

ROYAL COMMISSION INTO AGED CARE QUALITY AND SAFETY**SUBMISSION OF THE AUSTRALIAN NURSING AND MIDWIFERY FEDERATION
IN RESPONSE TO COUNSEL ASSISTING'S SUBMISSIONS ON SYDNEY HEARING 2:
THE RESPONSE TO COVID-19 IN AGED CARE****INTRODUCTION**

1. This submission to the Royal Commission into Aged Care Quality and Safety (the Commission) by the Australian Nursing and Midwifery Federation (ANMF) is made following the Commission's invitation for submissions in response to Counsel Assisting's submissions (RCD.0012.0063.0001) on Sydney Hearing 2 – the response to COVID-19 in aged care which was held between 10 and 13 August 2020 (the Hearing).
2. Overall, the ANMF was very pleased to read Counsel Assisting's submissions and is in very strong agreement with all of the sentiments and recommendations made therein. We take this opportunity to further highlight a number of salient points and confirm our particular support for several recommendations.
3. Counsel Assisting's submissions address several matters:
 - a) How well prepared the aged care sector was for outbreaks of COVID-19.
 - b) How to balance protecting residents in aged care facilities from COVID-19 with maintaining quality of life including access to visitors.
 - c) Hospitalisation of residents who test positive to COVID-19.
 - d) Staffing of aged care facilities and training of care workers especially in relation to infection control and personal protective equipment use.
4. The ANMF agrees with Counsel Assisting's three key conclusions that arose from the Hearing:
 - a) COVID-19 has presented and continues to present, the Australian aged care sector with an unprecedented challenge;
 - b) everyone involved both in aged care homes and in government has worked, and is working, very diligently to respond to that challenge, and;
 - c) none of the problems that been associated with the response of the aged care sector to COVID-19 was unforeseeable.
5. Further, the ANMF agrees wholeheartedly with Counsel Assisting's perspective that centrally, the Australian aged care sector was not well prepared to face the challenge of COVID-19 – neither before the tragic outbreaks at Dorothy Henderson Lodge and Newmarch House in New South Wales nor after these prior to the widespread and devastating outbreaks in Victoria's aged care sector.
6. Counsel Assisting remarks that the Federal Government was firmly on notice regarding the significant risk posed to nursing home residents based on clear reports from Europe and

North America that nursing home residents were dying in large numbers as a result of COVID-19.

7. As Counsel Assisting states, Australia's aged care sector remains unprepared for COVID-19 outbreaks. The ANMF submits that this is due directly to the systemic, widespread problems that plagued the sector before and during the ongoing outbreak and largely arise from the significant understaffing and poor skills mixes that are prevalent across many nursing homes around Australia.
8. This fact is the first that is recognised by Counsel Assisting in paragraph 16(a):

*"First, the limitations of the aged care workforce had been well documented in reports such the 2018 report of the Aged Care Workforce Taskforce. The sector is understaffed and lacks nurses with clinical skills;"*¹

9. Counsel Assisting goes on to highlight that the Federal Government should not have been in any doubt regarding the state of Australia's aged care sector well prior to the COVID-19 pandemic following the Royal Commission's 2019 Interim Report that signposted – not for the first time – a range of problems including but not limited to workforce challenges, governance problems, and challenges associated with the interface between the aged care and health sectors.
10. One of the primary foci of the Hearing was the balance between managing risks posed by a future pandemic or infectious disease outbreak and maintaining the overall health and wellbeing of aged care recipients including their mental health and quality of life. The ANMF submits that having in place a sufficiently sized, well-supported, trained, and resourced workforce with the appropriate skills mix and clinical governance structure prior to the event of a pandemic or infectious disease outbreak is the keystone to any effective collection of other necessary measures to both manage the potential risks of such events and to ensure the safety and quality of care to ensure older peoples' health, wellbeing, and quality of life at all other times. Later in the submission, Counsel assisting highlights that the experience in New South Wales showed that providers could have planned to lose almost their entire workforce to COVID-19 infection and/or self-isolation measures due to exposure rather than the incorrect and evidently baseless figure of 20-30 percent. The ANMF submits that if the aged care workforce had been sufficiently comprised of a suitable skills mix of staff including infection protection and control experts prior to the pandemic, the huge number of staff and residents exposed to COVID-19 in nursing homes could have been significantly lower than what it has been in reality – 80-100 percent.
11. The ANMF was pleased to see that at paragraph 16(d), Counsel Assisting highlighted that esteemed experts including Professor Joseph Ibrahim and we, the ANMF, had raised concerns and offered solutions to the Federal Government and the aged care sector at large.

