



Indirect employment in aged care

Issues paper

The Commission has released this issues paper to assist individuals and organisations to prepare submissions. It contains and outlines:

- the scope of the study
- the Commission's procedures
- matters about which the Commission is seeking comment and information
- how to make a submission.

The Productivity Commission acknowledges the Traditional Owners of Country throughout Australia and their continuing connection to land, waters and community. We pay our respects to their Cultures, Country and Elders past and present.

The Productivity Commission

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- the scope of the study
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- how to make a submission (see attachment B).

Participants should not feel restricted to comment only on matters raised in the issues paper. The Commission welcomes information and comment on any issues that participants consider relevant to the study's terms of reference.

Key study dates

Receipt of terms of reference	23 February 2022
Due date for submissions	29 April 2022
Final report to Government	September 2022

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1. About this study

One of the many challenges facing the aged care sector is attracting and retaining workers that can meet aged care needs now and into the future.

While there are several facets to this challenge and a number of reforms underway (see below), the Productivity Commission has been tasked by the Treasurer to examine a relatively narrow facet, namely:

... 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 stems from a recommendation of the Royal Commission into Aged Care Quality and Safety (the Royal Commission) that aged care providers be required to preference direct employment of workers engaged to provide personal care and nursing services.

The recommendation appears intended to address a reported increase in the use of independent contractors and workers sourced through digital platforms in aged care. The Royal Commission's final report highlighted concerns that their use could erode the quality of care, accountability for the care provided, and pay and conditions for the workforce. However, there is little evidence on the prevalence and impacts of these employment arrangements in aged care.

This study will look at the use of indirect employment in aged care — with a focus on independent contractors (including those in labour hire agencies) and workers engaged through digital platforms in residential and home-based aged care, and the implications for consumers, the aged care workforce and aged care providers. While aged care workers provide a wide range of services to older people (including allied health services, cleaning, meals, transport and social services) this study focuses on personal care workers and nurses.

The study is taking place at a time when aged care workforce issues are prominent and a range of reforms to Australia's aged care system are planned or underway. While these provide important context, it is beyond the study's scope to examine the full range of issues relating to the aged care workforce — many of which have previously been examined by other reviews (for example Aged Care Workforce Strategy Taskforce 2018; CEDA 2021; PC 2011; Royal Commission into Aged Care Quality and Safety 2021a; Senate Community Affairs References Committee 2017).

Background — about the Royal Commission

The Royal Commission into Aged Care Quality and Safety was established in October 2018 amidst concerns triggered by reports of abuse and substandard care affecting older people in aged care homes. The Royal Commission was to investigate problems in the aged care system and the quality of residential and in-home aged care services for older people (and for younger people with disabilities living in aged care homes). In its

February 2021 final report, the Royal Commission made 148 recommendations for reform across the sector (box 1),¹ including:

- a new Aged Care Act that provides a new definition of aged care and outlines the rights of older people to receive support that puts their needs and preferences first
- new governance arrangements for the aged care system (though the two Commissioners proposed different models to achieve this)
- replacing multiple existing aged care programs with a new program with common national settings that aims to simplify the complexity of the current system
- a variety of funding measures, including a new funding model that provides an entitlement to care at home via government subsidies.

The Australian Government has accepted, or accepted-in-principle, some 126 of the 148 recommendations. In turn it has committed to a five-year aged care reform plan, with a new Aged Care Act intended to commence on 1 July 2023 (DoH 2021b).

Box 1 – Recommendations of the Royal Commission about the aged care system

The Royal Commission’s final report stated that ‘the extent of substandard care in Australia’s aged care system reflects both poor quality on the part of some aged care providers and fundamental systemic flaws with the way the Australian aged care system is designed and governed’ (Royal Commission into Aged Care Quality and Safety 2021a, p. 73).

It made a series of recommendations to address problems identified across the whole sector. The recommendations covered the following broad themes:

- the principles and governance of a new aged care system
- raising the quality and safety of aged care services and accommodation
- outlining a new aged care program
- improving aged care for older people with disability and in remote areas, and Aboriginal and Torres Strait Islander people
- ending the placement of younger people in residential aged care
- developing the aged care workforce capability, and supporting informal carers and volunteers
- improving the regulation of the aged care sector and provider governance
- using research and technology to support aged care in the future
- planning the funding and financing of the new aged care system

Source: Royal Commission into Aged Care Quality and Safety (2021a).

Broad issues with the aged care workforce

Narrowing in on workforce matters, the Royal Commissioners attributed substandard aged care partly to an undervalued and undertrained workforce, and made several recommendations to improve workforce

¹ While many of the recommendations were jointly agreed, Commissioners Pagone and Briggs made a range of separate recommendations or parts of recommendations.

capability (box 2). The Government accepted or accepted-in-principle most of these recommendations, the exceptions including those proposing increases in award wages (recommendations 84 and 85) and mandatory minimum qualifications (recommendation 78). Workforce reforms are to be implemented within the next one to three years (DoH 2021b, pp. 51–58).

The aged care workforce has been the subject of several recent reviews in addition to the Royal Commission (Aged Care Workforce Strategy Taskforce 2018; CEDA 2021; DoH 2021a; Senate Community Affairs References Committee 2017) that have highlighted the following issues:

- staff and skills shortages that will not, in light of a growing ageing population, meet the growing demand for aged care services
- poor working conditions such as low pay and inconsistent working hours, forcing workers to hold multiple jobs
- high staff turnover and staff retention issues, including significant movement between organisations
- lack of skill development and career progression, leading staff to move to other industries.

The COVID-19 pandemic has exacerbated some of these issues, highlighting staff shortages and other workforce issues including poor mental health, staff working across multiple employers, poor job satisfaction and lack of job security (Gilbert and Lilly 2021).

Box 2 – Royal Commission recommendations about the aged care workforce

To address problems with the aged care workforce, the Royal Commission recommended:

- a National Registration Scheme for personal care workers that features ongoing training requirements and English language proficiency requirements for the personal care workforce (recommendation 77)
- making a Certificate III the minimum qualification required for personal care workers performing paid work in aged care (recommendation 78)
- dementia and palliative care training for workers (recommendation 80)
- increases in award wages and improved remuneration for aged care employees (recommendations 84 and 85)
- three mandatory minimum staff time standards for residential care (recommendation 86).

The Royal Commission also recommended that the proposed new Aged Care Act include a non-delegable duty that organisations that provide subsidised aged care services provide safe and high quality services and that their personal care and nursing staff have the experience, qualifications, skills and training to perform the work that they are being asked to perform (recommendation 14).

Source: Royal Commission into Aged Care Quality and Safety (2021a, pp. 260–265).

Data illustrate some of the pressures on the aged care workforce. As at June 2021, more than 50 000 older Australians were seeking a home care package at their approved level, but had not yet been offered one (DoH 2021c, p. 11). There is also unmet demand for residential care: the *Report on Government Services* (SCRGSP 2020) reported that in 2019-20 more than 300 000 'hospital patient days' were used by people eligible and waiting for residential aged care, and that in 2020-21 the median wait time between approval and entry into residential care was 163 days (nearly double the wait time of 2015-16). One study estimated that — even without the changes proposed by the Royal Commission — there will be a shortfall of over 110 000 workers by 2030 if the workforce continues to expand at its current pace (CEDA 2021). Further, there has been a decline

in the proportion of skilled workers (qualified nursing and allied health workers) in the residential aged care workforce since 2003 (Eagar et al. 2019, p. 5). The Royal Commission noted that this ‘erosion in the capability and capacity of the residential aged care workforce’ was occurring as ‘the needs of people in care have increased’ (Royal Commission into Aged Care Quality and Safety 2021c, p. 421).

This means that the Government will be implementing the recommendations it has accepted when there are already pressures on the aged care workforce. The 2021-22 Federal Budget included \$17.7 billion for aged care reform, including \$7.8 billion for a new funding model for residential aged care and \$6.5 billion for an additional 80 000 home care packages by 2022-23 (Treasury 2021, pp. 6–10).

Expanding home care, increasing staffing ratios and professionalising the aged care workforce will likely require significant adjustments in the sector. For instance, only 3.8 per cent of residential aged care facilities have staffing levels at or above the new minimum staff time standards (Sutton et al. 2021).

The Royal Commission recommendation on preferencing direct employment

Recommendation 87 of the Royal Commission (made by Commissioner Briggs alone) called for approved aged care providers to have policies and procedures that preference the direct employment of workers (box 3).

Box 3 – Recommendation 87 of the Royal Commission

Recommendation 87: Employment status and related labour standards as enforceable standards

1. By 1 January 2022, the Australian Government should require as an ongoing condition of holding an approval to provide aged care services that:
 - a. approved providers: have policies and procedures that preference the direct employment of workers engaged to provide personal care and nursing services on their behalf
 - b. where personal care or nursing work is contracted to another entity, that entity has policies and procedures that preference direct employment of workers for work performed under that contract.
2. From 1 January 2022, quality reviews conducted by the Quality Regulator must include assessing compliance with those policies and procedures and record the extent of use of independent contractors.

Source: Royal Commission into Aged Care Quality and Safety (2021a, p. 265).

As noted earlier, 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 (Royal Commission into Aged Care Quality and Safety 2021c, p. 428).

The Royal Commission presented a variety of reasons for recommendation 87.

- It considered that modes of engagement affect the quality of care provided. Views expressed in submissions and hearings suggested that ‘monitoring and checking the quality of care ... is far simpler when employing staff directly’ (Royal Commission into Aged Care Quality and Safety 2021c, p. 428).

