

SUBMISSION TO THE PRODUCTIVITY COMMISSION INQUIRY INTO “INDIRECT EMPLOYMENT” IN AGED CARE

ON BEHALF OF:

AUSTRALIAN BUSINESS INDUSTRIAL

25 MAY 2022

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1. BACKGROUND

- 1.1 This submission is made on behalf of Australian Business Industrial (**ABI**) to the Productivity Commission (**the Commission**) inquiry into “*employment models in aged care, and the effects that policies and procedures to preference the direct employment of aged care workers would have on the sector*” (**the Study**).
- 1.2 The Study is in response to Recommendation 87 of the Royal Commission into Aged Care Quality and Safety (**Royal Commission**), which called for approved aged care providers to have policies and procedures that preference the direct employment of workers.¹
- 1.3 The Commission observed that this recommendation seems designed to address a reported increase in the proportion of independent contractors employed in the health care and social assistance sector, and concerns about the use of workers sourced through digital platforms to deliver in-home services. Such workers are typically engaged by individuals receiving care but have more recently also been engaged by approved aged care providers.
- 1.4 The Royal Commission presented the following reasons for the recommendation:
- (a) it observed that *modes of engagement* affect the quality of care provided;²
 - (b) it identified the potential for care workers sourced through online platform, based upon their “*non-employee*” status, may put employment-related responsibilities on the aged consumer who has engaged the worker;³ and
 - (c) it observed that some witnesses have suggested that a move to greater reliance on independent contractors in aged care could erode pay and working conditions in the sector.⁴
- 1.5 Commissioner Briggs regarded “*direct employment*” as the best model to achieve the proposed workforce reforms and avoid a “*fractured, disparate and ill-supported workforce*”.⁵

¹ Royal Commission into Aged Care Quality and Safety, *Final Report: Care, Dignity and Respect, Volume 1: Summary and Recommendations* (Canberra, 2021) 265.

² Royal Commission into Aged Care Quality and Safety, *Final Report: Care, Dignity and Respect, Volume 3A: The New System* (Canberra, 2021) 428.

³ *Ibid* 431.

⁴ *Ibid* 429–430.

⁵ *Ibid* 432.

- 1.6 The term “*indirect employment*” is not defined by the *Fair Work Act 2009* (Cth). It is a broad term adopted by the Commission to refer to workers within the aged care sector that are not “*directly*” employed by providers of aged care. It includes:
- (a) employees of labour hire providers (also described as on-hire employees);⁶
 - (b) workers sourced via digital platforms;⁷ and
 - (c) independent contractors.
- 1.7 By that definition, indirect employment may also capture non-PAYG workers such as brokered and self-employed workers.
- 1.8 Each form of indirect employment serves to provide an alternative contribution to workforce supply in the aged care sector.
- 1.9 This submission will focus upon the role of high-quality labour hire providers in the aged care sector.

⁶ See, eg, Health Solutions Group Australia.

⁷ See, eg, Mable <<https://mable.com.au>>.

2. SUMMARY OF POSITION

- 2.1 In March 2022, the Australian Government published the *National Care and Support Workforce Strategy (National Strategy)* and *Aged Care Workforce Action Plan 2022-2025 (Action Plan)*.⁸ Each identify the *critical* need to promote growth, sustainability and diversity within the aged care workforce.⁹ The *Action Plan* sets out a series of initiatives designed to address ongoing and future supply and demand issues, which emphasise that action needs to be taken locally but also recognises the importance of diversifying supply by identifying migration pathways as an important initiative.¹⁰ However, neither explore the role played by indirect employment in supporting the aged care workforce.
- 2.2 The failure of the Australian Government to recognise the important role played by “*indirect employment*” in the aged care sector, in particular the critical role played by high-quality labour hire providers, within the *National Strategy* and *Action Plan* is a significant omission. Labour hire providers safeguard the aged care industry against immediate staffing shortages and the forecasted staffing deficit in aged care providers recruiting directly.¹¹ The contribution of labour hire to diversifying supply to the aged care workforce should be *recognised* and *supported* by the Australian Government, providers of aged care and peak bodies within the aged care sector.
- 2.3 Furthermore, to disregard the importance of labour hire in aged care is entirely inconsistent with the objectives of the *National Strategy* and *Action Plan*, especially the goal to support aged care providers to develop *sustainable* and *coordinated* approaches for growing a skilled workforce, with an emphasis on *thin markets* and *meeting the needs* of diverse communities.¹² It is an unacceptable oversight.
- 2.4 High-quality labour hire providers deliver an *alternative* and *critical* supply to the aged care workforce that promotes ongoing sustainability and productivity of the sector by providing practical and ongoing solutions to staff shortages that exist and/or arise for providers of aged care. That supply may be derived locally (and internationally), to ensure any gaps in

⁸ Commonwealth of Australia, *National Care and Support Workforce Strategy* (March 2022) (**National Strategy**); Department of Health, *Aged Care Workforce Action Plan: 2022–2025* (March 2022) (**Action Plan**).

⁹ *Ibid* 15.

¹⁰ *Ibid* 15-21.

¹¹ *National Strategy* (n 8) 15.

¹² *Action Plan* (n 8) 15.

- the workforce are filled. There is no reasonable basis to ignore or oust labour hire as a valid contributor to the ongoing functionality of the aged care workforce. The support and utilisation of labour hire is entirely consistent with the *National Strategy and Action Plan*. To ignore it, is to devalue a *proven* resource and safety net within the aged care sector.
- 2.5 Direct employment alone cannot sustain or respond to rising consumer needs in the aged care sector. Rising consumer demand for aged care services must be met by supply in the workforce. Supply is ensured by diversifying the source, namely, by engaging the services of labour hire providers.
- 2.6 Recommendation 87 is problematic because it infers that indirect employment is categorically a substandard alternative to direct employment that serves no purpose but to undercut costs and has the overall effect of diminishing the quality of care provided in the sector. Our principal concern is that high-quality labour hire providers are not inadvertently characterised by that inference. Particularly in circumstances where high-quality labour hire providers are distinguishable from workers that are self-employed and/or engaged via digital platforms. In support of that submission, we advance the following propositions.
- 2.7 *First*, the legitimacy of the supply of labour on an on-hire basis is expressly recognised in the *Aged Care Award 2010*.¹³ That industry award covers employers throughout Australia in the aged care industry and their employees.¹⁴ By expressly including ‘*on-hire employees*’ within the coverage clause, the Fair Work Commission recognises the legitimacy of on-hire employees in the aged care sector, which in turn ensures minimum employment standards are met.¹⁵ By this inclusion, labour hire is the only form of indirect employment expressly recognised in the Award.
- 2.8 *Second*, the *high-quality* of labour hire is characterised by a small number of large providers. In this submission, we focus on Health Solutions Group Australia (**HSGA**). HSGA provides labour hire nationally and its operating divisions provide nursing and community care. One of those operational divisions, Alliance Nursing, in particular, is one of the largest providers of nursing employees in Australia. HSGA have both public and private tender panel agreements in place. Nationally, HSGA is positioned as an industry leader in specialist

¹³ *Aged Care Award 2010* [MA000018] cl 4.5

¹⁴ *Ibid* cl 4.1.

