

RCSA Submission to the Productivity Commission Response to Indirect Employment in Aged Care Issues Paper

29 April 2022

Overview

The Recruitment, Consulting and Staffing Association (RCSA) welcomes the opportunity to make a submission to the Productivity Commission (PC) in response to the Indirect Employment in Aged Care Issues Paper.

RCSA is the peak industry body for the recruitment and staffing industry in Australia and New Zealand, representing more than 890 businesses in recruitment and staffing, which includes the labour and on-hire sectors. Our members source, place, and assign workers across a variety of industries and workplaces, supporting labour and professional demands across all forms of business and government.

Around 14% of the total businesses that RCSA represents supply personal care workers and nurses into Residential Aged Care Facilities (RACFs). While the number of on-hire workers contained within the overall health and aged care workforce may be proportionally small, it is an industry in which our members play a significant role, and one that relies very heavily upon its on-hire workforce to maintain continuity of care for residents. Without staffing agencies and their workers, there would be gaping holes in Australia's aged care framework.

It is vital that this inquiry recognises the critically important role that non-traditional and flexible labour plays not just in aged care, but across the economy more broadly. Beyond providing support for business to grow and create jobs, in many sectors it fills a need that cannot be met with a permanent workforce. In the aged care context, it has the capacity to address short-term staffing needs, support surge demand, or provide short-term specialised services. The importance of access to on-hire labour – for service delivery, for innovation, and for the stability of our community and healthcare mechanisms – is something that warrants acknowledgement and protection as part of these inquiry processes.

Agency nursing and care workers were key to ensuring the aged care system continued to function through the peak and troughs of the pandemic, plugging critical care gaps throughout. COVID-19 outbreaks caused staff across the aged care sector to be furloughed in droves, often for weeks at a time. That, combined with a workforce already spread thin to support testing, screening, and vaccination requirements, shone a powerful light on the invaluable role of agency workers in providing continuity of care and ensuring the aged care system was able to function through times of great uncertainty and unprecedented demand.

RCSA has firsthand experience of the reliance of the sector upon agency nurses and care workers to cover shifts in aged care facilities. We are proud to have partnered with the Commonwealth Government to develop an Aged Care Surge Workforce program that mobilizes agency workers across our membership efficiently and effectively in response to outbreaks in facilities. As at 22 April this year, RCSA's own surge workforce program had filled 52,967 shifts in aged care facilities across Australia since its commencement in June 2020. Collectively, staffing agencies supplying on-hire workforce in aged care during the pandemic period filled close to 90,000 shifts in aged care facilities, providing critical care—and saving lives—for residents at short notice and at a vital juncture.

It is clear that the sector plays a fundamental role in the fulfilment of a service that is under increasing demand. Staffing agencies have finely honed specialist capability, experience, knowledge, and capacity to train, manage and retain workforces. This provides important support for aged care providers and allows facilities to focus on their primary purpose: delivering quality care and services to the elderly.

Worker preference is an important consideration for any investigation of direct versus indirect employment in the aged care sector, as it relates to supply and capacity of the workforce. As we continue to experience skills and talent shortages across the labour market, it is important that regulation in the aged care sector does not impose requirements that make working in the sector less appealing, which could inadvertently result in the loss of critical workforce to other sectors. Experience across our membership with casual conversion provisions has shown that less than 3% of longer-term casual employees engaged by agency staffing firms across all sectors choose to convert their employment to permanent when offered. We expect that number would be significantly lower in the aged care sector

With that said, there are many elements to agency work that make it a more appealing choice for many aged care workers. Agency work offers nurses and carers a level of control and flexibility over their work that is not always accessible in permanent employment. It also provides many with an opportunity to earn higher hourly wages while choosing their own hours without fear of reprisal. During a pandemic that saw record cases of burnout for workers in the health and aged care sector, for many, agency work offered them an attractive, flexible alternative which allowed them to stay within the sector rather than look for work elsewhere. In many ways, agency staffing provides a safety net for Australia's aged care workforce and is playing an increasingly important role not just in keeping the system operating, but in keeping much needed workers within the system.

Importantly, data shared in the issues paper demonstrated the overwhelming preference of aged care providers to employ their workers directly. This is reflective of the role on-hire staffing plays in the sector. It is not a 'core' staffing approach, rather providers access it as a supplementary support for their directly hired workforce and to fill gaps that exist within that permanent workforce. RCSA was surprised and a little disappointed to see this investigation into an established and integral element of the aged care workforce structure. There was little data or evidence in the discussion paper that suggested any proportional or concerning growth in the on-hire or indirect workforce. Indeed, for more than 20 years, on-hire staffing as a proportion of the workforce has remained constant. That fact in itself is important, indicating it is likely to serve a 'need' rather than a trend or preference, in the way that it supports the sectors it supplies into.

