

Indirect employment in aged care: response to Productivity Commission issues paper (March 2022)

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About UnitingCare Australia

UnitingCare Australia is the national body for the Uniting Church's community services network and is an agency of the Assembly of the Uniting Church in Australia.

We give voice to the Uniting Church's commitment to social justice through advocacy and by strengthening community service provision.

We are the largest network of social service providers in Australia, supporting 1.4 million people every year across urban, rural and remote communities.

We focus on articulating and meeting the needs of people at all stages of life and those that are most vulnerable.

Introduction

UnitingCare Australia's purpose in making this submission is to respond to questions raised in the Productivity Commission (the Commission) issues paper, is to make comment on Recommendation 87 of the Royal Commission's Final Report.

We note that there is a strong link between Recommendation 87 of the Royal Commission's Final Report and the task of the Commission to examine "... employment models in aged care, and the effects that policies and procedures to preference the direct employment of aged care workers would have on the sector". We believe it is necessary for the study to consider critical economy-wide drivers of workforce and industrial relations outcomes, and not limit the study to exploring conditions specific to the aged care sector.

Our interpretation is that the purposes of Recommendation 87 include ensuring that:

- (a) users of support and care services are safeguarded by the mechanisms designed to ensure that workers are appropriately skilled and qualified;
- (b) members of the workforce are safeguarded against exploitation, underpayment and other risks of insecure employment;
- (c) there is a clear understanding of the mechanism of assigning responsibility for supervision and therefore both service user outcomes and worker protections.

UnitingCare Australia fully supports implementation of strategies to achieve these purposes. We believe direct regulation purporting to require services to justify their choice of alternative employment models would inevitably be inefficient and have impacts counter to the direction for the aged care services sector that the Royal Commission envisaged.

Attracting and retaining workers that can meet aged care needs now and into the future.

We agree with the premise in the paper, that this is not the place to explore the full range of issues that drive the challenge of workforce expansion. To a significant extent the Pollaers report¹ canvassed these issues, the exception being the additional drivers of workforce shortages that have emerged with the COVID pandemic.

The Aged Care Workforce Strategy Taskforce exploration was equally limited in scope, in that it was not an opportunity to examine the full range of drivers of wages stagnation in the Australian economy generally. Arguably, one of those drivers is the reduced bargaining power of workers in the face of increasing casualisation of the workforce and emergence of the 'gig' economy.

¹ A matter of care: Australia's Aged Care Workforce Strategy – report of the Aged Care Workforce Strategy Taskforce chaired by Professor John Pollaers OAM available at <https://www.health.gov.au/resources/publications/a-matter-of-care-australias-aged-care-workforce-strategy>

As the Commission has established, there is little evidence of aged care work insecurity at the scale seen elsewhere in the economy. This is not to say, however,

- a) that this economy-wide trend does not impact on wages outcomes for aged care workers or
- b) that aged care funding mechanisms, the design of the aged care services system, and the regulatory environment in which aged care operates do not have significant implications for the value placed on care work and therefore wages outcomes now and into the future.

UnitingCare Australia represents services that operate across the community services spectrum and sees the direct impacts of real wages shrinkage and insecure work arrangements. It is of great concern to members of our network that the Support at Home model currently under discussion,² together with the systemic funding and wages issues in aged care, will actually end up driving people to more insecure work arrangements as there may be incentives for workers and consumers to contract directly. Concurrently, providers must accommodate recent changes to the SCHADS award, including a minimum two-hour shift requirement, which is arguably at odds with transactional, consumer-driven program design.

Our first recommendation is therefore that **the study must:**

- 1. consider economy-wide drivers of care work value including trends towards casualisation and workforce insecurity; and**
- 2. be cognisant of proposals to adopt home care program settings in many respects similar to those governing the NDIS, with a view to understanding the connection between program design and relationships between service users, workers, and providers.**

There is ... unmet demand for residential care

The statistic cited in the paper as the basis for this statement [bed days waiting for residential care placement] highlights the intrinsic challenge of aged care planning: publicly available data is scarce and difficult to find. More recent versions of the report from which this data comes (the annual Government Services Report) do not include the equivalent figure for later years.