- Further, under some models, care workers sourced through online platforms may not be employees of that platform, potentially placing employment-related responsibilities — such as ensuring high quality care — on an older person who has engaged that worker (Royal Commission into Aged Care Quality and Safety 2021c, p. 431).
- Independent contractors also bear the cost of covering leave, tax and superannuation contributions, and are not entitled to the other benefits and protections typically granted under Australian employment regulation. Some witnesses suggested that a move to greater reliance on independent contractors in aged care could erode pay and working conditions in the sector (Royal Commission into Aged Care Quality and Safety 2021c, pp. 429–430).

Overall, Commissioner Briggs regarded ‘direct employment’ as the best model to achieve the proposed workforce reforms and avoid a ‘fractured, disparate and ill-supported workforce’ (Royal Commission into Aged Care Quality and Safety 2021c, p. 432). Commissioner Pagone was sympathetic to this view, although he believed that high quality care could best be enforced through a statutory non-delegable general duty included in the proposed new Aged Care Act that would apply to approved care providers regardless of their mode of engagement (recommendation 14; box 2) (Royal Commission into Aged Care Quality and Safety 2021c, p. 432).

Defining key concepts and the study’s scope

What is direct and indirect employment?

Recommendation 87 refers explicitly to ‘direct employment’. However, this term is not used or defined in the *Fair Work Act 2009 (Cth)*, and is not commonly used in industrial relations discussions in Australia. When engaging workers, employers can consider a range of employment arrangements, some of which involve hiring workers directly and some via intermediaries or as contractors (box 4).

Box 4 – Common types of employment in Australia

Employees are employed directly by the employer, who pays their wages, salary and other benefits and withholds tax on their behalf. Employers can direct employees when, what and how to do their work. There are a range of contract types for employees.^a

- **Permanent employees** are employed on an ongoing basis. They can be employed full time (typically for 38 hours per week) or part time (with a regular pattern of work typically averaging less than 38 hours per week). Permanent employees can have their employment terminated in certain circumstances, including for poor performance, misconduct or redundancy. In the case of redundancy, they are entitled to a notice period and redundancy pay.
- **Fixed-term employees** are employed for a specific period or to complete a specific task. They can work full time or part time hours. They are generally entitled to the same wages and conditions of work as permanent employees, except that they have no expectation of ongoing work beyond the end of their contracted period.
- **Casual employees** do not have firm advance commitment of ongoing work or an agreed pattern of work (although many casual employees work similar hours each week). Most casual employees do not receive paid leave, but are typically paid a casual loading on top of their hourly rate. Casual

Box 4 – Common types of employment in Australia

employees can work full time or part time hours. Casual employees are not typically entitled to notice of termination or to redundancy pay.

Labour hire workers (also known as on-hire or agency workers) are employed by an agency and outsourced to a host employer for a fixed period or to complete a specific task. Workers are paid by the agency, and the host employer pays the agency a fee for the services provided. Labour hire workers can be engaged as employees or independent contractors of the agency.

Independent contractors (also known as contractors or subcontractors) provide an agreed service to an employer and do not have an expectation of ongoing work. They usually negotiate their own working arrangements and fees with the employer. Independent contractors usually:

- have an Australian Business Number and submit invoices for payment to the employer
- can work for more than one employer at the same time
- use their own tools or equipment
- can choose to perform the work themselves or subcontract it to someone else
- have a high level of control over when, where and how they perform work
- bear the financial risk for making a profit or loss for each contract, as well as the costs of covering leave, tax and superannuation.

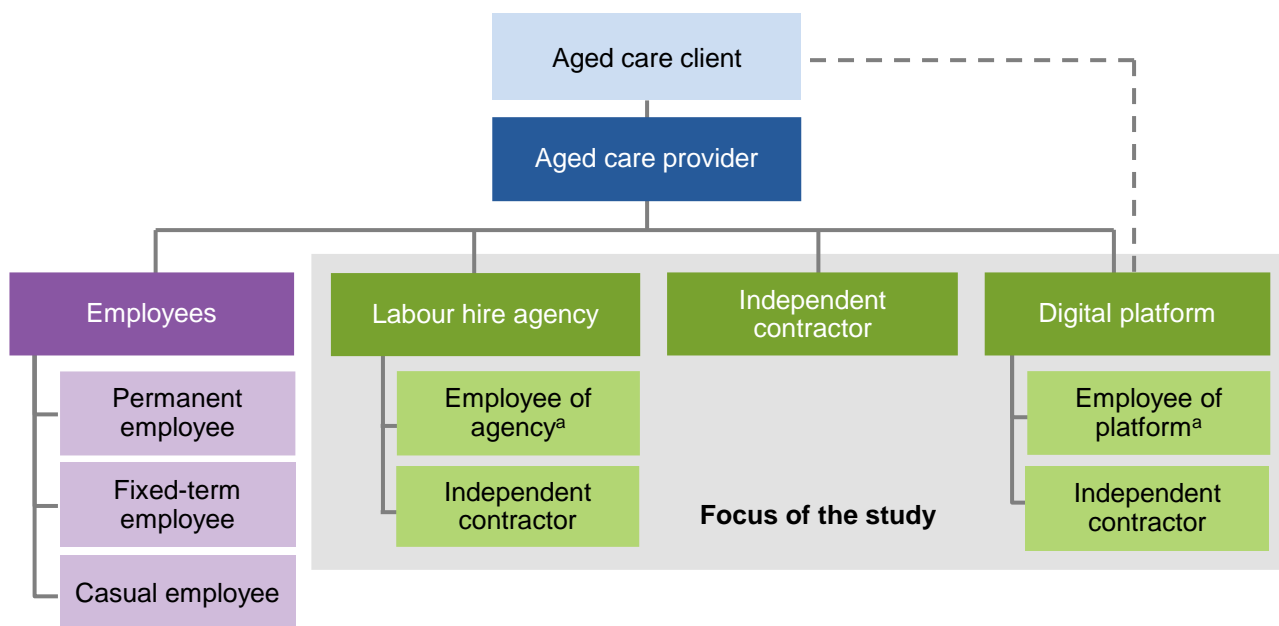
It is illegal for employers to engage in 'sham contracting', where workers who are really employees are told they are independent contractors and not given their full entitlements. Courts have considered a range of factors (including those listed above) when deciding whether workers are employees or independent contractors.

a. Other less common contract types apply to employees employed as apprentices, trainees, daily or weekly hire workers (in the building, construction and plumbing industries) and outworkers.

Source: Australian Government (2021b); Fair Work Ombudsman (2021b).

Workers in the aged care sector are engaged through a variety of employment arrangements (figure 1). *Employees* are typically either engaged directly by aged care providers, or through labour hire agencies where workers are employees of the agency. Employees may have a permanent, fixed-term or casual contract. Although the exact number of workers under each employment arrangement is not known (because data specifically on independent contractors and platform workers are not available on a comprehensive basis), most workers in aged care are employees of an aged care provider (section 2). *Independent contractors* can be engaged by aged care providers or through labour hire agencies.

Figure 1 – Employment relationships in the aged care sector



a. Employees may be permanent, fixed-term or casual employees.

Workers engaged through digital platforms — often called gig economy workers — are typically engaged as independent contractors (Schwellnus et al. 2019, p. 7). However recent rulings have found that some workers engaged through digital platforms are, from a legal perspective, employees of the platform, even where they have been engaged as independent contractors (for example, in the Fair Work Commission case of *Diego Franco v Deliveroo Australia Pty Ltd* (2021) U2020/7066). Evidence given to the Royal Commission suggests that some digital platforms operating in the care sector choose to engage workers as casual employees rather than independent contractors (Royal Commission into Aged Care Quality and Safety 2021c, p. 428).

Employment arrangements involving digital platforms are further complicated because care recipients can engage workers directly through a platform, even if government funding is provided through an approved aged care provider for a package of services (box 5). The Royal Commission heard evidence that the sourcing of workers by clients through digital platforms creates uncertainty about who is the ultimate employer of the workers, and who is liable for ensuring that high quality care is provided. In some cases, the care recipient may unwittingly be the employer, which the Royal Commission considered undesirable (Royal Commission into Aged Care Quality and Safety 2021c, pp. 431–432).

Box 5 – An example of how care recipients can engage government-subsidised care through a digital platform

Fred is approved for a Level 1 Home Care Package (HCP) to cover basic care needs. He has decided he wants to self-manage his HCP funds, meaning he will be responsible for finding support workers, scheduling appointments and managing his budget. However, he still has to find an approved HCP provider who will hold his funds. He finds a HCP provider who charges 15 per cent of his HCP funds in administrative fees.

Fred has heard from his tech-savvy friends that he can find care workers via a digital platform. He finds a platform called 'WeCare' and books a care worker named Dill to help him weekly. Dill is an independent contractor as WeCare does not directly employ the workers on its platform. WeCare is not an approved aged care provider.

After each job, Fred approves Dill's timesheet. Dill then uses the WeCare app to generate an invoice that is automatically issued to Fred's HCP provider, who will use his funds to pay the invoice.

The Commission's proposed approach

This study will focus on two employment arrangements that were highlighted as of concern in the Royal Commission's final report and that appear to be the target of the proposed restrictions in recommendation 87:

- *independent contractors*, whether engaged by aged care providers or through labour hire agencies
- *workers engaged through digital platforms* (referred to as platform workers in the remainder of this paper), regardless of whether they are employees or independent contractors of the platform.

However, to the extent that the issues relevant to these two categories also apply to agency workers more broadly, the analysis will also include labour hire agencies. These employment arrangements are shown in the grey box in figure 1.

While recommendation 87 was made in a section of the Royal Commission's final report on home and community care, the Royal Commissioners noted:

While we specifically inquired into issues with the mode of engagement of workers in the home care context, we consider that many of the issues are also relevant in the residential care context. (Royal Commission into Aged Care Quality and Safety 2021c, p. 430)

Furthermore, some providers offer both residential and home care services. Given this background, the study will include both the residential and home-based aged care sectors.

