

Submission by the Australian Nursing and Midwifery Federation

Aged Care Rules – Release 3 Relating to Provider Obligations

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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 3 Relating to Provider Obligations (the Rules).



Overview

6. Throughout this Rules release there are multiple places where provisions are yet to be drafted, including conditions on provider registration related to the delivery of funded aged care services, conditions related to financial matters, reporting on the Quality Indicators, and obligations regarding the aged care workforce. While it is appreciated that the development of such a large and complex volume of detailed outputs is challenging, it remains disappointing that the absence of these critical details means early, and in-depth consideration and consultation cannot be undertaken comprehensively. This is critical as there is a pressing need for timely consultation on the Aged Care Rules before their implementation to ensure that the rules are comprehensive and remain fit for purpose.
7. The New Aged Care Act governs the responsibilities of providers from the moment an older person first contacts aged care services until their final contact, which requires a coordinated, comprehensive and continuous approach to providing quality care to support the wellbeing of the older person. ANMF recommendations for this draft affirm our position that a skilled aged care workforce, with the necessary training and resources is critical for ensuring quality care and support of older individuals receiving aged care services and must be reinforced and supported in the development of the rules. This submission sets out the ANMF's key concerns with respect to provider obligations and other provisions included in this rules release.

Aged Care Code of Conduct and Quality Standards

8. Regarding the Aged Care Code of Conduct (Chapter 1, Part 5) the ANMF does not support the inclusion of the Aged Care Code of Conduct for aged care workers due to its overlap with and unnecessary duplication of existing, and superior, Codes and Standards of Practice for Registered Health Professionals. While the removal of registered workers from this obligation would remove this duplication, the ANMF recommends that instead of the Code applying only to non-registered workers, a comprehensive positive registration scheme for care workers through Ahpra should be implemented. This position has been articulated on many prior occasions and is again in our forthcoming submission to the separate consultation



process on registration for personal care workers. By registering and regulating personal care workers via Ahpra, this approach would allow for recognition of various state-based Codes for unregistered health workers while maintaining and enhancing national consistency. This approach would also provide greater safety and assurance for aged care service recipients, workers, and the wider community via a tried and tested approach and experienced regulatory body.

9. The ANMF is encouraged by the changes made to Standard 2 of the Aged Care Quality Standards (Chapter 1, Part 6) as they relate to greater recognition for the role of aged care workers in delivering safe and high-quality care. However, as these changes do not impose new obligations on providers, further refinement and strengthening are necessary to translate recognition into meaningful action. To reinforce the intent of Standard 2, an additional provision should be introduced, mandating that registered providers must maintain sufficient numbers of qualified and experienced direct care staff to deliver high-quality nursing services. Ensuring appropriate staffing levels is fundamental to improving care outcomes, reducing workload pressures, and supporting aged care workers in providing the level of care that older Australians deserve.¹ Without enforceable requirements for staffing adequacy, the improvements in recognition under Standard 2 risk being symbolic rather than substantive.
10. At Section 15-5 (Chapter 1, Part 6, Division 1), Standard 5 should apply to registered providers in the personal and care support in the home or community category. While not all these providers deliver clinical care, the care they provide must be considerate of clinical outcomes. The Department has previously recognised the importance of personal care for helping to keep older residents out of hospital and residential aged care. Personal care is typically required when an older person experiences functional and/or cognitive decline, increasing their vulnerability to clinical deterioration and adverse outcomes. Providers delivering personal care must understand frailty and acknowledge their responsibility for clinical outcomes related to increased frailty.



11. The requirement for medicines to be appropriately and safely managed by health professional is a welcome inclusion, however, it is important to establish clear definitions regarding the term ‘administration’ of medications to avoid any ambiguity. Specifically, it is crucial to distinguish between ‘administering’ and ‘assisting’ with medication. This will ensure that care workers understand their roles and responsibilities and do not take up tasks outside of their scope at the prompting of providers, and that medication is only administered by appropriately trained professionals. Clear guidelines will help maintain the safety and integrity of medication management.
12. A review period of the Aged Care Quality Standards (as per Chapter 1, Part 6, Division 3, Section 15-43) has been set to be conducted every 5 years. While noting that provisions here are yet to be drafted, there is a need for timely reviews to ensure that the Quality Standards remain fit for purpose. Regular independent evaluations should be conducted to ensure that the Quality Standards are functioning as intended and to identify areas for improvement. Provisions under this section should include clauses to expedite review periods should evaluations indicate critical issues in the way that the Quality Standards are functioning.

