

**Submission by the Australian Nursing and Midwifery Federation**

# **Aged Care Legislation Amendment (Aboriginal and Torres Strait Islander Aged Care Commissioner and Other Measures) Bill 2026**

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**Australian  
Nursing &  
Midwifery  
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 356,000 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 Community Affairs Legislation Committee for the opportunity to provide feedback to the inquiry on the Aged Care Legislation Amendment (Aboriginal and Torres Strait Islander Aged Care Commissioner and Other Measures) Bill 2026 (the Bill)<sup>1</sup>.
6. This submission responds briefly to the measures to introduce an ongoing statutory office of the Aboriginal and Torres Strait Islander Aged Care Commissioner. The submission responds in detail to the proposal in Schedule 3 Part 1 of the Bill to remove the definition of direct care staff member from the Act. The ANMF does not otherwise seek to make any

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<sup>1</sup> Aged Care Legislation Amendment (Aboriginal and Torres Strait Islander Aged Care Commissioner and Other Measures) Bill 2026 (Cth).



comments in relation to the other measures outlined in the Bill.

## Statutory office of the Aboriginal and Torres Strait Islander Aged Care Commissioner

7. The ANMF takes this opportunity to express its strong support for the primary purpose of the Bill introducing legislation that sees the role and functions of the Aboriginal and Torres Strait Islander Aged Care Commissioner being made a permanent and ongoing statutory office. This is a warmly welcomed amendment to the *Aged Care Act*<sup>2</sup> (the Act).
8. The ANMF notes the establishment of the role of Aboriginal and Torres Strait Islander Commissioner was a key recommendation of the Royal Commission into Aged Care Quality and Safety. The ANMF urges the Aged Care Quality and Safety Commission to take steps to make the interim position permanent as soon as possible. The Commission must ensure the legislative amendments translate in practice to implementing urgently needed reform of the aged care sector for Aboriginal and Torres Strait Islander peoples.

## Overview of direct care

9. The ANMF represents registered nurses (RNs), enrolled nurses (ENs), nurse practitioners and personal care workers across residential aged care, home care, and community aged care settings. The title of personal care worker may also refer to nursing assistants, assistants in nursing or range of other titles, such as personal care assistant. The ANMF's members working in aged care are predominantly engaged in the delivery of direct care services.
10. The ANMF's interest in this inquiry relates to the proposed deletion of the detailed definition of direct care staff member from section 7 of the Act and the proposal to move the definition to the Rules.<sup>34</sup>
11. The ANMF opposes this amendment and submits that it is neither necessary nor

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<sup>2</sup> *Aged Care Act 2024* (Cth)

<sup>3</sup> *Aged Care Rules 2025* (Cth)

<sup>4</sup> The Bill, Schedule 3- Other measures Part 1- Direct care staff member definition Item 1-Section 7 (definition of direct care staff member)



appropriate. The amendment risks weakening the legislative framework that supports the mandated delivery of direct care services to aged care residents.

## Background

12. The Act came into operation on 1 November 2025 after a period of significant consultation with stakeholders, including the ANMF.

13. Section 7 of the Act provides the following definitions relevant to the proposed amendment:

**direct care** means any funded aged care services prescribed by the rules which are delivered to an individual by a direct care staff member.

**direct care staff member** means an aged care worker of a registered provider who is any of the following:

- (a) a registered nurse;
- (b) an enrolled nurse;
- (c) a nursing assistant;
- (d) a personal care worker;
- (e) a person prescribed by the rules.

14. Section 11 of the Act sets out that funded aged care services are delivered by registered providers and the aged care workers of registered providers. Section 11(4) sets out the following in relation to an aged care worker:

An **aged care worker** of a registered provider means:

- (a) an individual employed or otherwise engaged (including as a volunteer) by the registered provider to deliver funded aged care services; or
- (b) an individual who:
  - (i) is employed or otherwise engaged (including as a volunteer) by an associated provider of the registered provider; and
  - (ii) is engaging in conduct under the associated provider's arrangement with the registered provider relating to the registered provider's delivery of funded aged care services; or
- (c) an individual who is a registered provider.

Note: An individual engaged by a registered provider includes an independent contractor.



15. The Bill proposes to repeal the definition of direct care staff member and substitute it with the following:

***direct care staff member*** has the meaning prescribed by the rules.

16. The Explanatory Memorandum<sup>5</sup> (the EM) offers a range of reasons for the proposed amendment, which is described as a ‘technical amendment’.

## The Act and direct care staff members

17. The EM provides that one of the reasons for removing the definition of direct care staff member from the Act and instead referring only to the Rules is that the term is mostly referenced in the Rules 2025. The ANMF does not agree that this is a sufficient reason to make the amendment.

18. The Act sets out key concepts<sup>6</sup> that underpin both the Act and the Rules.

19. Section 20 of the Act sets out the key concept of high quality care and the standards and features that identify high quality care. One of the identifying features of high quality care is set out at s20(c)(xiii) as follows:

*The delivery of high quality nursing services by sufficient numbers of qualified and experienced **direct care staff members** (emphasis added).*

20. The link between high quality care and direct care staff members is made clear in the above provision. References in the Act to high quality care<sup>7</sup> by inference incorporate the fact that care is delivered by direct care staff members.