The scope of tasks undertaken by workers in the aged care sector is broad, ranging from assistance with grocery shopping and gardening, to food preparation, cleaning and administration, to high-level personal and medical care. Consistent with recommendation 87 (box 3), the Terms of Reference for the study ask the Commission to focus on employment arrangements for personal care workers and nurses in aged care.



Information request

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

2. Current employment arrangements in aged care

This section provides an overview of the size and characteristics of the aged care workforce, the use of agency workers, independent contractors and platform workers in aged care, and current regulations relating to indirect employment.

The aged care workforce: an overview

The aged care workforce is growing

The Department of Health's National Aged Care Workforce Census (the Workforce Census) provides the most recent data on the size and composition of the aged care workforce (box 6).

Box 6 – National Aged Care Workforce Census

The Department of Health undertakes a National Aged Care Workforce Census about every four years. The latest Workforce Census (undertaken in 2020) provides information on the size of the workforce, types of employment contract, full time/part time status and other variables. Data for 2020 were reported under three broad aged care programs: residential aged care, Commonwealth Home Support Programme and the Home Care Packages program.

Some aspects of the 2020 Workforce Census might affect interpretation of the data.

- The response rate was relatively low (less than 50 per cent), meaning that the 2020 Workforce Census was in practice 'effectively a survey' (DoH 2021a, p. 62). In contrast, the 2016 Workforce Census had a 76 per cent response rate for residential aged care providers and 42 per cent for home care providers (Mavromaras et al. 2017, p. 8). Census data were weighted to get representative estimates.
- Due to the COVID-19 pandemic, workers were not interviewed directly (unlike previous surveys) so:
 - employment numbers in 2020 were derived from aged care providers' responses. This will lead to overcounting if people work at more than one aged care provider. According to the 2016 Workforce

Box 6 – National Aged Care Workforce Census

Census about 5 per cent of residential and 7 per cent of home aged care workers had another job in aged care

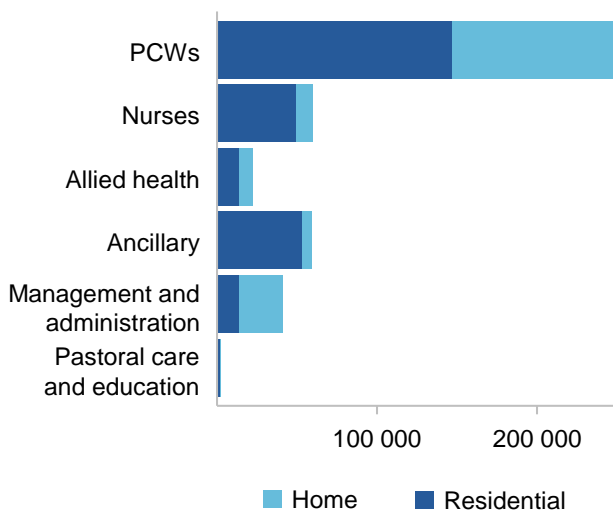
- the most recent data on aged care workers’ self-reported hours and wages are from the 2016 Workforce Census.

Despite these limitations, the sample size is still larger than for most surveys and the Commission is unaware of a more comprehensive data source for information on both the number of care workers in aged care and their employment characteristics. For example, aged care workers are included with other personal care workers (for example, disability care workers) in most Australian Bureau of Statistics (ABS) data sources.

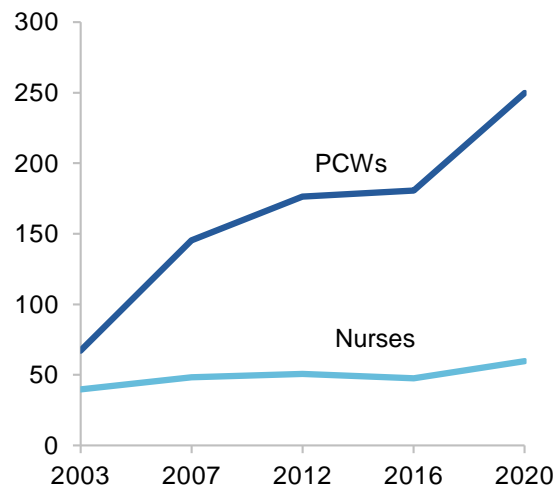
The total size of the aged care workforce was estimated to be 434 000 in 2020, with about three-quarters of these workers (332 000) in caring roles — comprising nurses, personal care workers and allied health workers.² Almost 250 000 workers are personal care workers (figure 2, panel a). There are also many volunteers that support residential aged care facilities (about 12 000 per fortnight in 2020) and home-based care. The number of volunteers in residential aged care fell substantially between 2016 and 2020, likely due to the impact of the COVID-19 pandemic.

Figure 2 – A snapshot of the aged care workforce

(a) Total aged care workforce, 2020^a



(b) Total nurses and personal care workers ('000s)^b



a. PCWs = personal care workers. Ancillary roles include cooks, cleaners and gardeners. **b.** The 2016 Census covered a broader range of home-based care programs than the 2020 Census.

Source: Commission estimates based on Department of Health (2021a); King et al., (2013); Mavromaras et al., (2017).

² These workers are typically referred to as ‘direct care’ workers in the aged care sector. To avoid confusion with ‘direct employment’ we will refer to them as caring roles in this study.

Aged care services are provided in residential aged care facilities and at home, with the level of care at home varying across programs, depending on the needs of users. About two-thirds of aged care workers are employed in residential care facilities with the remainder providing home-based care.

The aged care workforce has been steadily increasing, although there is variation in the rate of growth across different types of workers. For example, the number of personal care workers has increased by more than 70 per cent since 2007 (figure 2, panel b) while the number of nurses has grown more slowly. Demand for aged care workers is expected to continue to increase in the future as the population ages, the number of residents in aged care with high needs grows (CEDA 2021) and in response to the recommendations of the Royal Commission (section 1).

The majority of workers across all occupation groups (with the exception of management and administration) work in residential aged care (figure 2, panel a). Almost all ancillary workers were reported as working in residential care. Ancillary workers are predominantly cleaners, cooks and gardeners. The 2020 Census did not collect information from CHSP providers that only provided ancillary services, hence the number of staff in ancillary roles in CHSP is likely an underestimate (DoH 2021a, p. 4).

Most aged care workers are women, part time and have low wages

About 86 per cent of care workers (allied health, nurses and personal care workers) in residential care in 2020 were female (DoH 2021a, p. 15), with a similar proportion in home-based care.

Providers reported that more than 90 per cent of care workers were employed part time in 2020, with part time employment rates highest for personal care workers. While not reported in the 2020 Workforce Census, it is likely that some workers combine more than one part time job to increase their hours and income (DoH 2021a, p. 12). In 2016, 9 per cent of residential aged care workers and 16 per cent of home care workers reported holding multiple jobs (Mavromaras et al. 2017, pp. 28, 87). This is higher than the rate for the broader health and social assistance industry — 7.4 per cent, on average, in 2020-21 (ABS 2021a) — and health and social assistance has one of the highest rates of multiple job holding across the economy.

Despite multiple job holding, evidence suggests that there are still high levels of underemployment in aged care. About 30 per cent of residential aged care workers and 40 per cent of home care workers preferred to work more hours in 2016, the most recent year for which data are available (Mavromaras et al. 2017, pp. 27, 86). This is much higher than the underemployment rate reported by the ABS for the broader health and social assistance industry or for the economy as a whole (both were about 9 per cent in 2016) (ABS 2021b). The Committee for the Economic Development of Australia (CEDA 2021, p. 13) reported that high rates of underemployment 'represent a significant untapped supply of additional worker hours', arising partly due to inefficient rostering arrangements (CEDA 2021, p. 22).

Over time there has been an increase in the share of part time workers (up to 2016), followed by a swing towards casual employment (between 2016 and 2020). (Senate Select Committee on Job Security 2021b, p. 22) Most casual workers in the sector are personal care workers and casuals tend to be over-represented in home care relative to residential care (discussed below). The aged care sector pays relatively low wages, which can make it difficult to attract and retain workers (CEDA 2021, p. 8; Royal Commission into Aged Care Quality and Safety 2021a, p. 76). There is evidence that remuneration for aged care workers is less than for similarly-qualified workers in comparative sectors. For example, a Senate committee reported that registered and enrolled nurses were paid about \$100 less per week in aged care than in acute care (Senate Community Affairs References Committee 2017, p. 52).

Indirect employment in aged care

In undertaking this study, the Commission is interested in exploring data on the extent to which agency workers, independent contractors and platform workers are used in aged care and would welcome suggestions and access to a range of data sources.

For the purposes of this issues paper, several publicly-available data sources have been used to shed some light on the likely extent of these types of employment arrangements in aged care.

