

Australian Nursing and Midwifery Federation

# SUBMISSION TO THE AGED CARE WORKER REGULATION SCHEME CONSULTATION

26 JUNE 2020



Australian  
Nursing &  
Midwifery  
Federation



**Annie Butler**  
Federal Secretary

**Lori-anne Sharp**  
Assistant Federal Secretary

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

**T: 03 9602 8500**

**F: 03 9602 8567**

**E: [anmffederal@anmf.org.au](mailto:anmffederal@anmf.org.au)**

**W: [www.anmf.org.au](http://www.anmf.org.au)**



The 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 285,000 nurses, midwives and carers across the country.

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.

Our strong and growing membership and integrated role as both a professional and industrial organisation provide 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 Australia's health and aged care systems, and the health of our national and global communities.

With regard to care of older people, ANMF members work across all settings in which aged care is delivered, including over 40,000 members who are currently employed directly in the aged care sector. Many more of our members are involved in the provision of health care for older persons who move across sectors (acute, residential, community and in-home care), depending on their health needs. Being at the fore-front of aged care, and caring for older people over the twenty-four hour period in acute care, residential facilities and the community, our members are in a prime position to make clear recommendations to improve the care provided and enhance processes for access to that care.



## INTRODUCTION

---

The ANMF has supported and campaigned for regulation for unregulated aged care workers (however titled)<sup>1</sup> since 2004.<sup>2</sup> The ANMF believes that unregulated aged care workers should have been included in the national registration and accreditation scheme when it was introduced in 2010, as they, like registered and enrolled nurses, provide aspects of nursing care to the public.

The purpose of this scheme is public safety – consumers and employers know that health practitioners registered under the Australian Health Practitioner Regulation Agency (AHPRA) meet a national minimum standard of education, English proficiency, and are a fit and proper person for their role, thereby guaranteeing minimum levels of care regardless of where that care is delivered.

Our aged population deserve no less reassurance or transparency regarding the people who deliver their care, whatever the setting. Indeed, the first right in the Charter of Health Care Rights is “safe and high quality care and services”.<sup>3</sup> It is therefore essential that these health care workers are safe and competent to practice, work within a formal national regulation framework to enable them to complete their care delivery safely.

Members of the ANMF have expressed their concern about aged care workers not being regulated for many years. These members include registered nurses, enrolled nurses and unregulated aged care workers themselves. The concerns relate to the lack of consistency in standards of educational preparation, competence and no national register to track an aged care worker if there has been an established public safety risk. Registered nurses have specifically also raised ongoing concerns relating to their professional responsibility to provide supervision and support to aged care workers in often very difficult, understaffed nursing homes.

The aged care sector’s quality of care has changed over the period the ANMF have been campaigning for national regulation for this group of workers, as outlined in the Royal Commission into Aged Care Quality and Safety’s interim findings. The Counsel Assisting’s submissions highlight that many aged care providers are not able to provide safe, quality care to residents due to systemic issues such as widespread underemployment and rostering of qualified workers such as registered nurses, lack of sufficient numbers of direct care staff, and deficiencies in the provision of health care.<sup>4</sup>

- 
1. These workers are also titled assistants in nursing, personal care assistants, and personal care workers
  2. Australian Nursing and Midwifery Federation (2019) Policy: Assistants in Nursing [http://anmf.org.au/documents/policies/P\\_Assistants\\_in\\_nursing.pdf](http://anmf.org.au/documents/policies/P_Assistants_in_nursing.pdf)
  3. Aged Care Quality and Safety Commission (2020) Charter of Aged Care Rights (accessed 17 June 2020)
  4. Royal Commission into Aged Care Safety and Quality (2019) *Interim Report: Neglect* <https://agedcare.royalcommission.gov.au/publications/Pages/interim-report.aspx> (accessed 27 May 2020).



