



Answer to question:

PARLIAMENTARY JOINT STANDING COMMITTEE ON MIGRATION

MIGRATION, PATHWAY TO NATION BUILDING INQUIRY

QUESTION: JOCK01QON

CHAIR: Thank you. That was very informative. I'm just going to ask a general in relation to this, on the delays and the duplication of documents, and all the hoops and circuses that people need to go through. In your experience, do you have an understanding of why that is the case? Has it got anything to do with too many people being involved and too many different requirements? If so, please outline where those areas are that are creating this logjam of requirements.

Ms Jockel: *I'd like to take that question on notice.*

ANSWER:

The Department of Home Affairs Addendum to The Administration of the Immigration and Citizenship Programmes paper released, October 2023 at paragraph 5 states 'A well targeted migration program can play an important role in positioning Australia for future economic growth, while mitigating known risk. Targeted reforms can help Australia to attract skilled migrants to complement the existing Australian workforce and support Australia's long-term economic prosperity as outlined in the *Intergenerational Report 2023*.

It states that "as of 31 August, eight agreements are in effect, providing for more than 6000 direct care workers over five years. The first visa applications under this agreement have been received and processed by the Department of Home Affairs".

The Weekly Source, August 10, 2023 article states "We predicted this: Aged Care Labour Agreements of failure". The article expresses the concerns of many aged care providers regarding the requirement to sign a Memorandum of Understanding (MOU) with unions. This has resulted in a reluctance by aged care providers to access the Aged Care Industry Labour Agreement.

Mr Tom Symondson CEO Aged and Community Care Providers Association in his evidence to the Parliamentary Committee at page 35 stated that there will be a 'shortfall over the next decade of something like 110,000 workers, and by 2050 that would be 400,000 workers'. Regarding the Aged Care Industry Labour Agreement, he makes various comments regarding the challenges of dealing with the MOU and confirms that there was no consultation with the aged care industry regarding the Aged Care Industry Labour Agreement nor the MOU.

He states that 'it comes with challenges because it's a completely different process to anything we've had in the past... The model MOU for some providers includes things that are challenging to actually achieve, so we are having to go through negotiated engagement with unions locally to make sure that we can actually sign those MOUs. So that is making it a little bit more difficult to get the benefit of the industry labour agreement that we would like to see... The difficulty we have is that there is a multiple memorandum of understanding that all the unions have agreed to that we weren't consulted on in the first place. As a result, we are now, provided by provider, trying to ensure that MOU is able to be kept to by the provider. For example, there are conversations in the MOU around our use of agency staff and ensuring that it is as low as possible. I can tell you that any provider of aged care wants to keep its agency staff levels as low as possible. Agency staff are expensive, there's huge churn and it reduces continuity of care... Employing agency staff doesn't allow for that. It's things like that, where we now have to negotiate union by union and provided by provider...'

Regarding some items in the model MOU which are challenging to achieve he replied 'I will just say it was the MOU itself we didn't have input into, not the agreement as a whole... Specific providers might want different things in that MOU or to have different things not in the MOU that relate to their specific situation; those things have to be negotiated individually on a case-by-case basis, and then, with each branch and each union, that covers the staff in your organisation—which can be quite a lot if you're a multistate organisation or a national organisation or even an organisation that crosses the Murray River. That's one of the challenges.

The other thing is, because the MOU just sort of came in, and we have to have a bit of time to work out how effective it is and whether it's actually working, we need to ensure there is a review process of that MOU.'

Regarding the eight approved Labour Agreement he said 'it's still a relatively small number. A lot of our members are still having to work through the process. That's probably something we would have preferred to avoid'.

Regarding the 15% increase, he noted that 'some staff have used that as an opportunity to decrease their hours by 15% and continue to earn the same amount of money'. He also stated 'In many cases, providers would struggle enormously to come close to that and stay solvent. We do obviously have significant financial challenges. I should say that I'm on the government's aged care financial sustainability task force, which is looking at this right at the moment. But we have significant financial challenges. So even offering those amounts of money would be very, very challenging'.

At page 39 he went on to say 'This industry Labour agreement, where an MOU is a requirement, is new and untested, so we are testing it'.

In response to the question as to the 'greatest concerns that your members are expressing' Mr Symondson replied 'I think the biggest concern is that some of the very small organisations really just need to get on with recruiting people. As you would understand, in a busy human services-type organisation anything that takes extra time or effort is something that you'd rather not do. But recruiting people internationally takes time and effort, however you go about it. For a lot of our smaller members it might not even be an option because they don't have the resources to do international recruitment. So I'd say the concerns are time and also, kind of what I was alluding to, that this is a brand new way of engaging with unions, with government and with the migration system. It's untested and very few of our members have successfully achieved it...'