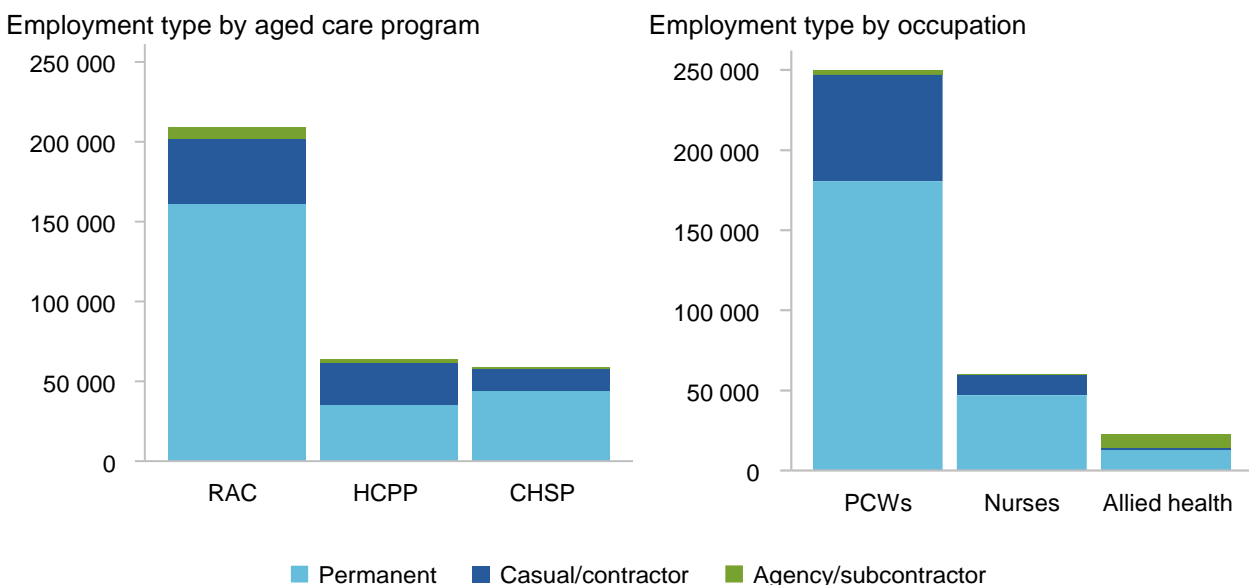
The proportion of agency workers and independent contractors appears low

The 2020 Workforce Census asked aged care providers about the breakdown of their workforce across three broad contract types: permanent; casual/contractor (on the payroll of the provider); and agency/subcontractor. The third category (agency/subcontractor) is likely to include independent contractors and platform workers, as well as workers employed by labour hire agencies.

The data suggest that the vast majority of care workers are either in permanent positions (240 000 or 72 per cent of care workers) or are casuals/contractors on the payroll of aged care providers (24 per cent) (figure 3). Only 3 per cent of the total aged care workforce were agency/subcontractor workers in 2020, with most in allied health occupations. In relation to nurses and personal care workers — the focus in this study — agency/subcontractor workers accounted for just 1 per cent of the workforce.

Figure 3 – Most staff are permanent

Care worker employment type, by aged care program and occupation, 2020^a



a. Care workers are all nurses, personal care workers and allied health workers. RAC = Residential Aged Care, HCPP = Home Care Packages Program, CHSP = Commonwealth Home Support Programme and PCWs = Personal care workers. Casual/contractor includes casual employees and contract workers who are on the payroll of an aged care provider, Agency/subcontractor includes labour hire agency workers and independent contractors who are not paid directly by the provider.

Source: Commission estimates based on Department of Health (2021a).

The 2016 Workforce Census estimated that the number of non-pay as you go (PAYG) care workers was 28 000 — 2.4 times the number of agency/subcontractor workers in 2020. That figure represented 10 per cent of the total care workforce in 2016. The large discrepancy between Workforce Census years has led some to raise concerns about the reliability of the latest Census data.

It seems doubtful that the actual number, and relative proportion, of aged care workers employed through agencies, labour hire or sub-contractors would have more than halved in four years. Particularly as, during 2020, COVID-19 reportedly led to an *increase* in the need for agency and labour hire staff to replace furloughed workers. (Senate Select Committee on Job Security 2021b, p. 26)

The response rate for the 2020 Workforce Census was comparatively low (box 6). It is possible that some of the discrepancy between years is accounted for by aged care providers that were more likely to use agency/subcontractor being less likely to respond to the questionnaire in 2020 than in 2016.

More broadly, the prevalence of agency/subcontractor workers could be underreported in the Workforce Census (in all years) if they are highly transient. The Workforce Censuses are conducted at points in time and if employees hired via an agency or platform are more likely to be filling in for short term roles, this could lead to their use being underreported compared to staff permanently on payroll.

Other sources also suggest that the use of agency workers and independent contractors in caring roles is low

The ABS provides data on the number of workers by industry and by employment type. Although the disaggregated industry data do not allow aged care workers to be identified in isolation, the available information suggests there are relatively few agency workers and independent contractors in aged care.

In residential care services — which includes residential aged care as well as disability, children’s and crisis accommodation — on average over the period 2015 and 2021 about 2 per cent of workers (3000 persons) were independent contractors (table 1). Over the same period, on average about 4 per cent of workers (9700 persons) reported finding their jobs through a labour hire agency, but less than 1 per cent were paid by an agency on an ongoing basis.

Table 1 – Agency workers and independent contractors are a small share of workers in residential care and social assistance industries

As a share of total employment

Industry	2015	2016	2017	2018	2019	2020	2021
Residential care services^a							
Independent contractors (%)	0.4	0.0	2.3	1.0	1.8	0.7	2.3
Found job through an agency (%)	-	5.0	-	3.0	-	3.5	-
Paid by an agency (%)	-	0.6	-	0.6	-	0.8	-
Other social assistance^b							
Independent contractors (%)	3.8	3.4	4.2	3.9	4.6	6.4	8.3
Found job through an agency (%)	-	4.6	-	4.3	-	5.1	-
Paid by an agency (%)	-	0.5	-	0.5	-	0.4	-

a. Includes aged care residential care services and other residential care services. **b.** Includes social support services such as disabilities assistance, aged care assistance, adult day care centre operation, marriage guidance and welfare counselling services. Data on agency workers are only collected in even-numbered years. Independent contractors and agency workers are not mutually-exclusive categories.

Source: ABS (*Characteristics of Employment, 2014 to 2021*, [TableBuilder], accessed 15 March 2022).

In other social assistance services — which includes home-based aged and disability services, as well as a range of other welfare and counselling services — independent contractors made up 8 per cent of the workforce (almost 34 000 persons) in 2021, more than double the rate of 2015. The use of agency workers in other social assistance services was relatively stable over the period.

The use of digital platform work is increasing

The use of platform work in aged care, and caring roles more broadly, has been growing (box 7). In a 2019 survey, it was estimated that about 7 per cent of the adult population had engaged in platform work in the past 12 months.³ About 7 per cent of platform workers listed caring work (including aged, disability, child and pet care) as the type of work performed on the main platform they use (McDonald et al. 2019, pp. 10, 17).

Box 7 – Digital platforms for care services

The implementation of the National Disability Insurance Scheme (NDIS) opened an individualised market for consumer care. Many new disability service providers emerged, including digital platforms. Demand for care platforms is primarily driven by individuals who receive funding from the NDIS and the Home Care Packages Program. Although many care platforms are NDIS-registered providers, to the Commission's knowledge, only one (Five Good Friends) is currently an approved aged care provider.

Digital platforms match consumers in need of care with workers. Many types of care services can be booked, including personal care, nursing and allied health support, meal preparation, transport, companionship and domestic assistance.

Consumers source workers by posting a job and selecting workers based on their profile, which typically outlines the worker's skills, rates and availability. The actual terms of a job (that is, time, services required and rates) are negotiated between the consumer and worker. Most platforms have scheduling and communication features on their portals and apps, and some encourage consumers to rate and review a worker's performance, which is then displayed on their profile.

Most platforms perform basic worker screening, requiring police clearance, identification and references. Depending on the platform and job, additional qualifications may be required. Some platforms provide insurance, typically public liability insurance. Most platform workers are engaged directly by consumers as independent contractors, and workers have no employment contract with the platform itself. However, at least one platform offering care services (Hireup) engages workers as casual employees of the platform (Hireup 2021).

Most digital platforms charge a fee to the consumer and worker. It is usually a percentage of the agreed hourly rate for the job. This is typically 5 per cent (in addition to the agreed rate) for the consumer and between 10 to 25 per cent (taken out of the agreed rate) for the worker. The estimated average earnings for care platform workers is \$21.60 per hour. Digital platforms typically generate and issue invoices on the worker's behalf following a job.

Source: Industrial Relations Victoria (2020); Macdonald (2021).

³ Survey respondents were asked if they had earned or attempted to earn money through digital platforms, including by engaging in work that is internet-based or performed at a specific location, or earning income from selling, renting out or licensing goods or other property (McDonald et al. 2019, p. 8).

Available data suggest that, in line with characteristics of the broader aged care workforce, women are more likely than men to provide caring services through digital platforms (Churchill and Craig 2019, p. 756). However, across all industries men are more likely than women to use digital platforms once other characteristics are taken into account (McDonald et al. 2019, p. 13), and the digital platform Mable (2019, p. 32) reported that workers engaged in caring tasks through their platform were disproportionately more likely to be men than the aged care workforce as a whole.

Platform workers typically do not work for many hours.

While a substantial minority of people in Australia are currently undertaking digital platform work, only a very small percentage are spending a large number of hours doing so. Almost half (47.2%) of current platform workers report spending less than 5 hours per week working or offering services through all digital platforms with which they engage, whereas only 5.4% of current platform workers report spending 26+ hours per week. (McDonald et al. 2019, p. 8)

This reflects that a significant motivation for engaging in platform work is to 'earn extra money', with 80 per cent of survey respondents indicating that platform work generated less than half of their total income (McDonald et al. 2019, p. 81).

According to McDonald et al. (2019, p. 43), the median wage for care workers employed via digital platforms (where care in this context includes baby sitting and pet services) was \$23.50 per hour. The wages for platform workers in caring roles was at the lower end of the distribution across all occupations (ranging between \$20 and \$45 across 12 different work classifications), as is the case for the carer workforce as a whole.

While the prevalence of platform work in aged care presently appears to be low, it could increase in the future — particularly in response to the growing demand for aged care, increasing funding for home care and its potential to provide more flexible care to cater for diverse needs at lower administrative cost.



Information request

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

- Is this accurately reported in available data sources? For example, is there a highly-transient workforce employed via digital platforms, agencies or as independent contractors that is not being captured in existing surveys?
- Are there other sources of data on employment arrangements in aged care that the Commission should consider using for this study?

The Commission is seeking information from **aged care providers** in both residential and home-based programs regarding the employment contracts of their carer workforce.

