ROYAL COMMISSION INTO AGED CARE QUALITY AND SAFETY

SUBMISSION OF THE AUSTRALIAN NURSING AND MIDWIFERY FEDERATION ON

CONSULTATION PAPER 1: AGED CARE PROGRAM REDESGIN: SERVICES FOR THE FUTURE

INTRODUCTION

1. This submission is provided by the Australian Nursing and Midwifery Federation (ANMF) in response to the Royal Commission's invitation for written submissions on Consultation Paper 1: Aged Care Program Redesign: Services for the Future (the Consultation Paper).[1]

2. The Consultation Paper provides an outline of the Royal Commission's current thinking about Australia's future aged care system with a focus on how programs may be redesigned and how different elements of such programs may effectively operate together. The primary focus of the Consultation Paper is upon; how older people experience the aged care system, financing, and regulation.

3. While the Consultation paper rightly points out that many of the challenges identified in past reviews on Australia's aged care system remain relevant, in light of the evidence described in the Royal Commission's Interim Report: Neglect,[2] it was surprising to note that the Consultation Paper begins by suggesting that the current aged care system:

> '[M]ay be seen as providing a continuum of care as a person's needs increase...'[3] (pp. 2)

4. The 'shocking tale of neglect' described by the Royal Commission paints a picture that describes anything but a 'continuum of care'.[4] (pp.1) Indeed, the Royal Commission has:

> '[F]ound that the aged care system fails to meet the needs of our older, often very vulnerable citizens. It does not deliver uniformly safe and quality care for older people. It is unkind and uncaring towards them. In too many instances, it simply neglects them.'[5] (pp.1)

5. The Royal Commission has described 'a system that is failing' where aged care providers and staff that are succeeding in the provision of safe, effective, and appropriate care are only doing so 'despite the aged care system in which they operate rather than because of it.'[6] (pp.9)

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[1] Royal Commission into Aged Care Quality and Safety. 2019. Aged Care Program Redesign: Services for the Future: Consultation Paper 1 [Internet]. Commonwealth of Australia, Canberra. Available online: https://agedcare.royalcommission.gov.au/publications/Pages/default.aspx

[2] Royal Commission into Aged Care Quality and Safety. 2019. Interim Report: Neglect [Internet]. Commonwealth of Australia, Canberra. Available online: https://agedcare.royalcommission.gov.au/publications/Pages/interim-report.aspx

[3] IBID. [1] (Page 2)

[4] IBID. [2] (Page 1)

[5] IBID. (Page 1)

[6] IBID. (Page 9)

6. Regarding the current state of Australia's aged care system, the ANMF particularly endorses three observations of the Royal Commission as described in the Consultation Paper; namely that it is:

   - Not effectively ensuring quality and safety;
   - Struggles to attract and retain sufficient numbers of skilled, knowledgeable, and competent staff; and
   - Recent reforms have placed too much faith in market forces and consumer choice as the primary driver of improvements of the system.[7]

7. In response to these observations, the ANMF agrees with the Royal Commission's assertion that there is a need:

   > '[F]or a fundamental overhaul of the design, objective, regulation, and funding of aged care in Australia'.[8] (pp. 3)

8. The ANMF commends the *Principles* proposed by the Royal Commission to underpin system design,[9] and generally agrees with the identified elements required for *Fundamental Change*.[10]

9. The ANMF agrees with the Consultation Paper's assertion that people from all backgrounds should be able to enter the aged care system and receive care that is provided in accordance with their diverse individual needs and preferences.

10. The Consultation Paper's emphasis on the need for greater focus on the provision of restorative care that endeavours to reenable and enhance the health and wellbeing of people in aged care is also welcomed and necessary. Flexible support services available in the community should extend to people residing in facilities, and likewise, the types of care available to people in RACFs that are able to be delivered in homes, should where possible, be provided there too.

11. Additionally, the ANMF agrees that flexibility is required to ensure that people can access effective respite services as needed. Further, the Consultation paper valuably highlights the need for greater integration and interface with the healthcare and disability care systems. In order to achieve these goals, there will be a need to focus upon how the aged care workforce can themselves be supported and enabled to safely and effectively deliver care across each one of these contexts in a way that is both person-centred and evidence-based.

12. The Consultation Paper explains the need to move away from highly institutionalised forms of residential aged care. Residential aged care facilities (RACFs) are certainly not hospitals and should ensure that people residing there are provided with flexible care that is attentive and responsive to their individual preferences and care needs and desire to retain independence and personal identity. However, as the Royal Commission has seen, the profile of many people within RACFs requires intensive and acute health care services that must be provided by qualified and skilled health care professionals. This care is partly dependent upon effective in-

[7] IBID. [1] (Pages 1-2)
[8] IBID. (Page 3)
[9] IBID. [1] (Page 4)
[10] IBID. [1] (Page 5)

reach and integration with primary care, allied health, mental health, and acute care services, but in the most immediate sense, is reliant on a well-trained, qualified direct care workforce made up of nursing staff, carers, allied health professionals, and others.

