

New South Wales Nurses and Midwives' Association

**Inquiry into the Aged Care Quality and Safety Commission  
Bill 2018 and related Bill**

**And**

**Aged Care Quality and Safety Commission (Consequential  
Amendments and Transitional Provisions) Bill 2018**

**September 2018**

The New South Wales Nurses and Midwives' Association (NSWNMA) is the registered union for all nurses and midwives in New South Wales. The membership of the NSWNMA comprises all those who perform nursing and midwifery work. This includes: registered nurses; enrolled nurses and midwives at all levels including management and education, and assistants in nursing/care workers (however titled, who are unregulated).

The NSWNMA has approximately 64,500 members and is affiliated to Unions NSW and the Australian Council of Trade Unions (ACTU). Eligible members of the NSWNMA are also deemed to be members of the New South Wales Branch of the Australian Nursing and Midwifery Federation.

Our role is to protect and advance the interests of nurses and midwives and the nursing and midwifery professions. We are also committed to improving standards of patient care and the quality of services in health and aged care services.

We currently have over 10,500 members who work in aged care. We consult with them in matters that are specific to their practice.

We welcome the opportunity to provide a submission to this Inquiry.

This response is authorised by the elected officers of the New South Wales Nurses and Midwives' Association

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## Introduction

The role of the Aged Care Quality and Safety Commission is to protect and enhance the safety, health, well-being and quality of life of aged care consumers; promote confidence and trust in the provision of aged care; and promote engagement with aged care consumers about the quality of care and services. The process by which this Bill was derived, and consultative processes once established offer little assurance that this Commission will provide a new direction for aged care. It is lacking in both transparency and consumer engagement and suggestive of a 'business as usual' approach.

The continued heavy bias of aged care industry peaks and line of direct communication to the proposed Commissioner will neither benefit, nor enhance transparency. Consumers and the workers who provide direct care to them need to be given a greater voice and influence through this Bill. Failure to do so will compromise its intended purpose.

For the purpose of this submission the main points relate to the Aged Care Quality and Safety Bill 2018. However, they are applicable as responses to both Bills under the terms of this Inquiry, since both apply to the establishment of the Aged Care Quality and Safety Commission.

We thank you for inviting us to make a submission to this important Inquiry and would welcome opportunity for further engagement.

Brett Holmes  
General Secretary  
NSW Nurses and Midwives' Association

## Recommendations

### **Applies to both Bills covered under the terms of this Inquiry**

1. Legislation must ensure that the Aged Care Quality and Safety Commission is an independent and transparent entity in the interests of public protection.
2. Any Advisory Body established under the proposed Bill must ensure balanced representation amongst its membership. Membership must include independent experts, clinicians, employee representatives and a diverse range of consumer representative bodies.
3. Employee and consumer representative bodies must be selected in a fair and transparent way.

### **Applies to the Aged Care Quality and Safety Commission (Consequential Amendments and Transitional Provisions) Bill 2018**

1. Emerging services such as online platform care agencies should be included in the remit of regulation to ensure the long term relevance of the Bill.
2. Division 3(59) should be amended to state: Information about an aged care service should be made publicly available, with an opt-out clause where this might not be in the public interest.

## Response to the Inquiry

### **Aged Care Quality and Safety Commission Bill 2018**

The merger between regulatory and complaints functions through the imposition of the *Aged Care Quality and Safety Commission Bill 2018* (the Bill) is welcomed. Any measures designed to streamline regulation and compliance of the aged care industry must ensure there is close information sharing. We believe this Bill will facilitate communication and intelligence gathering, which will be of benefit to both consumers and workers.

It is of concern to our members that there has been a historic lack of transparency in the regulation of aged care. This has been facilitated through continual influence of aged care industry representatives at all levels of the Australian Aged Care Quality Agency and Government consultative committees. An example of this is the Aged Care Sector Committee which provides direction for the development and implementation of aged care policy. This 15-strong Committee comprises three government appointments and seven members representing the aged care Industry.

