

Submission by the Australian Nursing and Midwifery Federation

Aged Care Rules – Release 4b Relating to the Remaining Rules

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**Australian
Nursing &
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Federation**



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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 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 ANMF thanks the Department of Health and Aged Care for the opportunity to provide feedback on the Aged Care Rules Release 4b Remaining rules (the Rules).



Overview

6. Noting that this release is intended to be the final release of the Aged Care Rules, it is concerning that some provisions are yet to be drafted. While it is appreciated that developing such a large and complex volume of detailed outputs is challenging, the absence of these critical details is disappointing, considering the need for early, in-depth consideration and comprehensive consultation. As the new Aged Care Act (the Act) is scheduled to come into force on 1 July 2025, it is imperative that the remaining provisions from across the rules' releases are made available for consultation as soon as possible. Timely consultation on the Aged Care Rules is critical to ensure the rules are comprehensive and fit for purpose upon implementation.
7. This submission sets out the ANMF's key concerns regarding the remaining rules and provisions included in this rules release.

Chapter 2 - Entry to the Commonwealth aged care system

Part 2 – Eligibility for entry

Division 2 – Aged care needs assessments and reassessments, Subdivision B – Aged care needs reassessments, Section 64-5 Significant change in circumstance

8. The introduction of a new, legislated reassessment pathway under the new Act is a welcome and important addition that will help to protect the wellbeing of older persons receiving funded aged care and aligns with the rights-based approach of the Act. This provision will help ensure that aged care recipients receive services that are responsive to their current and actual needs following changes in their circumstances, rather than relying on outdated assessments that no longer reflect their condition or needs.
9. Reassessments are essential to ensure that older people receive the appropriate level of care and direct care time. The exclusion of residential care recipients from reassessment triggers risks leaving a vulnerable population without the necessary safeguards to ensure their care plans remain appropriate and effective.



Part 3 – Classification

Division 1 – Classification assessments, Classification assessments for classification type ongoing for service group residential care – skills, qualifications and other requirements for approved needs assessors

10. Under *skills and qualifications* (2a – P21), the Rules prescribe that an assessor has at least five years' clinical experience in the delivery of aged care services or related health services as a registered nurse. The structuring of nursing award classifications mean existing assessors under current arrangements may not hold the pre-requisite five years' experience but be eligible to transition their role into new arrangements. Assurance is needed to ensure that no existing employees are at risk due to this change in legislation. This could be achieved through a 'grandfathering' arrangement that protects those workers against disadvantage until they meet the five-year requirement.

Division 3 – Approval of access to funded aged care services, Subdivision A – General, Section 65-20 Eligibility requirements—service group residential care

11. At section 65-20 some concern is expressed regarding the subjective and vague wording of residential aged care eligibility. Eligibility for service group residential aged care is articulated to be based on identifying that an 'individual is incapable of living in a home or community setting without support'. This might not be clear or understandable as it is open to interpretation and not underpinned by a clear, objective definition. Here, while ensuring that eligibility criteria is not exclusory, it is recommended that more clearly defined criteria is employed. Rather than as a gatekeeping method, this criterion should ensure that those who require support and/or wish to enter residential aged care are not unjustly blocked based on the subjective opinion of the reviewer, provided that they meet general eligibility requirements.

Part 3 – Classification

Division 3 – Classification levels and procedures, Subdivision B – Classification levels and criteria

12. The introduction of new Support at Home classifications under the revised Act represents a



change to the way aged care is delivered. Given the potential implications of these classifications on the level and type of care that individuals receive, it is critical that recipients placed within these classifications are closely monitored to ensure that the classifications remain fit for purpose over time. Mechanisms to ensure the timely review and adjustment of Support at Home classifications are paramount to ensure the safety of aged care recipients. This should include triggers for reassessment, the ability for care recipients or providers to request a review, and oversight of health outcomes.