13. Many people do wish to remain within their own homes as they age, however for many individuals and families, this is unfeasible due to the nature and intensity of the care that they require. Residential aged care will continue to be a necessary part of Australia's aged care sector, especially for those who are simply unable to be cared for safely or effectively at home. Greater integration and communication between aged care, health care, community care, and disability care are required as well as the potential development of sub-acute aged care facilities.

14. Residential aged care can and should be able to provide a level of care and support for people that offers a sense of safety, security, and confidence, rather than fear and anxiety. Providing individualised, person-centred care is a big part of this, and this in itself is dependent on having the right number of the right kind of staff to provide that care, irrespective of setting.

Consumer-directed care and person-centred care

15. The Consultation Paper rightfully highlights that currently, Australia's aged care system does not adequately ensure that individuals are supported to make informed decisions regarding their own care. This includes people living in residential aged care facilities (RACFs), home-based care in the community, or who are temporarily receiving restorative or respite care within an RACF.

16. Consumer-directed care prioritises the involvement of individuals and/or nominated loved ones in decision-making related to the nature of care they wish to (or do not wish to) receive and the way that this care is provided. Peoples' preferences for care (or decisions to decline care) can potentially increase the risk of harm, adverse events, or even death. It is vital that individuals and their loved ones understand any risks involved in their decisions about their care and it is the responsibility of healthcare professionals to ensure that this understanding is achieved. Available options must be clearly communicated along with the potential consequences of different choices and preferences.[11] Enrolled nurses (ENs) and registered nurses (RNs) are bound by a Code of Conduct and Standards of Practice that define their obligations and responsibilities in relation to communication and person-centred care.[12]

17. The conflict between considerations of 'dignity of risk' and 'duty of care' is relevant to discussions regarding consumer-directed care within the aged care sector. Balancing dignity of risk with duty of care is a frequent challenge in aged care, especially when individuals are unable to readily make their preferences for care known or when staff are not supported to or adequately trained to engage in person-centred care. It is vital that individuals and/or their nominated advocate/s (such as a family member or loved one) are informed, consulted, and

[11] Woolford MH, de Lacy-Vawdon C, Bugeja L, Weller C, Ibrahim JE. 2020. Applying dignity of risk principles to improve quality of life for vulnerable persons [Internet]. *Int J Geriatr Psychiatry*.35(1):122-130. Available online: https://doi.org/10.1002/gps.5228

[12] Nursing and Midwifery Board of Australia (NMBA). 2019. Professional Standards [Internet]. Nursing and Midwifery Board of Australia. Available online: https://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Professional-standards.aspx

supported to make choices about the care they wish to (or do not wish to) receive. Due to their training, code of conduct, and standards of practice, nurses are optimally placed to engage in person-centred care and to assist individuals and their loved ones to be involved in decision-making regarding care.

18. Consumer-directed care and person-centred care should also be thought about with regard to the Australian Commission on Safety and Quality in Health Care's (ACSQHC) 'Partnering with Consumers' Standard' which covers all health and aged care services.[13] This Standard aims to:

- Create health service organisations where there are mutually beneficial outcomes by having consumers as partners in planning, design, delivery, measurement, and evaluation of systems and services.
- Enable people within these services, to the extent they choose, partner in their own care.

19. While consumer-directed care is vital across all health and aged care settings, the program design canvassed in the Consultation Paper is ill-suited to the needs and characteristics of many recipients of aged care services, especially RACF residents and very vulnerable people without nominated advocates who are not able to effectively participate in decision-making regarding care. The evidence before the Royal Commission as to the characteristics of residents suggests that the very notion of reliance upon 'consumer-directed care' has significant limitations in the context of RACFs and aged care more broadly. As noted in the Royal Commission's Interim Report:

> '[M]any older people are not in a position to meaningfully negotiate prices, services or care standards with aged care providers. The notion that most care is 'consumer centred' is just not the true. Despite appearances, despite rhetoric, there is little choice with aged care. It is a myth that aged care is an effective consumer-driven market.'[14] (pp. 9-10)

20. The current limitations of consumer-directed care in aged care are particularly evident in the cases of disadvantaged and particularly vulnerable groups of people who are often over-represented in the aged care sector and who may not have a nominated advocate that can make decisions or act upon their behalf. Effective and appropriate engagement with consumer-directed care is particularly challenging for people with advanced dementia, people affected by severe traumatic brain injury, people from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander people, and/or people who are homeless.