¹⁵ *Ibid* cl 4.5.

nursing and care worker labour hire, holding agreements with multiple state government entities as well as private entities. The state government agreements are long standing agreements that are generally rolled over and/or renewed. This demonstrates state governments and aged care providers throughout Australia have confidence in the quality of service provided by HSGA.

2.9 *Third*, the high-quality service provided by HSGA is underscored by a high-quality services agreement, which sets out guarantees that promote quality and consistency of care, such that on-hire employees may be effectively integrated alongside existing employees of the host employer. HSGA takes the lead with ensuring quality and consistency of care is prioritised, which is welcomed by aged care providers engaging it. The standard terms include:

- (a) guarantees about the skill level of the workers;
- (b) obligations of HSGA under the agreement;
- (c) work health and safety (**WHS**); and
- (d) insurance and indemnity.

2.10 In the face of such high-quality labour hire arrangements, which state government and private providers have relied upon to remedy staff shortages - even more so over the course of the pandemic, Recommendation 87 serves to undermine and negate the beneficial and effective role played by high-quality labour hire providers within the aged care sector.

2.11 *Fourth*, there is no evidence that high-quality labour hire providers are undercutting direct employment in the aged care sector or seeking to destabilise the workforce. In fact, as will be explored in section 4 of this submission, the *2020 Aged Care Workforce Census*¹⁶ together with data published by the Department of Health¹⁷ demonstrate the consistent support provided by labour hire providers and reveal minimal growth in the proportion of on-hire workers within the aged care sector since 2012. Labour hire does not fracture the aged care workforce, it delivers essential support.

2.12 Each of those propositions demonstrate that it is entirely misconceived to assume that all on-hire labour is substandard or has a negative impact upon the quality of care delivered in

¹⁶ Department of Health, *2020 Aged Care Workforce Census Report* (2 September 2021).

¹⁷ See Department of Health, *The Aged Care Workforce, 2016* (March 2017).

the aged care sector. Whilst it might apply to some parts of the industry, it is misconceived to apply to all.

- 2.13 The consequence of promoting a wholesale view that all indirect employment is substandard will negatively impact consumers and increase pressure upon providers. Such an approach devalues the important role to be played by labour hire in the aged care sector; which is only exacerbated by the failure of the *National Strategy* and *Action Plan* to recognise labour hire workers as a source of supply to the aged care workforce.
- 2.14 In undertaking the Study, the Commission should:
- (a) Include employees of labour hire providers within the scope of the Study. Labour hire should be identified and assessed as an alternative contributor to the aged care workforce. It should be distinguished from other forms of indirect employment such as digital platforms and independent contractors.
 - (b) Recognise the legitimate and purposeful role played by high-quality labour hire within the aged care sector. It is an important fixture within the industry, which serves to support the industry, not destabilise it.
 - (c) Consider the example of HSGA as a high-quality labour hire provider, in particular have regard to the standard terms of its services agreement. The agreement set out in section 7 is a model of best practice by a high-quality labour hire provider.
 - (d) Reject the suggestion that restriction of on-hire employees within the aged care sector would be beneficial in the face of current and projected supply shortages to the workforce. It would also be entirely counterproductive to the *National Strategy* and *Action Plan*.
 - (e) Support the development of national regulation regarding alternative contributors to workforce supply in aged care. This should be done in consultation with industry leaders, peak bodies, and providers of aged care. This step would actively pursue all three goals of the *Action Plan*.
- 2.15 The inclusion of labour hire within aged care sector does not threaten the quality of care or fracture the workforce. Rather, labour hire is a *necessary alternative* to direct employment that may be integrated as needed to ensure that Australians in need of aged care have access. This is again entirely consistent with the *National Strategy* and *Action Plan*.

3. A CRITICAL FORM OF INDIRECT EMPLOYMENT: LABOUR HIRE

Overview

- 3.1 As a critical form of indirect employment within the aged care sector, on-hire employees who are directly employed by the labour hire provider should be included as a major focus of the Study.¹⁸ This submission will demonstrate that ignoring the role played by labour hire providers will only serve to hinder the objectives of the *Action Plan*, which is to the detriment of the consumer. This will be achieved by examination of the relevant statistics concerning the aged care sector and labour hire and the *National Strategy and Action Plan*.
- 3.2 In order to illustrate the important and beneficial contribution of high-quality labour hire providers to the aged care workforce, we will examine the service provided by HSGA, an industry leader in labour hire within the aged care sector. This will involve analysing the terms of services agreements used by HSGA, which are an example of best practice in labour hire in the aged care sector.
- 3.3 Prior to turning to that analysis, we provide a definition of “*labour hire*”.

Definition: Labour Hire

- 3.4 Labour hire is the supply of workers to a host employer. Labour hire workers are the employees of the labour hire provider. Under this arrangement, the labour hire provider is responsible for the pay, superannuation and all other aspects related to the employment of the labour hire worker.
- 3.5 Labour hire exists to meet the needs of a third party. As such, it is properly characterised as a “*solution*” to “*fluctuations in workloads, due to seasonal demand, additional/delayed projects*” in a variety of industries including building and construction, mining, retail, and warehousing.¹⁹
- 3.6 Labour hire providers are also well placed to supply workers with specialised skills.²⁰

¹⁸ Productivity Commission, “Indirect Employment in Aged Care” (Issue Paper, March 2022) 12 (**Issue Paper**).

¹⁹ See Workfast Staffing Solutions, “*Labour Hire: A Rapidly Changing Industry*” (Article, 15 August 2018) <<https://workfast.com.au/blog/labour-hire-a-rapidly-changing-industry>>.

²⁰ See, eg, HSGA.

- 3.7 The Australian Bureau of Statistics reports that 3% of employees reported being registered with a labour hire firm or employment agency.²¹ The occupations with the highest proportion of employees who were paid by a labour hire firm or employment agency are machinery operators and drivers (3.9%) and labourers (1.4%).²²
- 3.8 In some industries, labour hire workers may constitute the majority of operations²³ and/or be engaged to reduce overheads.²⁴ Neither description, however, applies to the operation of labour hire in the aged care sector.
- 3.9 In aged care, there is a demand for labour hire workers to respond to specific needs in the industry, namely: staff absences, staff shortages and to obtain specialist skills.²⁵ To demonstrate the position of labour hire within the landscape of the aged care workforce, we turn to relevant statistics compiled between 2012-2020.

²¹ Australian Bureau of Statistics, "Working arrangements" (August 2021) <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/working-arrangements/latest-release>>.

²² Ibid.

²³ See Queensland Government, *Inquiry into the Practices of the Labour Hire Industry in Queensland* (Brisbane, 2016) 11 <<https://documents.parliament.qld.gov.au/tableOffice/TabledPapers/2016/5516T1028.pdf>>.

²⁴ Australasian Centre for Corporate Responsibility, *Labour Hire & Contracting Across the ASX100* (12 May 2020), Section 4 <<https://www.accr.org.au/research/labour-hire-contracting-across-the-asx100/labour-hire-in-key-sectors>>.

²⁵ See example, Department of Health, *The Aged Care Workforce, 2016* (March 2017) 48-49.