A key contributing factor in the deterioration of quality care in the aged care sector is the change in the composition of staffing. The number of registered nurses working in aged care and positions available has dropped by almost a third in 13 years, from 21% of the direct care workforce in 2003 to only 14.6% in 2016. Similarly, enrolled nurses have gone from comprising 13.1% of the direct care workforce in 2003 to 10.2% in 2016. In contrast, aged care-workers (however titled), have increased from making up 56.5% of the direct care workforce to comprising 71.5% (almost three quarters) of the 2016 direct care workforce.<sup>5</sup> This change has significantly reduced the skills mix in both nursing homes and in community care. Further, while the overall number of people employed in aged care appears to have grown since 2003, the estimated proportion of employees working in direct care roles has continued to decline from 74% in 2003 to 65% in 2016.<sup>6</sup> The number of qualified regulated nurses in aged care has declined in large numbers and although the number of care recipients has increased, as well as their care needs, the number of this direct aged care workforce has decreased by over 10%.

The ANMF identified and highlighted that unregulated aged care workers needed to be regulated over 15 years ago. Since then, people receiving aged care services are increasingly frail, with multiple comorbidities, and increasingly likely to have dementia,<sup>7</sup> while the workforce has become less qualified to meet their complex health care needs. Considering the fragmented state of aged care, the rising complexity and vulnerability of the aged, and evidence supporting the need for regulation; the impetus is overwhelming: now there is no other option but to ensure that the remaining 70% of the aged care direct workforce is urgently regulated in line with the rest of their direct care workforce nursing colleagues.

As with other health care practitioners, the primary purpose of regulating aged care workers under a national registration and accreditation scheme is to protect public safety. The benefits of such a scheme are already well known and, if extended to the current unregulated direct care workforce, would provide certainty for the care recipient, their family, the employer, of the suitability of the worker and would also assist workforce planning. Additional benefits of regulation include aged care workers feeling recognised, valued, and competent to perform care, and enhance the status of the role in the public's eye. These qualities undoubtedly contribute to enhancing retention and continuity for employees, employers, and recipients of care.

---

5. Commonwealth of Australia, (2016) *National Aged Care Workforce Census and Survey – The Aged Care Workforce*, 2016, Department of health, Canberra. [https://www.gen-agedcaredata.gov.au/www\\_ahwgen/media/Workforce/The-Aged-Care-Workforce-2016.pdf](https://www.gen-agedcaredata.gov.au/www_ahwgen/media/Workforce/The-Aged-Care-Workforce-2016.pdf)

6. Ibid

7. Royal Commission into Aged Care Safety and Quality (2019) *Background paper 2 - Medium and Long-Term Pressures on the System: the Changing Demographics and Dynamics of Aged Care* pp. 10-13 <https://agedcare.royalcommission.gov.au/publications/Documents/background-paper-2.pdf>



To ensure that people receive safe, quality care, regardless of the location or model of care delivery, minimum standards of education and practice must be in place. In particular, the vulnerability of the people who are cared for in the aged care sector and the inherent potential for harm in delivering their care, demands appropriate regulation.

However, while nurses, doctors and some allied health workers are regulated health practitioners with clear minimum standards for practice, aged care workers currently do not have any regulatory requirements in place. They are not required to work in accordance with any professional standards and there is no effective process for managing complaints against them. Aged care workers do not have a mandated minimum education requirement to work in the sector, do not have to maintain regular professional development, or need to have professional indemnity insurance for their practice. Yet we know aged care workers are increasingly being up-skilled to undertake activities such as medication administration, baseline observations, diabetes management and insulin therapy. These activities are not low-risk, they are in fact potentially life threatening and require a high level of clinical expertise. Whilst we would not support aged care workers undertaking most of these listed activities, in reality, as there is no mandated staffing level and skills mix requirement for registered nurses to be on duty at all times in sufficient numbers across all states and territories, these workers continue to perform tasks that are beyond the scope of their role.