While we understand that the study stems from a recommendation of the Royal Commission that aged care providers be required to preference direct employment over indirect employment, the paper fails to properly distinguish agency work from digital platforms. It is this conflation, and the consequences of it, that RCSA is most concerned about.

Our member organisations engage their workers directly as employees, predominantly through casual employment but also in a permanent capacity. As employers, our members are subject to the exact same (and in many cases higher) standards and compliance measures as their clients. They are responsible for managing their employees who attend RACFs, ensuring that they are aware of their role and associated duties, all work health and safety protocols, that they have received the appropriate training and certifications, and have obtained the appropriate vaccinations.

We appreciated that the focus of the inquiry is predominantly around the engagement of independent contractors and whilst the use of independent contracting by staffing agencies is not commonplace in the aged care sector and not condoned by RCSA, where it does occur, it has been described as a historic practice, driven by the personal and commercial preference of the worker. Nevertheless, for vetting, training, safety, and compliance purposes, these workers are treated as any other employee. They undergo rigorous checks at the hands of the staffing agency to determine their eligibility for a role within a RACF, including an interview and candidate assessment. Given these workers will most likely be on-hired to a facility where casual employees of the agency have or are placed, there is also a connection maintained between the agency and the host once an independent contractor has been assigned should any issues arise with their performance or otherwise.

For the purposes of this inquiry, ***RCSA submits that staffing agencies are themselves significant scale direct employers of specialist nursing and care workers, and experts in the requirements, regulations and standards that apply to direct engagement of nursing and care staff.*** Failure to include agency work as direct employment and implementing measures to prevent agencies from supplying their services, only runs the risk of losing the foundation of the aged care workforce, ultimately endangering the health of the aged care residents' and recipients'.

This is in stark contrast with the way in which gig platforms source and place workers. Most gig platforms in the aged care context engage their workers as independent contractors. Defining themselves as nothing more than a matching service between the worker and the end-user (RACF or in-home care recipient), they offer limited vetting processes, with little to no human contact. With only a requirement to submit the relevant paperwork, there are no interviews and therefore no assurances that the contractor is of suitable character to be working with vulnerable people. This is particularly dangerous for in-home care, where in the absence of a staffing agency as an intermediary, there is absolutely no oversight. As such, ***RCSA submits that greater regulation and oversight is required where aged care providers utilise non-employer platforms to fill shifts in their RACFs. We also hold significant concerns around the lack of oversight that exists around independent contractors matched through non-employer platforms in-home care.***

The role of agency work in the aged care sector

For residents, recipients, and providers

As outlined above, agency work is a vital component of Australia's aged care framework. Staffing agencies are the safety net of our nation's health systems; offering highly trained and experienced

substitute staff when permanent employees are on leave, sick, or are simply unable to work. Agency workers can be 'work-ready' and on-site within a matter of hours, meaning that from the perspective of an aged care resident or recipient, the continuum of care is rarely ever broken. For providers, the knowledge that they have engaged a specialist who can employ, train, and manage the workforce allows them to focus on their principal objective: delivering care to the elderly.

Staffing agencies are subject to all the same standards as aged care providers. They complete all the appropriate checks and balances to determine a person's suitability for a role within a facility, and the providers hold agencies to account on this process. Conversely, our members are also rigorous in assessing the host-sites that have requested their workers. Given that their business centres on employment, our members are accustomed to their work health and safety obligations across all jurisdictions. It is actually more common that they find their clients unaware of their own responsibilities to agency workers, often requiring staffing agencies to be both the supplier of workers and educators of legal duties. Once placed, our members will conduct spot checks at the provider's site(s), regularly contact both the employee and the facility, and respond immediately to any issues that are raised by either party.

While providing training and briefing to staff is a condition of service, many RCSA members go beyond this. This is an important tool in not only ensuring that their workers are confident and capable on assignment, but that there is a pathway of professional development for agency workers to progress on. Through Learning Management Software (LMS), many of our members have implemented training courses for their employees, often surpassing what many providers offer. These courses are geared towards up-skilling individuals to fill notable gaps in provider's workforces, while also working to retain the agency workforce. Although RCSA and its members would take no issues with additional training requirements for aged care workers, and would do our best to support such initiatives, we do hold concern over such requirements simply existing as a roadblock to employment, especially as we continue to face the current skills and labour shortage.