As providers we understand that the COVID pandemic has reduced occupancy in some localities. Elsewhere it has exacerbated locality-specific shortages of care, with staff shortages leading in some situations to bed closures and/or inability to cater for the full range of potential residents. It is impossible however to establish – at a national level – the true situation in terms of the trends in distribution of places between geographical areas. It is well reported that StewartBrown data indicate an ongoing deterioration of the financial position of residential care services, in particular in non-metropolitan localities.³ This is

² <https://www.health.gov.au/sites/default/files/documents/2022/01/support-at-home-program-overview.pdf>

³ <https://www.stewartbrown.com.au/news-articles/26-aged-care/260-2022-04-stewartbrown-aged-care-financial-performance-survey-december-2021-video-presentation>

relevant for this study because it points to related issues of the capacity of services to establish and maintain aged care places, and the critical nature of the cost of labour in terms of the viability of those services.

There is no doubt that regulation is essential to ensure the quality and safety of aged care services. We believe, however, that regulation of staffing models is highly likely to reduce efficiency of delivery. Significantly, there is pressure to further regulate a system that is full of perversities largely beyond the control of providers, including:

- the brake that the current approach to funding puts on the capacity to respond to employment market signals or to (voluntarily) increase staffing levels
- incentives for employees to maximise income by working for multiple organisations or as casuals to make up for inadequate wages;
- disincentives to enter the aged care sector on a permanent basis (including reputation) or to remain in the sector in the long term (including lack of resources for training and limited opportunities for progression).

UnitingCare Australia therefore proposes that the main driver of improvements in quality – and access to services – will be funding arrangements that enable improvements in wages and conditions, and outcomes measures that encourage innovation and productivity improvements, rather than regulation. This is largely because not all aged care workers are equal. In order to pursue quality via a ‘good fit’ approach to staff selection, services must have the capacity to compete in the employment market for the best workers. They must also have measures by which they can demonstrate improved performance.

We note that minimum staff time standards for residential care should themselves reduce any incentive to offer conditions that are not the choice of the employee. Any flexibility gained through strategic use of agency staff can be expected to be offset by the risk that reliance on this approach will lead to regulatory failure.

Royal Commission Recommendation 87

UnitingCare Australia tends to agree with Commissioner Briggs that direct employment will on the whole support the proposed workforce reforms and avoid a ‘fractured, disparate and ill-supported workforce’. Without any external direction, services within our network already seek to employ workforce models that balance the benefits of direct employment (for consumers, the workforce generally, and therefore the financial position of the services) with selective use of agency staff (for example to fill short term vacancies where there is no practical alternative).

In our submissions to the Royal Commission, we highlighted the importance of program design, for care in the community in particular, that ensures care work is well supervised and managed, with the consumer at the centre.

We believe that in practice the strongest incentive for preferencing direct employment is cost: the investment in recruiting, onboarding, and retaining quality staff that is required to maintain standards – and attract and retain clients – is substantial. In contrast, the strongest

incentive towards use of agency or casual staff is the funding model, which increasingly rewards a transactional approach to service delivery.

Much is made of the consumer's choice when it comes to flexibility of mode and timing of service delivery, however absolute flexibility is inconsistent with a model that maximises consistency of personnel across a generally inefficient geographical footprint. It is therefore essential that services are able to manage their workforce to optimise potentially conflicting variables, within the funding they have at their disposal. We note in this context that services that deliver across a range of social services programs (ageing, disability, health) are often best able to deliver more efficiently however the lack of regulatory and funding alignment across programs presents a different set of issues.

Most workers in aged care are employees of an aged care provider

While it may be true that currently most workers in aged care are employees of an aged care provider (though we note there is no data on aged care-type services provided outside the Australian Government subsidised system), there is no guarantee that this will continue to be the case.

As noted above, in most direct care/nursing contexts appropriate training and supervision is critical to ensuring safety of both the worker and service recipient. Anecdotally, the lack of 'depth' in supervision and exposure to clinical expertise is also a disincentive to choosing working in aged care over the health system. There is still work to be done to lift the capacity of providers so these supports are consistently available to aged care workers.

This is not an argument for policies that require providers to preference direct employment. Effective workplace structure facilitates on the job training, growth in expertise, and also avoids situations in which relatively inexperienced staff are left 'out of their depth'. If there are any incentives for providers to create artificial employment structures (e.g. to support transfer pricing) or risks in consumers self managing their services, these should be managed through targeted accreditation and/or funding program requirements, not through an additional reporting/regulatory layer imposed on providers across the board.