In addition, as there is no national registering or licensing scheme in place for aged care workers, consumers, families and employers have no way to check that an aged care worker is appropriate to be looking after them or their loved one, or working for them. This can be compounded where aged care workers work as independent contractors, such as in the home care environment. Currently, if an aged care worker is found to be unsafe in the care they provide and is dismissed from their employment, they can move on to another employer with a minimal checking process occurring or, on many occasions, without any process at all. This presents a significant and real risk of harm to the public.

A suitable registration scheme for aged care workers, who are responsible for direct care of elderly people, must be developed and implemented to reduce and manage this risk to the public.

### **Who should be included in the regulation scheme?**

The scheme should include all care workers however titled (such as personal care worker, assistant in nursing or personal care assistant) who are providing care from a care plan that has been assessed and developed by a registered nurse or medical practitioner. The regulation scheme must not identify the setting, how the care is funded or how the aged care worker is employed. It should regulate the care worker who is delivering the care from an established care plan.



This is not dissimilar to nursing or medicine, as the regulation is focused on the individual not the way the care is funded or the setting in which it is delivered.

### What should the registration scheme look like?

Aged care workers should be regulated under the *Health Practitioner Regulation National Law Act 2009* (National Law).<sup>8</sup> This should occur through the establishment of a separate register for aged care workers by the Nursing and Midwifery Board of Australia (NMBA) within the existing national health practitioner regulation scheme, administered by the Australian Health Practitioner Regulation Agency (AHPRA).

The scheme should include the following minimum requirements:

- National registration that is applicable and consistent across the country, enabling portability for aged care workers;
- A publicly available national register that clearly identifies the registration status and any imposed conditions for individual aged care workers;
- Minimum education standards provided by accredited training/education organisations, including a core component of dementia care;
- Minimum communication standards, including English language skills;
- Processes for a criminal/police history check (and working with vulnerable people check) which covers national and international history and does not exclude spent convictions;
- A notifications scheme that manages complaints and concerns and records any conditions, suspensions or cancellations of registration that is available to the public and to employers;
- Support through codes of conduct, ethics and standards commensurate with the expectations of the public and the role;
- Requirements for continuing education, training and professional development and recency of practice commensurate with the role;
- Requirements for personal indemnity insurance commensurate with the role;
- Natural justice and procedural fairness for the aged care worker through the provision of a mechanism for regulatory decisions to be disputed using a legislated transparent and equitable process; and
- A fee structure that reflects the nature of the employee covered by the scheme.

---

8. Health Practitioner Regulation National Law Act 2009 <https://www.legislation.qld.gov.au/view/html/inforce/current/act-2009-045>



These identified minimum requirements are already established for the 16 professions regulated under the National Law and can easily be applied to the aged care workforce. There are many benefits to aged care workers being regulated under this registration and accreditation scheme; these include:

- The legislative framework and administrative arrangements for a national registration scheme are already in place, making it a cost effective option;
- Registration would be linked to the quality and standard of training required to be undertaken to enter the workforce via accreditation requirements under the scheme;
- The scheme has existing mechanisms for notification and management of complaints and concerns, and for administering and maintaining a public register;
- The scheme has existing administrative structures to enable the functions listed above;
- The scheme has consistent core standards across all registered professions but allows for individual professional customisation of the standards related to the nature of the role; and
- The NMBA has an established understanding of aged care and regulate registered nurses and enrolled nurses who work in this area of practice. Registered nurses provide the plan of care and oversight for aged care workers which is clearly articulated in the NMBA *Registered Nurse Standards for practice* and the NMBA's *Decision making framework nursing and midwifery*.<sup>9</sup> This document is a guide to decision-making relating to scope of practice and delegation of care and provides clear direction for nurses in how they are required to promote consistent, safe, person centred and evidence based care.