Restrictive Practices

13. Further clarification is required regarding the permitted use of restrictive practices (at Chapter 4, Part 9, section 162-5) to demonstrate that, under section 162 of the Act, only registered providers in the provider category or residential care are permitted to use restrictive practices, provided they conform to the requirements outlined in the Rules. All uses of restrictive practice that are not consistent with the rules, or perpetrated by providers who are not permitted, must be thoroughly investigated and appropriately managed.
14. Clarification of the definition of ‘unexpected death’ (as used in Expression (9) of Chapter 1, Part 7, Division 1, Section 16-5) is necessary to eliminate ambiguity and establish a measurable standard. The current wording, which states that "reasonable steps were not taken by the registered provider to prevent the death", is ambiguous and lacks a clear,



measurable criterion. Here, because low staffing levels and skills mixes are known to contribute to missed and rushed care which, in turn, are associated with risks that might result in morbidity and mortality, such occurrences should be considered an abrogation of responsibility on the part of the provider. A precise and objective definition of ‘unexpected death’ is also needed to ensure clarity for both aged care providers and regulatory bodies. Clear guidelines must be established to define what constitutes ‘reasonable steps’ in the context of aged care, ensuring that providers understand their obligations and report their actions transparently. Those reviewing provider incident reports must be able to assess whether these ‘reasonable steps’ were evidence-based and aligned with best practice standards in aged care. Further, the rules must clarify that the responsibility lies with the registered provider rather than individual workers. For example, if low staffing levels leading to inadequate clinical care was identified as the cause of an ‘unexpected death’, accountability must be placed on the provider. This distinction is crucial, as aged care workers often lack the necessary authority to effect systemic changes in care quality, such as staffing levels and skill mix.

15. Further clarification is also required to ‘stealing or financial coercion’ (as used in Expression (10) of Chapter 1, Part 7, Division 1, Section 16-5). The current use here, and in paragraph 16(1)(e) of the Act, limits this expression to apply only to an aged care worker of the provider, with no reference to financial coercion perpetrated by the provider. Recognising that providers have separate financial obligations as outlined in other parts of the Act and the Rules, explicitly including provider misconduct in the definition would help ensure stronger protections against financial abuse in aged care settings. Additional provisions should be introduced to this expression to hold providers accountable when they exploit their position to gain inappropriate control over an individual’s finances.
16. Where specific requirements are outlined (in Chapter 4, Part 9, Division 2) regarding the use of restrictive practices in emergency situations, stronger definitions and provisions are needed to clarify what qualifies as an ‘emergency’. While restrictive practices may be necessary in certain high-risk or urgent situations, it is crucial to establish clear criteria to



prevent their misuse or overuse. Although emergency provisions are necessary to protect individuals' safety when all requirements cannot be fully met (such as in Section 162-20(1)(a)), safeguards, reporting obligations, and additional responsibilities must ensure transparency and accountability. These provisions must also ensure that where an 'emergency' is identified, the circumstances leading up to this situation were not preventable or accountable to failings on the part of the aged care providers, such as a result of chronic understaffing or inadequate skill mixes. Providers must be held responsible for ensuring that restrictive practices are used only as a last resort, performed in a safe and ethical manner, and that adequate clinical care is provided to reduce the need for such practices.

17. The term 'informed consent', as used throughout Chapter 4 in relation to restrictive practices, should be clearly defined to ensure consistency and understanding. Recognising that existing provisions specify that informed consent includes the use of the restrictive practice and how it is to be used (including its duration, frequency and intended outcome), further provisions should be introduced to specify the exact details that must be communicated to all relevant parties. This includes providing sufficient information to older persons, their families or representatives, and aged care workers. These provisions should outline the nature and extent of information to be provided, ensuring that consent is truly informed and based on a comprehensive understanding of the practice's implications. Additionally, clear guidelines should be established on how this information must be recorded and reported. Ensuring transparency and accountability in the informed consent process will help protect the rights of older persons and promote ethical and responsible use of restrictive practices
18. Additional provisions (as they relate to Expression (g) of Chapter 4, Part 10, Division 1, Section 164-20) are required to provide direct reporting mechanisms for aged care workers to notify the Commissioner of reportable incidents, independent of the provider's internal reporting structure. Our experience has shown that providers can sometimes act as 'gatekeepers,' potentially delaying or preventing reports from reaching the appropriate authorities. Establishing a clear and legitimate pathway for aged care workers to directly



report concerns would enhance the safety and well-being of individuals in care and provide essential protection for staff who may fear retaliation or inaction.

