

# Submission to Productivity Commission

*Response to Indirect employment in aged care  
Issues Paper*

April 2022

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## **Introduction**

The Queensland Nurses and Midwives' Union (QNMU) thanks the Productivity Commission for the opportunity to comment on the issues paper *Indirect employment in aged care*.

Nursing and midwifery is the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers who make up the nursing and midwifery workforce including registered nurses (RN), registered midwives, enrolled nurses (EN) and assistants in nursing (AIN or however named) and students who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 65,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU. As the Queensland state branch of the Australian Nursing and Midwifery Federation (ANMF), the QNMU is also the peak professional body for nurses and midwives in Queensland.

The QNMU advocates for the role of nurses and midwives in providing timely access to quality and safe health care services across all geographical locations in Australia, including aged care. Given the many ongoing structural issues within the aged care sector, most recently exposed by the Royal Commission into Aged Care Quality and Safety (The Royal Commission), and the QNMU and ANMF's significant involvement in this, and many previous inquiries, there is an overriding sense that this opportunity to effectively reform aged care must not be missed.

We consider this consultation a timely opportunity to articulate the QNMU's position on the issue of indirect employment in the context of the aged care workforce.

Please find below some brief comments in relation to the consultation paper.

## Background

As identified in the Productivity Commission's Issues Paper *Indirect employment in aged care*, the aged care sector is experiencing a plethora of issues. Not least of all, the development of a workforce able to underpin and support improved levels of care, quality and safety so clearly needed, and most recently identified by the Royal Commission into Aged Care Quality and Safety (The Royal Commission).

The many structural issues in aged care have been a focus of the Australian Nursing and Midwifery Federation (ANMF) and the Queensland Nurses and Midwives' Union (QNMU) for many years. The initial ANMF *Because We Care* aged care campaign started in 2009<sup>1</sup> has evolved into the current *Make Aged Care Staff Ratios Law - It's Not Too Much To Ask* campaign. This campaign, now more relevant than ever in the lead-up to the federal election on May 21, 2022, has four key actions identified to fix aged care are:

1. RN24/7 – At least one registered nurse on site at all times
2. Greater transparency – funding tied to care
3. Minimum mandated care hours and the right skills mix (guaranteed ratios)
4. Improved wages and conditions.

The QNMU acknowledges that considerable detailed work will need to take place to achieve implementation of The Royal Commission recommendations in the many interrelated aspects of aged care in need to urgent reform.

## Summary of recommendations

- Workforce issues in aged care must be guided by a comprehensive, integrated and sustainable workforce plan that focuses on good jobs, job and income security, training and education and matching care needs with workforce characteristics.
- Include labour hire arrangements in any consideration of indirect employment in the aged care sector.
- Aged care sector workforce strategies must reflect the considered, and evidence based recommendations of the Royal Commission.
- Treat independent contractors (indirect employees) in the aged care sector as aged care providers and impose regulatory requirements to meet training and education, safety and quality and accreditation standards.

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<sup>1</sup> Australian Ageing Agenda (2009), Nurses launch nationwide aged care campaign, retrieved from <https://www.australianageingagenda.com.au/executive/nurses-launch-nationwide-aged-care-campaign/>

## Aged care reform rather than just change

The QNMU has long been concerned about the less than precise use of the word “reform” in policy debate generally, and specifically in relation to the aged care sector. According to the Merriam-Webster Dictionary<sup>2</sup> “reform” has the following meanings:

Verb:

- to put or change into an improved form or condition
- to amend or improve by change of form or removal of faults or abuses

Noun:

- amendment of what is defective, vicious, corrupt, or depraved
- removal or correction of errors or of an abuse or a wrong

Clearly, use of the word “reform” has the implicit meaning of making better. However, all too often in a political and policy setting, reform is now used simply to denote change of any kind, often relating to cost reduction, lowering of wages and conditions, repositioning to reflect an ideological or policy position that is not evidence based, or simply because use of the word “reform” gives the impression of action along the lines described by Petronius Arbiter, a Roman official when he said *“We tend to meet any new situation by reorganizing, and a wonderful method it can be for creating the illusion of progress while producing confusion inefficiency, and demoralization.”*<sup>3</sup>

The QNMU also notes the use of the word “flexibility” in terms of industrial conditions is often creatively used to offer the illusion of choice to workers, when in reality it would seem that any such “flexible” working arrangements only benefit employers. The QNMU would suggest that to date “reform” and “flexibility” have simply resulted in the parlous state that the aged care sector finds itself in now, where many workers in the sector could well be described as the working poor. Any reform must be real reform if Australia is to develop an aged care sector able to sustainably meet the needs of older Australians into the future.