---

9. Nursing and Midwifery Board of Australia (2020) NMBA's Decision making framework nursing and midwifery. <https://www.nursingmidwiferyboard.gov.au/codes-guidelines-statements/frameworks.aspx>



## KEY CONSIDERATIONS

### Regulatory burden

As outlined above, it is essential that aged care workers, who make up 70% of the workforce and provide care needs to the public, must be regulated. However, this regulation needs to be considered in the context of the sector – it is only one element which will contribute to improving care delivery in this area. The regulation scheme for this group of workers needs to ensure it does not create unintended consequences and inadvertently place unwarranted regulatory burden on the aged care worker for the failings of the aged care system. As has been made clear through both evidence tendered to the Royal Commission, and through cases such as Oakden and Earle Haven aged care facilities, management of these system failings is beyond the capacity of even the most well regulated workforce. Staff should not be held to account for these system shortcomings and failures. These matters should be referred to the most appropriate regulatory body, namely the Aged Care Quality and Safety Commission, rather than AHPRA.

### Education

The current educational preparation for aged care workers is not nationally mandated. The common preparation for this level of worker is a Certificate III in Individual Support Work in the Community Training Package. Over time there has been much debate as to the content of this training package as it is insufficient to meet the needs of the worker, the employer and, most importantly, those receiving care. Units covering core concepts, particularly dementia, are considered optional. This approach to the education requirements also results in inconsistency in aged care worker education outcomes from one Certificate III to another. It doesn't enable aged care providers to have confidence in the level of an individual workers skill and competence. In recent months these concerns have been heightened in response to the COVID-19 pandemic with some aged care providers utilising unskilled and minimally trained workers. This newly introduced role titled 'aged care assistant' is only required to complete 10 hours of training. The ANMF argues that, in some cases, the system has been structured to provide a carer workforce that can be kept compliant, in insecure work and therefore low paid, rather than creating aged care workers who can meet the care needs of older Australians. It is abundantly clear that this issue requires urgent attention.

Along with establishment of a register for aged care workers the regulator would need to develop standards that reflect the scope of the work required of the role (however titled) and the education and training level assessed as required to perform that role. For example, the education standard required for registration should be set at certificate rather than diploma or degree level.



### **Staffing and skills mix**

Aged care workers are an important and key component of ensuring that older Australians who engage with the sector receive appropriate, timely, quality care. For regulation, registration, upskilling of current care workers, and ongoing professional development to be successful, workloads for in-home aged care workers must be reasonable, and staffing levels and skill mix in residential facilities must be suitable to meet residents' needs.

An evidence based staffing and skills mix based on the assessed needs of each resident results in better care outcomes, both directly and as a result of improved staff retention, which increases continuity of care. Subsequently, this vulnerable population with changing health needs are looked after by staff they know, and who are familiar with their preferences, routines, and needs.

To achieve this, employers have an obligation to provide dedicated resources to ensure staff have reasonable workloads, can work within the scope of their training and practice, and are appropriately supported in delegation and supervision. There must be time and funding allowed for all direct care workers both to access training and development, and to offer training and development support where required.

### **English language skills**

The English language skill requirements must be inclusive and should not operate to unreasonably exclude workers from culturally and linguistically diverse backgrounds. However, they must ensure the aged care worker has the appropriate level of English language skill to enable clear communication between the person receiving care, consumers, colleagues and other stakeholders. Further, there must be an expectation that an aged care worker is able to read and write English at an adequate level to enable them to safely perform their work to achieve public safety.

### **Registration fees**

Fees for registration must be set at a level commensurate with salary ranges for this part of the workforce, and that does not impose a barrier to the workforce maintaining their registration and, in turn, their employment.

### **Implementation**

As the sector is under reform and requires further change, it is important that the regulation scheme for aged care workers be managed to mitigate unintended consequences and ensure the workforce is available with workers remaining in stable employment. This will require a period of transition, to allow aged care workers time to gain any required prerequisite qualifications and to enable processes for recognition of prior learning to be managed where training gaps are identified. In some cases grandfathering exceptions may be appropriate, and this should also be recognised. Time will also be needed to educate the existing workforce and the health professions more broadly about the requirements and expectations of the regulation scheme.