Conditions on Provider Registration Relating to Financial Matters

19. Noting that conditions on provider registration relating to financial matters (Chapter 4, Part 5) are yet to be drafted, the ANMF reaffirms its position, as outlined in previous submissions to the Aged Care Act, that specific conditions must be imposed to ensure the accountable and transparent use of funds. These conditions must explicitly require that all funding allocated to aged care providers is used solely for its intended purpose and that this is transparently reported or otherwise returned. Ensuring financial accountability is critical to maintaining public trust in the aged care system. The ANMF strongly advocates for clear legislative requirements that mandate aged care providers to disclose detailed financial reports, demonstrating how government funding and other revenue sources are allocated, as a condition on provider registration. This should be supported by specific provisions to prevent misallocation of funds, such as diverting resources away from care delivery towards non-care-related expenditures, such as real estate or shareholder dividends.

Workforce Requirements

20. The ANMF is supportive of the removal of duplication screening requirements for aged care workers who are also registered as health professionals (as detailed in Chapter 4, Part 6, Subdivision B). Given that registered health professionals undergo rigorous background checks and credentialing processes through their professional registration bodies, requiring them to complete additional screening for aged care employment creates unnecessary burden. Alignment of screening processes between aged care and disability services, workers will also reduce duplication and benefit from greater ease of transfer between sectors, promoting workforce flexibility and improving staff availability in both industries. Introducing NDIS clearance requirements also creates a more rigorous screening standard for aged care workers. Importantly, should personal care workers be registered with Ahpra, further duplication can also be minimised as then these workers would be regulated in a similar



fashion to nurses and other health professionals.

21. There is need for further clarity of what constitutes “appropriate qualifications, skills or experience” (as used in Chapter 4, Part 6, Subdivision C, Section 152-35) as it relates to section 152(c) of the Act. The absence of a clear and consistent definition creates ambiguity around the minimum requirements for aged care workers, leading to inconsistencies in the standard of care provided across the sector. As noted above, an Ahpra based national worker registration scheme to regulate the currently unregulated aged care workforce is needed. A positive registration scheme would also establish mechanisms for verifying credentials and supporting ongoing professional development, in addition to setting the standard for registration in the first instance. Enabling workers to continuously update their skills and knowledge in line with evolving best practices, and be recognised for this, will improve the care quality and enhance workforce retention by providing clear career progression pathways.
22. The provisions introduced in this rules release (Chapter 5, Part 6, Division 2, Section 153-5) have limited workforce vaccination requirements to registered providers in the residential aged care category. The ANMF reaffirms its strong position on the importance of vaccination requirements for all nurses and care workers in aged care. Vaccination is a fundamental measure for protecting the health and well-being of both older persons and aged care workers by preventing the spread of infectious diseases and reducing associated risks. All direct care workers, as well as any staff who come into contact or close proximity with older persons, must be required to be vaccinated. The absence of mandatory vaccinations significantly increases the risk of aged care workers contracting vaccine-preventable diseases from infected individuals and transmitting these illnesses to vulnerable individuals under their care. Given that older people, particularly those with underlying health conditions, are at heightened risk of severe illness, complications, and mortality from infectious diseases, minimizing their exposure through comprehensive vaccination policies is essential. To ensure a consistent and effective approach to infection prevention and control across the aged care sector, workforce vaccination requirements should be expanded to apply to all registration



categories. Establishing a uniform standard across the sector, like those in the health sector, will reduce the likelihood of infectious disease outbreaks and enhance overall health and safety outcomes across aged care settings.

Provider Governance

23. Under Section 157-5 and 157-10 (Chapter 4, Part 8, Division 1), it is stated that only registered providers in the residential care and transition care category must meet the independent non-executive member and clinical care provision experience membership requirements for their governing bodies. This provision should be expanded to include, at least, Category 4 providers (Personal care and care support in the home or community), ensuring that providers act in a way that is consistent with the clinical needs of the older people under their care. While Category 4 providers may not directly perform clinical interventions, governance oversight with clinical expertise would help ensure high-quality care delivery, given that these services often involve assisting individuals with complex health needs, medication management, and condition monitoring. Further, recipients of non-clinical care still require regular assessment to efficiently detect potential changes in health and wellbeing status or risk factors. Without care from a sufficiently trained care team with knowledge of such signs, these could be missed and result in harm.

Reporting Requirements

24. Provisions under Chapter 4, Part 7, Subdivision C, regarding the records that registered providers must keep and retain on Quality Indicators are yet to be drafted. There is a need for these records and reporting of the Quality Indicators by providers to be comprehensive and transparent. Records must be retained and reported to a sufficient level of detail that demonstrates if registered providers meet compliance requirements and where any specific failings are. Registered providers should be required to report on quality indicators at least annually to ensure transparency, accountability, and continuous improvement in care standards.