The QNMU believes that there is now a once-in-a-generation chance for “real” reform in the aged care sector. While acknowledging the discussion of indirect employment within the

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<sup>2</sup> <https://www.merriam-webster.com/dictionary/reform>

<sup>3</sup> Quote Investigator (2013), Reorganizing is a Wonderful Method for Creating the Illusion of Progress while Actually Producing Confusion, Inefficiency, and Demoralization, retrieved from <https://quoteinvestigator.com/2013/11/12/reorganizing/#:~:text=Petronius%20Arbiter%2C%20a%20Roman%20official,>

wider issue of the aged care workforce, the QNMU believes that focusing on indirect employment, which is a symptom of the systemic failure and malaise in aged care, stops consideration of the underlying root causes of the wider workforce issues endemic within the sector. The QNMU believes that the use of indirect employment arrangements is part of a definitive strategy to contain costs and shift risks rather than any strategic attempt to deal with these issues.

As identified by The Royal Commission, the QNMU believes that a well-paid, supported, skilled and permanently employed workforce is part of the solution and any attempt to bring an indirect employment model to a critical social service such as aged care (comparable to the criticality of health) will only exacerbate the care, safety and quality issues identified by The Royal Commission and largely benefit aged care providers who have been complicit in creating the current aged care crisis in the first place.

## **Workforce**

As identified in the issues paper, the aged care workforce is characterised by a predominately female workforce, part-time work and low pay. A proportion work across more than one worksite, an issue highlighted during the COVID-19 pandemic when restrictions on this activity were enacted due to infection prevention and management concerns. This phenomenon highlights a significant issue for some workers in aged care, i.e. they cannot earn an adequate wage from a single employer due to the precarious nature of the low-hours contact approach of some aged care providers. Registered Nurses (RN) and Enrolled Nurses (EN) earn significantly less than their private and public hospital sector counterparts and unregulated care workers can be reasonably described as the working poor of the aged care sector.

A range of issues can be implicated in the largely part-time nature of aged care work, indicating that part-time work may be in response to the arduous work conditions in aged care rather than just worker choice for some flexibility in work arrangements. The following issues must be considered:

- working in direct care roles in residential aged care in particular, is physically and mentally demanding work, given the low staffing and misaligned staffing and skill-mix endemic in the residential care sector. The Royal Commission found that the average hours of care per resident was just three hours, well below the 3.3 hours of care recommended to start from 1 July 2022 and the 3.6 hours of care recommended to

start from 1 July 2024<sup>4</sup>. These hours of care remain well below the average 4.3 hours of care per resident per day identified by the National Aged Care Staffing and Skills Mix Project (2016).<sup>5</sup>

- Many aged care workers work on minimal hours contracts where they are rostered additional hours to meet client/resident needs. This situation leads to precarious employment as workers are dependent on employer good-will to maintain their additional rostered hours and has the effect of creating a compliant workforce fearful of speaking up lest their additional (above contract) hours disappear under the guise of “changed operational requirements”.
- For registrants (RNs and ENs), there is little incentive to work in aged care, due to inferior wages, conditions and lack of career progression opportunities. For non-registrants too, there is little incentive to work in aged care, but the attraction issue is more acute for registrants which contributes to the quality of care and safety issues from a health service provision perspective. Aged care is often seen as an employer of last resort for those unable to obtain work in the public or private hospital sectors where there are superior wages and conditions. This can lead to situations where newly graduated RNs are in charge of facilities (often with greater than 150 residents) on their own with an overwhelming span of clinical and administrative control and supervision that makes it impossible to meet their professional standards of practice, let alone provide adequate levels of direct and indirect care to individual residents based on need.

From the QNMUs perspective, the solution to these issues is not increasing the use of indirect employment (surely the ultimate example of a transient workforce), but rather fixing the underlying workforce issues which have been allowed to proliferate since the introduction of the Aged Care Act (1997). The solution consists of:

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<sup>4</sup> Royal Commission into Aged Care Quality and Safety (2021), Final Report: Care, Dignity and Respect, Volume 1 Summary and recommendations, retrieved from [https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-volume-1\\_0.pdf](https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-volume-1_0.pdf)

<sup>4</sup> Willis, E., Price, K., Bonner, R., Henderson, J., Gibson, T., Hurley, J., Blackman, I., Toffoli, L and  
<sup>4</sup> Aged Care Workforce Strategy Taskforce (2018), A Matter of Care, Australia’s Aged Care Workforce Strategy, retrieved from <https://www.health.gov.au/sites/default/files/a-matter-of-care-australia-s-aged-care-workforce-strategy.pdf>