- To what extent do aged care providers use agency workers, independent contractors and platform workers for personal care and nursing roles?
- What types of tasks do independent contractors and platform workers in caring roles undertake? Are these different to the tasks undertaken by employees or labour hire agency workers?
- Is the use of agency workers, independent contractors and platform workers likely to increase in the future? If so, why?



Information request

The Commission is seeking information from **aged care workers** in both residential and home-based programs regarding their employment status.

- If you currently work as an agency employee, independent contractor, or platform worker, are you satisfied with your employment arrangements? Would you prefer a different employment arrangement?

Regulation of indirect employment in aged care

The use of agency workers, independent contractors and platform workers could provide various benefits for aged care providers, workers and recipients. These include opportunities for providers to fill unforeseen short-term staffing gaps; increased flexibility for workers to choose and schedule their working arrangements and place of work; and improved choice for consumers to find workers that best suit their unique needs.

Their use also presents some challenges. For example, independent contractors (including those engaged through platforms) do not have the same protections that are available to employees, although they may be able to negotiate higher remuneration in compensation.

In Australia, employee and employer relationships are governed by the *Fair Work Act 2009 (Cth)* (FWA) and the Fair Work Regulations 2009. The FWA maintains a clear division between employees and self-employed independent contractors. Employees are covered by the 11 minimum entitlements of the National Employment Standards whereas independent contractors are not (IRV 2020, p. 114). The FWA does however offer independent contractors protection from adverse action, coercion and abuse of freedom of association (FWO 2021a).

The *Aged Care Award 2010* covers employers, employees and on-hire employees working in the aged care industry. The award sets out detailed terms and conditions of employment that apply to aged care, such as the minimum hourly pay, allowances and hours of work. The award does not include any provisions relating to the use of independent contractors.

Independent contractors are not covered by the award (Macdonald 2020, p. 5). There is mixed opinion as to whether care workers providing services through digital platforms (and who are hired as independent contractors), are typically paid more, less or equivalent to the award wage (IRV 2020, p. 90).

Under the FWA, it is unlawful for an employer to 'recklessly' misrepresent an employment relationship or a proposed employment arrangement as an independent contracting arrangement (s. 357), a practice commonly referred to as 'sham contracting'. In its 2015 Inquiry into the Workplace Relations Framework, the Productivity Commission recommended that the Australian Government amend the FWA to make sham contracting unlawful where the employer could be reasonably expected to know otherwise, rather than just where the misrepresentation was 'reckless'. The same recommendation was also put forward by the Australian Government's Black Economy Taskforce (2017, p. 236), with the Government agreeing to increase penalties for sham contracting and consult on the possible changes to the Act (Australian Government 2018, p. 26). To date, there has been no amendment to the FWA.

Regulation of the use of some non-standard workers (including workers with fixed-term or temporary contracts, or those employed through labour hire agencies) is relatively common internationally (ILO 2016). Some countries have also sought to clarify the employment status of independent contractors procured or engaged through digital platforms (box 8).

Box 8 – Regulation of employment relationships for platform workers

Most countries are experiencing the impacts of digital platforms on traditional employer and employee relationships, with implications for how existing laws are interpreted. Rather than restricting the use of platform workers, some countries have sought to confirm their classification in respect of existing employment laws, with outcomes often arising from litigation.

Approaches generally fall along a spectrum ranging from classifying them as employees (based on the level of control the digital platform can exercise), creating an intermediate category to define their status, or a ruling confirming their classification as independent contractors (ILO 2021, pp. 8–9).

In the United Kingdom, Uber drivers are now classified as ‘workers’, a distinct category separate to employees and independent contractors, which provides some protections and minimum rates of pay like those provided to employees (Senate Select Committee on Job Security 2021a, p. 211).

The European Commission has published a draft proposal which, if ultimately approved by the European Union Parliament and adopted by member states, would seek to ensure that people working through digital labour platforms in the European Union are granted the legal employment status that corresponds to their actual work arrangements. The proposed directive outlines five criteria to confirm an employment relationship, and if two are met, a digital platform would be legally presumed to be the employer of its workers. If adopted, member states will have two years to transpose the directive into national law (European Commission 2021).

Some commentators (Stewart 2017, pp. 10–12) have suggested a range of options to account for the emergence of ‘gig workers’ and clarify their status, including through:

- enforcement of existing laws to confirm that this relationship does indeed constitute a form of employment according to existing statute and definitions
- clarifying or expanding definitions of ‘employment’ to capture the relationship between a digital intermediary and its workers
- creating a new category of ‘independent worker’ to define new rights and protections tied explicitly to the circumstances of gig workers
- creating rights for ‘workers’, not employees confirming that they are entitled to the protection of regulation by virtue of the productive work they perform
- reconceive what it means to be an ‘employer’, making it possible for a gig worker to have different employers for different purposes.

Who’s responsible for service quality and worker health and safety?

The *Aged Care Act 1997* (ACA) is the overarching legislation that outlines the obligations and responsibilities of government-funded aged care providers. Aged care providers must be approved by the Aged Care Quality and Safety Commission to provide services under home care, residential aged care and flexible care programs, and receive government funding.

Approved aged care providers and their workers are required to comply with the Aged Care Quality Standards (ACQS) which reflect the level of care and services the community expects from aged care providers (Australian Government 2021a). However, there can be a lack of clarity about who bears responsibility for the

quality of the service delivered by independent contractors and platform workers when they are engaged directly by the care recipient, rather than the approved provider.⁴ The Royal Commission outlined the view of the Department of Health that under current legislation, the approved aged care provider would be responsible for any services provided through an independent contractor or platform worker, noting that:

Although there is no contract between an approved provider and an independent contractor sourced through arrangements provided by businesses such as Mable’s [a digital platform providing care workers], Ms Amy Laffan, Assistant Secretary, Aged Care Reform and Compliance, Australian Department of Health, considered it was clear that section 96-4 would deem services provided by an independent contractor to be services provided on behalf of the approved provider in such situations. (Royal Commission into Aged Care Quality and Safety 2021c, p. 429)

Whilst there is an expectation that approved aged care providers are responsible for the oversight of the care delivered by independent contractors or platform workers engaged by the care recipient, the Department of Health acknowledged that this had not been tested in law (Royal Commission into Aged Care Quality and Safety 2020, p. 59). In its post-hearing submission, the Department of Health clarified its position that these obligations on approved home care providers extended to home care services provided on behalf of the approved provider under a subcontract or other arrangement but would support addressing the ambiguity that arises where services are provided through a digital labour platform (Commonwealth Government 2020, p. 7).

Work health and safety (WHS) is regulated by state and territory authorities. However, the Australian Government has set model WHS laws which jurisdictions can adopt in full or part (Safe Work Australia 2021). Most jurisdictions have implemented the model laws, except for Victoria and Western Australia, with some variations. Under the model laws, host organisations of independent contractors have responsibilities for the safety of the contractors.



Information request

What are the implications for aged care recipients of using agency workers, independent contractors, or platform workers to provide government-subsidised care? Who is responsible for the quality of care provided in these circumstances? Does the situation differ if the worker is engaged as an independent contractor rather than as an employee of an agency or a platform?

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

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

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

⁴ Under current funding arrangements for home care, an approved provider is required to manage the consumer’s funds and pays for services, even if the independent contractor or digital platform worker was engaged directly by the consumer.



3. Impacts of indirect employment in aged care

The Royal Commission heard from a range of stakeholders about the potential advantages and disadvantages for care recipients, workers and aged care providers of using agency workers, independent contractors and platform workers. For example, while agency and other surge staff were deployed during the COVID-19 pandemic in residential aged care facilities when regular staff were unable to attend, this accentuated some of the challenges of using indirectly employed staff, such as the lack of familiarity with the residents and their needs, and with the facility’s electronic clinical systems. Commissioner Briggs stated ‘in residential aged care, some 47% of people have concerns about staff, including understaffing, unanswered call bells, high rates of staff turnover, and agency staff not knowing the residents and their needs’ (Royal Commission into Aged Care Quality and Safety 2021b, p. 143).

However, some of the impacts canvassed in the Royal Commission were largely based on anecdotal evidence, rather than on actual data. This study will seek to collect and assess the evidence of a range of impacts of indirect employment on care recipients, workers, aged care providers and other areas (figure 4).

This section looks specifically at some of the potential impacts of indirect employment on the aged care sector, including on consumers, workers and aged care providers.

Figure 4 – Potential impacts of indirect employment in aged care

Care recipients	Workers	Aged care providers	Other impacts
			
<p>What is the impact on:</p> <ul style="list-style-type: none"> • quality and continuity of care? • accountability for providing high-quality care? • recipients’ risk of having to assume the responsibilities of being an employer? • cost of care? • choice of providers and services? • control over who provides care? 	<p>What is the impact on:</p> <ul style="list-style-type: none"> • job security, flexibility and autonomy? • wages and working conditions? • responsibility for leave, superannuation, tax, worker compensation? • employer incentives to invest in training and skills development? • potential for wage theft or sham contracting? • opportunities to earn extra income? 	<p>What is the impact on:</p> <ul style="list-style-type: none"> • provider control over how work is done? • competition from digital platforms for traditional providers? • flexibility? • costs of hiring, firing and wages? • ability to cover absences or short-term staffing needs? • ease of finding specialist skills (e.g. allied health)? 	<p>What is the impact on:</p> <ul style="list-style-type: none"> • incentives to develop innovative models of service provision? • competition in the aged care sector? • implementation of reform of the aged care sector? • costs and value for taxpayers? • ease and effectiveness of regulation?

Quality of care

The Royal Commission argued that a key benefit of directly engaging workers as employees would be to improve the continuity and quality of care provided to aged care recipients (Royal Commission into Aged Care Quality and Safety 2021a, pp. 42, 131, 2021c, pp. 430–432).