13. It is noted that existing Home Care Package clients and those waiting on the National Prioritisation System will not be reassessed into one of the new classifications when the new program starts. Here, it is recommended that a clear and timely transition pathway is implemented to begin the transition of current recipients to the new classification systems to ensure consistency in the delivery of care across the sector. This transition must be managed in a way that ensures no individual is disadvantaged or placed in a lower classification that results in a reduced level of care compared to what they received under the previous system.

Part 4 – Prioritisation

Division 2—Priority categories for classification types for service groups, Subdivision A—Service group home support, Section 87-5 Priority categories and eligibility criteria for classification type ongoing

14. At section 87-5 and onwards as it relates to the establishment of priority categories for the service group home support, it is recommended that a more robust and nuanced weighting system be implemented. While it is acknowledged that the complexities of individuals' situations make prioritisation challenging, some concern is expressed whether those in most need will be adequately prioritised. For example, where an individual is homeless, or at risk of homelessness their safety and care needs are potentially greater than where an individual lives alone, however this is weighted the same as both receive one 'point'. Although variation in circumstances will contribute, a review of the prioritisation system and the inclusion of more robust safety, health, functionality, and psychosocial considerations is warranted to



ensure that it suitably reflects differentiation of priority categories.

15. Further, while prioritising those in urgent need of home care is a sensible strategy to reduce backlogs, this must be adequately supported by targeted funding and government prioritisation to allocate places. It is essential that once individuals are assessed and classified, there is available funding and places.

Chapter 3 - Provider Registration

16. Fees for provider registration, renewal, exemptions, waivers, and refunds are yet to be drafted. Given that this is the final release of the rules, the timely release of this critical information is necessary. Access to this information is essential to ensure that providers can adequately prepare, budget, and make informed decisions regarding their participation and compliance under the new Aged Care Act. Further, consideration must be directed towards ensuring that challenges faced in the disability sector regarding provider registration are avoided based on lessons learned from NDIS provider registration processes. As highlighted elsewhere, it will be vital that those auditing provider registration status for renewal, suspension, revocation, and new registration are suitably qualified and trained to undertake this important role.

Part 3—Variations, suspensions and revocations of registration

Division 2 – Audit requirements, Subdivision B – How audits must be conducted – general – 110-13 – Audit must be conducted by a quality auditor

17. Under (2), the Rules state that; “[t]he quality auditor must gather evidence relevant to the scope of the audit being conducted and may be assisted by other quality auditors with the technical knowledge or skills required to collect and interpret information relevant to the scope of the audit.” Here, it would be appropriate to tie the requirement to the provider registration categories not the scope of the audit, since ambiguity may mean a registered nurse is not included in the assessment of compliance for a provider who is registered to deliver nursing care, or personal care under the direction of a registered nurse.



18. To further protection of the public, clearer details must be provided to guide what details and notices are provided to entities prior to auditing and whether unannounced audits should be able to take place to investigate matters that warrant urgent attention. Regarding the details in this section under (3) (a)-(i) pertaining to the type of information the Commissioner must give in a notice to an entity prior to undertaking an audit, greater clarification is necessary regarding whether a notice must be given at the time of an unannounced visit or whether this could result in entities concealing potential issues that might be uncovered by an unannounced audit.

Division 2 – Audit requirements, Subdivision E – How audits must be conducted – final audit report, 110-38 Final audit reports

19. This section contains details of what must be included in a final audit report. Here, information related to worker feedback is an important source of evidence that should also be included in final audit reports and this should be added to 110-38 Final audit reports (2) (a) – (f).