Likewise, if 'sourcing of workers by clients through digital platforms creates uncertainty about who is the ultimate employer of the workers, and who is liable for ensuring that high quality care is provided', this is a complex legal issue with economy-wide implications. The specific quality component of some types of aged care services and risk/liability questions that are associated with personal care and health care services to vulnerable people are common to all areas of human services and highlight the challenges of regulating for consumer and worker safety in a deregulated labour environment.

UnitingCare Australia notes that figures indicating the nature of employment arrangements will likely vary considerably according to local workforce conditions and suggests that the study assess data on a sub-national (at least state and territory, if not local government) level. Although services seek to maximise employment of permanent workers (including through making permanent those initially recruited as casuals) this is a long term challenge, which is to some extent perpetuated by policy settings:

- some use of agency staff is essential to maintaining appropriate staffing levels, particularly in regional and remote areas
- ongoing wage and remuneration issues in services undermine permanent recruitment efforts, as higher hourly rates make agency and casual work more attractive to workers.

The absence of any feedback mechanism to ensure that funding reflects market-based wages costs⁴ in local employment markets enables this cycle. This is borne out by the impact of COVID: because the sector is generally heavily reliant on workers from outside Australia, and the COVID pandemic has decimated the worker pool across all occupations, services in remote areas in particular have found it virtually impossible to compete in the market for workers.

Services would willingly engage in ongoing reporting of data to track workforce challenges, in the context of workforce development needs analysis and concerted efforts to address them. Additional regulation and/or contextualising use of agency/subcontracted workers as a quality issue is, however, highly concerning for services. In the face of policy directions likely to increase the capacity of aged care service users to contract individual services directly, implementation of mandated staffing levels and the star rating system, and continued workforce shortages linked to COVID, traditional providers may find it increasingly difficult to maintain direct employment levels.

Our further recommendation is that

- 3. to the extent that providers should have a 'level playing field' on which to compete, the study should look at whether there are any unique-to-the-sector risks associated with employment arrangements used by aged care labour hire agencies, and/or whether there is any need to clarify (for example through funding arrangements) where responsibilities for e.g. training and supervision reside.**

We also suggest that

- 4. the study fully explores the avenues that are used to fulfil staffing requirements outside metropolitan areas, the costs and risks associated with needing to 'import' temporary staff, and make recommendations on how these risks might be addressed either through development of alternative funding models or other mechanisms to attract staff to difficult-to-fill posts (e.g. remote area-specific scholarship programs, housing, spouse employment programs).**

⁴ In this context we note that the Royal Commission recommended linking wages growth to funding indexation.

Most aged care workers are women, part time and have low wages

It is indisputable that many issues in aged care are attributable to it being a highly feminised workforce. As such, we would support exploration of the gendered nature of the industrial issues that Recommendation 87 seeks to address.⁵

The issues raised in this section of the issues paper – under-employment and the prevalence of multi-site work – are, however reflective of two quite separate sets of issues.

The ‘unitised’ nature of home care in particular will tend to promote employment based on the patterns of service preferred by consumers. This will encourage providers towards arrangements that limit their exposure to worker ‘downtime’. While a significant number of workers may choose to work part time, the study should investigate whether the rapid expansion in the number of home care providers since removal of the Aged Care Approvals process for allocating packages may have accelerated underemployment and how this might be addressed.

In smaller regional and remote services, viability is likely to dictate that providers severely limit hours of work, based on the limited pool of clients. We note that ‘job building’ is considered by some to be a critical element of workforce sustainability in these contexts. In circumstances where scale does not permit an employer to support a full time role, combining funding sources can enable creation of sustainable positions (from the perspective of a worker). The risk of underemployment can be a severe disincentive to workers who would otherwise consider relocating to regional and remote areas.

This is not the scenario where a worker chooses to be employed by multiple services to maximise the benefits of salary packaging, or to enable unsafe workloads (reportedly in the region of 70 hours per week for some individuals). The fact that part time work predominates amongst personal care workers rather than nurses may indicate that the critically low rates of pay for the former are a perverse influencer of employment behaviour. The prevalence of ‘multi site’ work is well known as a problematic issue in terms of COVID infection control and likely to be associated with other unsafe practices such as excessive hours and presenteeism.

The study should assess the extent of, and drivers of, ‘overemployment’ to ensure that it does not overestimate either the number of workers, or the extent of underutilised labour available in the sector. UnitingCare Australia is concerned that available data potentially gives false estimates of the true number of individual care workers in the sector and would question whether the Committee for the Economic Development of Australia has accounted for the drivers of underemployment (such as local employer scale) in calculating the availability of additional care hours.