<sup>4</sup> Willis, E., Price, K., Bonner, R., Henderson, J., Gibson, T., Hurley, J., Blackman, I., Toffoli, L and Currie, T. (2016) Meeting residents’ care needs: A study of the requirement for nursing and personal care staff. Australian Nursing and Midwifery Federation

- Development and implementation of an aged care sector workforce strategic plan to meet the workforce needs of the sector in a sustainable way. A case in point is the Report of the Aged Care Workforce Strategy Taskforce published in June 2018 and which seems to have languished since.<sup>6</sup>
- Appropriate and evidenced based staffing and skill-mix levels that reduce the physical and mental work burdens on aged care workers so that they can work full-time or part-time in the sector and not see work in other sectors as preferential due to better workloads.
- Employment contracts that reflect the employees actual (and preferred) work hours and which give control over work hours back to the employee rather than the employer.
- The introduction of wages and conditions parity with the public sector so that registrants and unregulated care workers can choose to work in the aged care sector without the additional burden of loss of earning capacity.

### **Indirect employment (contractors) and digital platforms**

The QNMU has long been concerned about the increase in digital platforms supporting an individual contractor model of work, both generally and more specifically in relation to health and aged care (and also in the disability sector). These concerns regarding what is often referred to as the “Uberisation” of work relate to:

- Lack of benefits such as sick leave, superannuation and holidays available to paid employees.
- A focus on being paid per job rather than an hourly rate (the “gig” economy concept).
- While being touted as a flexible mode of work, in reality these workers live “on-demand” of those that utilise their services.
- Lack of financial security, award and enterprise agreement conditions, employment rights and work certainty.
- Collateral issues associated with insecure work such as access to mortgages and loans.

It should also be remembered that individuals and organisations that promote the “Uberisation” of work and the platforms that support this model do so for financial gain and not for some higher purpose or social good. Just because something can be done, there is no

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<sup>6</sup> Aged Care Workforce Strategy Taskforce (2018), A Matter of Care, Australia’s Aged Care Workforce Strategy, retrieved from <https://www.health.gov.au/sites/default/files/a-matter-of-care-australia-s-aged-care-workforce-strategy.pdf>



inevitability or requirement for it to be done, especially in critical social services such health and aged care.

Digital platforms such as Mable, engaged by the Commonwealth Government as part of its pandemic surge workforce strategy for aged care, promote this “Uberised” or “gig economy” business model, yet this approach is characterised by the following features which seem incompatible with the workforce and safety and quality requirements identified by The Royal Commission. They are not service providers, they are not covered by labour hire licensing regulation, they do not provide oversight or supervision of care workers and they have no responsibilities for employment or care.<sup>7</sup>

The extensive evidentiary processes and deliberations of The Royal Commission have pointed to the advantages of a permanent, well paid, supported and trained workforce in ensuring quality of care and safety of care recipients. Until other models of care, such as indirect employment can be empirically shown to provide a superior result, it is the view of the QNMU that such models be viewed with a healthy scepticism.

Nor should the current pandemic situation, where there are workforce issues across all sectors, be used as a beachhead excuse for these models either. What is required is a commitment on the part of the commonwealth and state governments to undertake effective strategic workforce planning to sustainably develop a workforce able to meet the needs of the aged care sector into the foreseeable future.

The QNMU would argue that development of the casual employee model in the aged care sector would offer the so called advantages of the indirect employment model and at the same time mitigate that downside features of “Uberised” work to a large degree by allowing individual workers to be employees with the “flexibility” that casual employment brings and the industrial protections of being an employee rather than an individual contractor.

## **Safety and quality**

A significant area of concern identified by The Royal Commission has been the quality of care and safety of care provided to aged care recipients. The QNMU maintains that these concerns are in large part a result of insufficient staffing, and a hollowed out workforce characterised

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<sup>7</sup> Baines, D., Macdonald, F., Stanford, J. & Moore, J. (2019). Precarity and job instability on the frontlines of NDIS support work. Retrieved from

[https://d3n8a8pro7vhmx.cloudfront.net/theausinstitute/pages/3070/attachments/original/1569981935/Precarity\\_and\\_Job\\_Instability\\_Under\\_the\\_NDIS\\_Formatted.pdf?1569981935](https://d3n8a8pro7vhmx.cloudfront.net/theausinstitute/pages/3070/attachments/original/1569981935/Precarity_and_Job_Instability_Under_the_NDIS_Formatted.pdf?1569981935)

by a predominance of unregulated care workers and not enough nurses (and Allied Health) to meet the increasing complexity of care needs, particularly in the residential setting. This therefore impacts not only the type of care delivered to those who live in aged care facilities, it places strain on an already crowded health care system in having to meet the healthcare needs of aged care recipients.

