



**The Aged Care Workforce Industry Council's (the Council's) Aged Care Employment Submission to the Productivity Commission**

*Question – page 12:*

***For the purposes of the study, the Commission proposes to focus primarily on the use of independent contractors (including those in labour hire agencies) and platform workers among nursing and personal care workers in residential and home-based aged care. Should labour hire agency workers who are directly employed by the agency also be a major focus of the analysis? If so, why?***

Agency workers have been part of the aged care workforce for many years. The Council believes that labour hire agency workers should be included in the analysis, given that this cohort is used widely across the aged care sector to address worker shortages and backfill ill/unwell staff.

*Question – page 18-19:*

***Available data suggest that the prevalence of agency workers, independent contractors and platform workers in aged care is small.***

***Is this accurately reported in available data sources? For example, is there a highly-transient workforce employed via digital platforms, agencies or as independent contractors that is not being captured in existing surveys?***

While it is difficult to calculate the national usage of agency nurses at any particular time, it is estimated that agency nurses may represent up to 5% of the nurses working in public and private hospitals and in aged care facilities<sup>1</sup>. No recent statistics on personal care workers employed by labour hire can be found.

*Question page 17:*

***Are there other sources of data on employment arrangements in aged care that the Commission should consider using for this study? The Commission is seeking information from aged care providers in both residential and home-based programs regarding the employment contracts of their carer workforce.***

***To what extent do aged care providers use agency workers, independent contractors and platform workers for personal care and nursing roles?***

***What types of tasks do independent contractors and platform workers in caring roles undertake? Are these different to the tasks undertaken by employees or labour hire agency workers?***

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<sup>1</sup> [ANMF Inquiry into independent contracting and labour hire arrangements, 2005](#)

***Is the use of agency workers, independent contractors and platform workers likely to increase in the future? If so, why?***

The Council has created a [workforce narrative](#) based on 109,000 insights from aged care employees. It provides interesting information and an understanding on workers motivations to work in the aged care sector. The data contained in the documents support the aged care sector to make evidence-led workforce planning decisions. The database has been compiled by organisational culture survey specialists, BPA Analytics.

*Question page 21:*

***What are the implications for aged care recipients of using agency workers, independent contractors, or platform workers to provide government-subsidised care?***

***Who is responsible for the quality of care provided in these circumstances?***

***Does the situation differ if the worker is engaged as an independent contractor rather than as an employee of an agency or a platform?***

High quality aged care work is best delivered by workers who are in an employment relationship with a service provider. This employment arrangement is necessary for oversight, supervision, support and for professional and career development. Care workers sourced via labour hire agencies and digital platform who are engaged as independent contractors are in employment arrangements that may not support the maintenance of supportive, safe work environments, appropriate oversight and supervision, or access to professional development and training. Such arrangements are poorly suited to meeting the aim of building a system of high-quality care and they devolve many risks to care workers and care recipients.

Agency, contractor or platform workers may not have knowledge or an understanding of the regulation and standards that guide government-subsidised aged care. This creates a risk of compromised quality care. E.g. A nurse who usually works in acute care filling a shift at an aged care facility. The accountability for platform workers as sole traders is unclear, and potentially leaves the worker exposed.

*Question page 21:*

***Who is currently accountable for lapses in work health and safety or quality of care when care is delivered by agency workers, independent contractors or platform workers?***

Under the Commonwealth Workplace Health and Safety Act: The primary duty of care under the model WHS Act is owed by a person conducting business undertakings (PCBU) to a 'worker', which includes a labour hire worker. All labour hire PCBUs and host PCBUs have a primary duty of care to ensure, so far as is reasonably practicable, the health and safety of labour hire workers engaged by, or caused to be engaged by them, or whose activities are influenced or directed by the PCBU<sup>23</sup>.

Greater clarity is required on where responsibility lies.

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<sup>2</sup> [Labour hire: duties of persons conducting a business or undertaking \(safeworkaustralia.gov.au\)](#)

<sup>3</sup> State and territory legislation may differ

Question page 21:

**Is there any evidence that the existing regulatory framework is deficient in scope, implementation or enforcement?**

**Are there examples of good practice or effective regulation of employment arrangements for agency workers, independent contractors and platform workers in other sectors or other countries that might be applicable to aged care?**

Agency workers tend to have greater insurance protection, whereas the regulation of employment for contractors and platform workers is unclear.

