



Brief Submission to the Senate Standing Committee on Community Affairs Inquiry into the *Aged Care Amendment (Implementing Care Reform) Bill 2022*

About Us

The Health Services Union (HSU) is a growing member-based union with over 95,000 members across every state and territory. Our members work in the breadth of health and social assistance industries, in the public, private and not-for-profit sectors. HSU members in aged care work in roles including personal care worker (PCW), enrolled nurse (EN), assistant in nursing, physiotherapist, occupational therapist, therapy assistant, recreational and lifestyle officer, food services, laundry attendant, cleaner, and administrative officers. Our aged care members predominantly work in residential facilities (RACFs) but also in home and community services. In addition to those directly employed in the aged care sector, the HSU has members working in health professions that require them to interact on a regular basis with older Australians. This includes paramedics, mental health clinicians, disability support workers, and other allied health professionals.

Summary

The HSU supports the *Aged Care Amendment (Implementing Care Reform) Bill 2022 (the Bill)* and its quick passage through the Senate at the conclusion of this Inquiry. The HSU welcomes the new Government's prompt and decisive action in aged care, making it a first order of business. For our members, a Bill that addresses the deepening workforce crisis and the public's trust deficit in the sector is long overdue and therefore most welcome.

The HSU is pleased to make this submission and will engage at every opportunity as the Bill progresses through Parliament and other processes, to ensure that the reforms it gives effect to now and in future are well-designed and meeting their intended purposes. The HSU looks forward to engaging in consultations with Government, older people, workers, other unions and providers as we progress this important legislation and deliver a quality aged care system. This submission places on the record where we want consultations and the reform agenda to focus.

Schedule 1 – Registered Nurses

Recommendation 86 and the skills mix

The HSU is a staunch advocate for improving staffing numbers across a diverse number of skills groups. ENs and PCWs provide essential, person-centred care. However, as evidenced by the Royal Commission into Aged Care Quality and Safety (**the Royal Commission**) and reiterated by HSU members, 'there are often not enough staff members to provide the care that is necessary [and] there is no time to attend to the little things that make such a difference—to sit and have a chat over a cup of tea or to talk about the things that matter to an older person.'¹ Care that meets whole-of-person needs is high-quality care and this can only be delivered with high staffing across a skills mix.

The Royal Commission made a final recommendation (86) to improve the number of direct care staff and staff time standards across three distinct groups – Registered Nurses (RN), ENs and PCWs. While the rollout of the AN-ACC funding mechanism will allow for the first tranche of staff

¹ Royal Commission into Aged Care Quality Safety, Final Report, March 2021, p. 372.

time standards to begin, and Schedule 1 of this Bill will further advance its implementation via more RNs, Recommendation 86 cannot be marked as completed until all details are finalised in subordinate legislation and fully implemented in services. Specifically, this requires increasing care minutes across the three identified skills groups to '215 care minutes per resident per day for the average resident, with at least 44 minutes of that staff time provided by a registered nurse.'²

Allied Health

Allied health professionals (AHPs) play a 'vital role... in preventing physical and cognitive decline, in addition to providing restorative short-term care in response to acute events.'³ There are not enough AHPs in RACFs and home and community aged care. The HSU draws attention to the findings and recommendations of the Royal Commission regarding the restrictive nature of funding under the current, soon to be former, Aged Care Funding Instrument and that, particularly as the new AN-ACC still does not account for AHPs, there is a pressing need to implement dedicated AHP funding for home and residential care. Implementation of the two relevant allied health recommendations in the Royal Commission⁴ would secure funding and uplift the number of AHPs in aged care services. It is essential this happens so that these vital workers are embedded into staffing profiles and care minutes, additional to those prescribed by Recommendation 86 and the Bill. The HSU will continue advocating for AHPs and will be looking to future consultations and the legislative reform agenda for solutions.

Drafting and consultations

The drafting of subordinate legislation⁵ to this Bill will be critical to getting the rest of Recommendation 86, and engagement of other occupations, right. Drafting must be informed by genuine, tripartite consultation between Government and its relevant Department, industry, and the workforce and their union representatives. Additionally, and noting the aforementioned first stages for the introduction of staff time standards, the drafting of the subordinate legislation should be informed by insights and data from the Star Ratings system (to be introduced by the end of the year), assessment on the function of the AN-ACC, improved reporting and information transparency, and any workforce planning and supply issues encountered as Schedule 1 takes effect.

Exemptions

The HSU is eager to understand how exemptions to Schedule 1 will be drafted not only for the RN requirement,⁶ but because we assume they will be applied to other groups of workers. The Explanatory Memorandum draws on the Royal Commission evidence that exemptions should apply only in certain circumstances such as 'regional, rural and remote areas where the provider has been unable to recruit sufficient numbers of staff with the requisite skills.'⁷ How this is given effect in legislation is critical.