21. Despite assertions that nursing opposes consumer-directed care and consumer-centric practice,[15] the ANMF does not oppose or dispute the importance of the provision of consumer-directed care and has advocated strongly for the need of holistic person-centred

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[13] Australian Commission on Safety and Quality in Health Care (ACSQHC). Partnering with Consumers Standard [Internet]. ACSQHC. Available online: https://www.safetyandquality.gov.au/standards/nsqhs-standards/partnering-consumers-standard

[14] IBID. [2]. (Page 9-10)

[15] Yates Transcript (P-89:20-26)

care.[16] However, for many people within the aged care system, a reliance on consumer-directed care is problematic and overlooks considerable barriers to implementation.[17]

Person-centred, holistic nursing care

22. The ANMF suggests that the Consultation Paper appears to articulate a perspective that problematically separates the role of nurses as providers of higher level 'clinical tasks' from 'personal care'.[18] This misconception of nursing work, the role of nurses in aged care, and the nursing profession more broadly, has been addressed at length in previous submissions.[19] Nurses provide both personal care and health care, often in an integrated fashion where important tasks like skin integrity, wound, swallowing, and mental wellbeing assessments can be carried out simultaneously with activities characterised as personal care such as bathing, dressing, toileting, feeding, and even simply spending time with and talking to residents.

23. The characterisation of nursing staff as only being required to undertake some higher-level clinical care duties and the supervision of care workers misrepresents and diminishes the diverse, essential, and holistic nature of nursing care and risks further relegating nurses to a marginal role within aged care.[20] This characterisation is largely a result of the role and duty allocation decisions made by providers driven by funding/profit considerations, not by resident need or the requirements of quality and safe care. As explained earlier, and at length in other evidence before the Royal Commission, nurses are already under-represented in aged care; eroding their roles and scope of practice risks yet poorer attraction and retention of this critical workforce.

24. Mr Mamarelis clearly explained the pivotal role that nurses have in the provision of holistic, person-centred care in RACFs:

> 'Given the close personal nature and the close working relationship that the registered nurse has, I think they're pivotal to providing that care and enhancing that relationship-based approach. There are insights that the registered nurse gains through their relationship that are so beneficial. I think the challenge comes – and when you talk to registered nurses, they've told me first hand, we just want to be able to do what we were trained to do and provide care, but they're so caught up in compliance and paperwork and that's one of the barriers to doing that. So my view is the registered nurses are absolutely pivotal to supporting this approach that we're taking.'[21] (pp.2438)

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[16] ANM.0012.0001.0001 (Page 3-6, Paras 15-23)

[17] Gill L, Bradley SL, Cameron ID, Ratcliffe J. 2018. How do clients in Australia experience Consumer Directed Care? [Internet]. *BMC Geriatrics.*18(148). Available online: https://doi.org/10.1186/s12877-018-0838-8

[18] IBID. [1] (Page 7)

[19] ANM.0015.0001.0001 ANMF Workforce Submissions [Page 4–7, Paras 9-27].

[20] Yates Transcript (P-89: 19 and 28-40)

[21] Mamarelis Transcript (P-2438 21-29)

Entitlement-based individualised funding

25. In the Consultation Paper, the reference to the proposed 'move to individual funding for care matched to need within the care system' under *Fundamental Change* is not sufficiently developed to allow for a detailed response.[22] The Consultation Paper does nonetheless refer to the need for the basis of the funding assessment to be 'to assign an entitlement to efficient cost of care'.[23] That reference has particular significance in the context of Australian aged care policy development, particularly the Australian Government's Productivity Commission Report 'Caring for Older Australians'.[24]

26. The Royal Commission's focus on aged care entitlement reflects the Productivity Commission's approach to individualised entitlements as follows:

> "...[T]he value of the entitlement could be expressed as being a particular level of entitlement with a set price point, together with any supplements. The value of the care entitlement would be paid for through a care contribution and a subsidy."[25] (pp. 167)

27. At Recommendation 9.4, the Productivity Commission's report recommended the establishment of a system that would:

- Provide aged care services to individuals 'on an entitlement basis';
- Individuals being given the option to choose providers; and
- The 'entitlement' would include the care objectives, the services, the total value of the entitlement, the period of the entitlement and the statement of the individual's co-contribution obligations.[26] (pp. 173)

28. The Commission's Consultation Paper adopts the Productivity Commission's general approach by suggesting that:

- Individual funding for care allowing people to build their own bundle of supports and care in the location of their choice; and
- A funding assessment for care services that assigns 'an entitlement to the official cost of care'.[27] (pp. 13)

