



QACAG SUBMISSION

Submission to the Aged Care Bill 2024

OCTOBER 2024

About QACAG

Quality Aged Care Action Group Incorporated (QACAG) is a grassroots community activist group that aims to improve the quality of life for people in residential and community aged care settings. QACAG is made up of people from many interests and backgrounds brought together by common concerns about the quality of care for people receiving aged care services.

QACAG Inc. was established in 2005 and became incorporated in 2007. Membership includes older people, some of whom are receiving aged care in nursing homes or the community; relatives and friends of care recipients; Carers; people with aged care experience including current and retired nurses; aged care workers and community members concerned with improving aged care.

Membership also includes representatives from: Older Women's Network; Combined Pensioners & Superannuants Association of NSW Inc.; Kings Cross Community Centre; Senior Rights Service; Multicultural Communities Council of the Illawarra; Public Services Association; Carers' Circle; Aged Care Reform Now; NSW Nurses and Midwives' Association and the Retired Teachers' Association.

To ensure the consumer voice is carried in this submission we held a hybrid caucus for members, held individual conversations, invited handwritten and electronically submitted feedback and sought feedback from our organisational membership which includes consumer and workforce representatives. The feedback received is incorporated throughout.

QACAG members welcome the opportunity, through this submission, to provide input to *the* Aged Care Bill (2024). Given the short timeframe to provide feedback this is not an exhaustive list of our concerns and we note the rules are not fully released. We would welcome opportunity to offer additional comments as opportunity presents.

Margaret Zanghi

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President, QACAG Inc.

Summary of Recommendations

1. Consultation with workers regarding compliance with Direct Care Minutes must be a requirement of every aged care governance committee.
2. The United Nations Principles for Older Persons should be mirrored in the Objects.
3. Exemptions to registered nurses 24/7 must be removed as an option where nursing services are provided.
4. The Act must make provision for the setting of a minimum ratio of registered and enrolled nurses to residents where nursing care is a service offered, which guarantees additional nursing care minutes.
5. The setting of, and compliance with prescribed numbers of aged care workers must be included in the Act at all relevant points where care workers are referred to.
6. The Act must provide clarity around who is a responsible person and exclude registered nurses who have no operational control from this definition.
7. The Act should provide for the potential registration of care workers through the Australian Health Practitioner Regulation Agency (Ahpra) as recommended in the Royal Commission.
8. High quality aged care is a right which should be publicly funded and delivered.
9. The Act should ensure that aged care services are culturally appropriate for CALD older people, including workforce diversity, language support and tailored communication strategies.

QACAG members are pleased the Aged Care Bill (2024) is now progressing. While the Rules were released on the 26 September, we do not consider that adequate time to make an informed judgement on them – particularly given the important role they take in making a difference to the lives of older people. Additionally, we are concerned that our earlier submission to the drafting of this legislation had little impact on the version presented through this Bill, given the intention of putting older people front and centre in a new rights-based Act.

Whilst in the Bill, we have concerns regarding the reported omission going forward of a worker committee, or formal pathway for aged care workers to voice concerns to their employer if money directed towards provision of direct care is misappropriated, re-directed or simply fails to ensure safety of older people through provision of adequate staffing. This is a lost opportunity to right the wrongs that led to a Royal Commission into Aged Care Quality and Safety (Royal Commission) and protect older people before things go wrong, rather than afterwards, through a strengthened complaints system.

Aged care workers are uniquely placed to identify understaffing leading to poor quality care in real-time and are a much safer barometer of safety for older people than the infrequent and often, shortened compliance audits undertaken by the Aged Care Quality and Safety Commission. Our members believe at a minimum **consultation with workers regarding compliance with Direct Care Minutes must be a requirement of every aged care governance committee.**

In the absence of a robust regulator, our members consider sites such as Aged Care Watch¹ to be a considerably better reflection of the quality of care being delivered at any point in time, and often contradicts the regulators compliance reports which frequently rubber stamp a three-year term of compliance, even where shortfalls are identified. This offers our members no guarantee of safety and in our opinion is a complete waste of taxpayer's money, which could be better spent funding additional workers, including registered nurses and enrolled nurses.

