in the ED and proposed relevant amendments. If the future of Australia's aged care system is to be one of accountability, transparency, continuous improvement, quality and safety, then it will require empowered, highly trained, skilled and appropriately qualified workforce, with enough workers to meet safe staffing levels. The new Act must set the system up to attract and retain such a workforce. Workers must be placed within the new legislative and regulatory framework as a valued voice.
136. The ANMF thanks the Department for the opportunity to provide feedback on this version of the ED and welcomes the opportunity to review a revised ED, along with the currently incomplete Chapters, and the single set of rules and regulations.

¹ Australian Government, Department of Health and Aged Care (2023) Quarterly Financial Snapshot: Aged Care Sector. Available at: [Quarterly Financial Snapshot of the Aged Care Sector – Quarter 2 2022-23 \(health.gov.au\)](https://www.health.gov.au/quarterly-financial-snapshot-of-the-aged-care-sector-quarter-2-2022-23)

² Australian Nursing and Midwifery Federation (2023) Regulation and registration of assistants in nursing. Available at: <https://www.anmf.org.au/media/eenjx4y/anmf-position-statement-regulation-and-registration-of-assistants-in-nursing.pdf>.

³ Australian Government, Department of Health and Aged Care (2023) Quarterly Financial Snapshot: Aged Care Sector. Available at: [Quarterly Financial Snapshot of the Aged Care Sector – Quarter 2 2022-23 \(health.gov.au\)](https://www.health.gov.au/quarterly-financial-snapshot-of-the-aged-care-sector-quarter-2-2022-23)

⁴ Palliative care Australia (2024) What is Palliative Care. Available at: <https://palliativecare.org.au/resource/what-is-palliative-care/>

⁵ Aged Care Quality and Safety Commission Act 2018. Available at: [Federal Register of Legislation - Aged Care Quality and Safety Commission Act 2018](https://www.federalregister.gov/?date=2018-07-26&title=Aged+Care+Quality+and+Safety+Commission+Act+2018)

⁶ Australian Government, Department of Health and Aged Care (2023) Quarterly Financial Snapshot: Aged Care Sector. Available at: [Quarterly Financial Snapshot of the Aged Care Sector – Quarter 2 2022-23 \(health.gov.au\)](https://www.health.gov.au/quarterly-financial-snapshot-of-the-aged-care-sector-quarter-2-2022-23)

⁷ Health Practitioner Regulation National Law as enacted in each state and territory (2009), Available at: [Health Practitioner Regulation National Law Act 2009 - Queensland Legislation - Queensland Government](https://www.legislation.gov.au/idx/inspec?doc=/content/publication/2009/01/01/health-practitioner-regulation-national-law-act-2009-queensland-legislation-queensland-government)

Appendix A

Standard 8: The Workforce

Intent of Standard 8

Standard 8 describes the responsibilities and obligations of providers for ensuring that the direct and indirect care workforce has the demonstrated capability and capacity to deliver safe and quality care that meets the individual care needs of older people.

Standard 8 expectation statement for older people:

The workforce that provides my care has the appropriate number and skill-mix of staff to meet my planned care needs effectively, safely and to a high standard.

Standard 8 expectation statement for employees:

I am treated as a valued member of the organisation, and this is demonstrated by:

- feeling physically, psychological and culturally safe
- having clear lines of communication and feedback for work related issues and concerns
- being supported and encouraged to identify and report issues and concerns relating to the work
- a work environment that supports me to provide personal, clinical and health care that complies with relevant laws, regulations and professional standards.
- organisational systems that support me to identify and meet my learning and development needs.

Standard 8 expectation statement for the provider:

The organisation is provided with clear and timely feedback regarding the workforce planning and management and the capacity and capability of the workforce to provide safe, quality care, a professional practice work environment, and works with relevant regulatory bodies to ensure that workforce standards are met.

Outcome 8.1: Workforce planning

Outcome statement:

The provider understands and manages its workforce needs and plans for the future.

Actions:

8.1.1 The provider demonstrates that they have developed, implemented and regularly reviewed a workforce strategy and plan that:

- a) provides evidence that the strategy and plan is based on gap analysis of current and anticipated future workforce needs and risks.
- b) identifies the number and skill-mix of direct and indirect care workers to manage and deliver safe, quality care and services.
- c) specifically identifies the number and skill-mix of health practitioners (nursing and allied-health) required to meet the clinical and health care needs of older people cared for by the nursing home or service and to meet regulatory requirements.
- d) Identifies the skills, qualifications and competencies required for each role.
- e) Identifies strategies and processes for engaging suitably qualified and competent workers.
- f) Is based on a permanent workforce model and identifies strategies to minimise the use of indirect employment workers wherever possible.
- g) Identifies strategies to mitigate the risk of workforce shortages, absences or vacancies.
- h) Identifies and demonstrates strategies to for supporting the physical, psychological and cultural safety of the workforce including work-life balance.