29. The Consultation Paper's proposal of the individualised conferral of aged care 'entitlements' raises the issue of significant difficulties regarding the provision of safe, quality care in settings within which the delivery of care must necessarily be organised on a different basis (i.e. within RACFs). Setting staffing levels within an RACF on an individual basis makes no sense and would be unfeasible in settings where multiple people with different and changing care needs and preferences reside. While an individual entitlement can very readily be applied in the context

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[22] IBID.
[23] IBID. [1] (Page 15)
[24] Australian Government Productivity Commission. 2011. Caring for Older Australians Report No. 53, Final Inquiry Report. Overview and Volumes 1 and 2 [Internet]. Commonwealth of Australia. Canberra. Available online: https://www.pc.gov.au/inquiries/completed/aged-care/report
[25] IBID. (Page 167)
[26] IBID. (pp. 173)
[27] IBID [1] (Page 13)

of home-based care delivery, the model has major shortcoming in residential aged care settings, including small-scale settings.

30. Despite the concerns identified by the Royal Commission that too much faith has been placed in consumer choice in respect of recent reforms, the Royal Commission has adopted the Productivity Commission's model and proposal of 'aged care entitlement' with a focus on consumer choice. It is noted that this 'entitlement' approach was adopted by the Productivity Commission and preferred by it to a voucher system or cash out option for a consumer-directed approach in aged care.[28]

31. The proposed assessment for entitlement arrangements, if retained, should be confined in the case of RACFs to an assessment of whether or not residential care is required or not. This is because:

- People requiring residential care commonly have complex, chronic, and changing health statuses. Their assessment needs are complex and evolving, and will need to be the subject of detailed assessment and care planning within the facility;
- There is a danger of 'cookie cutter' care planning at the assessment stage which is ill-suited to the care needs and preferences of individuals;
- Registered nurses in RACFs are professionally required to undertake assessments of a person's individual care needs and preferences and develop care plans independently of an 'entitlement assessment', and;
- People assessed at the facility level with care needs and preferences other than or beyond those assessed for the purpose of a 'care entitlement' will be likely to miss out on required or preferred care.

32. The ANMF highlights that even within a home-based context, if the care entitlement and associated funding is individualised, there is a potential for staffing to also be individualised. This is a considerable risk to the provision of safe, quality care, and the suitability of the employment model. This has been seen to play out in the context of home care within the National Disability Insurance Scheme (NDIS).[29] For example, an aged care entitlement of one hour of nursing care daily may well translate to and be structured as a one hour call for a nurse (with no minimum period of engagement, no travel time, no consecutive appointment etc.). People engaged on an individual contract basis, rather than as employees are vulnerable to exploitation and lack employment security. The benefits of connection to other employees, including mentoring, ongoing professional development and job security are lost in the 'gig' economy style of employment that is associated with individualised funding for care recipients. This in turn impacts quality of care.

33. It is vital here, to see that the employment consequences of adopting a care funding and care entitlement model have significant consequences for working conditions and thus the ability of the sector to attract and retain skilled, qualified staff. The provision of seamless, individualised person-centred care is contingent on having a suitably sized and qualified

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[28] IBID. [24]. (Report Volume 2: Page 3)

[29] Hancock N, Smith-Merry, J. 2020. It's hard for people with severe mental illness to get in the NDIS – and the problems don't stop there [Internet]. The Conversation. 21 January 2020. Available online: http://theconversation.com/its-hard-for-people-with-severe-mental-illness-to-get-in-the-ndis-and-the-problems-dont-stop-there-130198

workforce of the right kinds of people – implementing an entitlement and funding model that does not support the workforce will not enable this.

Opposition to Aged Care Assessment Team privatisation

34. Further to these issues raised in regard to entitlement assessment, the ANMF finds concern in the Government's apparent proposed amalgamation and privatisation of the Regional Assessment Service (RAS) and Aged Care Assessment Teams (ACAT) through a national tendered process. Privatisation will lead to increasing the gap in service delivery, increased costs to aged recipients, and further fragmentation of the service.

35. While the ANMF agrees with increasing the number of service providers, this should be achieved through the public health care system. As the Royal Commission has heard, these concerns are also shared by Australian and New Zealand Society for Geriatric Medicine (ANZSGM) President Dr John Maddison:

> 'These changes will have a significant detrimental impact on the care of the most vulnerable older Australians and their access to high quality expert care by limiting any meaningful involvement of geriatricians along with specialist nursing and allied health services in this process.'[30]

36. The ANMF is aware that the Royal Commission has already responded to public concerns that the Royal Commission has supported the privatisation of ACAT,[31] and urges the Royal Commission to consider the very real negative outcomes likely to be caused by privatisation of ACAT via a national tender process.