Whistleblower Protections

25. At Chapter 4, Part 10, Division 2, Section 165-15(1(i)) the protections for whistleblowers should be expanded to include disclosures made to worker advisory body members, aged care advocates, and worker union representatives. Aged care workers are often hesitant to report concerns regarding care quality or workplace issues due to fear of retaliation or lack of support. Expanding the scope of protected disclosures to these groups would provide workers with additional avenues to raise concerns in a safe and supportive environment. This would help empower workers to raise matters around poor care quality or understaffing, particularly important where ACQSC and other regulators may not have sufficient recourses to monitor aged care facilities on the ground level as aged care workers can.

Complaints and Incident Management

26. While acknowledging that provisions for the Worker Voice and Quality Care Advisory Body have been abandoned, there remains a need to integrate worker feedback into the delivery of aged care services. Aged care workers are on the front lines of service delivery and possess valuable insights into care quality, staffing levels, and workforce challenges that directly impact care outcomes. The complaints and incident reporting system must be designed to enable aged care workers to provide real-time feedback on care delivery within registered providers, including concerns about staffing levels and direct care time allocation. Workers should be empowered and well-informed on how to raise issues related to staffing and workforce conditions that contribute to incidents. These systems must mandate that registered providers take meaningful action on all complaints, ensuring that worker feedback is appropriately considered and that identified issues are effectively addressed. Strengthening these provisions will signal to aged care workers that their role is important and supported by government and regulator.



Direct Care Minutes and RN 24/7

27. At Chapter 5, Part 6, Division 1-Registered nurses is yet to be drafted. Here, the inclusion of explicit reference to the RN 24/7 requirement to ensure continuous clinical oversight and high-quality care is essential. Embedding the RN 24/7 requirement into the Rules will further strengthen accountability and reinforce the commitment to high-quality, person-centred care in the aged care sector.
28. At Chapter 5, Part 6, Division 2, it is encouraging to see the inclusion of care minute requirements incorporated. However, there remains a need for periodic reviews of the adequacy of care minutes to ensure they remain responsive to the evolving needs of aged care residents and reflect the actual care needs of those receiving care. To support continuous improvements in aged care staffing development of a structured plan that includes a progressive increase in care minutes, aligning with the recommendations of the [National Aged Care Staffing and Skills Mix Project Report is required](#). By embedding a review mechanism and a pathway for increasing care minutes over time, the legislation would help safeguard resident well-being. A major finding of the Aged Care Royal Commission was significantly inadequate levels of care being provided to older people. Unless levels of care are raised to ultimately reflect the demand for care, aged care reform will fail.

Other Provider Obligations

29. In Chapter 5, Part 7—Other Obligations [to be drafted], there is a need to include additional provider obligations, particularly regarding collaboration with the broader healthcare system. Aged care is the only sector in the broader healthcare field where clinical and personal care are not currently considered intrinsically linked as part of a care continuum. Aged care is *health care* and must be treated as such where health professionals coordinate to deliver care. To achieve this, registered providers must be required to collaborate with external multidisciplinary services and providers across different healthcare sectors, ensuring that older individuals have seamless access to the full range of healthcare services they require. This collaboration should be facilitated through provider obligations in terms of



improved clinical in-reach and outreach initiatives, strengthening partnerships between aged care facilities and hospitals, primary health services including general practitioners, allied health services, and specialist care teams.² These partnerships will enable timely intervention and reduce avoidable hospitalizations.³⁻⁵ Sharing information through clear and up-to-date advance care directives/plans would ensure continuity of care and reduce gaps in treatment.⁶ Requiring registered providers to engage in meaningful collaboration with the broader healthcare system will help break down existing silos in aged care, ensuring that older Australians receive comprehensive, integrated, and high-quality care. These reforms will enhance health outcomes, improve coordination between sectors, and reinforce the understanding that aged care must be recognised as an essential and integrated part of the wider healthcare system. Older persons seeking care should receive the same level of care no matter if this care is delivered across the health and aged care systems.

30. With the upcoming digital transformation in the aged care sector in line with the introduction of the Act, it is essential for providers to demonstrate digital preparedness and have obligations in this area. Obligations on providers should include requiring that registered providers organise and deliver training to aged care workers regarding their responsibilities in using digital systems. Providers must equip their workforce for this transition, ensuring that any new requirements introduced do not disrupt daily operations or hinder the delivery of quality care.



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