Outcome 8.2: Workforce utilisation

Outcome statement:

The provider ensures that the workforce is fit for purpose to meet the individual care and clinical needs of older people receiving care provided by the service.

8.2.1 The provider demonstrates that sufficient numbers and mix of suitably qualified and skilled staff are employed to meet the care needs of older people cared for by the nursing home or service to meet regulatory requirements:

- a) Best practice rostering optimises the skills, knowledge and abilities of staff to meet care needs of residents and clients
- b) Staff work-life balance requirements are considered in all deployment decisions
- c) Business planning is demonstrated to match workforce capability and capacity to service demand.

8.2.2 Direct care workers are provided in sufficient numbers and skills-mix to meet the needs of the resident or client cohort but not less than those number required through direct care minutes funding and any other relevant legislation or regulation:

- a) Rosters clearly identify average minutes of care per resident and registered nurse minutes of care in the residential setting so that these metrics can be easily accessed by staff.

Outcome 8.3: Workforce development

Outcome statement:

The provider demonstrates that a planned, communicated and continuously evaluated strategy, plan and process is in place to support the role, and professional and personal developmental needs of the workforce.

8.3.1 Staff receive the appropriate support, training, professional development, supervision and personal performance and development relevant to their job description.

8.3.2 Staff are supported, enabled and encouraged to obtain further qualifications relevant to the role they perform within the organisation.

8.3.3 Employees are enabled to undertake training and education needs which:

- a) Is consistent with the assessed needs of the resident or client cohort
- b) Includes both mandatory and non-mandatory learning opportunities
- c) Enable health practitioners to comply with their continuous professional development requirements
- d) Enables career progression and meets individual learning needs.

8.3.4 Priority training areas are encouraged and supported within the organisations workforce plan:

a) The health service organisation provides access to supervision and support for the workforce providing:

- end-of-life care, including palliative care
- dementia care
- skin integrity care
- behaviour management
- nutritional support.

Outcome 8.4: Workforce regulatory requirements

Outcome statement:

The provider demonstrates that the organisation enables and supports Health Practitioners registered with the Australian Health Practitioner Regulation Agency (Ahpra), or Self Regulating Allied Health Professions, to meet the standards of practice and code of conduct requirements of the relevant professional regulator.

8.4.1 Care staff including health practitioners and unregulated care workers are enabled to identify situations that compromise their professional standards of practice or codes of practice.

There is a system in place to support staff to report concerns or situations that compromise their capacity to meet their professional standards or codes of practice.

- a) Reported concerns or situations are responded to by the provider in a timely manner (where possible within 24 hours).
- b) Staff are supported to meet continuing professional development or credentialing requirements for registration or membership of a professional body.

Outcome 8.5: A positive workplace environment

Outcome statement:

The provider demonstrates that the organisation enables and supports the physical, psychological and cultural safety of staff.

8.5.1 The provider has effective systems in place for the identification, reporting and escalation of safety and quality issues and operational and professional decisions.

- a) Contemporary policy and procedures in relation to physical, psychological and cultural safety are in place.
- b) Processes are in place to regularly seek feedback from the workforce on their understanding and use of the safety and quality systems.
- c) Systems are in place for workers to raise concerns regarding staffing and skill-mix, incidents, complaints and workplace health and safety issues.
- d) Whistle-blowing policies and procedures are in place and known to employees and they are enabled and supported to raise concerns in good faith and protected against reprisal.
- e) Direct care workers are provided the opportunity to raise issues of concern relative to staffing and skills mix, resident and client safety and quality and workplace safety with the relevant regulatory authority and a workforce representative.

8.5.2 Health professionals are provided access to, and enabled, receive clinical supervision and mentoring.

- a) Orientation and transition to practice programs are individualised to the learning needs of individual practitioners.
- b) Health practitioners are supported to connect with external healthcare providers and any other entity deemed appropriate to maintain and update their clinical knowledge and skills.

8.5.3 Worker rights in relation to association and membership of industrial bodies are acknowledged and supported in the workplace.

- a) Employees are enabled, without disadvantage or adverse consequence relative to their employment, to engage a workplace representative for industrial and or other matters including professional advice, undertaking a union position, or being a union member in the workplace, including Health and Safety Representative role, and through education, networking and advisory groups.

8.5.4 Professional reporting lines are clearly identified within the organisation to support the practice of health practitioners in relation to:

- a) role responsibilities and accountabilities
- b) scope of practice issues
- c) supervision and delegation
- d) professional advice, direction and performance.

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- ⁷ The Royal Commission into Aged Care Quality and Safety (2020) Aged Care Royal Commission Final Report: Summary, retrieved from <https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-executive-summary.pdf> 2
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