Question page 28:

**What are the pros and cons of agency workers, independent contractors and platform workers in aged care for:**

- **aged care recipients (in terms of quality of care and consumer choice)**
- **aged care workers (in terms of employment conditions and worker preferences)**
- **aged care providers (in terms of job creation and availability of workforce, flexible and innovative models of care, accountability of aged care providers for the care delivered on their behalf, costs of providing care and viability of aged care providers)?**

#### Pros

- Choice – ability for consumer to select their carer of choice through independent contractors/platform workers.
- Consumer ability to control budget or cost if sourcing own care.
- Worker preference for employment type differs by individual. Anecdotal evidence suggests some workers prefer casual employment to maximise flexibility and income/earnings. However, this is a gap in the current evidence.
- Being underpaid is the second most common reason workers give for leaving the aged care sector, behind retirement<sup>4</sup>. Earning a higher income through an agency is a benefit to a low paid workforce.
- Agency workers support aged care providers to deliver services in a time of continued workforce shortages and pressures.

#### Cons

- People in aged care want relationship-based care, not transactional-based care.
- Cannot influence onboarding, induction, career progression with indirect staff. E.g. a provider used indirect staff during COVID peaks, who brought COVID into the facility and resulted in a 3-month lockdown.
- Workers in casual employment may find it more difficult to achieve life goals such as purchasing a property to securing a car loan
- Service users' positive perception of care and care quality tends to be associated with better organisation of workers, more training, longer employment tenure and stability of working time. Consistency of care is commonly named by social care recipients as important for

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<sup>4</sup> [ACWIC, 2021, Workforce Narrative](#)

quality of care and this is undermined where poor working conditions and low pay lead to high turnover of care workers. Contract workers may not give the care recipient the consistency of care they desire<sup>5</sup>.

- People with dementia prefer to receive support from the same staff every day.
- High quality aged care work is best delivered by workers who are in an employment relationship with a service provider. This employment arrangement is necessary for oversight, supervision, support and for professional and career development.
- Care workers sourced via labour hire agencies and digital platform who are engaged as independent contractors are in employment arrangements that may not support the maintenance of supportive, safe work environments, appropriate oversight and supervision, or access to professional development and training.
- Such arrangements are poorly suited to meeting the aim of building a system of high-quality care and they devolve many risks to care workers and care recipients.
- Labour hire agencies including digital care platforms may not provide the oversight, support and supervision of workers necessary for good quality care and safe work.
- Agency nurses are likely to be unfamiliar with the workplace and clients/residents, requiring orientation and additional supervision.
- There are highly experienced and qualified workers currently working as independent contractors. However, these workers are likely to have gained their experience and been supported through training and professional development as employees of service provider organisations in the past.

*Question page 28:*

***What role can technology play in providing support in aged care?***

Supporting rostering, reporting, reducing the administrative burden on staff so that they can spend more time providing direct care to older Australians, supporting learning and development opportunities.

*Question page 29:*

***What are the potential impacts of preferencing the use of direct employment of personal carers and nurses in aged care?***

***How could providers give effect to such a requirement in practice?***

***If the use of agency workers, independent contractors and platform workers in aged care was restricted, could they be readily and effectively replaced by workers engaged as employees of aged care providers? Would such a restriction affect the cost of care?***

***If so, how (for example, requiring providers to employ a larger permanent workforce or increasing administration costs etc), and by how much?***

***Are there any preconditions in personal care and nursing workforce supply that would be required prior to any potential policies and procedures to preference the use of direct employment?***

- There is a current workforce shortage across the aged care sector:

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<sup>5</sup> [Amjad, H, 2016, Continuity of Care and Healthcare Utilization in Older Adults with Dementia in Fee-for-Service Medicare, JAMA](#)

- Options currently underway to ease short term pressure includes bonus/retention payments, recruitment campaigns and skilled migration
- Medium term options include scholarship and traineeship programs for personal care workers, nurses and allied health students
- Longer term work underway is looking at the career paths and job architecture in the sector to outline the vast and interesting roles for workers to ‘grow’ their careers. Workers employed directly are more likely to have access to ongoing training and professional development to assist their career progression and skill acquisition
- Personal Care Workers may be required to hold a minimum Certificate III in Individual Support (Ageing) as recommended by the Royal Commission, Recommendation 77: National registration scheme.

*Question page 29:*

***How would preferencing direct employment in aged care affect other care sectors and the economy more broadly?***

***Are there any lessons for aged care in the experience of the National Disability Insurance Scheme or other sectors?***

***Would it be appropriate to regulate indirect employment in aged care using industry-specific regulation vis-à-vis economy-wide regulation?***

- Many care workers work across more than one care sector e.g. aged care and disability
- At a Commonwealth government level, there are changes underway to bring the care sectors closer together, for example:
  - Work is underway by the Department of Health to implement the NDIS worker regulation scheme across the aged care sector
  - The Department of Social Service’s recruitment campaign for the care workforce (‘Life Changing Life’) focuses on aged care, disability and veteran’s care
  - The Department of Education, Skills and Employment is introducing industry clusters into the National Vocational Education and Training System. The ‘early educators, health and human services’ cluster will include childhood education, aged care, mental health and health, disability and allied services