

Australian Nursing and Midwifery Federation submission to the

**Department of Health and
Aged Care Consultation
Paper No.1 – A new model
for regulating aged care.**

20 October 2022



Australian
Nursing &
Midwifery
Federation



Annie Butler
Federal Secretary

Lori-Anne Sharp
Federal Assistant Secretary

Australian Nursing and Midwifery Federation
Level 1, 365 Queen Street, Melbourne VIC 3000
E: anmffederal@anmf.org.au
W: www.anmf.org.au



INTRODUCTION

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 320,000 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 forefront 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.

The ANMF welcomes the opportunity to provide feedback on a new model for regulating aged care, however has serious concerns with the proposed model. The proposed model does not provide for a forward thinking approach that will address the change required to achieve quality aged care delivery, ensuring the safety of older people. Further, it does not use the Royal Commission findings as a basis for re-thinking regulation, including a lack of acknowledgement of the significant concerns the Royal Commission outlined regarding the failings of the sector's market based approach to care delivery.



The ANMF suggests that the proposed model should be re-drafted using the Royal Commission findings as a basis for the revised approach.¹ This approach should include strong regulatory functions that are rigorous and enforceable that support and empower the worker to deliver quality aged care. The regulatory model must be informed by the underlying principle of ensuring that people who access aged care services are provided with safe, quality care and the assessment of any legislation, regulation or standard must be viewed through the lens of ensuring quality care received for every individual.

The ANMF notes the consultation's request to keep responses to 1500 words. Unfortunately this and the relatively short consultation period raises concerns for the ANMF, as this has not facilitated open and thorough consultation with stakeholders on such important reform.

OVERVIEW

1. To what extent do you think the proposed new model will address current regulatory challenges? In what ways will it help achieve better safety and quality results for older Australians?

The high level approach taken in this - *Stage 2: Developing details of how the new model will operate* and the paucity of detail provided, particularly as it relates to the workforce and the direct impacts of the change, makes it significantly difficult to provide informed responses on the impact this model will have on the regulatory challenges faced in the aged care sector.

The ANMF agrees that the identified foundations of the new regulatory model - rights-based, person centred, risk based and continuous improvement approaches are reasonable. However, as the consultation paper only provides overarching discussion with minimal detail, it is unclear how these identified foundations will be implemented into a new model of regulating aged care to make real change.

As the Royal Commission outlined, the current regulatory system for aged care has many deficiencies and has adopted a light touch approach to regulation when a more rigorous system of continuous monitoring and investigation is required.² It is also the ANMF's experience that aged care regulation has historically failed to deliver proper care outcomes. A contributing factor to these poor outcomes has been the inability or unwillingness of governments and some providers to ensure that funding is spent on the care for which it is intended. To be effective, the model must include detail of how providers will be monitored and held accountable for not only the care they provide but also the spending of allocated funds.



Safe, quality care will also only be achieved with legislated, safe levels of staffing skill mixes including registered nurses being employed in aged care facilities 24 hours per day with ratios that align with the assessed needs of residents. Any new regulatory model for aged care must identify as a fundamental element that the workforce providing care has the right staff and right knowledge and skills to deliver care that meet the assessed needs of individuals. Staffing levels and skills mix require continuous monitoring and investigation to ensure providers are held accountable for safe, quality care delivery.

Along with ensuring safe levels of staffing and skills mix, it is essential that secure employment with appropriate remuneration under modern awards and enterprise agreements is prioritised in order to attract and retain an appropriate workforce.

2. How do you think the model could be further enhanced? Can you share specific examples of what you would like to see included?

Further detail is required on how the proposed model and its regulatory tools will be developed and implemented to provide a comprehensive response to these questions. However, the ANMF offers the following suggestions on how the model could be enhanced:

Regulatory Stewardship

The range of key stakeholders who will collectively contribute to regulatory stewardship is broad. Specific detail is needed to help users of the model understand the way systems and processes for each stakeholder will inform and influence regulation and how it will link to other systems.

Rights based approach

The implementation of a rights based approach must ensure that people receiving care are empowered to clearly understand their rights and that there are easy, accessible processes to address any concerns with effective redress mechanisms in place when these rights have been breached.