4. RELEVANT STATISTICS: AGED CARE AND LABOUR HIRE WORKERS

Overview

4.1 The following statistics provide insight as to the prevalence of labour hire workers within the aged care sector between 2012 to 2020. Together with evidence as to reasons for its usage in both residential aged care and home care, the data demonstrates that labour hire workers are not positioned as a threat to direct employment. Rather, they provide essential support to the aged care workforce.

General

4.2 The aged care sector broadly consists of three service types:

- (a) residential aged care (**RAC**);
- (b) home care packages program (**HCPP**); and
- (c) Commonwealth home support program (**CHSP**).

4.3 In all three service care types, most direct care staff work in permanent part-time positions. Staff employed through an agency or subcontractor are largely allied health professionals.²⁶

4.4 The total number of workers in each service:²⁷

- (a) RAC: 277,671;
- (b) HCPP: 80,340; and
- (c) CHSP: 76,096.

4.5 In 2020–21, approximately 1.5 million people received some form of aged care, with the majority receiving home-based care. By reference to category of care, that number breaks down as follows:²⁸

- (a) 825,383 people received home support through the CHSP;
- (b) 212,293 people received care through a HCPP;

²⁶ 2020 Aged Care Workforce Census Report (n 16) 6.

²⁷ Ibid.

²⁸ Department of Health, 2020-21 Report on the Operation of the Aged Care Act 1997, 13.

- (c) 67,775 people received residential respite care, of whom 39,404 (approximately 58.1%) were later admitted to permanent care; and
- (d) 243,117 people received permanent residential aged care.

Labour Hire

4.6 The following statistics are drawn from the *2020 Aged Care Workforce Census* (the **Census**) and an earlier report published by the Department of Health, *The Aged Care Workforce, 2016* (the **2016 Report**). They assist in illustrating the current engagement levels of “agency” workers and, more broadly, the reasons aged care providers may engage in alternative sources of labour (i.e. indirect employment) within the aged care sector.

(A) RAC

4.7 The following table sets out the proportion of direct care staff and agency/sub-contractor worker by job role in RAC:²⁹

	Permanent Employee (%)	Casual / Contractor (%)	Agency / Sub-contractor (%)	Total Jobs
<i>Nurse Practitioner</i>	81	2	17	203
<i>Registered Nurse</i>	77	22	1	32,726
<i>Enrolled Nurse</i>	82	18	1	16,000
<i>Personal Care Worker</i>	79	20	1	146,378
<i>Allied Health Professional</i>	39	6	55	10,604
<i>Allied Health Assistant</i>	83	13	4	2,992

4.8 The source of supply of nurses and personal care workers in RAC is predominantly permanent employees (80% average).

4.9 In 2012 and 2016, RAC facilities were surveyed to determine the proportion of facilities specifically engaging agency workers. The results appear below:³⁰

- (a) 2012: 46%; and
- (b) 2016: 41%.

²⁹ *2020 Aged Care Workforce Census Report* (n 16) 12.

³⁰ *The Aged Care Workforce, 2016* (n 17) 61.

4.10 The following table sets out the proportion of RAC facilities engaging “non-PAYG workers” (i.e. indirect employment) in the designated fortnight by occupation and type of worker in 2016:³¹

Occupation	Agency (%)	Brokered (%)	Self-Employed (%)	All non-PAYG (%)
Registered Nurse	27	0.9	0.7	28.3
Enrolled Nurse	13	0.3	0.3	13.4
Personal Care Attendant	28	0.9	0.2	29.1
Allied Health	5.4	7.3	6.2	17.6
All occupations	40.6	8.3	6.5	49.8

4.11 The following table set out the proportion of RAC facilities engaging “non-PAYG” registered nurses and personal care workers in the designated fortnight, by State/Territory: 2003, 2007, 2012 and 2016:³²

State/Territory	RN				PCA			
	2003	2007	2012	2016	2003	2007	2012	2016
NSW	19.1	23.6	26.7	24.1	21.7	25.4	22.2	20.7
Victoria	25.9	31.9	31.2	25.3	31.6	45.7	35.9	29.9
Queensland	27.3	44.1	37.6	29.4	24.1	42.2	35.2	23.4
SA	44.6	44.8	47.3	41.0	51.2	64.1	60.8	46.6
WA	30.3	38.9	28.4	28.3	48.3	62.3	28.4	48.1
Tasmania	15.6	21.4	47.1	40.0	2.2	5.7	10.0	6.2
ACT	44.4	23.5	29.2	37.9	50.0	35.3	29.2	51.7
NT	40.0	81.8	40.0	42.1	50.0	63.6	40.0	26.3
All facilities	26.1	33.3	32.6	28.3	30.1	41.1	34.3	29.1

4.12 The 2016 Report observed that “almost all non-PAYG workers contributing to the residential aged care workforce are RN and PCA agency workers, but also includ[e] a sizable number of ENs”.³³

4.13 The reasons cited for this usage of agency workers were stated, together with the percentage cited, are as follows:³⁴

³¹ Ibid 62.

³² Ibid 63.

³³ Ibid.

³⁴ Ibid.

- (a) “short-term cover for staff absences” (87%);
- (b) “unable to fill vacancies” (51%);
- (c) “matching staff to peaks in service user demand” (14%);
- (d) “covering for maternity leave or annual leave” (19%); and
- (e) “obtain specialist skills” (4%).

4.14 The 2016 Report also observed that “freeze on permanent staff numbers” and “other reasons” were rarely cited by the RAC facilities surveyed (approximately 2,795 facilities).³⁵

4.15 For completeness, the main reasons cited for use of “brokered” and “self-employed” workers was to “obtain specialist skills” (65% and 75%, respectively).³⁶

(B) Home Care (HCPP and CHSP)

4.16 The following table sets out the proportion of direct care permanent, casual and agency staff by job role in HCPP:³⁷

	Permanent Employee (%)	Casual / Contractor (%)	Agency / Sub-contractor (%)	Total Jobs
Nurse Practitioner	61	4	35	60
Registered Nurse	68	29	3	3,022
Enrolled Nurse	72	26	2	887
Personal Care Worker	54	44	2	56,242
Allied Health Professional	42	6	52	3,375
Allied Health Assistant	87	11	2	432

4.17 The source of supply of personal care worker in HCPP is closely split between permanent employees (54%) and casual/contractor workers (44%). The conflation of “casual” and “contractor” in the Census data makes it difficult to properly consider the contribution of indirect employment. However, the split does indicate a diversity of supply.

³⁵ Ibid.

³⁶ Ibid.

³⁷ 2020 Aged Care Workforce Census Report (n 16) 28.

4.18 The following table sets out the proportion of direct care permanent, casual and agency staff by job role in under CHSP arrangements:³⁸

	Permanent Employee (%)	Casual / Contractor (%)	Agency / Sub-contractor (%)	Total Jobs
Nurse Practitioner	93	<1	7	184
Registered Nurse	82	16	2	5,008
Enrolled Nurse	80	19	2	1,699
Personal Care Worker	73	25	2	47,128
Allied Health Professional	79	8	13	4,305
Allied Health Assistant	89	11	0	705

4.19 In 2012 and 2016, 27% of home care and home support aged care outlets used “at least one non-PAYG worker in the designated fortnight”.³⁹

4.20 The following table sets out the proportion of home care and home support aged care outlets using “non-PAYG workers” (i.e. indirect employment) in the designated fortnight by occupation and type of worker in 2016.⁴⁰

Occupation	Agency (%)	Brokered (%)	Self-Employed (%)	All non-PAYG (%)
Registered Nurse	3.2	3.2	0.2	6.5
Enrolled Nurse	0.5	0.7	0	1.2
Community Care Worker	8.6	12.7	1.8	21.2
Allied Health	2	4	2.7	8.3
All occupations	11.8	15.4	4.5	27.1

4.21 The 2016 Report observed that the distribution overall was “very similar” to 2012.⁴¹ That result indicates minimal change between the two periods.