37. Where an aged care provider may be awarded a contract to provide the assessment service, conflicts of interest arise where the assessor is potentially also the provider of care (i.e. an RACF operator). Incentives will also exist to cut costs and increase profit, either through the elevation of cost of the service, or through employment of less qualified assessment staff. This draws into dispute the guarantee that a privatised model of delivery would ensure qualified and multi-disciplinary assessment teams. Current proposed methods of implementation also fail to outline an appropriate transition to the amalgamated model.

38. It is of major concern that this proposed privatisation of the service, which has not been recommended by the Royal Commission, is being pursued. Especially at this time, the likely interruption to the current delivery of assessment service would have a severely negative impact, particularly to the most vulnerable people within the aged care system.

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[30] Australian and New Zealand Society for Geriatric Medicine (ANZSGM). 2019. Media Release: Changes to Aged Care Assessment Teams will have a negative impact on the care of older Australians [Internet]. ANZSGM. 13 December 2019. Available online: http://www.anzsgm.org/documents/ANZSGM_ACAT_13.12.2019-MediaRelease.pdf

[31] Royal Commission into Aged Care Quality and Safety. 2020. Media Release: Statement by Royal Commission Chair on ACAT privatisation [Internet]. 14 January 2020. Available online: https://agedcare.royalcommission.gov.au/news/Pages/media-releases/media-release-14-january-2020.aspx

Overreliance on the 2011 Productivity Commission Report and Recommendations

39. As noted above, the ANMF agrees with the Royal Commission's observation that many of the issues and ongoing problems within Australia's aged care system have been reported within the many existing reviews and inquiries into the sector. Further, many recommendations from these earlier reports are still relevant, but have not been acted upon. Overreliance on the results of earlier investigations and their recommendations however, may risk overlooking the most up to date evidence of Australia's systemically neglectful aged care sector. In this section, we question the Consultation Paper's apparent reliance upon elements of the 2011 Productivity Commission Report.[32]

40. The ANMF is aware that the focus of the Productivity Commission's terms of reference were not, as is the case of the Royal Commission, quality and safety, but rather upon the development of funding options. Accordingly, it is submitted that the adoption and substantial mirroring of the Productivity Commission model is inconsistent with the nature of the overwhelming evidence received by the Royal Commission and its own particular focus.

41. The program design proposal described in the Consultation Paper draws substantially on the shape of the Productivity Commission's 2011 report (see Table 1):

Table 1. Comparison of elements from the Commission's Consultation Paper 1 and the Productivity Commission's 2011 report.

Royal Commission's Consultation Paper Topic [33]	Productivity Report Equivalent [34]
Information assessment (page 8)	The gateway - chapters 9.1, 9.2 & 9.4
Entry level support (page 10)	Chapter 9.2 (non entitlement based support)
Respite (page 11)	Chapter 9.2
Restorative care (page 12)	Chapter 9.2
Care (page 13)	Chapter 6.1, 7.9 & 9.1
Specialist advice and services (page 15)	Chapter 9.5
Access for diversity groups (page 16)	Chapter 11.1 & 11.2
Rural and remote (page 17)	Chapter 11.4

[32] IBID. [24]
[33] IBID. [1]
[34] IBID. [24]

42. While the present submission is not a response to the Productivity Commission's report, it does however respond to the Royal Commission's adoption of a substantial number of elements of the Productivity Commission's system design. The ANMF would like to highlight some consequences of adopting the Productivity Commission's general approach outlined almost a decade ago.

43. The Productivity Commission's program design proposal was developed without the benefit of the overwhelming evidence of *neglect* (to use the title of the Commission's interim report) heard by the Royal Commission.

44. The Productivity Commission's design did not respond to the evidence on quality in any comprehensive way and referred to the issue as one of 'variability in the quality of care'.[35] The evidence before the Royal Commission demands a different approach based upon the more targeted and up to date evidence it has and will continue to consider.

45. The Productivity Commission's response to quality concerns was to point to reforms that were designed to provide:

- Greater consumer choice;
- Improved working conditions;
- Improved regulations;
- Making information available;
- Increased access to consumer advocates.[36]

46. The 'deep and entrenched systemic flaws' identified by the Royal Commission following its analysis of successive previous reviews into aged care sector deserve new and innovative solutions.[37] It is submitted that those matters identified by the Productivity Commission are an inadequate response to the need for quality and safe care in both RACFs and in peoples' homes in the community. It is further submitted that the Royal Commission would be in error to adopt as a model for the aged care system one that was substantially based on the approach and thinking of the Productivity Commission almost a decade ago. The Royal Commission is clearly aware of the fact that 20 years of reviews into aged care quality and safety have identified the same problems.[38] Basing solutions to these problems substantially upon recommendations of the Productivity Commission in 2011 would neither appear likely to succeed, nor respond to, nor honour the wealth of evidence the Royal Commission has seen to date.