## CONSULTATION QUESTIONS:

### Who should the scheme apply to?

The ANMF is aware that there are many and varied roles within aged care. Some of these are already regulated, such as health practitioners, and others will require some form of screening, be it a national screening process or a working with vulnerable people check. However, the ANMF recommend that the following definition is used specifically for this proposed regulatory scheme for workers who meet the following criteria:

*The scheme should apply to any otherwise unregulated person who is engaged, as part or all of their role, to meet any assessed needs of a person's care according to a care plan that has been developed by a registered nurse or medical practitioner. Regulation is required irrespective of the setting in which care is delivered (e.g. a person's home, a nursing home) and how a worker is titled (e.g. personal care worker, assistant in nursing) or employed (e.g. full time, casual, independent contractor).*

### What should be the key features of the scheme?

Aged care workers should be regulated under the National Law, through the establishment of a separate register by the NMBA within the existing national health practitioner regulation scheme, administered by AHPRA.

The key features of the scheme must include:

- National registration that applies however the worker is contracted and is consistent across the country, enabling portability for aged care workers and transparency for employers and the public;
- A publicly available national register that clearly identifies the registration status and any imposed conditions for individual aged care workers;
- Minimum education standards provided by accredited training/education organisations, including a core component of dementia care;
- Minimum communication standards, including English language skills;
- Processes for a criminal/police history check which cover national and international history;
- A notifications scheme that manages complaints and concerns and records any conditions, suspensions or cancellations of registration that is available to the public and to employers;
- Support through codes of conduct, ethics and standards commensurate with the expectations of the public and the role;



- Requirements for continuing education and training and professional development commensurate with the role;
- Requirements for personal indemnity insurance commensurate with the role; and
- A fee structure that reflects the nature of the employee covered by the scheme.

## Criminal History

- 1. What is your preferred approach to aged care worker criminal history assessments?**
- 2. Are there other options that should be considered?**

The ANMF does not support Option A1 or A2 and suggests that the criminal history assessment for aged care workers should be the same as the requirements regulated by the NMBA for registered and enrolled nurses. This includes a criminal history check for both national and international offences on initial registration which will provide a more rigorous system than the police check currently in place for aged care, as the national scheme includes international convictions and does not exclude spent convictions.

Aged care workers must be required by law to inform the regulator if there is any change to their criminal history and be required to sign an annual declaration regarding their criminal history on renewal of their registration.

- 3. If there were to be a centralised assessment of criminal history, should any other matters be routinely taken into account? If so, which of the following options should be considered?**

This section of the consultation paper refers to consideration of information about an individual being gained through several sources, including the employer and government agencies. Criminal history requirements ought not to be confused with performance or conduct issues of an individual, but should remain focused on criminal offences only, which should go to the suitability or good standing of the individual seeking to work with this vulnerable group.

It would be unjust to impose a higher standard on aged care workers than the regulation that is currently in place for the 16 health professions in the national scheme, as would be the case if civil cases were considered. Further, it is essential that the regulation scheme affords natural justice for the aged care worker and provides for a decision to be disputed in a fair and equitable way.



#### **4. Are there any other matters that should/should not be considered as part of any aged care worker screening scheme?**

The ANMF suggests that the requirements outlined in the AHPRA criminal history registration standard should be applied when deciding whether an aged care worker's criminal history is relevant to their employment.