21. The role of direct care staff members in the delivery of high quality care is essential to meeting the objectives of the Act<sup>8</sup> and core to recognising that direct care staff are the

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<sup>5</sup> Explanatory Memorandum, Aged Care Legislation Amendment (Aboriginal and Torres Strait Islander Aged Care Commissioner and Other Measures) Bill 2026 ((Cth) p40.

<sup>6</sup> *Aged Care Act 2024* (Cth) ss 8-22.

<sup>7</sup> *Aged Care Act 2024* (Cth) ss 25(6),(13), 147, 339,349.

<sup>8</sup> *Aged Care Act 2024* (Cth) s5



backbone of the aged care system. An amendment that takes direct care staff out of the Act fails to recognise the importance of workers engaged in direct care and weakens the legislative strength of both the above provisions.

## The Rules

22. The Rules do not currently define direct care staff member. Direct care staff members are referred to in the rules by reference to the definition at s7 of the Act.
23. The EM states that through the Rules, direct care staff members will continue to be defined to include a registered nurse, enrolled nurse, a nursing assistant, a personal care worker and a person prescribed by the Rules.
24. The ANMF is concerned that by moving the definition to the Rules, workers who may be defined as direct care staff members can be varied far more easily than if the current list in the Act is retained. As subordinate legislation, rules may be amended on an administrative basis at Ministerial discretion or by government agency. This concern becomes particularly pressing when the issue of delivery of mandated care minutes is considered.
25. The ANMF has repeatedly expressed its dismay at the erosion of mandated care minutes through the mischaracterisation of non-direct care workers as direct care workers and the misattribution of work that is performed by direct care workers but does not meet the definition of direct care.
26. The risk of moving the roles of RN, EN, nursing assistant, and personal care worker to the Rules is that legislative protection of these indisputably direct care roles is lost. Any mechanism that opens the door to adding roles to the list of staff members whose work can be acquitted against the delivery of mandated care minutes is highly concerning. For example, it is already the case that cleaning or catering staff are being 'reclassified' to care roles, despite the fact that the work they do does not meet the requirements of mandated care minutes. If the definition is moved to the Rules and thereby becoming more susceptible to inappropriate amendment, the capacity for misattribution of care minutes will be further



enabled.

### **Aged care workers and volunteers**

27. The EM states that the amendment relates in part to the definition of aged care worker at subsection 11(4). The definition of aged care worker is broader than that of direct care staff member. Aged care workers include volunteers engaged by a registered provider.
28. The EM states that volunteers should generally be excluded from the definition of direct care staff member and thereby not be counted towards the calculations of supplement. The ANMF agrees that the contribution of volunteers should not be included in the calculations for the delivery of direct care minutes or for any funding supplement.
29. Unlike s11(4), a plain reading of the s7 definition of direct care staff members does not encompass volunteers but, rather, means a person who is a member of staff. The ANMF submits that there is no basis for confusion between what is meant by a direct care staff member and an aged care worker (which may include a volunteer, in the ordinary meaning of the word).
30. The EM goes on to suggest that work performed by an appropriately qualified member of a religious order, should be included in the calculation of direct care work. The ANMF agrees with this contention where that work is delivery of direct care. It is the case that certain providers of aged care are affiliated with individual orders of nuns, some of whom are qualified and registered RNs, ENs, or personal care workers, and who are engaged primarily in these roles to delivery care. These workers are not directly remunerated in the way ordinary employees are, but they are otherwise rostered to perform direct care work in accordance with their nursing care role. In these circumstances, the work performed is not appropriately characterised as volunteer work but is rather that of direct care staff member.
31. The number of religious order members delivering direct care work is very small, and the issue of ensuring such work counts towards the delivery of care minutes has previously been identified and resolved in consultation between the Department of Health, Disability and





Ageing, provider representatives and the relevant unions. The outcome is reflected in the **Care minutes - Guide for registered providers of residential care homes** document.<sup>9</sup>

32. The ANMF does not agree that the proposed change is necessary to ensure that the work of religious order members is counted towards direct care where that work is performed in defined circumstances, as set out in the Care Minutes Guide. There is no need for flexibility as referred to in the EM, as the issue has been well identified and addressed in the limited circumstances in which it arises.

## Conclusion

33. The s7 definition of direct care staff member, by its title and reference to registered nursing classifications together with nursing assistants and personal care workers, makes clear that this work is not that of volunteers. In addition, and most importantly, it ensures that provisions of the Rules that relate to the delivery of direct care and direct care minutes are delivered by the legislatively recognised staff who are qualified to do so.
34. The ANMF urges the Committee to reject the proposed amendment at Schedule 3 Item 1 of the Bill.

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<sup>9</sup> [Care minutes – Guide for registered providers of residential care homes](#) see 3.3.1 Members of a religious order