The precautionary principle in public health – its application in aged care

12. The ANMF draws the Commission's attention to paragraph 21 where Counsel Assisting highlights Professor Nicola Spurrier's remarks regarding the precautionary principle in public health as the need for decision makers to err on the side of caution despite facing a body of evidence that is not yet settled or complete. We strongly agree that the principle, enshrined

¹ Royal Commission into Aged Care Quality and Safety Counsel Assisting's Submissions on Sydney Hearing 2 – the response to COVID-19 in aged care (RCD.0012.0063.0001). Paragraph 16(a).

in public health statutes of States and Territories, must be included as a matter of priority in the *Aged Care Act*. In a pandemic where a novel disease is spreading rapidly and killing so many, it is natural and unremarkable that new evidence is emerging and continuously evolving. The adoption and implementation of actions based on the precautionary principle enables promising and proven interventions and approaches to be put in place in preparation and in response to the likely challenges. One area where the adoption and application of the precautionary principle could save lives is through mandating the implementation of best practice fit testing for P2/N95 respirators that should be used;²

- *in settings where suspected or confirmed coronavirus (COVID-19) patients are cohorted and where frequent, prolonged episodes of care are provided (i.e. providing care for a patient on a dedicated COVID-19 ward).*
- *in uncontrolled settings where suspected or confirmed coronavirus (COVID-19) patients are cohorted, to avoid the need for frequent changes of N95/P2 respirators.*
- *where suspected or confirmed coronavirus (COVID-19) patients are cohorted and there is risk of unplanned aerosol generating procedures (AGPs) and/or aerosol generating behaviours.*
- *when undertaking an AGP on suspected or confirmed coronavirus (COVID-19) patient.*

13. Application of this principle in practice, such as through mandating fit testing for respirator use to ensure that all health and aged care workers that need to use respirators can and do have access to the type, make, model, and size of respirator that fits them correctly is in line with the standard of reasonable practicality, raised by Counsel Assisting in paragraph 24, as ensuring that everything reasonably practical must be done to safeguard workers. Noting that fit testing must also be implemented with best practice fit checking,³ the ANMF strongly recommends that in aged care, as in hospitals there should be:

- Mandated use of approved P2/N95 masks for all tasks that workers perform dealing with patients suspected or confirmed to have COVID-19
- Mandated training and fit testing in the use of masks provided to staff.

Did the Commonwealth Government have a COVID-19 response plan specifically for the aged care sector?

14. The ANMF strongly agrees with Counsel Assisting's points raised in relation to the question of whether the Commonwealth Government had a COVID-19 response plan specifically for the aged care sector in that any such response plan would have needed to identify at least the following failures and shortcomings associated with the aged care sector which needed to be addressed to equip it to respond to COVID-19:

- a) gaps in workforce numbers and training, including the likelihood that more staff would be necessary to deliver care during the pandemic;
- b) access to PPE and training in its proper use;
- c) a lack of clinical skills, especially in infection control;
- d) deficits flowing from the absence of skills related to infection control in the case of personal care workers that are taken for granted in the health sector;

² Victorian Department of Health and Human Services. 2020. Personal Protective Equipment (PPE) - coronavirus (COVID-19), <https://www.dhhs.vic.gov.au/personal-protective-equipment-ppe-covid-19> (accessed 1 September 2020)

³ Peters M. 2020. COVID-19 Fit testing and fit checking for respirators. Australian Nursing and Midwifery Federation (Federal Office). Updated 27 August 2020. Available online: <http://anmf.org.au/pages/anmf-covid-19-evidence-briefs>

- e) the challenges of achieving high level infection control in a homelike setting;
 - f) deficiencies in governance and managerial ability;
 - g) the significant operational differences between aged care facilities and hospitals;
 - h) the challenges associated with the interface with the State health sector.
15. We highlight that none of these shortcomings are unique or new with regard to Australia's aged care sector and have been documented, as Counsel Assisting and the Commission are aware, in the Commission's Interim Report, and many previous reviews and inquiries into the aged care sector, as pertaining to deficiencies across much of the system prior to COVID-19.
16. Here, we highlight the tireless efforts of those who work within the sector, particularly those who have and are continuing to put themselves at risk of COVID-19 as a result of working in the aged care sector. The shortcomings of the sector, of the Government's preparedness, are not those of the workers, the staff who do their best not because of but despite a sector that is largely unsupportive of their efforts.
17. We agree with Counsel Assisting's summation that no, the Commonwealth Government did not have a COVID-19 response plan specifically for the aged care sector, and that while the CDNA guidelines are a helpful document, this was not an aged care preparedness plan and there remains no reason why our governments should be scrambling only now to be putting such arrangements in place.
18. The ANMF also agrees with Counsel Assisting's judgement that the Aged Care Quality and Safety Commission's planning for the COVID-19 outbreak in Australia was insufficient and do not represent the comprehensive plan a regulator facing the COVID-19 pandemic needed.