47. As the Royal Commission has stated, while the changes implemented following the Productivity Commission's Report were (in the words of the Australian Department of Health) intended to create a 'more consumer-driven, market-based and less regulated' aged care system',[39] the:

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[35] IBID. [24] (Overview and Recommendations: Pages XIX and XLIV)
[36] IBID. [24] (Overview and Recommendations: Page XLIV)
[37] IBID. [2] (Page 81)
[38] IBID. (Page 78)
[39] Australian Government Department of Health. 2017. Client information and support, Aging and Aged Care, updated February 2017. In: Royal Commission into Aged Care Quality and Safety. 2019. Interim Report:

> '...[I]ncreased focus on a market approach did not resolve persistent concerns held by advocacy groups and the broader community about the quality and safety of aged care.'[40] (pp. 73)

48. Indeed, as the Royal Commission has noted, the Tune Review and the Productivity Commission Review both agreed:

> '...[T]hat quality and safety standards and oversight should be retained to temper deregulation and market-based measures.'[41] (pp. 80)

49. Further, the Royal Commission is aware that the Carnell-Paterson review concluded that:

> '...[T]he rationale for regulation of residential aged care quality is that the market is an inadequate mechanism to ensure the safety and wellbeing of highly vulnerable residents.'[42] (pp. 80)

50. The Royal Commission expressed some concern in the Consultation Paper about regulation in relation to its proposed design. The proposition that more scope for care recipients to choose between alternative providers might reduce the need for some regulatory interventions around service quality has, the ANMF submits, no basis in evidence when applied to residential aged care. The ANMF has submitted previously, evidence to the Royal Commission regarding known and potential outcomes of public reporting in relation to the United States' 'Nursing Home Compare Rating System'.[43]

51. The Productivity Commission's approach envisaged that care recipients were playing:

> '[A]n increasingly important role in driving improvements in the quality of care because they will generally have the choice to take their entitlement elsewhere if they are not happy with the quality of care.'[44]

52. While appearing to support the ethos of personal choice and consumer freedom, this perspective overlooks the challenges that many people within the aged care system face (described above). This is and will continue to be true for especially the most vulnerable people within the system whose choices are severely constrained by factors such as personal financial resources, geography and distance, and the availability of information and capacity to navigate both information and the system itself.

53. The ANMF does not dispute the urgent need for more clear, accessible, and detailed information and resources for people who are entering the aged care sector and the community more broadly, but echoes concerns raised earlier, that the market is an inadequate mechanism to ensure the safety and wellbeing of residents.[45]

Neglect [Internet]. Commonwealth of Australia, Canberra. Available online: https://agedcare.royalcommission.gov.au/publications/Pages/interim-report.aspx

[40] IBID. [2] (Page 73)

[41] IBID. (Page 80)

[42] IBID. (Page 80)

[43] Exhibit 11-1 (Tab 167) - RCD.9999.0231.0011 - 'ANMF Letter to RC - comments on UoW Report', the ANMF's response to the UoW Report; ANMF UoW Commentary Reference.

[44] IBID. [24] (Report Volume 2: Page 207)

[45] Carnell K and Paterson R. 2017. Review of National Aged Care Quality Regulatory Processes [Internet]. Available online: https://www.health.gov.au/sites/default/files/review-of-national-aged-care-quality-regulatory-processes-report.pdf

54. The absence of any coherent proposals in terms of quality regulation in the Consultation Paper in respect to residential aged care underscores the inappropriateness of the model for that sector of the system. By referring to the tailoring of a regulatory approach to the nature of the services and the needs of the care recipient, the Consultation paper ignores the difficulties inherent in the proposal.

55. The Productivity Commission argued that:

> 'Stronger competitive pressures should provide an incentive for providers to find more cost-effective ways to meet the requirements of the compliance framework.'[46] (pp. 202)

56. The model of seamless transitions and consumer directed care reaches an end point when applied to the overwhelming majority of very vulnerable people currently in RACFs and indeed home-based care in the community. The ANMF urges the Royal Commission to adopt a different perspective from the previous Productivity Commission that responds to the latest and overwhelming evidence on quality and safety it has received. The ANMF submits that the Consultation Paper's substantial reliance on the Productivity Commission's 2011 approach is misplaced and should be rejected by the Royal Commission.