These requirements include:

- The nature and gravity of the offence or alleged offence and its relevance to health practice;
- The period of time since the health practitioner committed, or allegedly committed, the offence;
- Whether a finding of guilt or a conviction was recorded for the offence or a charge for the offence is still pending;
- The sentence imposed for the offence;
- The ages of the aged care worker and of any victim at the time the offence was committed or allegedly committed;
- Whether or not the conduct that constituted the offence or to which the charge relates has been decriminalised since the aged care worker committed, or allegedly committed, the offence;
- The aged care worker's behaviour since they committed, or allegedly committed, the offence;
- The likelihood of future threat to a person receiving care from the aged care worker; and
- Any information given by the aged care worker.<sup>10</sup>

### **Code of Conduct**

#### **5. What is your preferred approach to a code of conduct? (select one or more options)**

The ANMF does not support any of the options suggested in the consultation paper and recommend that a separate code of conduct should be developed for the workers who would be covered under the new regulation scheme administered by AHPRA. This scheme should apply to any person who is engaged to meet the assessed needs of a person's care plan that has been developed by a registered nurse or medical practitioner, irrespective of the setting in which care is delivered and how a worker is titled or employed.

The code developed for these workers should be consistent with other codes, but align with, and be specific to, their role.

---

10. Modified from Australian Health Practitioner Regulation Agency (2015) Criminal History Registration Standard <https://www.ahpra.gov.au/Registration/Registration-Standards/Criminal-history.aspx>



**6. What do you consider are the advantages and disadvantages of introducing a code of conduct for aged care workers?**

Codes of conduct provide an objective standard against which behaviour can be measured and determined. This allows the person receiving care, consumers, care workers, health practitioners, employers, and the public to have clear, shared, reasonable expectations of the required conduct. An aged care worker code of conduct will also make it easier for consumers to report, and employers to identify and discuss, conduct that falls below that described in the Code.

The ANMF has not been able to identify any disadvantages to consumers, aged care workers, health practitioners, employers or the general public of establishing an aged care worker code of conduct.

### English Language Proficiency

**7. What is your preferred approach to strengthening English proficiency in aged care?**

**8. What are the other options for strengthening English proficiency in aged care (particularly for those providing personal and clinical care)?**

The ANMF supports Option D2 outlined in the consultation document – establishing a requirement for aged care workers to demonstrate their proficiency in English as part of a registration process that is consistent with the National Scheme and commensurate with the role of an aged care worker.

It is the position of the ANMF that the NMBA should include a minimum requirement for English language skills under the proposed regulation scheme for aged care workers. This registration standard should not operate to unreasonably exclude workers from culturally and linguistically diverse backgrounds but must ensure the aged care worker has the ability to effectively communicate both in with verbal and written skills commensurate with their role. The minimum safe level must ensure that aged care workers can effectively communicate with the person receiving care, consumers, their families, and their colleagues.

It is important that aged care workers who are currently employed in care roles have time to transition to meet any new English language skills standard. This may include grandfathering opportunities and support for current aged care workers to be able to meet the minimum requirements.

### Minimum Qualifications

**9. What is your preferred approach to minimum qualifications?**

**10. What are the other options for strengthening the skills and knowledge of PCWs in delivering aged care?**



The ANMF does not support either Option E1 or E2. As has become apparent during the Royal Commission into Aged Care Quality and Safety, on many occasions providers have demonstrably failed to adequately “determine the necessary combination of skills, qualification and knowledge relevant to the particular role being performed, the nature of the service and the profile of consumers.”<sup>11</sup>

For this reason, and in the interests of consistency with other aspects of the National Scheme, the ANMF supports Option E3, with regulation establishing a requirement for workers to demonstrate their qualifications as part of a registration process.

There should be a regulated minimum education requirement for aged care workers, who should have clearly identified competencies and vocational pathways. A Certificate III in Individual Support provides baseline training which is suitable for the role of aged care worker. However, at present the quality of delivery of the Certificate III qualification is variable and needs to be reviewed and regulated. There are many instances of the program not meeting the requirements for the role of an aged care worker because of missing aged care specific content (such as dementia care and management). As a result, Certificate III trained aged care workers do not always have the skills necessary for entry to the sector.

There should be a national accreditation scheme for qualifications leading to registration as an aged care worker. This scheme must accredit education providers to offer the program that prepares aged care workers for the sector. Program units identified as essential to the safe, quality provision of aged care should be made core units rather than elective, for example dementia care, palliative care, diversity training, law and ethics, and how to recognise and report elder abuse and issues of concern.