The factors associated with high quality aged care are varied and complex (box 9). Establishing a direct link between quality and the employment model used is therefore challenging, and there appears to be scant direct evidence on the links between the use of agency staff, independent contractors or platform workers and the quality of care.

Many submissions to the Royal Commission argued that employees of aged care providers may deliver better quality care for clients, because, in part, of the characteristics associated with being an employee that may not be present in contracting or platform models. Reasons why the use of more traditional employee relationships in aged care could be correlated with higher quality care include:

- the ability for aged care providers to monitor and control their employee's engagement with clients, both on a day-to-day basis, and longer term through training, development and organisational strategies (Counsel Assisting 2020; Dementia Australia 2019)
- better wages, employment conditions and career pathways, which can assist in attracting and retaining higher quality workers (Dementia Australia 2019; HammondCare 2019; HSU 2019; UWU 2019)
- more secure and stable employment, which can provide continuity of care for clients (Dementia Australia 2019; HSU 2019; Regis Healthcare 2019; UnitingCare Australia 2019)
- establishing clearer lines of accountability for quality (both organisationally and from a regulatory perspective) and a clearer legal duty of care between the employee and client, which may lead to higher quality outcomes (Counsel Assisting 2020).

Box 9 – What is quality in aged care and how is it assessed?

Research into aged care quality and submissions to the Royal Commission have suggested a range of characteristics that may be associated with quality outcomes, including:

- continuity of care and time spent with each client
- engagement with client's physical, mental, emotional and social needs
- mitigation of falls, injuries and hospitalisations.

The Royal Commission noted that high quality care is most likely achieved with a highly skilled, well rewarded and valued workforce. It recommended (recommendation 22) that the expanded Australian Commission on Safety and Quality in Health and Aged Care be tasked with reviewing the current standards and setting quality indicators for all aged care services. Recommendation 22 was accepted in principle by the Australian Government.

Currently, all government-funded aged care providers must comply with eight Aged Care Quality Standards that reflect the level of care and services the community expects from aged care providers. The Standards cover: consumer dignity and choice; ongoing assessment and planning; personal care and clinical care; services and supports for daily living; organisations service environment; feedback and complaints; human resources; and organisational governance.

Box 9 – What is quality in aged care and how is it assessed?

Residential aged care providers are assessed against these Standards through monitoring visits, reviews, and feedback from those receiving care and services. From July 2020, information on homes' performance against the Standards has been published online.

From July 2021, residential aged care providers have also been required to report quarterly under the National Aged Care Mandatory Quality Indicator Program on the proportion of residents who have been experienced or been subject to: pressure injuries; physical restraint; unplanned weight loss; falls and major injury; and medication management, including polypharmacy and anti-psychotics.

Source: Aged Care Quality and Safety Commission (2021); Australian Government (2021a); Department of Health (2021b, p. 19); Royal Commission into Aged Care Quality and Safety (2021a).

The Senate Select Committee on Job Security heard that workforce characteristics — including total staffing, staff mix, casualisation and clinical governance — are among several factors that determine the quality of care in aged care facilities. International evidence suggests that the degree of casualisation of the workforce is linked with a higher rate of adverse events and poor quality of care (Senate Select Committee on Job Security 2021b, p. 57).

Despite this, anecdotal evidence provided to the Royal Commission showed that employee relationships are no guarantee of high quality care. Most aged care workers are permanent, part time employees (section 2), and examples of lower-quality care identified by the Royal Commission do not appear to be disproportionately linked to a particular employment type.

Mable (a digital platform specialising in home-based aged and disability care) argued 'what is most important to quality outcomes is not whether the worker is employed by a provider, but the worker's values, motivations, training and their understanding of person-centred care' (Royal Commission into Aged Care Quality and Safety 2021c, p. 429). Indeed, it could be argued that ratings systems used by digital platforms improve transparency about the quality of care provided by platform workers and could provide incentives for better quality care.

Commissioner Pagone argued that the proposed new duty to ensure high quality and safe care (recommendation 14; box 2) would apply to all providers, 'whether they directly employ care workers or not'. Nonetheless, both Commissioners acknowledged that it would be easier for providers to comply with the duty 'if they are legally able to direct the way in which care work is performed through an employment relationship' (Royal Commission into Aged Care Quality and Safety 2021c, p. 432).

Consumer choice and innovation

Since 2015, the notion of 'consumer-directed choice' has underpinned home care in Australia. Funding for home care services is directed to consumers rather than providers, with the aim of giving consumers more choice over what services are needed and who provides services. There is strong support among older Australians for consumer choice: a survey by National Seniors found that 95 per cent ranked consumer choice in home care as extremely or very important, although far fewer were confident that they could choose a provider to best meet their needs in practice (McCallum and Rees 2017, p. 14).

Proponents of emerging digital platforms in the aged care sector argue that they can improve consumer choice and control, and provide better value-for-money for consumers than traditional aged care providers. For example, in their submission to the Royal Commission, digital platform Mable argued:

It is difficult for traditional models to efficiently and effectively respond to this dispersed diversity of need and choice among geographically dispersed consumers, without putting upward pressure on prices for services and/or downward pressure on wages. Technology enabled, community-based models like Mable can solve this challenge of diverse and dispersed needs, improving outcomes for both workers and consumers. (Mable 2019, p. 2)

Most digital platforms engage workers as independent contractors. Restrictions on the use of independent contractors would likely limit the operations of digital platforms in the aged care sector, potentially lessening competition. However, a review of on-demand work in Victoria found that there was nothing inherent in the operation of digital platforms that precluded the use of employee — rather than independent contracting — arrangements (IRV 2020, p. 143). Indeed, at least one digital platform operating in the care sector (Hireup) engages workers as casual employees rather than independent contractors.

A lack of digital literacy among older people has also been found to be an impediment to the use of digital platforms in the sector (McCallum and Rees 2017, p. 23) and could justify intervention to protect consumers. More broadly, the Royal Commission, for example, argued that the aged care sector is a ‘quasi-’ or poorly functioning market, which could warrant regulation.

In a true functioning market, quality is usually assumed to be protected through consumer choice, with consumers choosing not to use poor services. In aged care, consumer choice can be limited because some care services are rationed and in short supply and older people often access aged care in unplanned stressful circumstances, where decisions need to be made quickly. It is also not easy for many people to change services. As a result, in quasi-markets, effective quality regulation and monitoring becomes central to maintaining quality services. (Royal Commission into Aged Care Quality and Safety 2021b, p. 201)

Skills and labour shortages

The aged care sector already faces significant skills and labour shortages (section 1). Agency staff, independent contractors and platform workers can be used to address staffing gaps (for example, due to absence or staff turnover) to ensure minimum standards, staffing ratios and quality of care are met on a short-term basis, or for longer-term recruitment of workers into the sector. While they currently comprise a small proportion of the aged care workforce, there is potential for future growth.

Many allied health workers in aged care are employed as independent contractors (section 2), suggesting that independent contracting arrangements are used to source specialised skills. Agency staff, digital platforms and independent contractors appear to be used by traditional aged care providers to source workers to cover short-term absences and skills shortages. For example, during the COVID-19 pandemic, the Australian Government engaged Mable to fill staffing gaps under ‘surge workforce’ arrangements (Colbeck 2020).

Digital platforms could also play a role in attracting new workers to aged care: Mable claimed that 47 per cent of their aged care workers surveyed in 2019 were new to the sector, and that their workforce was younger and more likely to be male than the aged care workforce in general (Mable 2020, p. 15).

But an expansion of on-demand and short-term work could worsen existing skills shortages because workers in this environment may have fewer opportunities for training and development. Employers have poorer incentives to invest in training or career development for independent contractors relative to employees, with

the cost of training more likely to fall on the former. The Senate Select Committee on Job Security found that many platform workers in aged care:

... have access to some training but are often expected to complete it in their own time and at their own cost. Workers who do not complete the training may be penalised by losing shifts or being placed on reduced hours. (Senate Select Committee on Job Security 2021a, p. 71)

In proposing recommendation 87, Commissioner Briggs considered that 'direct employment' was the best model to professionalise the aged care workforce.

Wages, employment conditions and worker preferences

Many submissions to the Royal Commission pointed to a range of adverse effects of indirect work including independent contracting and platform work. For example, the Health Services Union said:

Insecure work is giving rise to an increase in work environments marked by harmful practices, including job and wage insecurity, chronic workload pressures (inadequate staffing levels), lack of supervision and co-worker support, real or perceived lack of respect and recognition from management and society, poorly defined work roles and working outside scope, unsafe workforce planning practices (rostering) and fatigue. (HSU 2019, p. 22)

The Senate Select Committee on Job Security also heard evidence of a range of negative impacts on platform workers arising from job insecurity, including poor health and financial instability (Senate Select Committee on Job Security 2021a, pp. 86–88).

Independent contractors are not subject to industrial awards and must negotiate remuneration with their host organisation. They are not entitled to paid leave, superannuation or workers compensation, and these costs — as well as other risks associated with self-employment such as insecure work and income — need to be factored into their fees.

Workers on digital platforms who are independent contractors typically negotiate fees and hours of work with clients directly.⁵ The platform charges a service fee that is taken out of the payment made from client to worker. Some platforms have in-built minimum rates designed to ensure workers cannot be underpaid, although unions argue that these are not high enough to ensure workers are adequately remunerated (IRV 2020, pp. 89–90).