The importance of the workforce - the need for mandated staffing levels and skills mix

57. As will be apparent from the ANMF's previous submissions to the Royal Commission, our primary focus has been on quality and workforce issues in residential aged care facilities (RACFs). Those issues are not covered in any detail in the Consultation Paper, as noted by the Royal Commission.[47]

58. The ANMF agrees that the people who receive aged care services, along with their family and loved ones, should be of central importance to the aged care system as active participants in person-centred planning and care. To ensure that safe, effective, and appropriate care is provided to the high standards that these people deserve and should expect, consideration of the workforce - those that provide those services, particularly direct personal and clinical care, is critical to the design and operation of aged care services across home-based care, respite/restorative care, and RACFs. Indeed, the Royal Commission has stated that:

> 'The quality of care that people receive from aged care services depends very much on the quality of the paid carers and their working conditions. Workforce issues are relevant to every aspect of our inquiry.'[48] (pp. 232)

59. The ANMF and other witnesses have submitted consistent and irrefutable evidence regarding the inadequacy of staffing in RACFs.[49] No evidence before the Royal Commission suggests that present staffing levels in Australia's aged care sector are adequate to ensure that the care needs of people in aged care are adequately met. As the Royal Commission has seen from the evidence tendered by Professor Eagar, the average rating of an Australian RACF is only two-

[46] IBID. [24] (Report Volume 2: Page 202)
[47] IBID. [1] (Page 1)
[48] IBID. [2]
[49] IBID. [19] [Page 8, Paras 28-29].

stars for staffing (as calculated by the United States' Nursing Home Compare Rating System).[50] Further, on average, an Australian resident receives 36 minutes of care from a registered nurse per day – corresponding to a one-star rating. This fact is even more disturbing, considering that based on the ANMF's Staffing and Skills Mix study, a rating of less than five-stars according to this rating system would not provide safe, effective care for residents.[51]

60. In contrast to the vast amount of evidence before the Royal Commission, that staffing in many RACFs in Australia is inadequate and does not ensure safe, effective care or safe, sustainable working conditions for staff, the evidence in support of nurse-to-patient ratios as a cost-effective staffing model, which not only ensures safe, quality care but has been demonstrated to improve the quality of care, is overwhelming.[52]

61. In 2011, the Productivity Commission's Report labelled an across-the-board staffing ratio as a 'fairly blunt instrument'.[53 (pp.206)] That statement has been relied upon by employers, Government, and others ever since. Indeed, the Royal Commission, throughout its hearings, has heard several witnesses echo the 'blunt instrument' view without reflection upon more recent evidence or strong justification for that perspective.[54,55,56]

62. Since 2011, further evidence regarding the effectiveness of minimum staffing and skills mix has been reported. Much of this has been brought before the Royal Commission by the ANMF in its previous submissions including most recently, the ANMF's proposed staffing system.[57] The ANMF submits that the persistent characterisation of minimum staffing levels and skills mix as blunt and inflexible must cease based on the wealth of new evidence to the contrary now at our disposal and a failure of the opponents of ratios-based staffing and skills mix to proffer alternatives.

63. Based on this more recent evidence, the ANMF opposes views that mandated minimum staffing levels and skills mixes are unlikely to be an efficient way to improve the quality of care. Indeed, as the ANMF has shown, minimum staffing *is* flexible and amenable to adjustment based upon the profile of residents and their care needs.[58]

64. The ANMF highlights that based on up to date evidence, experts such as Professor John Pollaers OAM, Chair of the Aged Care Workforce Taskforce and lead author of the 'A Matter of Care Australia's Aged Care Workforce Strategy', the Australian Medical Association, the Royal

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[50] 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.
[51] IBID. [4]
[52] IBID. [19] [Page 15-16, Paras 61-67].
[53] IBID. [24] (Page 206)
[54] Sparrow Transcript (P-432:43-44)
[55] Beuchamp Transcript (P-338:37-43)
[56] Elderton Transcript (P-187-188:30-9)
[57] IBID. [19]
[58] WIT.0488.0001.0001

Australian College of General Practitioners, and the ANZSGM [59] have recommended the implementation of mandated minimum staffing levels and skills mixes.[60]

65. Further, the ANMF opposes the view that mandated minimum staffing levels could eliminate incentives for providers to invest in innovative models of care or new technologies, as new models of care and technologies could readily be adopted alongside mandated minimum staffing and skills mix to provide care. In the context of home-based community care, small cottage-style care, innovative models (e.g. the Buurtzog model of care), and within RACFs that utilise varied models of care, there is a clear and unquestionable need to have *at least* a minimum number of the right kind of staff.[61]

66. The ANMF submits that mandated minimum staffing levels and skills mix would be effective and amendable to inclusion alongside new technologies that enhance both care safety and quality as well as the experience and wellbeing of people within aged care. Indeed, the introduction of staffing ratios within health care systems in Victoria, Queensland, and California have not resulted in any evidence to suggest that advancements in innovation and technology have been stymied in any way.