Regulating a minimum education requirement for aged care workers irrespective of setting will provide greater opportunity for aged care workers to articulate into nursing and other health professional or practitioner qualifications, as well as into higher level certificate qualifications and relevant training packages.

The introduction of a regulation scheme for aged care workers must include sufficient transition time for the current workforce to gain qualifications and/or assess and recognise prior learning and experience, and for education regarding the requirements and expectations of registration.

---

11. MP Consulting (2020) Aged Care Worker Regulation Scheme Consultation Paper p. 31



## Continuing Professional Development

### 11. What is your preferred approach to continuing professional development?

The ANMF supports Option F3 – establishing a requirement, consistent with the National Scheme, that aged care workers demonstrate they have met specified minimum continuing professional development (CPD) requirements as part of their registration process.

As this is a low paid workforce, providers should be required to offer aged care workers CPD in paid time. This will ensure currency of knowledge and ongoing development and training, relevant to their work place and the worker's individual needs.

### 12. What are the other options for strengthening the CPD of PCWs and others delivering aged care?

What constitutes CPD should be broadly defined, provided the content is relevant to the care worker's role. This should include internal education that is relevant to the provision of care (e.g. hand hygiene, evacuation processes), external programs of study (e.g. ANMF online modules for aged care workers), and any required annual competencies appropriate to the aged care worker's level, education and role (e.g. manual handling, managing behaviours of concern, recognising and escalating possible clinical deterioration). This approach allows for CPD to be undertaken which meets the individual needs of both the care worker and their workplace.

### Should worker screening be a positive register of cleared workers and/or a list of excluded workers, and who should have access to the list?

## Register

### 13. How should the register of cleared workers be presented?

The ANMF recommends consistency with the National Scheme, and therefore supports a variation of Option G3: a list of workers who have been cleared to work in aged care, including notifications, conditions, and suspension or cancellation of registration.

Like the AHPRA Register, the database should be publicly searchable, with a list of those who are registered, therefore those who have met the regulator requirements for registration and those who are registered but have notifications or conditions on their practice.

As with the regulated professions, it must be incumbent on both individual aged care workers to ensure they're currently registered and employers to ensure that their staff are registered, with fines applying for holding yourself out as a registered aged care worker and for the employment of unregistered staff.



### **What protections should be built into the scheme, particularly for aged care workers?**

Again, the ANMF recommends consistency with the National Scheme. Under this scheme a health practitioner can appeal certain decisions made by a National Board in relation to registration and decisions made as a result of the notifications process. The National Scheme will afford the aged care worker a legislated process for appeal, allowing for natural justice and procedural fairness.

### **How should the scheme be managed?**

#### **Regulatory Body**

#### **14. What are the advantages and disadvantages of different bodies managing screening of all aged care workers and/or registration of PCWs?**

As noted in the Royal Commission into Aged Care Quality and Safety's interim findings, almost every aspect of the aged care system is currently fragmented.<sup>12</sup> The ANMF supports a process and regulatory framework that is integrated, comprehensive, transparent and consistent. Incorporating aged care workers into the existing National Scheme ensures that all aspects of regulation and registration are administered by a single authority.

The benefits of regulating aged care workers under the National Scheme through AHPRA and the NMBA include:

- The legislative framework and administrative arrangements for a national registration scheme are already in place, making the transition to regulation cost effective;
- The national regulator has existing mechanisms for notification and management of complaints and concerns, for administering and maintaining a public register, and administrative structures to enable these functions;
- The national scheme clearly links registration with the requirements to undertake standardised training via accreditation, and to continue developing knowledge and skills; and
- AHPRA has consistent core standards across all regulated professions, while allowing for development of specific registration standards consistent with the role.