The question of whether independent contractors and platform workers in aged care are paid more or less than employees covered by an award remains disputed (IRV 2020, pp. 89–90; Senate Select Committee on Job Security 2021a, pp. 68–69). However, there is potential for independent contractors and platform workers to agree to rates that are lower than the award wage. The Senate Select Committee on Job Security heard that the precarious and decentralised nature of platform work made it harder for workers to bargain — either individually or collectively — for better pay, conditions of work health and safety (Senate Select Committee on Job Security 2021a, pp. 81–82). Even where workers are paid at or above award rates, effective hourly wages may be eroded by unpaid work, particularly in home-based care:

... many aged care workers are not paid for their time spent waiting between sporadic bookings, travelling between clients or completing administrative work, which is usually

⁵ The Royal Commission heard that at least one digital platform offering caring services (Hireup) engaged workers as casual employees rather than independent contractors. In this situation, workers would be entitled to receive wages and conditions as spelt out in the award.

expected to be completed after they have clocked off following a full shift of direct care work. (Carers NSW 2019, p. 4)

It is clear that some workers value the flexibility of independent contracting work. A recent survey of platform workers found that 60–70 per cent valued being able to choose their hours of work, tasks and ways of working. Workers also valued being able to use their skills and qualifications (McDonald et al. 2019, p. 52).

Independent contracting and platform work can also provide opportunities for aged care workers to top-up their income from more traditional jobs, which is important in a sector with chronic underemployment (section 2). A survey of platform workers found that earning extra income was a significant motivator for platform workers, but that for the majority, platform work was secondary income: 80 per cent said that it provided less than half their annual income. The average weekly hours of care platform workers in the survey was 8.6 hours (although this was on their main platform; some workers are registered with multiple platforms) (McDonald et al. 2019).

Low barriers to entry and flexible work arrangements could make platform work attractive to workers who are unable to access traditional job opportunities, including workers with caring responsibilities, disabilities, language barriers or those lacking work experience. About 37 per cent of platform workers listed ‘finding work despite health issues or disability’ as an important or very important motivation for engaging in digital platform work (McDonald et al. 2019, p. 32).

Flexibility and cost effectiveness for care recipients and aged care providers

Proponents of agency staff, independent contractors and platform workers tout the benefits of increased flexibility and responsiveness of the workforce. For example, Mable offers customers the ability to find support in as little as four hours.

Great for occasions where your regular support person has had to cancel due to illness or a family emergency. With Mable Last Minute you'll find independent support people who are available at short notice ... Whether it's a spur of the moment social engagement, a last-minute medical appointment or an event that simply slipped your mind. With Mable Last Minute you can post a job to find someone available and ready to support in as little as 4 hours. (Mable 2021)

In the home care sector, administrative costs can be high. The Aged Care Financing Authority reported that administrative costs comprised 32 per cent of home care providers' expenses in 2019-20, a similar proportion to the preceding three years (Aged Care Financing Authority 2021, p. 48). Digital platforms purport to be able to reduce administrative costs compared with traditional aged care providers, enabling a higher proportion of available government funding to be spent on hours of care (IRV 2020, p. 91; Mable 2019).

There could also be flexibility and cost advantages for traditional aged care providers from engaging agency workers, independent contractors or platform workers. The Australian Industry Group pointed to a range of potential benefits for firms (particularly small businesses) of the rise of the gig economy in particular, including flexibility to scale and up and down to meet business demands, quicker, lower-cost recruitment, access to a wider talent pool and increased productivity from being able to target specific skills for specific tasks (Ai Group 2016).



Information request

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

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

Are the impacts different in residential care settings compared to home care settings?

What role can technology play in providing support in aged care? How have digital platforms changed the way aged care workers are sourced? What other forms of technology are used to engage aged care workers? How can technology be used to improve the efficiency and quality of care?

4. Preferencing direct employment in aged care

As outlined in section 1, recommendation 87 suggested that approved aged care providers should preference direct employment. Implementing this recommendation (alongside recommendation 14) would have a range of impacts on consumers, workers and aged care providers.

The Commission is keen to hear from stakeholders about the merits of effectively restricting the use of indirect employment in aged care relative to other approaches that could ameliorate any negative impacts of indirect employment.

Regulating the use of indirect employment in aged care is also likely to have flow-on effects to other sectors. The Royal Commission heard evidence that some aged care providers, labour hire agencies, digital platforms and workers work across multiple care sectors, particularly in disability care (AHPA 2019; Australian College of Care Workers 2019).

Currently, there appear to be few restrictions on the use of independent contractors or platform workers under the NDIS or in other care sectors such as childcare. Independent contracting appears to be more prevalent in other caring sectors than in aged care. In 2019, 17 per cent of NDIS providers identified as sole traders (NDS 2019, p. 7). In 2016 almost 15 per cent of workers in the childcare industry identified as being self-employed (Commission estimates from the 2016 ABS *Census of Population and Housing*). Most family day care workers in the childcare sector are independent contractors rather than employees (Delaney, Ng and Venugopal 2018).



Information request

What are the potential impacts of preferencing the use of direct employment of personal carers and nurses in aged care? How could providers give effect to such a requirement in practice?

If the use of agency workers, independent contractors and platform workers in aged care was restricted, could they be readily and effectively replaced by workers engaged as employees of aged care providers? Would such a restriction affect the cost of care? If so, how (for example, requiring providers to employ a larger permanent workforce or increasing administration costs etc), and by how much?

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

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

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

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

References

ABS (Australian Bureau of Statistics) 2021a, *Labour Account Australia, June 2021*, 8 September, Cat. no. 6150.0.55.003, Canberra.

— (Australian Bureau of Statistics) 2021b, *Labour Force, Australia, Detailed, October 2021*, 18 November, Cat. no. 6291.0.55.001, Canberra.

Aged Care Financing Authority 2021, *Ninth Report on the Funding and Financing of the Aged Care Industry*, Australian Government, Canberra.

Aged Care Quality and Safety Commission 2021, *National Aged Care Mandatory Quality Indicator Program*, <https://www.agedcarequality.gov.au/providers/national-aged-care-mandatory-quality-indicator-program> (accessed 4 December 2021).

Aged Care Workforce Strategy Taskforce 2018, *A Matter of Care Australia's Aged Care Workforce Strategy*, Australian Government, Canberra.

AHPA (Allied Health Professions Australia) 2019, *Supplementary Submission - Workforce Issues: Submission to the Royal Commission into Aged Care Quality and Safety*.

Ai Group (Australian Industry Group) 2016, *The Emergence of the Gig Economy*, Thought Leader Paper: Education & Training Policy Team, Sydney.

Australian College of Care Workers 2019, *Policy Submission to the Royal Commission into Aged Care Quality and Safety*, December, AWF.650.00054.0001.

Australian Government 2018, *Tackling the black economy: Government response to the Black Economy Taskforce Final Report*.

— 2021a, *Aged Care Quality Standards*, <https://www.myagedcare.gov.au/aged-care-quality-standards> (accessed 4 December 2021).

— 2021b, *Employees*, business.gov.au (accessed 15 November 2021).

Black Economy Taskforce 2017, *Black Economy Taskforce - Final Report*, October, The Treasury.

Carers NSW 2019, *Submission to the Royal Commission into Aged Care Quality and Safety: Workforce Issues*, AWF.650.00065.0001.

CEDA (Committee for Economic Development of Australia) 2021, *Duty of Care: Meeting the Aged Care Workforce Challenge*, Melbourne.

Churchill, B. and Craig, L. 2019, 'Gender in the gig economy: Men and women using digital platforms to secure work in Australia', *Journal of Sociology*, vol. 5, no. 44, pp. 741–761.

Colbeck, R. (Minister for S.A. and A.C.S., Minister for Sport) 2020, *Contingency measures to ensure continuity of aged care during COVID-19*, <https://www.health.gov.au/ministers/senator-the-hon-richard-colbeck/media/contingency-measures-to-ensure-continuity-of-aged-care-during-covid-19> (accessed 6 December 2021).

Commonwealth Government 2020, *Submissions to the Royal Commission into Aged Care Quality and Safety*, 11 September, RCD.0012.0072.0002.