The QNMU supports The Royal Commissions recommendation for regulation of the currently unregulated workforce. Such an approach would undoubtedly lead to a more qualified and skilled aged care workforce. The QNMU believes that the direct employment model is the best mechanism to support this approach. Indirect workers, as independent contractors, are responsible for their own training, ongoing development and upskilling. While directly employed workers also share this responsibility, employers also have obligations in relation to training and education to maintain standards of care and safety and continuous quality improvement which would be inherently more difficult in an indirect employment model, particularly if this practice became more widespread. Reliance on an indirect workforce, with less rights of control by the employer, may exacerbate the safety and quality issues identified by The Royal Commission rather than offer a solution.

## **Industrial**

A significant concern of the QNMU is the potential for aged care providers to utilise a greater indirect workforce to circumvent the potential wages and conditions improvements that could flow from the recommendations of The Royal Commission and the current aged care industry work value case before the Fair Work Commission. As independent contractors, indirect workers are not subject to industrial instruments such as awards or enterprise agreements which provide some certainty around income and work conditions, and are thus subject to competitive pressures (from other independent contractors) that prima facie would drive down income.

A further issue that arises with the use of indirect employees is the problem of sham contracting. Should there be an increase in indirect employment in the aged care sector, the potential for this exploitive practice increases. In a 2018 submission to the Treasury consultation *Government Response to the Black Economy Taskforce Report: Designing a modern ABN system*<sup>8</sup>, the Australian Council of Trade Unions (ACTU) clearly identifies this practice as an ongoing issue within the Australian economy, and has the potential to become

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<sup>8</sup> Australian Council of Trade Unions, 2018, ABN Abuse, The Rise of Sham Contracting, retrieved from <https://www.actu.org.au/media/1385230/d182-the-rise-of-sham-contracting-and-abuse-of-the-abn-system-14-september-2018.pdf>

an issue in the aged care sector should the use of indirect employment become more prevalent and aged care providers see an opportunity to contain costs and avoid paying leave entitlements and superannuation.

## **Regulation and oversight**

When considering the role of indirect employment in the aged care sector, attention should also be given to what criteria independent contractors must meet in order to provide aged care services. Indirect employees, unlike those employed directly, are separate business entities, and in the case of aged care, it could be argued that they are engaged in providing aged care services rather than just performing work as employees would. This raises the issue of regulation of those entities providing aged care services; should they be regarded as aged care service providers and what criteria/requirements should they have to meet to be permitted to work in the sector. While different in focus to the approval process for corporate entities providing aged care services, it would not be unreasonable to ask that independent contractors meet a set of requirements which would include training and education, background and fitness to provide services as well as being accredited on an ongoing basis. While employers have industrially based rights of control for employees, the relationship between employers and independent contractors is more tenuous and additional safeguards in the form of regulatory oversight would be useful. Benefits may include:

- Reducing sham contracting
- Setting minimum independent contractor skills and capabilities as a safety and quality measure given that safety and quality issues were a major finding of The Royal Commission
- Reduce incentives for providers to circumvent award and enterprise agreement conditions available to employees
- Reinforce The Royal Commission's recommendations for a permanent and sustainable workforce.

## **Conclusion**

The QNMU supports The Royal Commission's view that a permanently employed, well supported and fit for purpose work workforce is a key requirement to resolving the plethora of structural issues within the aged care sector.

It is difficult to see how the introduction of an indirect employment model (including labour hire arrangements) offers a solution to the workforce issues identified by many reports and enquiries on the issues within the aged care sector.

## **Recommendations**

The QNMU makes the following recommendations:

- Workforce issues in aged care must be guided by a comprehensive, integrated and sustainable workforce plan that focuses on good jobs, job and income security, training and education and matching care needs with workforce characteristics.
- Include labour hire arrangements in any consideration of indirect employment in the aged care sector.
- Aged care sector workforce strategies must reflect the considered, and evidence based recommendations of the Royal Commission into Aged Care Quality and Safety.<sup>9</sup>
- Treat independent contractors (indirect employees) in the aged care sector as aged care providers and impose regulatory requirements to meet training and education, safety and quality and accreditation standards.

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<sup>9</sup> Royal Commission into Aged Care Quality and Safety (2021), Final Report – List of Recommendations, retrieved from <https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-recommendations.pdf>