Provider influence has penetrated every level of consumer advocacy, workforce consultation, strategic planning and consultative committees. Whilst we acknowledge that the sector must be consulted about policy direction, their undue influence over many years has led to stifling of compliance and concealment of the true picture of quality in residential aged care.

The Bill, in its current form, does not offer sufficient reassurance that a 'more of the same' approach will not ensue. Our concerns are substantiated by both the consultation process that preceded the Bill and its subsequent proposed consultative methodology.

The consultation process outlined in preparation for this Bill outlined broad consultation through the Carnell-Paterson review. The outcome of which proposed a 'band-aid' approach to regulation of the sector, widening complaints functions and

reporting of incidents rather than focusing on root cause analysis. Many clinical and consumer focused organisations provided evidence linking quality to safe staffing ratios and skills mix. However, it was disappointing that this was largely ignored and failed to feature in any of the resulting recommendations.

Specific consultation in preparation for this Bill was also sought from ‘targeted sector meetings’. It is disappointing, and perhaps indicative in the content of this Bill, that it sought to individually consult with the sector, rather than a broad range of consumer advocacy organisations and workforce representatives. In addition, the Aged Care Sector Committee Quality Subgroup also provided assistance. At that time, it is our understanding this subgroup did not have a single member representing the workforce. Consumer representation tends to be tokenistic and lacking in breadth.

Whilst we welcome the appointment of a statutory appointed Aged Care Quality and Safety Commissioner, we would need assurance that this appointment was selected on the merit of impartiality, business acumen and clinical expertise. Many senior appointments historically have been biased toward experience from within the Industry. The recently announced Royal Commission into Aged Care Quality and Safety suggests that seeking expertise from an already failing aged care industry would not necessarily provide the impartiality, transparency and expertise required for a Quality and Safety Commissioner. The strength of the appointment will therefore provide an insightful benchmark for determining the intention and success of this Bill.

Furthermore, we note that the Bill makes provision for the appointment of a clinical advisor to the Commissioner, supported by a clinical expert panel. Also the establishment of an advisory body known as the ‘Aged Care Quality and Safety Advisory Council’. Members of this Council will be selected on the basis of their skills and experience which includes provision of aged care. The criteria excludes workforce representatives and membership will be directly transferred from the existing Aged Care Quality Advisory Council.

This would have provided an ideal opportunity to examine the effectiveness of the current advisory council in view of multiple concerns raised about the Aged Care

Quality Agency since the Oakden report. Transferring a committee which has been used to advise a failing agency will not evoke consumer confidence, and is a further indication of a business as usual approach to regulation of the sector.

It is debateable as to whether the provision of a clause requiring disclosure of a conflict of interest from a Committee member will ensure transparency. Far greater transparency could be achieved through fairer and balanced representation from organisations acting as consumer advocates and workforce representatives and clinicians employed within the sector.

### **Aged Care Quality and Safety Commission (Consequential Amendments and Transitional Provisions) Bill 2018**

In addition to the concerns already outlined. Under 19(a)(ii) *Regulatory functions of the Commissioner*, emerging services such as online platform care agencies should be included. There is great risk to consumers who seek introduction to direct care workers, including registered nurses through online platform care agencies. In this scenario the platform agency will act only to link the care recipient with the care worker. It will then defer accountability for the quality of care and services provided by the care worker to the care worker. Whilst many consumers will find this appealing and empowering, it can pose risk to those who lose capacity to self-advocate and manage these private contractual agreements.

Our members tell us that retirement villages are emerging as the entry point to aged care. Aging in Place reforms designed to keep people at home also enables people to live longer in retirement villages, many of which are co-located with residential aged care facilities. This is not an accidental placement, aged care providers see retirement villages as opportunities to attract future consumers. It is hoped that the new Bill will consider the care provided to people in retirement villages as care defined under home care or residential aged care.

In relation to 59 *Information about an aged care service may be made publicly available*. This should be amended to state this should be made publicly available, with an opt-out clause where this might not be in the public interest. The suggestion that the Commission may not make information about an aged care facility or service publicly available is not fully transparent, and the amendment will raise consumer confidence.