4.22 The following table set out the proportion of home care and home support aged care outlets using “non-PAYG” registered nurses and community care workers in the designated

³⁸ Ibid 42.

³⁹ *The Aged Care Workforce, 2016* (n 17) 127.

⁴⁰ Ibid.

⁴¹ Ibid.

fortnight, by State/Territory: 2003, 2007, 2012 and 2016:⁴²

State/Territory	RN			CCW		
	2007	2012	2016	2007	2012	2016
NSW	7.5	6.9	7.9	14.3	21.1	23.1
Victoria	1.7	11.9	6.3	13.0	26.8	20.6
Queensland	3.0	9.9	5.8	8.8	14.4	17.6
WA	1.9	5.3	8.6	12.1	18.2	25.7
SA	3.3	1.6	4.4	13.0	27.6	25.3
Tasmania	0.0	5.0	2.8	3.4	21.3	16.1
ACT	7.7	5.3	2.6	15.4	28.1	44.7
NT	3.0	6.9	7.7	6.1	20.7	5.1
All outlets	2.2	7.9	6.6	11.6	21.0	21.3

4.23 The 2016 Report observed that:⁴³

- (a) non-PAYG community care workers were the most widely used direct care occupation hired by outlets; there were 10,099 non-PAYG community care workers in outlets in the designated fortnight, also reflecting their role as the majority of the home care and home support workforce generally; and
- (b) the next most widely utilised occupation were non-PAYG allied health workers of which there were 1,443.

4.24 Two reasons were frequently cited for the usage of agency workers:⁴⁴

- (a) “short-term cover for staff absences” (66%); and
- (b) “unable to fill vacancies” (38%).

4.25 The two most common reasons cited for using brokered staff were:⁴⁵

- (a) “matching staff to peaks in service user demand” (44%); and
- (b) “short-term cover for staff absences” (43%).

⁴² Ibid 128.

⁴³ Ibid.

⁴⁴ Ibid 129.

⁴⁵ Ibid.

4.26 The reasons cited for engaging self-employed workers were as follows:⁴⁶

- (a) “*obtain specialist skills*” (45%); and
- (b) “*matching staff to peaks in service user demand*” (33%).

4.27 As with RAC, the reason “*freeze on permanent staff numbers*” was rarely cited.⁴⁷

Observations

4.28 The preceding statistics demonstrate that across the aged care sector labour hire providers, together with indirect employment more broadly, occupy a minority of the market share of the aged care workforce. This appears consistent with data compiled between 2012 to 2020 (although noting changes to questions and compilation of data impact upon the ability to draw precise comparisons).

4.29 Significantly, the 2016 Report provides further detail as to the proportion of usage of “*non-PAYG*” employment - which, as earlier observed, meets the definition of indirect employment - by RAC facilities and by home care outlets; reporting 41% of RAC facilities used agency workers in 2016 and 27% of home care outlets reported used indirect employment at least once during a designated fortnight. Moreover, the 2016 Report provides insight to the reasons providers of aged care, in RAC and home care, engage in indirect employment arrangements. Those reasons included:

- (a) “*short-term cover for staff absences*”;
- (b) “*unable to fill vacancies*”;
- (c) “*matching staff to peaks in service user demand*”;
- (d) “*covering for maternity leave or annual leave*”; and
- (e) “*obtain specialist skills*”.

4.30 The 2016 Report also expressly observed that a “*freeze on permanent staff numbers*” was rarely cited as the reason for engaging indirect employment.

⁴⁶ Ibid.

⁴⁷ Ibid.

- 4.31 This data provides essential background as to the role played by indirect employment in aged care. It demonstrates that multiple reasons exist at a residential facility or home care outlet level that create supply needs that are not always capable of being met by direct employment.

5. THE NATIONAL STRATEGY AND ACTION PLAN

Overview

5.1 Despite the Australian Government identifying the *critical* need to promote growth, sustainability and diversity within the aged care workforce, both the *National Strategy* and *Action Plan* completely disregard the contribution and value of labour hire. This omission is particularly striking against the proven value of labour hire to the aged care sector over the course of the pandemic in Australia. The following analysis will highlight that ignoring the role of labour hire is entirely irresponsible, unreasonable and only serves to increase pressure on aged care providers.

The National Strategy

5.2 The *National Strategy* demonstrates the Australian Government's recognition of the need to increase workforce supply within the aged care industry. Part 3 of the *National Strategy* recognises “*workforce barriers and issues facing the care and support workforce*”.⁴⁸

5.3 Key issues identified include:

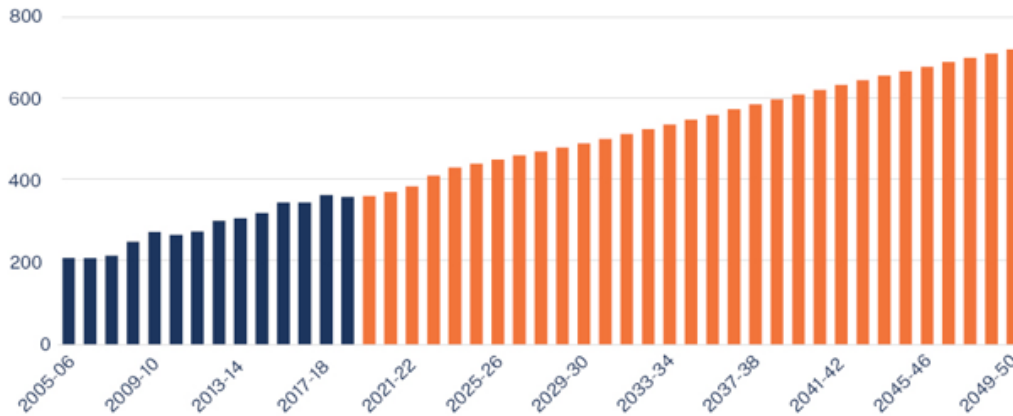
- (a) growing demand for services;
- (b) “*a gap*” forecast to emerge in the short-term at a national level;
- (c) diversifying the workforce.

5.4 The relevance of each issue will be explored in turn.

⁴⁸ *National Strategy* (n 8) 14.