Were the lessons of Dorothy Henderson Lodge and Newmarch House learned?

19. The ANMF strongly agrees with Counsel Assisting's judgement that the lessons of Dorothy Henderson Lodge and Newmarch House were neither sufficiently learned nor acted upon by the Commonwealth. This is evidenced by what then happened in Victoria shortly after. As Counsel Assisting states at [68]:

"What did the Commonwealth do to ensure that the lessons of the first two aged care outbreaks in Sydney in March and April 2020 were conveyed to the aged care sector? Not enough.

20. On this, the ANMF highlights the point made at paragraphs 72 and 73, that in light of what was known about COVID-19, the risk in aged care, and the woeful preparedness of the sector as outlined above; why hasn't the Commonwealth put in place arrangements for easy access by providers to trained and accredited infection prevention and control experts? And as Counsel Assisting states; to be blunt, what could be more important to the nation than to deploy these experts right now to help our floundering aged care sector? It is not enough to tell providers that if they request help, they will be provided with a 'Clinical First Responder'.

The Response to the Increase in Community Transmission of COVID-19 in Melbourne since June 2020

21. The ANMF points to Counsel Assisting's comment at [79]: "the AHPPC recommended on 13 July 2020 to the Commonwealth Minister of Health that masks be made compulsory for

aged care workers. That was four weeks after the steady increase in Victorian community transmissions which commenced on 16 June 2020.” Here, we strongly agree with Counsel Assisting’s assessment that the issue of whether masks should have been required in aged care earlier than was consequently recommended is not simply “a matter of hindsight”. We concur that evidence for the protective properties of surgical/medical masks in the context of working with potential and confirmed cases of COVID-19 was already strong and that the lack of guidance from the AHPPC to aged care providers stands as a considerable and likely deadly missed opportunity. We agree that the masks ‘order’ should have been made sooner and strongly support the call put forward by Professor Ibrahim, echoed by Counsel Assisting, that a dedicated aged care specific national coordinating body to advise government is urgently required.

A national aged care plan

22. The ANMF strongly and emphatically supports the implementation of a national aged care plan for COVID-19. Such a plan would have immediate application and future translation into ongoing impacts regarding infection prevention and control in aged care. The national plan that Counsel Assisting appears to have in mind should contain within it, clear planning in response to a multitude of issues that the ANMF and others have already brought before the commission. As stated at paragraph 93, a national COVID-19 aged care plan needs to consider the workforce challenges the aged care sector faces and anticipate the effect of the lack of clinical skills in the sector. It must consider what additional training in infection control and PPE use is needed, how it can best be provided and whether it should be made compulsory. It must recognise the need for high level infection control expertise early in any outbreak response and make appropriate arrangements with organisations such as the Clinical Excellence Commission in NSW. As Counsel Assisting highlights, a thorough national plan needs to respond to the challenges associated with the casualised aged care workforce and in particular the multiplicity of jobs performed by care staff, particularly the essential personal care workers. Further, the plan must anticipate that in the face of the risk of infection of the workforce, the difficulties associated with delivering care under COVID-19 conditions will require more care staff and that these care staff must be protected, well resourced, and supported. It must anticipate that the costs of operating aged care services for an extended period are likely to be significant and place great strain on the financial position of all providers and that currently these providers have no legislation in place to ensure that the funds they are provided with are actually being used to respond to COVID-19 or support the delivery of care.

Maintaining quality of life

23. The ANMF is in strong agreement with Counsel Assisting’s statement at paragraph 97 that just as important as preparing for and responding to outbreaks when they occur, is maintaining the quality of life of those people living in residential aged care throughout the pandemic. Counsel Assisting’s statement goes on to say; “[A]ll residents are legally entitled to quality care at all times.” Here, the ANMF wishes to draw the Commission’s attention back to their Interim Report and assess whether this legal entitlement was being upheld by the sector and providers even before the pandemic. Counsel Assisting notes that many residents have to date not experienced an outbreak in their homes firsthand but have instead been subject to significant restrictions for much of this year. The ANMF highlights again, that even before the pandemic, the Commission recognised the widespread neglect, dehumanisation, and lack of dignity and respect shown by the sector and providers to the older people under their care.