The 'safeguard' provided by agency workers become even more pronounced throughout the COVID-19 pandemic. As the virus began infiltrating RACFs in 2020 and permanent staff were stood down due to exposure or contraction, agency workers, including RCSA and our membership, stood up. RCSA was quick to recognise its capacity to assist with the depth and breadth of our membership. We worked efficiently to establish a Surge Workforce Program in partnership with the Commonwealth Department of Health, creating a central point for aged care providers to access a nation-wide temporary workforce to fill critical shifts. Since the inception of the Program, RCSA has been able to fill more than 50,000 shifts with a variety of other, directly engaged, staffing firms filling around 30,000 shifts.

Because of the volume and breadth of people they employ, oftentimes staffing agencies have workers with skillsets that are lacking in the permanent workforce. For example, throughout the COVID-19 outbreaks, our members were a vital support across aged care in providing the Infection Protection and Control (IPC) Leads to providers. Without access to these specialist skills, providers would not have been able to operate in a safe manner, further underlining the critical nature of agency work.

For workers

While COVID-19 outbreaks have subsided to a certain degree, the need for agency workers in aged care has not. We are now facing the most severe skills and labour crisis seen in recent history, and

aged care is no exception. While the data shows that the share of agency workers in aged care is relatively small, the demand on the permanent workforce, combined with the pressure of the pandemic, has contributed to a trend for a significant amount of workers and nurses in aged care to give up on permanent employment and take up agency work. This highlights the benefits that this type of employment offers, not only to the providers, but to the workers themselves.

There are several factors that can be attributed to this shift. Working in aged care is physically and mentally demanding, and the hours associated with permanent employment are unsustainable even at the best of times. Moreover, the legal nature of permanent employment and the relationship with providers makes it difficult for these employees to refuse or say 'no' to shifts or extra hours, forcing them to fit their life around the way they are required to work.

By contrast, agency work is founded upon flexibility. Workers can pick up shifts that fit with their schedule and commitments. As contingent workers, they do not have the same concerns when it comes to declining shifts offered to them by their staffing agency. It has presented as an alternate that better allows workers to manage their hours, support their mental health avoid burnout and on average, earn more per hour. This has also worked to keep workers and nurses in the system who would have otherwise left all together, which would have only put further pressure on an already-stretched workforce.

On the other hand, agency work can also be used as a steppingstone for individuals who are looking for permanent engagement. Through training and assignments, workers with less experience can build up their resume and skills by trying out different facilities and providers. When a permanent role opens, they are then in a better position to apply for it should they choose to. Our members are also reporting that candidates are currently using agency work to earn supplementary income at a higher rate. Individuals are signing part-time employment contracts direct with providers, and then using the remaining 20 hours of their week to earn higher rates through agency placements.

Agency work in the age of platforms

Casual employment vs independent contracting

As touched on above, the majority of RCSA members in the aged care context engage their workers as casual employees under the *Fair Work Act 2009* (Cth) (FWA). Their employees are subject to the National Employment Standards (NES), with their pay and conditions determined by the Modern Awards. This is no different to the way in which providers engage their own permanent and casual workers.

For the small number of staffing agencies that do engage their workers as independent contractors, this is not driven by the agency themselves. In most instances, it will come as a request from the worker to be paid through their Australian Business Number (ABN). While the method of pay differs, the screening, interviewing, credential checks, onboarding, and training remains the same for independent contractors as it does for casual employees. Additionally, staffing agencies will continue to carry out checks of the facility, maintaining close contact with the provider and contractor. However, it should be noted that this is not common, or even mandated, practice.

RCSA and its membership is acutely aware of, and concerned about, the number of ancillary issues that can arise from engaging workers as independent contractors in aged care, for both workers and

for facilities and care recipients. To that end, RCSA requires suppliers to its Aged Care Surge Workforce to demonstrate that they engage workers as employees.

The risk of platforms that engage independent contractors

The issues paper explains that the use of platform work in aged care, and caring roles more broadly, has been growing. This is consistent with what RCSA is seeing in market. Unfortunately, though, the difference between platforms that employ their workers and those that engage their workers as independent contractors is not entirely clear from an end-user perspective. This presents a great risk for those who are quickly seeking workers to plug the gaps and ensure their residents, clients, or themselves, are being cared for.

Several RCSA members who supply into aged care use platform technology to match their workers with shifts. Their use of this technology is centred around efficiency and data collection, and only marketed towards providers. As described above, their workers are casual employees and are under the constant direction of both the agency, and once on-site, the facility manager.