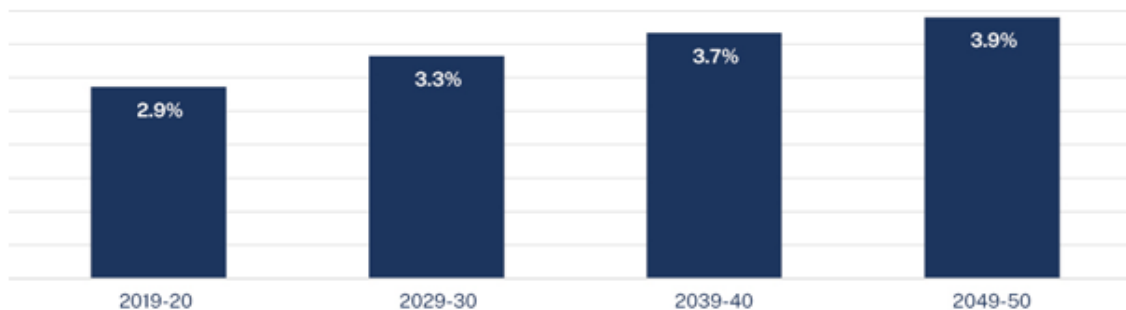
(A) Growing demand for services

5.5 The first issues identified is the “*growing demand for services*”. The following projection was included to demonstrate the trend of acceleration: ⁴⁹



Source: National Skills Commission, Care Workforce Labour Market Study, September 2021. Modelling by Deloitte Access Economics, 2021. Demand projections are headcounts not FTE.

5.6 To put into context, the sector demand as a share of the total Australian employment was represented as follows: ⁵⁰



Source: National Skills Commission, Care Workforce Labour Market Study, September 2021. Deloitte Access Economics, 2021.

5.7 The significance of those statistics is plain: with consumer demand increasing, ensuring that supply can meet demand must be a priority issue.

⁴⁹ Ibid.

⁵⁰ Ibid 15.

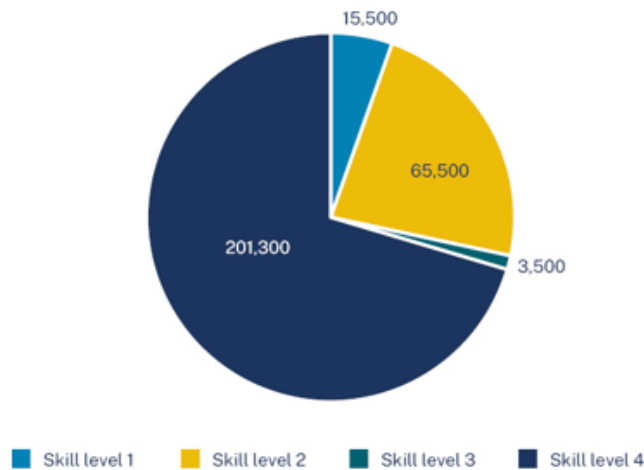
(B) A Gap

5.8 The *National Strategy* recognises that “a gap will begin to emerge in the short-term at a national level”.⁵¹ It makes the following observations:⁵²

- (a) By 2025-26 there will be a projected shortfall of 80,990 workers (headcount), increasing to 285,800 by 2049 50. Shortages will be most significant for personal care and support workers (skill level 4).
- (b) By 2049-50, almost three in four vacant care and support roles will be skill level 4 (certificate II/III equivalent). A strong pipeline of university graduates means that at a national level, higher skill level occupations will face smaller workforce gaps.

5.9 It was also observed that impact in regional areas may differ significantly, in both respects, with data from the National Skills Commission suggesting “greater recruitment difficulty outside of capital cities”.⁵³

5.10 The projected workforce gaps by skill level as at 2049-50 was illustrated by the following graphic:



Source: National Skills Commission, *Care Workforce Labour Market Study*, September 2021; Deloitte Access Economics 2021. Skill level 1 is commensurate with a bachelor’s level qualification or higher; skill level 2 is commensurate with an associate degree, advanced diploma or diploma; skill level 3 is commensurate with an AQF Certificate III or IV; skill level 4 is commensurate with an AQF Certificate II or III.

⁵¹ Ibid.

⁵² Ibid 15-16.

⁵³ Ibid.

- 5.11 The *National Strategy* also observed that providers are experiencing “*localised recruitment challenges*” across Australia, which increased with the COVID-19 pandemic.⁵⁴ This problem is speaking to difficulties in recruiting “*direct*” employees. It does not concern labour hire providers.
- 5.12 The projections demonstrate that it imperative that diverse strategies are implemented to ensure that the workforce within the aged care sector is supported and able to sustain itself as demand increases. Despite a history of on-hire labour providing solutions to staff shortages and gaps in the workforce,⁵⁵ it refuses to acknowledge the viability and value of labour hire as a strategic solution. There is no explanation provided for ignoring on-hire labour.
- 5.13 The projections demonstrate that the aged care workforce will require ongoing and increased access to alternative sources of supply in order to meet consumer demand. There is a pressing need to recognise and support the role played by high-quality labour hire providers within the aged care sector.⁵⁶ Hence, it is not the time to disregard all indirect employment but strengthen it. As the pandemic has demonstrated that the aged care sector is reliant upon a strong and reputable alternative source of employment to direct employment.
- 5.14 The *National Strategy* recognises the need to build “*sustainable workforces at the local and regional level*”.⁵⁷ To ignore the vital usage of indirect employment, in particular the role to be played by labour hire at a local level, is entirely counterproductive to this aim.

⁵⁴ Ibid 17.

⁵⁵ See “4. Relevant Statistics: Aged Care and Labour Hire” at Section 4, above.

⁵⁶ Issue Paper (n 18) 18.

⁵⁷ *National Strategy* (n 8) 17.

(C) Diversifying the workforce

- 5.15 The *National Strategy* also identifies that “[e]nsuring a diverse supply of workers will be critical to growing and sustaining the care and support workforce”.⁵⁸
- 5.16 The diversity is articulated by reference to the demographic of the worker:
- (a) women;
 - (b) men;
 - (c) indigenous Australians;
 - (d) people with disability;
 - (e) migrants;
 - (f) job seekers; and
 - (g) students.
- 5.17 Each demographic is accompanied by recommended strategies that may encourage ongoing and/or increased participation by the relevant demographic. For example, for migrants the opportunity identified is to establish “*dedicated migration pathway to grow the care and support workforce where there are labour shortages*”.⁵⁹
- 5.18 The reference to migration demonstrates the *National Strategy* recognises the Government appreciate the need to diversify the source of supply as well as the supply itself.
- 5.19 In this respect, the failure to address the role played by labour hire providers is a significant omission. High-quality labour hire providers are an important alternative and secondary source for localised supply. This critical mode of employment must be recognised.
- 5.20 Supporting the role played by high-quality labour hire providers is critical to building sustainable workforces at regional and local level. The role played by high-quality labour hire providers must be built into national strategies moving forward. It will also be relevant to the government arrangements that seek to “*measure the success of care and support*

⁵⁸ Ibid 20.

⁵⁹ Ibid 24.

workforce initiatives”, in particular, the goals targeting growth and sustainability of the aged care workforce.⁶⁰

The Action Plan

5.21 The *Action Plan* outlines the Australian Government’s targeted and *coordinated* action to address aged care workforce challenges.⁶¹ It expressly recognises that a “*skilled, responsive and adequate workforce is critical for the success of the significant aged care reforms the Government is progressing*”.⁶² Given it is intended to compliment the *National Strategy*, it is unsurprising that the *Action Plan* excludes labour hire providers as relevant to a “*coordinated approach*” to growing the aged care workforce.