Division 2 – Audit requirements, Subdivision J—Requirements for persons conducting audits—registration as a quality auditor [to be drafted]

20. Requirements for persons conducting audits, under Subdivision J of Chapter 3, Part 2, Division 2 are yet to be drafted. Here it is important that those conducting audits to determine an entity's ability to conform with the Aged Care Quality Standards are suitably experienced and qualified. Given the auditing process, it is recommended that auditors have direct experience in the delivery of funded aged care services. Further, auditors should hold relevant clinical qualifications, including a Bachelor of nursing (or equivalent qualification), to ensure they possess a comprehensive understanding of all the clinical care practices, and the care needs of older persons. Auditors must also receive appropriate training regarding the auditing process, the function of funded aged care under the new aged care act and the Australian regulatory system, and the use of aged care quality compliance tools, such as the Aged Care Quality Standards and the Star Ratings system. Importantly, duplication and double-handling – for example duplication of Ahpra requirements for registered/regulated health



professionals must be avoided such as the duty of nurses to comply with the Aged Care Code of Conduct. As ANMF members include quality auditors, it will be critical that the ANMF is involved in any further or separate consultations to ensure that our members are not disadvantaged.

Chapter 5 – Registered providers, responsible person and aged care worker obligations

Part 2—Obligations relating to reporting, notifications and information

Division 1 – Provider obligation – reporting to particular persons, Subdivision L – Registered nurses, 166-805 Reporting requirements relating to registered nurses

21. While the ANMF opposes exemptions for maintaining RN 24/7, it is accepted that the legislation does make provisions for exemptions in its current form. Here, it is important to highlight, however, that the proposals regarding reporting of periods where a registered nurse is not on-site and on duty at all times to the System Governor potentially create system delays in gaps being communicated to the system regulator. If there are gaps in provision of registered nurses the system regulator must also be notified as soon as possible to inform the risk assessment for that service.

Chapter 13—Information management

Part 4—Information sharing

Division 1—Publication by System Governor, Subdivision A—System Governor must publish information about funded aged care services generally, Section 544-30 Approved residential care home—direct care responsibilities

22. Under section 544-30, the specific requirements regarding the System Governor’s obligation to publish information relating to direct care responsibilities are yet to be drafted. It is important that information is published in a manner that is accessible, coherent, and available in multiple formats to ensure it is usable by diverse consumers. Given that direct care time and compliance with direct care responsibilities are key indicators of the quality and safety of care provided within aged care services, it is important that this information is



published in a clear, accurate, and timely manner. Publication of this data will improve transparency and accountability and support informed consumer decisions. Further, the publication of this data will encourage continuous quality improvement.

Additional Information

Procedural fairness – Procedural fairness for investigations regarding potential breaches of the Aged Care Code of Conduct

23. While it is understood that Rules Release 4b contains little to no direct mention of the Aged Care Code of Conduct (the Code) and the procedures that govern how potential breaches of the Code are managed by the Aged Care Quality and Safety Commission (ACQSC), as the last set of rules to be consulted on before the commencement of the Act on 1 July 2025 it is essential that there is legislative underpinning for procedural fairness for these investigations.
24. The Code describes how aged care providers, their governing persons and workers (including volunteers) must behave and treat people receiving aged care. The ACQSC can take action if an aged care provider, governing person, or a worker is suspected of being in breach of the Code. The ACQSC states that when such action is taken, their processes and decisions need to be consistent with the principles of procedural fairness. The details of how procedural fairness is maintained is outlined in a [Fact Sheet](#) produced by the ACQSC.
25. Procedural fairness is critical in any case where a person is under investigation for a suspected breach of the Code, however the details provided by the ACQSC are minimal and further information appears largely absent from legislation in the new Aged Care Bill 2024 and related Rules releases to date. For example, the information provided in the Fact Sheet only briefly mentions that a person involved in an investigation by the ACQSC has the right to representation of their choosing if they are involved in or subject to an investigation under the Code.
26. The ANMF strongly recommends that the final legislation and Rules accompanying the new



Aged Care Act include clear and detailed information regarding how the ACQSC should adhere to procedural fairness when dealing with persons involved in investigations regarding the Code. It is especially important that such processes be transparent, impartial, and respectful of workers. The following rights for workers involved in or subject to an investigation under the Code should be clearly detailed in legislation and the relevant sections of the Rules:

- Written notification outlining the allegations and evidence forming the basis of the concerns.
- A reasonable time to respond to enable the worker to present their perspective.
- Impartial and respectful decision making.
- The right to be represented.