- Counsel Assisting 2020, *Counsel Assisting's Final Submissions*, 22 October, RCD.9999.0541.0001.
- Delaney, A., Ng, Y.-F. and Venugopal, V. 2018, 'Comparing Australian garment and childcare homeworkers' experience of regulation and representation', SAGE Publications Sage UK: London, England, *The Economic and Labour Relations Review*, vol. 29, no. 3, pp. 346–364.
- Dementia Australia 2019, *Workforce Submission to the Royal Commission into Aged Care Quality and Safety*, December, AWF.650.00047.0001.
- DoH (Department of Health) 2021a, *2020 Aged Care Workforce Census Report*, 2 September, Australian Government, Canberra.
- (Department of Health) 2021b, *Australian Government Response to the Final Report of the Royal Commission into Aged Care Quality and Safety*, Australian Government, Canberra.
- (Department of Health) 2021c, *Home Care Packages Program Data Report 4th Quarter 2020-21*, October, 1 April - 30 June 2021.
- Eagar, K., Westera, A., Snoek, M., Kobel, C., Loggie, C. and Gordon, R. 2019, *How Australian Residential Aged Care Staffing Levels Compare with International and National Benchmarks*, Centre for Health Service Development, Australian Health Services Research Institute, University of Wollongong.
- European Commission 2021, *Proposal for a Directive of the European Parliament and of the Council on Improving Working Conditions in Platform Work*.
- FWO (Fair Work Ombudsman) 2021a, *Independent Contractors*, <https://www.fairwork.gov.au/find-help-for/independent-contractors> (accessed 8 December 2021).
- (Fair Work Ombudsman) 2021b, *Types of employees*, <https://www.fairwork.gov.au/starting-employment/types-of-employees> (accessed 15 November 2021).
- Gilbert, L. and Lilly, A. 2021, *Independent review: COVID-19 outbreaks in Australian residential aged care facilities*, 30 April.
- HammondCare 2019, *Workforce Submission*, November, AWF.650.00019.0001.
- Hireup 2021, *Can I work with Hireup and other companies?*, <https://help.hireup.com.au/hc/en-us/articles/360033164572-Can-I-work-with-Hireup-and-other-companies-> (accessed 13 December 2021).
- HSU (Health Services Union) 2019, *Workforce Submission to the Royal Commission into Aged Care Quality and Safety*, AWF.650.00053.0002.
- ILO (International Labour Organization) 2016, *Non-Standard Employment Around the World*, Geneva.
- (International Labour Organization) 2021, *World Employment and Social Outlook: The role of digital labour platforms in transforming the world of work*, ILO Flagship Report, Geneva.
- IRV (Industrial Relations Victoria) 2020, *Report of the Inquiry into the Victorian On-Demand Workforce*, Victorian Government, Melbourne.
- King, D., Mavromaras, K., Wei, Z., He, B., Healy, J., Macaitis, K., Moskos, M. and Smith, L. 2013, *The Aged Care Workforce, 2012: final report*, Department of Health and Ageing, Canberra.
- Mable 2019, *Workforce Submission to The Aged Care Royal Commission*, RCD.9999.0453.0074.
- 2020, *Workforce Submission to The Aged Care Royal Commission (updated)*, RCD.9999.0453.0075.
- 2021, *Last Minute Jobs – Find Local Support People*, <https://mable.com.au/last-minute-jobs/> (accessed 3 December 2021).
- Macdonald, F. 2020, *Response to the Royal Commission into Aged Care Quality and Safety: Home Care Hearing Draft Propositions*, RCD.9999.0468.0001.
- 2021, 'The Emerging Market for Individualised Support and Care', in Macdonald, F. (ed), *Individualising Risk: Paid Care Work in the New Gig Economy*, Springer, Singapore, pp. 111–133.
- Mavromaras, K., Knight, G., Isherwood, L., Crettenden, A., Flavel, J., Karmel, T., Moskos, M., Smith, L., Walton, H. and Wei, Z. 2017, *The Aged Care Workforce, 2016*, March, Department of Health.
- McCallum, J. and Rees, K. 2017, *Consumer Directed Care in Australia: Early Stage Analysis and Future Directions*, National Seniors, Brisbane.
- McDonald, P., Williams, P., Stewart, A., Mayes, R. and Oliver, D. 2019, *Digital Platform Work in Australia: Prevalence, Nature and Impact*, November, Department of Premier and Cabinet (Victoria).
- NDS (National Disability Services) 2019, *State of the Disability Sector Report 2019*, Melbourne.
- PC (Productivity Commission) 2011, *Caring for Older Australians*, Report no. 53, Canberra.
- Regis Healthcare 2019, *Submission to the Royal Commission into Aged Care Quality and Safety*, December, AWF.650.00034.0001.
- Royal Commission into Aged Care Quality and Safety 2020, *Transcript of Proceedings, Sydney, Day 90*, 2 September.
- 2021a, *Final Report: Care, Dignity and Respect, Volume 1: Summary and Recommendations*, Commonwealth of Australia, Canberra.
- 2021b, *Final Report: Care, Dignity and Respect, Volume 2: The Current System*, Commonwealth of Australia, Canberra.
- 2021c, *Final Report: Care, Dignity and Respect, Volume 3A: The New System*, Commonwealth of Australia, Canberra.
- Safe Work Australia 2021, *Model WHS Laws*, <https://www.safeworkaustralia.gov.au/law-and-regulation/model-whs-laws> (accessed 8 December 2021).
- Schwellnus, C., Geva, A., Pak, M. and Veiel, R. 2019, *Schwellnus, Cyrille, Assaf Geva, Mathilde Pak, and Rafael Veiel. 'Gig economy platforms: Boon or Bane?' (2019)*, OECD Economics Department Working Paper No. 1550, OECD, Paris.
- SCRGSP (Steering Committee for the Review of Government Service Provision) 2020, *Report on Government Services 2020 - Part E Health*, Productivity Commission, Canberra.
- Senate Community Affairs References Committee 2017, *Future of Australia's aged care sector workforce*, Parliament of Australia, Canberra.
- Senate Select Committee on Job Security 2021a, *First Interim Report: On-Demand Platform Work in Australia*, First interim report, Parliament of Australia, Canberra.
- 2021b, *Second interim report: insecurity in publicly-funded jobs*, October, Commonwealth of Australia, Canberra.
- Stewart, A. 2017, 'Regulating Work in the Gig Economy', pp. 10–12.

Sutton, N., Ma, N., Sug Yang, J., Rawlings-Way, O., Brown, D., McAllister, G., Parker, D. and Lewis, R. 2021, 'Considering the new minimum staffing standards for Australian residential aged care', *Australian Health Review*.

Treasury 2021, *Securing Australia's Recovery: Guaranteeing the Essential Services*, Australian Government, Canberra.

UnitingCare Australia 2019, *Submission to the Royal Commission into Aged Care Quality and Safety: Workforce Issues*, December, AWF.650.00093.0001.

UWU (United Workers Union) 2019, *Submission to the Royal Commission into Aged Care Quality and Safety*, December, AWF.650.00074.0001.

A. Terms of reference

I, the Hon Josh Frydenberg MP, Treasurer, pursuant to Parts 2 and 4 of the *Productivity Commission Act 1998*, hereby request that the Productivity Commission (the Commission) undertake a Study to examine:

- 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.

Background

The Royal Commission into Aged Care Quality and Safety (the Royal Commission) was established on 8 October 2018 and the *Final Report: Care, Dignity and Respect* was released on 1 March 2021.

The Australian aged care system provides subsidised care and support to older people. It is a large and complex system that includes a range of programs and policies. In response to the Royal Commission there will be significant reform to the aged care system. These reforms will be underpinned by a new Aged Care Act, which is intended to commence from 1 July 2023, subject to parliamentary processes.

The Royal Commission noted a trend in recent years has been the increased use of 'independent contractors' in aged care.

The Royal Commission's Final Report noted numerous submissions over the course of the Royal Commission inquiry had made the claim that quality care was more likely to be delivered by direct employees than by contractors. However, some stakeholders consider these subcontracting models deliver better consumer choice and flexibility, which is also desired by the sector.

Scope of the inquiry

The Commission will undertake a study to examine 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.

When examining these issues, the Commission should also consider recommendation 87, as well as submissions and evidence provided to, the Royal Commission.

In undertaking this Study, the Commission should:

- examine the extent of the aged care personal care and nursing workforce who are not directly employed by aged care providers
- taking into account the wide scope of duties within the aged care sector, ranging from low level care such as grocery shopping and gardening through to high level personal and medical care, examine how different employment arrangements might impact on:
 - quality of care
 - consumer choice
 - job creation and availability of workforce
 - employment conditions for the workforce
 - worker preferences
 - flexible and innovative models of care
 - accountability of aged care providers for care delivered on their behalf

- costs of providing care
- viability of aged care providers
- explore any preconditions in personal care and nursing workforce supply that would be required prior to any potential policies and procedures to preference direct employment
- consider whether new policies and procedures would impact other care sectors, such as disability and childcare.

The Commission should support analysis with modelling using quantitative and qualitative data.

Process

The Commission should undertake broad consultation with consumers, the aged care workforce, unions and aged care providers.

The Commission could release a draft report in June 2022, and provide a final report to the Australian Government in September 2022.

The Hon Josh Frydenberg MP

Treasurer

[Received 23 February 2022]

B. How to make a submission

How to prepare a submission

Written submissions may range from a short comment outlining your views on a particular topic to a much more substantial document covering a range of issues. Where possible, you should provide evidence, such as relevant data and documentation, to support your views.

Publishing submissions

- Each submission, except for any attachment supplied in confidence, will be published on the Commission's website shortly after receipt, and will remain there indefinitely as a public document.
- The Commission reserves the right to not publish material on its website that is offensive, potentially defamatory, or clearly out of scope for the inquiry or study in question.

Copyright

- Copyright in submissions sent to the Commission resides with the author(s), not with the Commission.
- Do not send us material for which you are not the copyright owner – such as pictures, photos and newspaper articles – you should just reference or link to this material in your submission.

In confidence material

- This is a public review and all submissions should be provided as public documents that can be placed on the Commission's website for others to read and comment on. However, information which is of a confidential nature or which is submitted in confidence can be treated as such by the Commission, provided the cause for such treatment is shown.
- The Commission may also request a non-confidential summary of the confidential material it is given, or the reasons why a summary cannot be provided.
- Material supplied in confidence should be clearly marked 'IN CONFIDENCE' and be in a separate attachment to non-confidential material.
- You are encouraged to contact the Commission for further information and advice before submitting such material.

Privacy

- For privacy reasons, all **personal** details (e.g. home and email address, signatures and phone numbers) will be removed before they are published on the website.
- You may wish to remain anonymous or use a pseudonym. Please note that, if you choose to remain anonymous or use a pseudonym, the Commission may place less weight on your submission.

Technical tips

- The Commission prefers to receive submissions as a Microsoft Word (.docx) files. PDF files are acceptable if produced from a Word document or similar text based software. You may wish to search the

Internet on how to make your documents more accessible or for the more technical, follow advice from Web Content Accessibility Guidelines (WCAG) 2.0: <https://www.w3.org/TR/WCAG20/>

- Do not send password protected files.
- Track changes, editing marks, hidden text and internal links should be removed from submissions.
- To minimise linking problems, type the full web address (for example, <http://www.referred-website.com/folder/file-name.html>).

How to lodge a submission

Submissions should be lodged using the online form on the Commission's website. Submissions lodged by post should be accompanied by a submission cover sheet, available from the Commission's website.

Online*	www.pc.gov.au/inquiries/current/aged-care-employment
Post*	Aged care employment study Productivity Commission GPO Box 1428 Canberra City ACT 2601, Australia
Phone	Please contact the Administrative Officer on 02 6240 3248

* If you do not receive notification of receipt of your submission to the Commission, please contact the Administrative Officer.

Due date for submissions

Please send submissions to the Commission by Friday 29 April 2022.