

Submission by the Australian Nursing and Midwifery Federation

**Consultation Paper on the Senate
Community Affairs Legislation
Committee's statutory review of specified
provisions of the *Aged Care Act 2024* and
associated *Aged Care Rules*, conducted
under section 602(12) of the Act.**

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Australian
Nursing &
Midwifery
Federation



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Annie Butler
Federal Secretary

Australian Nursing and Midwifery Federation
Level 1, 365 Queen Street, Melbourne VIC 3000

E: anmffederal@anmf.org.au

W: www.anmf.org.au



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 345,000 nurses, midwives and care-workers across the country.
2. Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.
3. Our strong and growing membership and integrated role as both a 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.
4. Through our work with members, we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.
5. The Australian Nursing and Midwifery Federation (ANMF) welcomes the opportunity to provide a submission to the Senate Community Affairs Legislation Committee's statutory review of specified provisions of the *Aged Care Act 2024* and associated *Aged Care Rules*, conducted under section 602(12) of the Act.
6. The ANMF represents nurses and care workers across residential aged care, home care and community settings. This submission reflects the experiences of our aged care members to date following commencement of the *Aged Care Act* on 1 November 2025.



Overview

Cross-Cutting Implementation Issue – Workforce Assumptions

7. Across multiple provisions under review, the Rules assume a level of workforce availability, skill mix and surge capacity that is not reliably delivered under current labour market and funding conditions.
8. While care-minute requirements and AN-ACC funding provide an important baseline, they operate on averaged assumptions and do not guarantee:
 - staffing presence or appropriate skill mix at the point of care; or
 - surge capacity during acuity spikes, outbreaks or emergencies.
9. This misalignment increases compliance risk, shifts accountability toward individual workers, and undermines both care quality and worker safety. The issues outlined below should be read in this context.

Section 14 – Aged Care Code of Conduct

10. The ANMF supports high standards of professional conduct and strong protections for people receiving aged care. However, early implementation of the Code of Conduct indicates that it operates alongside employment law, professional regulation and provider obligations in a way that creates overlap and ambiguity in accountability.
11. Our members report concerns that civil penalties and compliance action may be applied to workers for conduct arising from provider-controlled systemic failures, including chronic understaffing, inadequate skill mix and unsafe workloads.
12. The ANMF recommends that the Rules clarify that where alleged conduct breaches are caused or materially influenced by systemic conditions under provider control, primary accountability rests with the registered provider, rather than individual workers. The ANMF also recommends strengthening whistleblowing and reporting protections to ensure workers can raise concerns without fear of reprisal, including specific protections for visa-dependent workers.



Further, the ANMF reiterates its position that a separate, comprehensive and prescriptive provider-focused code of conduct should be developed, and that longer-term safeguarding would be better supported through mandatory national registration of personal care workers.

Section 15 – Aged Care Quality Standards

13. The ANMF supports revised Quality Standards grounded in rights-based care. However, the absence of a stand-alone workforce standard represents a significant regulatory gap.
14. Although the Rules reference adequate staffing, safety, worker wellbeing and care-minute obligations, these requirements are not translated into enforceable expectations within the Quality Standards, which remain the primary regulatory tool of the Aged Care Quality and Safety Commission. This creates a risk that providers may comply with the Standards in a purely technical or administrative sense by meeting documentation or reporting requirements—without ensuring safe staffing levels at the point of care.
15. The ANMF recommends the inclusion of a stand-alone workforce standard explicitly aligned to Australian National Aged Care Classification funding model (AN-ACC), direct care minutes and minimum registered nurse presence requirements, together with clear prescription in the Rules for the responsibility for monitoring and enforcing care-minute compliance. The ANMF further recommends strengthened accountability mechanisms to ensure providers accurately record and report direct versus non-direct care time. In addition, the ANMF supports improved alignment between the Aged Care Quality Standards and the Australian Commission on Safety and Quality in Health Care (ACSQHC) health service standards, with a single national authority responsible for standards development.