Given the serious workforce demands across skill sets, exacerbated by the pandemic, it is critical that providers before engaging the exemption process, exhaust every measure to meet staffing standards, are required to demonstrate they have exhausted all measures, are granted a time-

² Ibid, p. 419.

³ Ibid, p. 179.

⁴ Ibid, pp. 175-182.

⁵ Explanatory Memorandum, p. 18 and 21.

⁶ Schedule 1, line 10, new Section 54-1A (3)(4).

⁷ Explanatory Memorandum, p. 8

bound exemption, and are required to provide ongoing evidence that they are addressing the worker and skills shortage. Additionally, there must be review mechanisms in any instance a provider breaches the conditions of an approved exemption or where an outlier number of exemptions occurs.

Safeguarding

The HSU supports the wording at new Section 54-1A (2) that the RN must be ‘on-site and on-duty, at all times at the residential facility.’ We believe that specifying ‘on site and on duty’ should apply to all skills groups where a staff time standard is applied, as it reduces ambiguity around what constitutes meeting the requirement i.e. The right number of workers on the books does not mean the right number have been rostered on and are providing care.

The HSU supports the view that there will be an increase in regulatory treatment as staff time standards continue to be implemented.⁸ We recommend that in addition to the provisions of this and any related legislation, the existing quality safeguards (e.g. Quality Standard 7) undergo a review to ensure they are fit-for-purpose. Where there is a failure to comply on care minutes, the legislative and regulatory framework must support meaningful compliance and enforcement action. The Aged Care Quality and Safety Commissioner and/or Department of Health and Aged Care must be adequately resourced to investigate and carry out appropriate compliance activity regarding care minutes, including the regulation of any exemptions. The regulator must have the ability to identify and assist any instance of repeated or ongoing worker and skills shortages.

Schedule 2 – Capping home care charges

The HSU supports the introduction of Schedule 2, noting the issues regarding management, administrative and exit fees in home care have been well-canvassed by the Royal Commission and other inquiries. Older Australians want to remain at home and in their communities for as long as possible. To enable this and ensure sustainability in the home care sector, greater transparency and regulation of provider expenditure is required.

As a new home care program is rolled out in aged care, noting its commencement has sensibly been delayed by the Government to afford more consultation, a better understanding will be built around pricing, funding and service provider costs. This information should be used to set pricing and funding, determine appropriate caps, identify where providers are exceeding or falling below the average, and allow for adjustments, including clawbacks of unspent funds or additional supplements where there are viability issues. Caps on administration and management fees would reflect real-time data and median costs, and providers can use this information to ensure their viability. Any exemptions or supplements to assist with service providers administration and management costs must be subject to stringent evidence and threshold requirements.

The HSU is aware of activity by some home care providers to mitigate cost increases in relation to recent changes to the *Social, Community, Home Care and Disability Services Industry Award* (SCHADS Award). The changes, effective from 1 July, deliver positive improvements to home care

⁸ Ibid, pp. 25-26.

workers take-home pay, long service leave entitlements, Superannuation Guarantee rate, minimum hours of engagement, and access to paid travel time. Providers must manage home care package funding to ensure that workers receive these benefits, to which they are legally entitled, and care recipients have no disruption to services and costs. Already, this is not happening.

Schedule 3 – Transparency of Information

Common-sense transparency measures enabled under the Bill will restore trust and integrity in aged care providers by ensuring that every (taxpayer) dollar spent in the sector is going towards high-quality care and that expenditure is publicly available. The HSU has been calling for improved transparency measures for years, including making recommendations on amending the *Aged Care Act 1997* (**the Act**) and the *Corporations Act 2001* (**Corporations Act**) to ensure rigorous financial reporting and publication requirements.

Acknowledging that the Explanatory Memorandum sets out broad categories for reporting and that the Star Ratings system will improve transparency, the HSU is eager to ensure that:

- There are clear definitions of direct care and essential supporting roles and that information is reported accordingly under each. For example and not intended as an exhaustive list, categories must be well-defined across the breadth of direct care (e.g. nursing, personal care, allied health) and essential supporting roles (e.g. lifestyle and recreation, catering, cleaning, administration).
- Complementary to the above, reporting is required on modes of employment including direct and permanent employment (full-time, part-time, casual), and indirect employment (labour-hire, agency, consultant and gig).
- Workforce training and professional development expenditure is reported.
- That if any reporting exemption is available, a high threshold is met before it is granted.

Concluding remark

The HSU supports the prompt passage of this Bill in the Senate. We look forward to being engaged in subsequent consultations and drafting of critical subordinate legislation, with regard to the issues outlined in this submission.

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Authorised by Lloyd Williams, National Secretary

This submission has been prepared by HSU National but is made on behalf of our branches and members Australia-wide. HSU National is the trading name for the Health Services Union, a trade union registered under the *Fair Work (Registered Organisations) Act 2009*. The HSU has registered branches for New South Wales/Queensland/Australian Capital Territory; Victoria (4); Tasmania; South Australia/Northern Territory; and Western Australia.