---

12. Royal Commission into Aged Care Safety and Quality (2019) op. cit. p. 1



The ANMF does not believe there are any disadvantages to cohorting all aspects of regulation and registration to one national regulator. However, apportioning aspects of regulation and registration to multiple services increases the risk of vital information failing to be communicated between bodies in an efficient, coordinated, timely fashion. In addition, navigating different departments/organisations would make identifying and rectifying mistakes far more time consuming and onerous for aged care workers, employers, and the regulators themselves.

### **How should the scheme intersect with other like schemes?**

#### **Intersection with Other Schemes**

**15. In principle, should a person cleared to work with people with a disability be automatically cleared to work in aged care?**

**16. Are there any other clearances that should support automatic clearance in aged care?**

As outlined in this response, the ANMF is recommending that the workers included in this scheme should be those who are engaged to meet the assessed needs of a person's care plan that has been developed by a registered nurse or medical practitioner, irrespective of the setting in which care is delivered and how a worker is titled or employed. Therefore, the registration is based on the worker not the setting or the funding source. The workforce under this scheme would be able to provide care across aged care and disability provided the minimum qualification for registration offers education for the provision of care to both people with a disability as well as those requiring aged care. This would be necessary to enable the worker to be employed across both the aged care and disability sectors.

**17. What are the relevant considerations regarding the interplay between AHPRA (and any other professional registrations) and PCW registration for aged care?**

As the ANMF is suggesting the regulation of aged care workers is administered by AHPRA and registration is with the NMBA this question is redundant.

#### **Implementation and transition issues**

Although there are no consultation questions for this section, the ANMF wishes to provide commentary on the importance of managing the implementation of any new regulatory scheme for aged care workers. As has been highlighted throughout this submission the ANMF contends that aged care workers should be regulated by AHPRA and registered with the NMBA, under the National Law. This regulation needs to be undertaken in a strategic and informed manner that will mitigate risk and identify unintended consequences. The following principles need to underpin the national regulatory scheme for aged care workers:



- Public safety must be maintained;
- Workforce numbers need to be sufficient to provide care needs for those people requiring aged care;
- Stable employment must be established and maintained;
- There must be a funded transition period to enable aged care workers to gain the minimum education level for registration;
- Grandfathering should be provided for aged care workers who have appropriate experience and education to be registered;
- There should be recognition of prior learning for the many and varied courses aged care workers may have completed;
- Ongoing communication and consultation with stakeholders including unions who represent aged care workers must be maintained; and
- Clear communication for aged care workers, their health practitioner colleagues, and employers about the new regulatory requirements should be provided.

AHPRA have implemented the regulatory scheme for 15 professions over a long period of time. They have also recently introduced Paramedicine into the national regulatory scheme. AHPRA understands how to administer and implement nationally consistent regulation for a new workforce. They also understand how to engage and consult with relevant stakeholders as required by the National Law. They are best placed to manage a national regulation scheme for aged care workers and will ensure the principles outlined above underpin the scheme.



## **CONCLUSION**

---

The vulnerability of people receiving aged care services, combined with their high level of frailty and medical complexity, requires care delivery from a workforce that is qualified and regulated. This means ensuring minimum national standards of education, English language proficiency, criminal history and conduct. To meet the best interests of the person receiving care, the aged care worker, family members, health practitioner colleagues and employers, the registration process must be clear and transparent.

Rather than creating a new regulatory scheme, or piecing together aspects of existing systems, utilising the framework of the AHPRA National Scheme will result in a more comprehensive, cost effective, well-articulated and seamless transition for aged care worker regulation. Registration with the NMBA is the most appropriate regulatory mechanism for aged care workers as they work under the guidance, direction and supervision of qualified regulated nurses.

The new aged care worker regulation scheme must be introduced with sufficient transition time for both the sector to establish appropriate governance, and for aged care workers to meet the new requirements without undue burden. This period of transition will also allow employers, aged care workers and regulated health practitioners to be fully informed of the requirements and expectations of aged care worker regulation.