5.22 We will now turn to a summary of the goals and the migration pathways initiatives set out in the *Action Plan* to demonstrate there is no logical basis to exclude labour hire providers.

(A) The Goals

5.23 The goals of the *Action Plan* are threefold:⁶³

- (a) **Grow:** Promote approaches that attract and retain workers with the right skills, knowledge and attributes to work and pursue a career in aged care.
- (b) **Skill:** Support a continuous learning environment. This includes approaches for workers and providers to upskill, attain formal qualifications and put learnings into practice.
- (c) **Enable:** Support aged care providers to develop sustainable and coordinated approaches for growing a skilled workforce, with an emphasis on thin markets and meeting the needs of diverse communities.

(B) The Migration Pathways Initiatives

5.24 As part of “*growing the workforce*”, the *Action Plan* stipulates that the Australian Government is investing in aged care workforce initiatives that attract and retain a diverse

⁶⁰ Ibid 41.

⁶¹ *Action Plan* (n 8) 15.

⁶² Ibid.

⁶³ Ibid.

range of workers with the right skills, knowledge and attributes to work and pursue a career in aged care.⁶⁴ This includes supporting and using “*migration pathways with industry*” including:

- (a) **Pacific Australia Labour Mobility (PALM) scheme** – which assists aged care providers struggling to fill vacancies locally with access to Pacific and Timor-Leste aged care workers;
- (b) **Labour Agreements** – which streamlines and provides flexibility in sourcing overseas aged care workers where providers experiencing critical staffing shortages that cannot be met by local workers; and
- (c) **Priority Migration Skilled Occupation Lists (PMSOL) includes Nurse (Aged Care)** – employer sponsored nominations and visa applications on the PMSOL are given priority processing.⁶⁵

5.25 As to PALM scheme, it is a program run by the Department of Foreign Affairs and Trade and the Pacific Labour Facility. It assists aged care providers to become approved employers for recruiting Pacific and Timorese aged care workers through the PALM scheme for one to 4 years. The express aim of that initiative is to “[r]educe workforce shortages in regional and remote areas by supporting aged care providers to employ Pacific and Timorese aged care workers”. The initiative is ongoing.⁶⁶

5.26 As to Labour Agreements, the explanation of the initiative is as follows:

“The Department of Home Affairs and the Aged Care Workforce Industry Council will assist aged care providers to use Labour Agreements to employ skilled (including lower-skilled) workers. These Agreements set the conditions for recruiting overseas workers and ensures that regulatory worker protections are maintained. It includes the level of qualification and experience required and appropriate English language standards.”⁶⁷

⁶⁴ Ibid 17.

⁶⁵ Ibid.

⁶⁶ Ibid 18.

⁶⁷ Ibid 19.

5.27 The initiative was described as “ongoing” and its objective is to “[r]educe workforce shortages by increasing the pool of aged care workers available through flexible visa concessions”.⁶⁸

5.28 As to the priority processing under the PMSOL, the following explanation was provided:

“Priority processing of visa applications for registered nurses sponsored by an aged care service provider. This is one of 44 occupations listed as critical to supporting economic recovery.

Commencement: 2 September 2020

End date: Subject to ongoing review”⁶⁹

5.29 The aim of the priority processing initiative was to “[r]educe workforce shortages caused by the COVID-19 pandemic by allowing employer-sponsored aged care nurses to travel to Australia and fill urgent skills gaps”.⁷⁰

5.30 The initiatives in the *Action Plan* are described as “diverse”.⁷¹ By the *Action Plan* “[t]he Australian Government is committed to ensuring the workforce is available, trained and provides the care that senior Australians and their families expect and deserve”.⁷² Hence, it is plain that the Australian Government recognises that the source of supply must also be diversified.

5.31 During the pandemic, due to its international recruitment sources, HSGA was able to utilise the supported migration pathways to bring nurses from the UK to answer the supply shortages in Australia. The operating divisions of HSGA that provide nursing care, such as Alliance Nursing, were actively supported and encouraged by the migration initiatives put in motion by the Government.

5.32 Despite the role played by labour hire providers with respect to providing locally sourced aged care workers, together with workers via the migration pathways, over the course of the pandemic, only the migration pathways initiatives are included within the *Action Plan*. There is no reasonable basis for the Australian Government to ignore the value of labour

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid 3.

⁷² Ibid.

hire providers in answering supply and demand barriers within the aged care sector. It is a form of indirect employment that has consistently proven itself as valuable contributor to supply within the aged care sector. To ignore its role is to undermine its significance and to promote an unfounded suggestion that it is destructive to the delivery of aged care.

6. HSGA: A HIGH-QUALITY LABOUR HIRE PROVIDER IN AGED CARE

Overview

6.1 To further illustrate the position of high-quality labour hire within the landscape of the aged care workforce, we turn to an example of best practice in specialised labour hire: HSGA.⁷³ This section will provide an overview of the services provided by HSGA, a high-quality labour hire provider, followed by an analysis of a HSGA services agreement.

Health Solutions Group Australia

6.2 HSGA is a national Healthcare, Community Care and Disability Support organisation that provides recruitment solutions via labour hire service agreements with providers throughout Australia⁷⁴ in the aged care sector.

6.3 HSGA have both public and private tender panel agreements in place. Nationally, HSGA holds agreements with multiple state government entities as well as private entities. The state government agreements are long standing agreements that are generally rolled over and/or renewed. This demonstrates the confidence shown in HSGA by providers of aged care in the industry and, significantly, state governments throughout Australia.

6.4 With over 130 years' experience recruiting nurses, aged care workers, disability support staff and other specialist support staff, HSGA is an industry leader as a high-quality labour hire agency. The purpose of HSGA is to *"help build a better Australia for all"*.

6.5 HSGA facilitates labour hire via six operating divisions:

- (a) Alliance Nursing;
- (b) Alliance Community;
- (c) Belmore Nurses;
- (d) RNS Nursing;
- (e) ACT Nursing; and
- (f) CQ Nursing.

⁷³ Issue Paper (n 18) 21.

⁷⁴ It has offices in NSW, Victoria, Western Australia, South Australia, ACT and Queensland.

- 6.6 By way of example, Alliance Nursing has 3,580 employees. As mentioned, it is nationally one of the largest providers of on-hire employees in nursing. These employees work in a variety of settings including:
- (a) aged care facilities;
 - (b) hospitals;
 - (c) clinics;
 - (d) prison settings; and
 - (e) private facilities.
- 6.7 Of the 3,580 employees engaged by Alliance Nursing, 1,114 employees (31%) are visa holders currently a mix of Working Holiday Visas, Sponsorship Visas and Student Visas.
- 6.8 Under current services agreements, the following classifications are used:
- (a) clinical educators;
 - (b) clinical managers;
 - (c) registered nurses;
 - (d) enrolled nurses;
 - (e) assistants in nursing;
 - (f) kitchen hands;
 - (g) cleaners; and
 - (h) chefs.
- 6.9 Alliance Community is another operating division within HSGA that provides premium community support. It is also an NDIS registered provider. Alliance Community employs 607 care workers. Of the aged care consumers benefiting from high-quality community care provided via labour hire employees, 64 are on HCP and 452 are on CHSP.
- 6.10 The HSGA employees are engaged by host employers pursuant to a services agreement. By that agreement the on-hire employee is outsourced to a host employer for a fixed period to complete a specific task. The on-hire employee is paid by HSGA. The host employer pays HSGA a fee for the services provided.