Workforce planning capacity is a critical deficit in the sector. In addition to the abovementioned data deficits, there are also workforce shortages that make it difficult to fill corporate roles in the sector. The work of the Aged Care Workforce Industry Council in this area should assist in modernising approaches to rostering, job design and workforce

⁵ see for example *Gendered Dimensions of Digital Platform Work - Review of the Literature and New Findings*
<https://engage.vic.gov.au/inquiry-on-demand-workforce>

management. We note however that there are significant 'non marketised' elements of aged care that must be taken into account. The intent of mandatory staffing and nursing hour standards is to safeguard the 'relational' aspects of service, which are at risk in a unitised approach to service costing and delivery.

It is definitely the case that 'remuneration for aged care workers is less than for similarly-qualified workers in comparative sectors' and there is considerable evidence of loss of aged care workers through direct competition with other care streams, including within our member organisations. Our members indicate that workers may use aged care roles as a stepping off point to other, better paid roles, or move out of aged care because they can be better rewarded elsewhere. Particularly since the COVID pandemic, workers have been exiting because of the impact on their working environments. Increases in demands on workers, including from increasing compliance activities and the demands of heightened infection control measures, have not been met with recognition in the forms of wages reform or improved conditions.⁶ 'Retention bonuses' have not been received as adequate recognition of the underlying workforce challenges.

Taken together, these factors do not promote safe work practices or quality improvement for users of services. We therefore recommend

- 5. that the study investigates the deeper drivers of low pay and poor conditions in the sector and the implications of these for user experiences of aged care.**

The use of digital platform work may increase in aged care

UnitingCare Australia suggests that the study methodology include interviews with human resource managers across the aged care and similar (potentially competing) human services sectors to explore the range of experiences of organisations in terms of staff recruitment and retention, and drivers of different workforce models.

Data collections focused on the aged care workforce are by necessity backward looking, however there are analogies with the disability workforce. We believe that there will be considerable value in looking at

- a) the potential change in numbers of agency workers and independent contractors if reforms progress in certain directions, specifically aligning aged care with disability services in areas that have influenced employment models in that sector e.g. enabling self management of packages;
- b) potential changes in the relative significance of different forms of employment as governments implement policies to increase the length of time individuals receive care at home (at the expense of residential care);
- c) strategies used in the disability sector to attract and retain workers.

⁶ See submissions to the Fair Work Commission Aged Care Work Value case, including <https://www.fwc.gov.au/documents/sites/work-value-aged-care/submissions/am202099andors-sub-uca-040322.pdf>.

We note that, in this context, gross numbers of workers are significant. Each 'non-pay as you go (PAYG)' care worker represents at least that number of service users. If there are significant concerns regarding the quality of care received from agency/subcontractor workers, the risks associated with that small proportion of workers in a sizeable – and growing – workforce must be appropriately managed.

The NDS submission to the Inquiry into the Victorian On-Demand Workforce⁷ highlights issues which, if transplanted to the aged care sector, would be concerning from the perspectives of both consumers and workers. A national survey of the arrangements in place to safeguard platform workers and service recipients in the context of disability services could be a most useful element for the study.

Impacts of indirect employment on quality of aged care

UnitingCare Australia fully supports strategies to prioritise continuity and quality of care provided to aged care recipients. It is highly desirable that personal and clinical services in particular are provided by workers who are enabled to build relationships with service users (including their carers). Promoting the 'relational' in aged care was central to the recommendations of the Royal Commission.

We question, however, whether the emphasis on employment arrangements is the most effective means by which to promote relational care. We would encourage the study to consider also

- a) correlations with investment in appropriate care coordination and case management,
- b) the role of standards relating to communication of care needs and observations by carers,
- c) any need for greater clarification of responsibilities for care management in situations analogous to the current CHSP-type services.

Proportionality of regulation is critical, as is the autonomy that may be maintained via enabling service users to self manage their services. It must be recognised that the vast majority of care recipients and/or their designated carers are fully capable of engaging in relationships with service providers, whether they are traditional 'aged care' providers or providers of individual services such as home modifications or maintenance.