Skill assessments are also an issue.

The Australian Nursing & Midwifery Accreditation Council (ANMAC) assesses applications for Skills Assessments for Nursing Support Worker ANZSCO 423312 and Personal Care Assistant ANZSCO 423313.

The Australian Community Workers Association (ACWA) assesses applications for Skill Assessments for Aged or Disabled Carer ANZSCO 423111.

CEDA's Skills Recognition 2022 publication notes that skill assessments are part of the known bottlenecks. The publication refers to the administrative burdens, qualification requirements and barriers to labour mobility between countries and states 'Most international research on this topic has failed to demonstrate quality improvements from stricter regulatory entry barriers, or a reduction in the quality of goods or services following an easing of such barriers'.

Mr Symondson's comments regarding enterprise agreements aptly summarises some of the concerns; 'That's a really complicated place to be right at the same time with complicated negotiations with multiple unions.'

Clearly, there are multiple 'areas that are creating this logjam of requirements' with 'all the hoops and circuses that people need to go through' and with too many people being involved and too many different requirements.

The comments that I'm aware of from many of the aged care providers is that the Aged Care Industry Labour Agreement should be scrapped.

I have stated in my submission that an Essential Skills Visa should be quickly implemented which does not require a mandatory MOU to be first entered into with a union/s.

The aged care providers that have raised their concerns with me have stated that the Aged Care Industry suffers from a disproportionate regulatory burden relative to the aims to address the workforce shortages.

The multiple regulatory burdens act as barriers to meeting the workforce needs so desperately required by Australia's aged care sector.

This is clear from CEDA's Duty of care: Aged-care sector running on empty, 2023 publication. The CEDA media release October 5, 2023, notes that 'many homes are now operating under capacity due to worker shortages, with some as low as 50% capacity. Those in regional and remote areas are the most affected. "New mandated staffing levels mean many facilities are operating well below full capacity because they can't get enough workers. Some have closed altogether"'.

For further information please see attached the following documents:

- Skilled visa pathways for carer roles- Aged Care Industry Labour Agreement webinar slides
- ANMAC Skilled Migration Services: Direct Care Assessment Checklist
- ANMAC Skills Assessment: Direct Care Occupations Fact Sheet 2023
- Aged Care Industry Labour Agreement Template



Answer to question:

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MIGRATION, PATHWAY TO NATION BUILDING INQUIRY

QUESTION: JOCK02QON

Dr WEBSTER: ... In terms of the labour agreement, if I understood you correctly, those providers who are not buying into a labour agreement—of which there is a plethora by the sound of it—are choosing to close their books?

Ms Jockel: I cannot speak for all of them. *I'm happy to take this question on notice and reach out to those I am familiar with and ask them to comment.* But, in the best of good faith, with the data that I have, which was recently researched—and there are only nine or so labour agreements that have been approved so far, and the department has that they're being approved quickly as a priority once the MOU has been signed—to me, that reflects that it's not working.

ANSWER:

Only eight Aged Care Industry Labour Agreements have been entered into as at 31 August 2023.

CEDA's "Duty of care: Aged-care sector running on empty" 2023 publication notes:

- 'Workforce shortages in the aged care sector are driving low occupancy rates and many facilities are unable to operate at full capacity;
- Regional areas are the most affected, with some residential facilities operating at a capacity of just 50%;
- At least 18 aged-care homes have closed or are due to close in 2023—at least half of which have directly noted staff shortages as the reason for closing;
- Job vacancies in healthcare and social services remain the highest of any industry—showing the widespread demand for workers;
- The lack of capacity in aged care facilities is adding pressure to hospitals. In NSW from Dec 2021 to Jun 2022 the number of regional patients awaiting discharge to an aged-care facility nearly tripled;
- Industry data shows that agency costs per bed day have more than doubled since 2022;

- Data from the Department of Health and Aged Care shows that 53% of all aged-care facilities are operating at a loss'

CEDA has again called that the Essential Skills Visa for Personal-Care Workers be prioritised and be available for areas of critical need such as aged care, childcare, disability, and healthcare.

CEDA's recommendation is unreservedly supported. It is clearly evident that the Aged Care Industry Labour Agreement is not the solution.



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QUESTION: JOCK03QON

Dr WEBSTER: *As you go to those providers, could you ask them whether they were consulted about the labour agreement?* I think the committee would find it helpful to know what consultation took place to put this reasonably radical responsibility on providers to gain a labour agreement.

