



**Australian College of Nursing**

# **AGED CARE AND OTHER LEGISLATION AMENDMENT (ROYAL COMMISSION RESPONSE NO. 2) BILL 2021**

AUSTRALIAN COLLEGE OF NURSING RESPONSE TO THE  
STANDING COMMITTEE ON COMMUNITY AFFAIRS (November  
2021)



## Preamble

The Australian College of Nursing (ACN) would like to thank the Standing Committee on Community Affairs for the opportunity to provide comment on the **Aged Care and Other Legislation Amendment (Royal Commission Response No.2) Bill 2021**.

As the peak professional body for the nursing profession, ACN is committed to ensuring every person in Australia has access to safe, high-quality care that respects the individual's right to dignity, respect and autonomy. ACN supports nurses to uphold the highest possible standards of ethical conduct and professionalism in the provision of health and aged care.

We are a member-based organisation with a corporate and individual membership reach more than 150,000 nurses in all states and territories. Our membership consists of nurses in roles of influence such as clinical nurse experts, organisational leaders, academics, educators, and researchers, as well as early- and mid-career nurses looking to move into leadership roles within the profession.

ACN is an accredited Higher Education Provider and registered training organisation (RTO), graduating 100,000 nurses in the past 15 years with post-graduate qualifications. We have provided hundreds of thousands of clinicians with Clinical Professional Development training in all settings and are proud to have provided over 15,700 immunisation qualifications for our health workforce since 2004.

## ACN response to the Aged Care and Other Legislation Amendment (Royal Commission Response No.2) Bill 2021

### General comment

ACN welcomes the government's commitment to implementing the recommendations of the Royal Commission into Aged Care Quality and Safety Final Report. Many of the measures proposed in the Bill will significantly improve quality, accountability and governance of the aged care sector. However, for any reforms to be effective, ACN believes that:

1. The description of the Aged Care Act must be changed to read **"An Act to establish the provision of safe, quality care for older people in Australia"**
2. The primary object of the Act must be **the provision of high quality and safe care for every older person in Australia.**
3. That in the construing of the objects of the Act **the clause (2) (a) (*having regard to limited resources available to support services and programs under this Act*) be deleted.**

Without an explicit commitment to ensuring every older person receives safe, quality care that respects the individual's right to dignity, respect and autonomy being enshrined in the new Aged Care Act, all other reforms to aged care legislation will be ineffectual. Access and equity of care will remain dependant on location with people living in regional, rural and remote Australia further marginalised and disadvantaged.

### Amendments relating to residential aged care funding

ACN supports the replacement of the Aged Care Funding Instrument with the Australian National Aged Care Classification (AN-ACC). However, there is significant concern among ACN members

working in the sector that the fee structure for AN-ACC has not yet been outlined. While there have been promises that no one will be disadvantaged, without a clear structure for funding available, it is difficult to see how this promise will be delivered in practice in the legislation. Appropriate consideration and allocation of resources to enable sufficient registered nurse governance and care based on resident equity 24/7 is also difficult to determine without the fee structure outlined.

Most troublingly, AN-ACC does not appear to support wandering residents with dementia; nor will there be scope to further consider dementia-specific facilities within new design concepts, as the model detracts from the intake and ongoing support of these residents due to their level of dependence.

### **Amendments relating to screening of aged care workers, and governing persons, of approved providers**

ACN welcomes any measures to ensure the unregulated health care workforce is appropriately screened and governed to protect the older person from the kinds of abuse and neglect detailed throughout the Royal Commission. In particular, ACN supports the introduction of nationally consistent pre-employment screening, and registration of all unregulated health care workers. This will help protect older people from unscrupulous or incompetent workers who find employment elsewhere, even if they have been reprimanded or banned in another jurisdiction. During the Royal Commission, testimony demonstrated the various ways industrial organisations negotiated deals for members facing disciplinary action for neglect and/or abuse of residents. These negotiations resulted in resignations rather than terminations, letters of reference and deeds or release for these employees, enabling them to find employment in other aged care settings with no protection for the public or the residents. ACN believes national regulation of the unregulated health care worker is the only way to protect the public, residents and the industry from this occurring in the future. To further strengthen this, ACN suggests a three-year review for all workers, to maintain consistency with the current model and allow greater accountability. ACN members also suggests introducing a transition period, to allow workers, especially those on low incomes, to pay for any new police checks or screening requirements when they are able, rather than by the 1 July 2022 deadline.

While these new initiatives are laudable, ACN believes further reform is needed in this area. As well as the regulation of all unregulated care workers, mandatory training in essential for quality aged care (dementia, end of life care, human rights, infection prevention and control) for the unregulated health care workforce.<sup>1</sup> This includes a minimum of a Cert III in Individual Support and preferably a Cert IV in Ageing Support. These minimum training requirements will also provide an ideal opportunity for new care workers entering the system to become familiar with the Code of Conduct.

With all these changes, ACN queries the responsibility and accountability of some industry providers in supporting workers to follow these new requirements, such as providing paid leave or dedicated professional development hours for any new training or registration. ACN strongly advocates for provisions to ensure employers support unregulated health care workers to undertake a minimum of 20 hours of professional development annually. If these workers were regulated, it would make implementation and monitoring much easier and thus improve public safety.