Additionally, The objects give effect to the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities but fail to mention the United Nations Principles for Older Persons². Whilst we understand Australia

¹ <https://www.agedcarewatch.org.au/#/tracker/aged-care-watch-tracker/landing/Home>

² United Nations (1991) United Nations Principles for Older Persons. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-principles-older-persons>.

has not ratified this specific convention and question why this is. It relates to Independence, Participation, Care, Self-fulfilment and Dignity, all concepts which were covered by the Royal Commission's recommendations and should be covered under this law. We question this omission, given the Act is specifically designed for older people.

We believe a fundamental principle of aged care must be restoration of function rather than servicing of sickness, the latter term introduced in this version of the Bill is an ambiguous and inappropriate way to classify a person seeking aged care. **The United Nations Principles for Older Persons should be mirrored in the Objects.**

We are pleased that nursing is recognised as a core business of residential aged, and progressively, in-home aged care. The requirement for a registered nurse 24/7 has been a significant step towards closing inequalities in the care expectations for older people, compared to the general population accessing hospital care. However, we believe exemptions undermine this initiative and widen the health gaps between those accessing care in the bush compared to metro areas. **Exemptions to registered nurses 24/7 obstruct the achievement of high-quality care and must be removed as an option within the Act where nursing services are provided.**

Additionally, given recognition that a high level of care provided in residential aged care, is now nursing, including end of life care, simply requiring one registered nurse is insufficient to adequately meet the clinical needs of older people. This leads to safety issues such as unlicensed care workers administering dangerous, addictive medications to older people, diminishing their rights to safe, good quality care. Additionally, when a nurse is on a break this leaves no nursing coverage for that period. **The Act must make provision for the setting of a minimum ratio of registered and enrolled nurses to residents where nursing care is a service offered, which guarantees additional nursing care minutes.**

At no point in the Bill is there mention of direct care minutes or numbers of workers to be provided to deliver safe care and uphold rights of older people. It was a clear finding of the Royal Commission that understaffing leads to neglect. This finding was the basis for the establishment of care minutes and their funding, and it is surprising that the requirement for provision of sufficient numbers of workers, however prescribed through the rules is omitted. It is a fundamental omission which must be rectified, and **we call for the inclusion of sufficient numbers of aged care workers to be prescribed in the Act at all relevant points where care workers are referred to.** We believe that there should be a ratio of

workers 20% RN, 30% EN, 50% personal care worker or assistant in nursing in line with research undertaken by the Australian Nursing and Midwifery Federation³.

Our members have expressed significant concern that registered nurses may still be captured by the definition of a responsible person in circumstances where they oversee day to day care but have no authority to influence operational matters, including the setting of staffing numbers and skills. **The Act in its final version must provide clarity around who is a responsible person, excluding registered nurses who have no operational control** as we do not believe this to be robust enough to ensure nurses are not targeted for blame by registered providers when things go wrong.

It is disappointing that worker registration through an established authority such as the Australia Health Practitioner Regulation Agency (Ahpra) has not been provided for within this Bill. Such a scheme would negate the need for many of the costly administrative systems and penalties prescribed. This is a missed opportunity to offer enhanced protections for older people and joins the long list of recommendations from the Royal Commission that are being ignored. **The Act should provide for the potential registration of care workers through Ahpra.**

Whilst we understand the absolute need to adequately fund aged care, we believe the proposed arrangements significantly penalise those with small to moderate financial resources. We can see aged care being excluded as an option for many driving an unregulated system where contract help is sought 'under the radar' or even worse, help not being sought at all, leading to higher incidence of neglect and abuse in the community. We fundamentally believe high quality **aged care is a right and one which should be publicly funded and delivered.**

The Act should ensure older people from Culturally and Linguistically Diverse (CALD) backgrounds receive equitable care. This includes employing a diverse workforce, providing cultural competency training, and ensuring access to translation services. Care plans should respect cultural and spiritual preferences of the individuals. Additionally, communication strategies should include CALD representatives to ensure their voices are considered.

³ https://www.anmf.org.au/media/slebc13/national_aged_care_staffing_skills_mix_project_report_2016.pdf