- 6.11 An outline of the services provided by HSGA as a high-quality labour hire provider follows:
- (a) HSGA supplies on-hire employees to aged care providers across Australia. By way of example, one of HSGA's operating divisions, Alliance Nursing supply on-hire employees to 19 aged care providers across Australia. Of those agreements, nine are "*preferred provider service agreements*" that have been completed through a tender process.
 - (b) HSGA have both public and private tender panel agreements in place.
 - (c) HSGA hold agreements with multiple state government entities as well as private entities. The state government agreements are long standing agreements that are generally rolled over and/or renewed.
 - (d) HSGA provided support for COVID outbreak sites both via Aspen Medical as a sub-contractor to the Commonwealth Government and through direct service supply engagement.
 - (e) HSGA also operates office in the UK and Ireland to attract and recruit staff from around the globe to join the workforce. This international operation was of critical assistance over the course of the pandemic.
- 6.12 Having set out the services provided by HSGA, we turn examine a services agreement.

7. HSGA: TERMS OF SERVICES AGREEMENT

Overview

- 7.1 HSGA provides the Commission with an example of best practice in labour hire within the aged care sector. To demonstrate this, we set out key terms included with the standard HSGA preferred provider services agreement (the **Agreement**).
- 7.2 For the purposes of the Study, the key terms examined are as follows:
- (a) guarantees about the skill level of the workers;
 - (b) obligation of HSGA under the Agreement (referred to as “*the Provider*”);
 - (c) work health and safety (**WHS**); and
 - (d) insurance and indemnity.
- 7.3 The terms collectively work together to ensure quality and consistency of service. They also make clear the obligations of “*the Provider*” (i.e. HSGA) and “*the Purchaser*” (i.e. the host employer) under the Agreement.
- 7.4 We will now set out each category of terms in turn.

(A) Terms Guaranteeing Skill Level of Worker

- 7.5 Turning to the on-hire employees provided, the Agreement includes the following terms:
- (a) description of services provided;
 - (b) minimum experience clause and required competencies of each employee provided pursuant to the Agreement (see below); and
 - (c) obligations concerning employee compliance with internal training, policies and procedures.
- 7.6 An example of a “*minimum experience*” clause is extracted below:

“All staff supplied by the Provider to the Purchaser (whether direct employees, contractors or agents of the Provider) will have completed the Purchaser’s onboarding process prior to being deployed to the Purchaser’s facilities As part of this onboarding process, staff supplied by the Provider and are required to have read and signed an acknowledgement that they understand and agree to abide by the ... Staff Induction Handbook.”

In accordance with clause [...] of the Agreement, the Provider warrants, and the Purchaser relies on these warranties, that any staff supplied by the Provider to the Purchaser to perform the Services, have the relevant skills, expertise and competency to perform the Services, including the competencies listed as follows on the next page.” (Emphasis added)

7.7 The required competencies are expressly annexed to the Agreement. An example of competencies for “Assistant in Nursing” include:

“Certificate III in Aged Care with minimum 6 months practical experience in the position of a PCA or AIN; or

Second year student enrolled in Bachelor of Nursing who has also completed at least two clinical placements, once placement in Aged Care.

Demonstrated competences in:

- Basic life support;*
- Manual handling;*
- Fire and emergency procedures;*
- Hand hygiene, Infection control (aged care);*
- Occupational violence and aggression;*
- Elder abuse mandatory reporting to include the Serious Incident Response Scheme classifications of 8 incident types*
- Preventing falls and harm from falls;*
- Basic Life Support*
- Bullying harassment and discrimination.”*

7.8 Under the Agreement, HSGA further agrees to ensure that all employees, contractors and agents:

- (a) *“possess the necessary skills, expertise, experience, licences and competencies to perform the services in a manner that will, so far as is reasonably practicable, not expose any person to a risk to their health and safety”;*
- (b) *comply with all of “the Purchaser’s Policies and Procedures, as amended from time to time, and all reasonable directions of the Purchaser and its duly authorised personnel”;*
- (c) *“attend any training provided by the Purchaser, as directed”;* and

- (d) wear personal protective clothing and equipment as required by the Purchaser, and WHS Laws, when performing the services, will not intentionally misuse or damage personal protective clothing and equipment, and will inform the Purchaser of any damage, defect or need to decontaminate or clean this equipment.

7.9 The minimum experience term serves to guarantee the quality of service to be provided. Further, the requirement to undertake any relevant induction and/or onboarding “*process prior to being deployed*” serves to promote consistency of service for consumers. It demonstrates that compliance under the Agreement requires HSGA and the host employer to undertake a coordinated approach to delivery of care in the context of labour hire. All of which is to the benefit of the consumer.

(B) Terms Setting out Obligations of HSGA

7.10 Under the Agreement, the obligation upon HSGA and the host employer are clear. The obligations upon HSGA include the following:

- (a) to comply with all legislation and regulatory requirements relevant to the carrying out of the services under the Agreement;
- (b) ensure that the services are performed in a proper and efficient manner;
- (c) in performing the services, HSGA shall “*endeavour to cause as little disturbance as reasonably possible to the business of the Purchaser*”;
- (d) HSGA “*warrants that all persons engaged to provide services under the Agreement are sufficiently skilled and/or experienced to provide the services*”;
- (e) responsible for promptly dealing with any industrial relations issues connected to the employees engaged by the provider to perform the services under the Agreement;
- (f) acknowledges that “*it is liable to pay all wages, superannuation and other contributions or payments in respect of any employees engaged by the Provider to provide the Services and to make required deductions from such wages or payments in respect of taxation and superannuation*”;
- (g) “*the Provider shall obtain the Purchaser's approval prior to engaging any contractor*”;

- (h) *“the Provider agrees, at its own expense, to have all employees, contractors or agents engaged by the Provider for the provision of Services to undertake the Purchaser’s induction processes **prior to the delivery of any Services**”* under the Agreement (emphasis added); and
 - (i) *“the Provider agrees, at its own expense, to ensure that all employees, contractors and agents of the Provider complete the Purchaser’s induction processes **annually** during the term of [the] Agreement including any further term”* (emphasis added).
- 7.11 HSGA as the provider also agrees that it will ensure that *all* individuals engaged to provide services under the Agreement:
- (a) have a current police certificate (without any record of conviction);
 - (b) have been assessed as *“suitable to provide aged care”*;
 - (c) have been subject to a *“thorough background check”*; and
 - (d) are aware of and act on mandatory reporting requirements.
- 7.12 The collective effect of those obligations is to ensure only skilled and competent workers are provided. Further, that the skilled and competent workers provided undertake an induction process *“prior to the delivery of any services”* - which HSGA guarantees its *“employees, contractors and agents”* will undertake *“annually”*. This promotes consistency of service and allows for indirect employment to be integrated into a facility without disrupting the standard of care directly provided by the care provider.
- 7.13 The stipulation of these obligations as standard within a service agreement are plainly to the benefit of the consumer and host employer.