The right for older Australians to receive safe, quality care from an appropriately skilled workforce must also be included in the model. This should include providers being responsible and accountable for:

- Care that is provided by the right staff with the right knowledge and skills that meets the assessed needs of individuals;
- Ensuring workers in aged care including nurses and care workers remain current using evidence based practices and are supported to work within their scope of practice/job role;



- The provision of ongoing education and professional development that is applicable to the care of older people within the given context. Education must be appropriate to the care worker role or health practitioner scope of practice.

Person-centred approach

The person centred nature of the proposed approach through a strengthening of the legislative framework to ensure older Australians receive safe and quality care through a more contemporary approach is supported.

Details on how providers of aged care services will be expected to directly engage with older Australians at the strategic level should be included in the model. Examples might include co-design of services and reporting on improvements related to feedback.

The success of embedding the needs, goals, values and preferences of older Australians within the regulatory model will be reliant on having the right voice and representation. All older Australians are key stakeholders of regulatory stewardship including vulnerable populations and all should be provided with the same opportunities to access the systems and influence their own care. This should be reflected in the model.

Risk-based approach

Although the ANMF notes that a risk based approach is contemporary and evidence based, the current aged care regulatory system has already been identified as having a risk based approach, which is not effective or robust in identifying and managing risk. To be effective the ANMF suggests it is essential that this approach is implemented with strong regulation, strong enforcement and strong engagement of the workforce, providers and the implementing Commission.

Continuous improvement

Implementing a continuous quality improvement approach into aged care delivery is essential rather than a focus on only aiming to meet minimum compliance expectations and is supported by the ANMF.

Staffing and skills mix

Reporting of daily safe staffing requirements and actual staffing levels is needed to facilitate transparency regarding aged care providers meeting their obligations for the provision of care. It is proposed that providers publish de-identified rosters and daily minute targets for each facility as well as the actual care minutes provided. This information should be developed with worker input and be made available to workers, residents and their families. The ANMF suggests that requirements of this expectation be set in legislation or subordinate legislation and is strongly regulated with clear penalties under this model.



Reporting

Previous models of regulation have relied too heavily on ineffective and limited reporting requirements. It is the experience of the ANMF that self-reporting in aged care cannot be relied upon to provide information that is objective and ensures funding is spent appropriately and linked to the provision of quality care.

Code of Conduct

The ANMF does not support the introduction of the Code and accompanying Aged Care Quality and Safety Commission Amendment (Code of Conduct and Banning Orders) Rules 2022 Exposure Draft (ED) in its current form as we consider it is not the appropriate instrument to ensure safe and quality outcomes in aged care and that it is structurally flawed.³

The Code as currently proposed is to apply to all aged care workers, governing persons and approved providers. It is the ANMF's strong view that adoption of one Code to regulate the conduct of all service and care providers in the aged care sector will result in inequity, unfairness and fail to ensure that the appropriate level of accountability is met by those who are responsible for the delivery of safe and quality care. On the one hand, the scheme as proposed sets a compliance burden on aged care workers that is excessively high and on the other, standards that are too low to be effective for providers. A regulatory scheme that proposes to set compliance standards and consequences for breaches of standards at the same level for a kitchen hand, personal care worker, nurse as a CEO or board member, is fundamentally flawed. The consequences of non-compliance with respect to the ED and supporting legislation must be revisited.

Worker Registration

An educated and skilled workforce that is valued and secure in their employment is central to providing safe, high quality aged care services to consumers. Regulation of health care practitioners through the Australian Health Practitioner Regulation Agency (AHPRA) supports practice that is safe and protects the public. The ANMF has supported and campaigned for regulation for unregulated aged care workers⁴ since 2004. The ANMF believes that unregulated aged care workers should be included in the *Health Practitioner Regulation National Law Act 2009* (National Law),⁵ like registered and enrolled nurses. The purpose of this positive regulation scheme is public safety – consumers and employers know that health practitioners registered under AHPRA have met a national minimum standard of education, English proficiency, and are a fit and proper person for their role, thereby ensuring minimum levels of care regardless of where that care is delivered.



3. What do you see as the benefits of the proposed risk-based approach in regulating higher risk services? And what might the drawbacks be?

Whilst it is acknowledged that there will be further consultation on this area, the current level of detail in the consultation paper makes it difficult to envision how the system will work and if the approach will have the capacity/authority/resources to mitigate risks, how risks will be determined and ranked. More detail and possible examples are required to help clarify the way the risk based approach might translate into practice. It will be important to consider staffing levels and the skills and education of staff into any risk matrix.