24. Counsel Assisting rightly conveys the severe and ongoing impact that restrictions imposed on residential aged care have had on Australia's older people in nursing homes. These cannot be denied. The ANMF submits that even when residential aged care can go 'back to normal' at whatever unknown point in the future when the pandemic is no longer a threat, the 'normal' we had across much of Australia's aged care sector was still characterised by one word; neglect. COVID-19, as devastating as it has been on a global, national, and acutely personal level for so many, presents an opportunity to turn the sector around. To not 'go back to normal' but to learn not only from the lessons revealed most starkly by the pandemic and the sector's response, but to act upon the undeniable evidence we had prior to the pandemic that we already had a sector in crisis.

Workforce

25. The ANMF agrees strongly with Counsel Assisting's statement that the COVID-19 pandemic has highlighted and exacerbated the existing problems that the Commission has heard beset the aged care workforce long before 2020. As Counsel Assisting notes, improvements to working conditions in aged care including reducing the reliance on insecure work, increasing remuneration, and providing sufficient hours at one workplace would improve both infection prevention and control efforts, continuity of care, and enhance workforce attraction and retention in the sector. We are pleased to see that Counsel Assisting intends to draw upon the wealth of evidence now before the Commission including recent evidence pertaining to workforce challenges and what can be done to address them in their future submissions.
26. The ANMF notes that at paragraph 196, Counsel Assisting cites evidence that came before the Commission at Sydney Hearing 2 on August 12. Here, Counsel Assisting highlights an account from a frontline aged care worker regarding only being permitted to use one glove rather than two to provide care to residents. We submit that this piece of evidence appears to have been incorrectly attributed to Ms Asmar who appeared at the same hearing as Ms Butler who related this story to the Commission at line 46, P-8620.⁴ We do note however, that Ms Asmar did refer to gloves and lack of sufficient PPE supplies at other points during the hearing and referred to a colleague's account of being told that they were only permitted one mask per shift (line 21-22, P8621).
27. To clarify the source of the evidence regarding a staff member only being allowed to use one glove, the original report was provided by a participant of the ANMF's National COVID-19 in Aged Care Survey:⁵

"All PPE is locked in managers office. Staff have been instructed to use only one glove. We are not allowed to wear a mask at work. We only have plastic sleeveless aprons. Manager says carers have to bring an empty box of gloves to have one replaced and are being questioned making them too afraid to ask. Staff have been buying their own and using plastic bags on their hands. Last week I asked about the residents who were quarantined and was told I (and care staff) were not allowed to wear PPE despite department guidelines saying so. Staff told not to come to work

⁴ Transcript (12 August 2020) at P-8620

⁵ Australian Nursing and Midwifery Federation (ANMF) – Federal Office. National COVID-19 in Aged Care Survey [Internet]. Australian Nursing and Midwifery Federation (ANMF) – Federal Office. June 2020. Available online: http://www.anmf.org.au/documents/reports/ANMFAgedCareCOVID-19Survey2020_FinalReport.pdf

unwell but one nurse was told to come after her husband had a fever and sore throat and maintenance man had a fever on a weekend and was told to come to work Monday morning. No contactless thermometers and staff taking residents temps daily reusing disposable thermometer probe covers.” (p. 22)

Conclusion

28. In summary, the ANMF confirms its support for and agreement with Counsel Assisting’s submissions on COVID-19. At the time of writing, there have tragically been 460 deaths in Australia attributed to COVID-19 in Australian nursing homes with 429 occurring in Victoria. This is 240 more deaths since Counsel Assisting made their submission. At this time there are still 861 active cases of COVID-19 in nursing homes. All of these are in Victoria.⁶
29. Health and aged care staff continue to work tirelessly to care for these people and other nursing home residents in extremely challenging situations. Residents, families, and loved ones continue to suffer as the pandemic continues. We agree with Counsel Assisting that the sector has been hindered in its response by a lack of coordinated planning by all levels of government. We submit that this lack of coordinated planning, regulation, support, and oversight and the ongoing abrogation of responsibility began much earlier than the pandemic and that the neglectful state of Australia’s aged care system and successive governments’ unwillingness to act upon the wealth of unequivocal evidence for decades has resulted in the ongoing disaster still unfolding in the sector. The Royal Commission has before it the task of handing up powerful recommendations to the government to finally take action and to hold the providers accountable for the safety and wellbeing of those in their care and for those that work for them, not only in the context of the current pandemic and future infectious disease outbreaks, but in the context of an aged care sector that cannot risk “going back to normal.”

⁶ Australian Government Department of Health. COVID-19 cases in aged care services – residential care. 2020. Last updated 2 September. Available at: <https://www.health.gov.au/resources/covid-19-cases-in-aged-care-services-residential-care>