We believe the study should consider carefully the points at which issues have arisen in the context of NDIS delivery. Instances of inadequate oversight of workers engaged to care for individuals who are vulnerable by virtue of social isolation, will not be addressed through regulation of employment arrangements. Likewise, it would be a perverse outcome if simplification of administrative requirements for services easily engaged in the community was inhibited through requirements for traditional employment arrangements.

As noted in the Commission's discussion paper, UnitingCare Australia definitely supports policy settings that will promote continuity of care for clients. We believe that in the context of 'traditional' service arrangements this can best be achieved through program and funding arrangements that recognise the roles – in more complex care arrangements – for care

⁷ <https://engage.vic.gov.au/download/document/7347>

coordination and case management, as well as industrial reforms that will enable providers to offer workers more secure and stable employment.

We also note in this context that as 'minutes of care' become embedded as a measure of performance, use of agency/casual staff to ensure facilities achieve full staffing levels may increase, notwithstanding the expectation that overall this measure will promote quality of care.

The important features of quality frameworks must apply equally but appropriately and proportionately to different situations to ensure efficient and safe practices. Thus, while the discussion paper cites the use by the Australian Government of Mable to fill staffing gaps under COVID 'surge workforce' arrangements, this raised issues in relation to infection control. Providers in some cases had poor visibility of where other shifts had been worked. Similarly, in the absence of a national worker registration scheme, there is low visibility of poor or inappropriate performance of workers. These are real issues that are not amendable to solution through regulation of employment arrangements, again highlighting the importance of identifying the drivers behind issues raised through the Royal Commission.

UnitingCare Australia believes that the study must fully investigate the claims that administrative costs are reduced through use of digital platforms, 'enabling a higher proportion of available government funding to be spent on hours of care'. This investigation should consider the types of costs that contribute to 'administration', whether there are genuine savings associated with the use of platforms, and whether there are perverse outcomes such as underinvestment in training and supervision or shifting/avoidance of costs such as insurance or vehicle use. Whilst the 'flexibility and cost advantages' of platform workers cited in the discussion papers seem attractive, it is difficult to believe that these advantages are achieved entirely without sacrificing a legitimate 'benefit' somewhere in the system.

The recent changes to the award for community support workers are evidence of community expectations that workers should not be required to absorb the costs of the flexibility that benefits consumers. It is critical to understand the embedded costs that traditional providers must absorb, and risks where these costs are avoided or transferred to workers.

Conclusion

UnitingCare Australia strongly believes that there are risks and benefits of use of 'platform workers' and casuals, linked in large part to trends towards self management of care. There are many arguments in favour of promoting self management as a matter of policy, however there is a strong likelihood that an increase in use of 'sole traders' – and uplift in accompanying risks – will follow.

From our perspective the principal value in this study will be its capacity to illuminate the risks ahead for aged care service users and service providers as the 'gig economy' evolves, and to make recommendations on the most efficient way to address the drivers of risk. We suggest that a key source of insight and information will be the disability services sector.

Although we support a strong emphasis on personal care and clinical roles, we believe that it is important to acknowledge and understand the different elements of aged care services and the importance of proportionate and appropriate regulation targeting different types and levels of risk.

The focus of the study should be on assessing alternatives to ensure that, in respect of all activities in the sector:

- a) users of support and care services are safeguarded by the mechanisms designed to ensure that workers are appropriately skilled and qualified;
- b) members of the workforce are safeguarded against exploitation, underpayment and other risks of insecure employment;
- c) there is a clear understanding of the mechanism of assigning responsibility for supervision and therefore both service user outcomes and worker protections.

We therefore recommend that the study must:

1. consider economy-wide drivers of care work value including trends towards casualisation and workforce insecurity; and
2. be cognisant of proposals to adopt care at home program settings in many respects similar to those governing the NDIS, with a view to understanding the connection between program design and relationships between service users, workers, and providers; and
3. look at whether there are any unique-to-the-sector risks associated with employment arrangements used by aged care labour hire agencies, and/or whether there is any need to clarify (for example through funding arrangements) where responsibilities for e.g. training and supervision reside.

We also recommend that the study

4. fully explore the avenues that are used to fulfil staffing requirements outside metropolitan areas, the costs and risks associated with needing to 'import' temporary staff, and make recommendations on how these risks might be addressed either through development of alternative funding models or other mechanisms to attract staff to difficult-to-fill posts (e.g. remote area-specific scholarship programs, housing, spouse employment programs)
5. investigate the deeper drivers of low pay and poor conditions in the sector and the implications of these for user experiences of aged care.