By contrast, gig platforms define themselves as a marketplace that simply 'matches' contractors with aged care providers or in-home care recipients. This has inherent risks for both workers and consumers. As RCSA understands it, contractors are uploaded onto a platform after having submitted appropriate paperwork. There is little or no vetting, interview, or screening process, and if there is human contact, it is limited at best. Additionally, contractors set their own terms of work, without guidance from the platforms for themselves, meaning, especially outside of RACFs, they can provide the type of care that they see fit. This is further complicated by issues of insurance, payment and health and safety. As a relatively new technology, platforms themselves are also not subject to any regulations or licensing. This is concerning even outside of provision of services in aged care and to vulnerable pockets of the community.

For an end-user though, these issues are often not at the forefront of their decision making or even consideration. Realistically, many people use price or availability as a determinative factor in engaging services and given most gig platforms abstain from employing their workers, removing all associated on-costs, *prime facie* they are cheaper. Not only does this present as a challenge for our industry, in terms of undermining price in the marketplace at the expense of protections and entitlements for workers – it also poses as a significant risk for consumers. There appears to be limited understanding on the part of consumers as to what this contractual arrangement means for them. With little clarity around the legal relationship they have with the person who has been assigned to care for them, aged care providers and older Australians have the potential to be placed in a situation where they have unknowingly assumed employment responsibilities and liabilities.

To that end, RCSA submits that this inquiry should focus on the distinguishment between gig platforms that employ their workers, and those that do not. It would also be a worthwhile venture to explore how we can educate decision-makers and procurers in the care framework to better understand the difference in these methods of engagement, and what it ultimately means for older people.

RCSA strongly advocates and encourages providers to engage an RCSA member for their on-demand staffing needs. RCSA members are reputable workforce providers, who are bound by our Code of Professional Conduct. Across the board, our members go above and beyond their legal requirements

and obligations when it comes to engaging and maintain their workforces, and where a provider thinks that this is not the case, our Code offers a fair and timely dispute resolution process.

In aged care, our members' activity is undertaken almost exclusively in delivering staffing services to facilities. Given the highly unregulated and complicated nature of in-home care, it is not an area in which our members tend to operate in. We do however contend that this type of care should be reserved for casual employees due to the high level of oversight that is required when assigning workers to provide care inside a vulnerable person's home. RCSA acknowledges that this will be difficult to do without further altering the applicable Award to align with the flexibility that is required for this type of care.

Summary

Agency work is vital to aged care. It is the continuity of care for older Australians, a reliable staffing solution for providers, and an alternative way of work for workers. Frankly, without it, our aged care framework would be in disarray.

RCSA is concerned that issues around employment in aged care often tend conflate agency work and gig platforms. Moreover, they often confuse or refuse to recognise the differences, in terms of obligation, risk and liability, between casual employment and the engagement of independent contractors. It is therefore important that this inquiry appropriately acknowledges and recognises the multiple dynamics involved and works to examine them all in understanding direct versus indirect employment in aged care. A focus must also be placed on who the employer is, and how they conduct themselves as an employer, as opposed to where they sit in the context of 'directness' to the aged care facility.

To that end, RCSA argues that aged care staffing firms are specialist direct employers of nursing and care staff across the aged care sector. In that capacity, in terms of professionalism, responsibility and expertise, they conduct themselves in a manner which is equal to and oftentimes higher than, other employers of staff in the aged care sector. RCSA agrees that there are significant issues to further examine around worker protections, resident care and sufficient understanding of risk and liability in scenarios where independent contractors are engaged without specialist employer oversight or guidance. RCSA welcomes the PC's contact to further discuss and explore this and the role of agency work in the sector.

About RCSA

RCSA is the peak body for the recruitment and staffing industry in Australia and New Zealand.

RCSA promotes and facilitates professional practice within the recruitment and staffing industry. It sets the benchmark for industry standards through representation, education, research and business advisory support to our member organisations and accredited professionals who are bound by the Australian Competition and Consumer Commission (ACCC) authorised RCSA Code for Professional Conduct.

In addition to the Code and as described in the above submission, RCSA has established the StaffSure Certification Scheme. StaffSure permits business, government, and workers to find and partner with reputable Workforce Service Providers such as on-hire companies, professional contracting firms and private employment agencies. Going beyond most Labour Hire Licensing Schemes, providers are

independently audited against the StaffSure Standard, which includes a fit and proper person check, work status and remuneration, financial assurance, safe work, immigration, and accommodation.

RCSA is also a proud member of the World Employment Confederation (WEC), the voice of the recruitment and staffing industry across 50 countries, and ACCI, Australia's largest and most representative business network.