While a risk-based approach enables priority setting and focus planning, it must have the capacity, authority and resources to mitigate against identified risks. It should also have the capability of enforcement, sanctions and removal of provider registration. These elements should be included and explained as part of the way the model functions. For a risk-based approach (particularly a risk-proportionate approach) as identified in the consultation paper, to work, there must be sufficient regulatory oversight, resources and systems in place, otherwise the strategy is pointless.

The safeguarding of older Australians using a risk-based approach will need to ensure all risk areas have clear reporting pathways and that data and measurements cannot be manipulated to positively skew outcomes. This is critical given the impending introduction of the STAR rating system with the use of data reporting to assess performance.

A risk based approach must also be embedded in provider governance arrangements and should not place further administrative and reporting burden on nurses and care workers working in aged care.

4. Do you think the model will support continuous improvement in the sector? Can you suggest other ways in which the model could do this?

The current regulatory system has resulted in an approach focused on compliance with the aim of meeting minimum requirements and fiscal targets rather than the delivery of evidence based, person centred care. This approach has resulted in a hollowed-out sector in areas such as workforce, industrial support, governance, capacity and capability. The new model must provide messaging that is supported by regulatory policies and processes that only meeting minimum compliance is no longer acceptable and the expectations of care delivery being based on continuous improvement is essential.



A quality improvement approach has the potential to build a culture of learning rather than one of blame: and should work intuitively with a risk based approach. Such a culture will encourage employees to use and respond to incident reports with the aim of improving and providing high quality care. However, further detail is required to understand how the model will translate to practice noting that any cultural change will take time and need significant drivers and enablers at the regulatory and provider level. For a quality improvement approach to be effective it must also be supported by the regulatory bodies overseeing the aged care sector.

5. Do you think the new model will encourage entry into the sector of a wider range of provider entities, such as sole traders and individuals?

Implementing a stronger regulatory system may deter some new providers entering the aged care sector by acting as a screening mechanism. However, it is essential that the regulatory model keeps older Australians safe through a rigorous system of continuous monitoring and investigation as its primary objective. The new model does nevertheless need to find a balance between applying regulatory burden with proportionate expectations and processes.

In relation to the question regarding sole traders and individual providers the ANMF vigorously opposes the gig economy. The model must ensure the safety of older Australians and that quality care provision is not compromised by the way an aged care worker is employed. Direct employment should be supported and strongly encouraged in the design of the regulatory model. Regulatory design and processes must also clearly identify the responsibilities of consumers who may directly engage with workers and their potential obligations for the worker's safety within their home. Further, the model must be clear on the expectations of providers and those who may be contracted by providers to ensure the safety of older Australians and meet the regulatory expectations.

6. What other feedback would you like to share?

The ANMF has nothing further to add at this time.



CONCLUSION

The ANMF maintains that the proposed model for regulating aged care presented does not provide a forward thinking approach that will address the change required to achieve quality aged care delivery, ensuring the safety of older people. The ANMF urges the Department of Health and Aged Care to reconsider the model. The model must include strong regulatory functions that are rigorous and enforceable that support and empower the worker to deliver quality aged care.

REFERENCES

¹ Royal Commission into Aged Care Quality and Safety. 2021. *Final Report – Executive Summary*. Canberra: Commonwealth of Australia. p77 <https://agedcare.royalcommission.gov.au/publications/final-report-executive-summary>

² Royal Commission into Aged Care Quality and Safety. 2021. *Final Report – Executive Summary*. Canberra: Commonwealth of Australia. p77 <https://agedcare.royalcommission.gov.au/publications/final-report-executive-summary>

³ Australian Nursing and Midwifery Federation 2022. ANMF response to the Code of Conduct Exposure Draft: https://www.anmf.org.au/media/zarmv1ip/anmf_submission_acqsc_amendment_code_of_conduct_banning_orders_rules_2022_exposure_draft.pdf

⁴ Australian Nursing and Midwifery Federation. 2019 *Assistants in nursing*, https://www.anmf.org.au/media/ddmlbuw3/p_assistants_in_nursing.pdf

⁵ Health Practitioner Regulation National Law Act 2009
<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2009-045>