Section 16 – Meaning of Reportable Incident

16. The ANMF supports robust incident reporting and transparency. However, the current definition risks both over- and under-reporting and does not sufficiently distinguish between individual misconduct and incidents arising from systemic failures. Our members report regulatory over-burden arising from overlapping investigations by multiple bodies, including professional regulators and aged care regulators, for the same incident.



17. The ANMF recommends clearer distinction in the Rules between individual misconduct and system-level failures, explicit recognition that incidents arising from poor staffing levels; unreasonable workloads, and inadequate resourcing remain provider accountability issues, and the inclusion of measures that promote a strong safety culture in aged care, including psychological safety for workers and increased on-site regulatory presence.

Sections 17, 162 and 163 – Restrictive Practices

18. The ANMF has consistently opposed the normalisation of restrictive practices and supported strong safeguards, as reflected in submissions to the Royal Commission (2019–2020), responses to the Aged Care Bill and Rules consultations (2023–2024), and continued advocacy for restraint minimisation and workforce adequacy. In the context of persistent workforce shortages, there is a risk that emergency and immunity provisions may inadvertently enable the routine use of restrictive practices, rather than ensuring they remain confined to genuinely exceptional circumstances.

19. The ANMF recommends tighter definitions of “emergency” and “necessity”; mandatory documentation outlining staffing context and the alternatives attempted; and safeguards to ensure that immunity provisions do not displace professional accountability or ethical obligations, noting that these measures are critical to minimising the use of restrictive practices.

Section 141 – Provider Register

20. The ANMF supports transparency through the Provider Register. However, current disclosures provide limited insight into workforce-related quality risks.

21. The ANMF recommends that the Provider Register is maintained in an electronic, publicly searchable form, and that disclosures be expanded to include serious or repeated workforce-related non-compliance, including regulatory findings linked to staffing and skill-mix failures.



Section 154 – Personal Information and Record Keeping

22. The ANMF supports strong privacy and record-keeping requirements. However, extended retention periods increase administrative burden.
23. Without adequate provider systems and resourcing, these obligations risk displacing direct care and shifting compliance pressure onto frontline workers.
24. The ANMF recommends reinforcing that responsibility for record-keeping systems, resourcing and compliance rests with providers, in the Rules. Workers must not bear personal compliance risk for failures arising from provider systems or resourcing.

Chapter 4 – Funding of Aged Care Services

25. The ANMF acknowledges that AN-ACC funding and care-minute requirements improve recognition of care needs on average. However, funding arrangements do not reliably accommodate:
 - acuity volatility; or
 - the real costs of clinical emergencies such as outbreaks.

This misalignment contributes to risk transfer to providers and workers and may incentivise risk-averse admission practices.

26. The ANMF reiterates its support for a levy-based funding approach, as recommended by the Royal Commission, and recommends strengthening alignment between funding arrangements, workforce obligations and regulatory expectations.

Sections 379 and 507 – Worker Screening and Banning orders

27. The ANMF supports national safeguarding mechanisms, including a worker screening database and register of banning orders. As these systems become operational, procedural fairness and workforce impacts must be carefully monitored.
28. The ANMF recommends that worker screening checks do not create financial barriers for workers, with costs borne by government rather than individuals, that registers be maintained in searchable, real-time public formats, and that ongoing monitoring be undertaken to assess workforce supply impacts arising from these mechanisms.



Conclusion

29. The ANMF supports the objectives of the Aged Care Act 2024 to strengthen safety, quality and accountability. However, early implementation experience shows that many of the provisions under statutory review, particularly those relating to conduct, quality standards, incident reporting, restrictive practices, transparency, record keeping, funding and worker screening, are based on assumptions about workforce capacity and funding responsiveness that are not reliably met in practice.
30. Addressing these misalignments is essential to ensuring the Rules operate as intended, protect older Australians, and do not unfairly transfer risk to a workforce already under significant pressure.
31. The ANMF stands ready to continue working with the Government and Parliament to ensure these reforms are implemented in a way that is fair, effective and sustainable.