ANSWER:

Mr Symondson's evidence at page 35 and following makes clear that providers were not consulted about the Labour Agreement nor the MOU.

This is also consistent with my direct discussions with some 20 or so key aged care providers following the introduction of the Aged Care Industry Labour Agreement in May 2023.

When I explained that in order to access the Aged Care Industry Labour Agreement, the provider was first required to enter the mandatory MOU, this caused significant dismay.

There is a real concern that the industry had not been consulted regarding the Aged Care Industry Labour Agreement or the MOU.

Many stated that they would rather reduce the services or close their doors than have to deal with a further layer of disproportionate regulatory requirements at a time when the aged care industry was "on its knees".

A number expressed real concern about what was referred to as "mandatory unionism".

The feedback provided regarding the difficulties and challenges of the MOU also confirm Mr Symondson's evidence to the Parliamentary Committee regarding the MOU and the experience of negotiating with the union/s.

The Parliamentary Committee will be aware that Labour Agreements require consultation with both industry and the relevant union.

The Aged Care Industry Labour Agreement is indeed “radical” and the failure to consult with industry is of significant concern, regardless of individual perspectives.

The failure to consult with industry prior to the introduction of this radical initiative, and its very low take-up rate relative to the significant size and needs of the aged care sector, clearly evidence that this approach does not work.

Regardless, Labour Agreements are not the appropriate vehicle to address wholesale workforce shortages in a significant and growing essential services sector, including with the projections of the Intergenerational Report, with 65-year-olds will double, the 85-year-olds will triple, centenarians will grow sixfold, while Australia’s tax base is halved, and expenditure on aged care. Total government spending is projected to rise by 3.8 percentage points of GDP over the next 40 years. Demographic ageing causes around 40 per cent of this increase.

The Parliamentary Committee has copious data regarding the dire workforce shortages in this essential services sector which will only continue to grow significantly over time.

It is urged to recommend to the Government that an Essential Services Visa be implemented without delay and that it not require what others have described as “mandatory unionism”.

The feedback from providers is that the justification that the MOU aims to protect workers from exploitation is not sustainable. All workers regardless of citizenship and/or visa status should have the same protections. regarding workplace laws, rights and entitlements.

The proposed Fair Work Legislation Amendment (Closing Loopholes) Bill 2023, now before parliament, will criminalise wage theft for intentional employee underpayments and create an unprecedented shift in workplace regulations. This offence will carry penalties of up to 10 years in prison and fines up to \$1,565,000 for individuals and \$7,825,000 for corporations. This amendment once it comes into effect will further protect all vulnerable workers regardless of citizenship or visa status.



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QUESTION: JOCK04QON

CHAIR: Maria, you will come back to us with some of the questions on notice. *The committee would be interested to see what the response to the requirements has been for union membership and whether that could end up being an impediment.* We'd be interested in that.

ANSWER:

Mr Symondson's evidence at pages 35 and following makes comments which make clear 'what the response to the requirements has been for union membership and whether that could end up being an impediment'.

Attached also is a copy of the Memorandum of Understanding (nine pages) and Aged Care Industry Labour Agreement MOU General information and guidelines (and attachments).

The MOU at Paragraph A states 'The Parties acknowledge the unprecedented workforce shortages in the aged care sector and the paramount importance of providing quality care for older Australians'.

It goes on to state 'The Parties agree that in the first instance, the workforce shortage should be addressed through offering current employees more hours and minimising barriers to attraction and retention by providing predictable rosters with set hours, decent wages and good working conditions'.

One of our aged care provider clients have advised that this requirement is unduly onerous at a time when there are 'unprecedented workforce shortages', and when they cannot meet the care needs of their elderly, because of which they have closed their books. This provider will not access the Aged Care Industry Labour Agreement as it adds an 'unjustifiable regulatory burden'.

The Parliamentary Committee may wish to review the balance of the MOU.

Once entered, the provider can seek access to the Aged Care Industry Labour Agreement.

Once the Aged Care Industry Labour Agreement is approved, the provider is subject to Sponsorship Obligations and Sponsorship Monitoring by the Department of Home Affairs.

The provider must also comply with the MOU and the relevant union can lodge a complaint with the Department of Home Affairs regarding alleged non-compliance.

In effect, the provider is subject to monitoring regarding compliance obligations by both the Department of Home Affairs and the relevant union/s.

Conclusion

A disproportionate regulatory burden relative to the aims it seeks to address, and which acts as a barrier to meeting the ‘unprecedented workforce shortages’ in aged care and one which was implemented without consultation with the industry.