(C) Terms about WHS

7.14 Turning to WHS, in addition to the terms above, the Agreement provides:

- (a) HSGA must:
- (i) perform its obligations, and the services, under the Agreement in a manner that does not cause the Purchaser to breach any of the Purchaser's obligations under WHS Laws;
 - (ii) participate in such verification activities as the Purchaser may reasonably require to monitor compliance with WHS Laws including audits and inspections;
 - (iii) consult, cooperate and coordinate activities with the Purchaser and any other person that shares a duty under WHS Laws;
 - (iv) immediately notify the Purchaser of any:
 - A incident which is notifiable to a government entity under WHS Laws involving the Provider or the Provider's Affiliates arising from the performance of the Services;
 - B notice issued under WHS Laws from a government entity or government official to the Provider or the Provider's Affiliates arising from the performance of the Services;
 - C breach of WHS Laws by the Provider or the Provider's Affiliates;
 - D commencement of enforcement action (including legal proceedings) under the WHS Laws against the Provider or the Provider's Affiliates.
- (b) HSGA warrants that:
- (i) it is familiar with, and has the capability, resources, experience and competencies to comply with its obligations under the Agreement;
 - (ii) it has provided the Purchaser with all the information necessary for the Purchaser to assess the Provider's capacity to perform the services under the Agreement;

- (iii) all personal protective equipment its employees, contractors and agents use to perform the services will be fit for purpose and adequately maintained by appropriately qualified persons at regular intervals.
 - (c) In the event of any incident which is notifiable to a government entity under the WHS Laws involving the Provider or the Provider's Affiliates arising from the performance of the Services, the Provider must cooperate, and require the Provider's Affiliates to cooperate, with the Purchaser in any investigation the Purchaser may choose to undertake (including any investigation that the Purchaser may undertake to obtain legal advice and/or in relation to legal proceedings that are reasonably anticipated).
 - (d) If the Provider fails to perform any of its obligations under this clause the Purchaser may request the Provider to make arrangements for compliance with those obligations and suspend the Agreement until obligations under this clause have been satisfied.
 - (e) Any breach by HSGA or HSGA's employees, contractors, or agents of WHS Laws that gives rise to circumstances which presents actual or potential risk to life or serious injury or illness entitles the Purchaser to terminate the Agreement and the Provider must bear any costs it incurs as a result of the termination.
- 7.15 The WHS obligations are plainly detailed and clearly set out the obligations upon HSGA. Further, in terms of notifiable incidents, the coordinated approach required is set out in express terms - and agreed to by both HSGA and the host employer. No uncertainty arises in terms of WHS obligations under the Agreement.

(D) Terms about Insurance and Indemnity

7.16 The Agreement also sets out clear terms with respect to insurance and indemnity.

7.17 An example of the “*insurance clause*” used by HSGA is extracted below:

“For the purposes of meeting its obligations under this Agreement, the Provider shall effect and maintain in full force during the term up to the date of termination of this Agreement the following insurance covers;

- accident compensation cover in accordance with the requirements of the Workers Compensation Act 1958 for all staff employed by the Provider;*
- professional indemnity insurance for not less than ten million dollars (\$10,000,000) for any single claim; and*
- public risk insurance for not less than ten million dollars (\$10,000,000) for any single claim. If the Purchaser makes a written request, the Provider must within seven (7) Business Days give proof that its insurance policies are current.*

All policies of insurance required to be taken out under clause [...] shall be taken out with a financially sound and reputable insurer. The Provider will provide to the Purchaser satisfactory evidence of the currency of the insurance policies required to be taken out by it under the terms of this Agreement prior to the delivery of any Services under this Agreement and thereafter on a yearly basis or upon reasonable request by the Purchaser.”

7.18 An example of an “*indemnity clause*” used by HSGA is extracted below:

“The Provider indemnifies and shall keep the Purchaser indemnified from and against all costs, claims, losses, damages, demands, liabilities, causes of action, proceedings awards or judgements suffered or incurred by or brought or made against the Purchaser to the extent that they are caused or contributed to by

- the Provider's breach of any of the provisions of this Agreement; or*
- negligent acts or omissions of the Provider or the Provider's employees, agents or contractors.*
- the Provider's liability for any loss or damage under this indemnity will be reduced to the extent that the loss or damage was caused by the act or omission of the Purchaser or the Purchaser's officers, employees, agent or contractors.*
- the Provider will not be liable for any special, indirect, Consequential Loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by the Purchaser or any other person resulting from any act or omission by the Provider (including breach, termination or non-observance of this Agreement).”*

- 7.19 The express inclusion of both clauses assists to minimise disputes as to common matters that arise in commercial agreements. They also serve to provide the host employer with confidence that engagement of labour hire workers will not increase their risk and exposure. The Agreement ensures that engagement of labour hire will not be to the detriment of the host employer.

Conclusion

- 7.20 The preceding terms are example of best practice in a services agreement between a high-quality labour hire provider and a host employer. It demonstrates that concerns as to quality of service, impacts upon consistency and clarity as to lawful obligations may be addressed expressly and precisely in a contract. A well-drafted agreement is an important safeguard in this respect.
- 7.21 To enhance consistency of approach across all providers of labour hire, regulations could be created to ensure that certain terms are always included and/or addressed. This step would be welcomed and would likely assist with counteracting any misconception, arising from Recommendation 87 and the Australian Government's omissions, that labour hire entities provide substandard care. HSGA showcases high-quality labour hire practices within the aged care sector that promote and safeguard the quality of its service. Regulation would ensure such high-quality practices are standard practice for all providers of labour hire.

8. CONCLUSION

- 8.1 Employees of labour hire providers should be a major focus of the analysis by the Commission. This emphasis is essential to rectify the significant damage being done to the perception of this valuable section of the aged care workforce by the Australian Government's consistent disregard for its role and position within the aged care sector.
- 8.2 To recognise the value of labour hire does not serve to detract from direct employment. Labour hire providers are not “*competitors*” within aged care that seek to dominate the aged care sector. Rather, they provide a critical alternative supply to the aged care workforce to answer and remedy any gaps that arise. This important role has been historically tracked in surveys and reports produced by the Australian Government. The data compiled between 2012-2020 highlight labour hire as a necessary fixture within the industry, with both RAC and home care providers identifying engagement of labour hire workers as a solution to supply shortages.
- 8.3 To seek to restrict access to high-quality labour hire providers would be to the absolute detriment of consumers and is entirely counterproductive to the *National Strategy* and *Action Plan*. Demand within the aged care sector is increasing, restricting alternative and diverse sources of supply would only exacerbate pressure upon providers and, in turn, negatively impact consumer access to care.
- 8.4 HSGA demonstrates that high-quality labour hire providers are more than capable of delivering consistent and quality care services via a coordinated approach with host employers. The approach adopted by HSGA, with respect to its comprehensive services agreement, is an example of best practice that is capable of being implemented and followed by all labour hire providers. The Australian Government could easily regulate this aspect of the industry, which would ensure a high-quality approach to labour hire is consistently delivered. However, the necessary predecessor to that step is recognition of the role of labour hire in aged care.
- 8.5 The delivery of quality aged care requires a consistent and coordinated approach. It is time for the role played by high-quality labour hire providers within the aged care sector to be recognised as a valuable contributor to the sustainability of the aged care workforce.

For ABI

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