### **Amendments relating to code of conduct and banning orders**

ACN supports the proposed expanded powers for the Commissioner to introduce and enforce a Code of Conduct, and a database using mutual recognition arrangements to prevent workers from moving between sectors after they have been reprimanded or banned one sector. However, ACN advocates for a clear framework around what will be considered an 'unsuitable worker' and how the Commissioner will investigate and hold them accountable in different aged care settings. In particular, ACN queries whether the 1 July 2022 deadline is feasible for these new governance mechanisms to be established effectively and appropriately.

ACN also seeks clarification regarding employees whose union membership means their poor conduct is negotiated and protected. For the public to have trust in the aged care system, there must be safeguards in place to ensure this will not happen in future and that employers are accountable for neglectful or abusive employees.

### **Amendments relating to the extension of incident management and reporting**

ACN supports the extension of incident management and reporting to home and community based aged care, with one caveat. It is essential that any mandatory reporting be proportionate to the level of care a worker provides and contact they have with the older person. For instance, a worker who provides daily, intimate, in-home care such as toileting and bathing will be well-placed to report incidents and any risks to the older person outside of care, such as abuse or domestic and family violence. This same expectation should not apply to a worker who maintains the older person's garden once a month.

### **Amendments relating to governance of approved providers**

ACN strongly supports new requirements for approved providers' governing bodies to have majority independent, non-executive members, and at least one member to have experience in the provision of clinical care. This is a welcome step in ensuring sound clinical governance.

However, ACN members are concerned with the Bill's proposal to address disproportionality, with providers of 40 clients or less exempt from these new governance requirements. While ACN agrees it can be onerous for particularly small, independent providers to, for instance, support Board members to undertake the Australasian Institute for Clinical Governance course, this figure of 40 clients or less appears arbitrary, and should be based instead on residents' acuity and other contextual factors. For instance, a small provider in a rural or remote area may have 39 high-care clients, with complex comorbidities and poor access to specialist and allied health care. It is just as important that the governing body responsible for ensuring the wellbeing of these residents is majority independent and based on sound clinical governance as it is for a metropolitan residential aged care facility with 50 residents, with primarily low-care needs. Every resident's safety, care and wellbeing should be of equal priority, not dependent on the size of the facility they are residing in.

### **Amendments relating to information sharing**

ACN strongly supports any measures to improve the consistency of quality and safety protections across the aged care, disability and Veterans' Affairs sectors. In addition, for example ACN expects to see a significant improvement in reporting efficiency between aged care and the NDIS. ACN strongly encourages providers to adopt digital documentation and record keeping, as well as a digital

strategy that will allow for interoperability, maintenance of privacy, and most importantly accessible information for clinicians and providers in all care settings.

### **Amendments relating to the use of refundable accommodation deposits and bonds**

ACN supports this proposal to enhance transparency and continuity of care for the older person, as well as to provide greater monitoring powers to the Commissioner.

However, ACN would also suggest extending this monitoring and oversight to aged care delivered in the community, a sector particularly vulnerable to financial mismanagement. This would ensure more viable and fiscally responsible aged care sector more broadly.

### **Amendments relating to the Independent Health and Aged Care Pricing Authority**

ACN supports this proposed change, though has some concerns, outlined below:

- There is confusion about what is administrative (called package management in the Act) and care management which is defined in the care and services schedule as a direct service type.
- The current wording of the Act defines what costs should be represented in the price charged for package management and what costs should be represented in the price charged for care management. Care management is further defined under the quality principles in the schedule of care and services as a direct care type – so it is not an administrative cost but rather an essential aspect of care. Thus, the proposed additional definitions may create more confusion when compared to the existing Act.

Regarding the level of package management, ACN members would make the following comments:

- While it is understood the market would determine the price, various parties are not comfortable with what this may cost. If the legislation is restricted to package management then it is reasonable this would not exceed the 25% as has been proposed.
- However, this could not include care management as this is entirely dependent on the individual client and the complexity of their care needs and choices. Care management for high-care clients often involves Registered Nurse Level 2 equivalent or qualified allied health practitioners that are much more costly to deliver. Complexities and comorbidities of each person needs to be taken into consideration with enough funding to allow for appropriate clinical care.

More generally, ACN is concerned that Home Care Package (HCP) assurance reviews will also assess the appropriateness of the use of HCP funds and how much is directed to package management (administration) and care management and other direct and indirect service charges. This adds additional complexity to the financial and accountability mechanisms for home care – all of which compound an administrative cost burden, that only serves to increase the likelihood of more funds directed to package management.

### **Amendments relating to restrictive practices (New Schedule 9)**

ACN strongly supports any measures to reduce the use of restrictive practices through enhanced safeguards, and particularly the introduction of consent by a substitute decision-maker, where an individual is unable to consent themselves. However, there is concern among our membership that this appears to be a one-off process, rather than requiring the substitute decision-maker to regularly

review their consent. This means that even if an individual's condition deteriorates significantly, there is no requirement to review or amend their consent to restrictive practices. ACN recommends a minimum of annual reviews, with scope for this to be brought forward if the individual's condition deteriorates.

In addition, ACN would like to ensure consent is both informed and valid; that the substitute decision-maker is properly consulted, rather than merely signing a form, and that they understand the implications and risks of what they are consenting to.

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<sup>1</sup> Australian College of Nursing 2021. Aged Care Solutions Expert Advisory Group: Perspective Brief.  
<https://www.acn.edu.au/wp-content/uploads/aged-care-solutions-eag-perspective-brief.pdf>