67. Instead of recommending a mandated minimum staffing and skills mix, in 2011, the Productivity Commission opted for a strategy to better empower consumers with more information thereby providing an incentive for providers to compete more on quality of service.[62] While the ANMF is very supportive of greater information and transparency for people entering the aged care system and the community more broadly (particularly with regarding to staffing levels and skills mixes as well as the transparent use of funding for care), a number of matters emerge from this:

- The evidence before the Royal Commission suggesting that minimum staffing and skills mix is a 'blunt instrument' is misconceived and out-dated, particularly in regard to the ANMF's model for staffing levels and skill mix;
- These is no clear evidence that enhanced consumer information in relation to RACFs is effective in improving safety and quality for residents and staff, and;
- There is no clear evidence that fostering market competition between RACFs effectively leads to improvements in safety and quality of care, better outcomes for residents, or greater staff attraction and retention.

68. The ANMF maintains that the Royal Commission must recommend mandatory staffing and skill mix, which has been the subject of its earlier submissions (Previous ANMF submissions are summarised in Appendix 1). A mandated minimum staffing level and skills mix of RNs, ENs, and personal care workers (PCW) is required to ensure that aged care providers can

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[59] Aged Care Workforce Strategy Taskforce. 2018. A Matter of Care Australia's Aged Care Workforce Strategy, Aged Care [Internet]. Workforce Strategy Taskforce, June 2018. Available online: https://agedcare.health.gov.au/sites/default/files/documents/09_2018/aged_care_workforce_strategy_report.pdf

[60] ANMF. 2018. Media Release: Australia should be a world leader in aged care delivery [Internet]. Published in *The Australian* Newspaper 15 December 2018. Available online: http://anmf.org.au/media-releases/entry/media_181215

[61] IBID. [19]

[62] IBID. [24] (Report Volume 2: Page 206-207)

effectively and appropriately meet the diverse and changing care needs of the people that they serve.

69. The ANMF acknowledges that alone, mandated minimum staffing levels and skills mix may not be effective in addressing the range of systemic problems within aged care. The ANMF recommends that other actions must also be taken to support and sustain the delivery of safe, quality aged care. This includes but is not limited to improved education, training, and regulation of staff, an improved, transparent, and fit-for-purpose funding model, and an accessible and understandable system for ensuring that consumers are informed regarding the quality of care and staffing delivered by aged care providers. However, safe, quality care will not be achieved without mandating evidence-based minimum staffing levels and skills mix.[63]

70. From the evidence now before the Royal Commission, it is clear that in the absence of regulation of staffing and skills mix, in many cases, providers do not staff facilities adequately to provide safe, quality care that meets the needs and preferences of residents.[64]

71. The evidence before the Royal Commission to date, including that which has been submitted by the ANMF, clearly demonstrates that if implemented, mandating minimum staffing and skills mix would be effective at ensuring the aged care system is able to improve and rectify the problems above.

72. The proposed program design described Productivity Commission's report and echoed substantively in the Consultation Paper is incompatible, or at least not readily compatible, with the introduction of mandated minimum staffing and skill mix in RACFs.

73. The ANMF is opposed to any program design that does not facilitate as a central element the introduction of mandated staffing levels and skill mix as an essential initiative to ensure an appropriate level of care for all people within aged care. The Productivity Commission report called for the removal of 'complex and burdensome regulations' that might be related substantially to an overreaction to specific incidents.[65] The ANMF submits that the evidence before the Royal Commission demands regulation for mandating of staffing levels and skill mix in RACFs. It could be argued that the longstanding, systemic, and wide-ranging issues in aged care are the result of insufficient regulation and governance. This was highlighted by Mr Versteege in his statement to the Royal Commission.[66]

Concluding remarks

74. The ANMF submits that in order to enhance the aged care workforce's capacity and capability to provide high quality care and support good quality of life to care recipients and make the aged care sector a more attractive and rewarding place to work the following must occur as a matter of priority:

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[63] IBID [19]
[64] IBID.
[65] IBID. [24] (Overview and Recommendations: Page XLII)
[66] Versteege Transcript (P-176-6:9-8)

- Wage outcomes for aged care workers must be improved to match public sector wages.
- The aged care sector should be supported to overcome the systemic barriers to achieving wage parity and improved working conditions.
- Safe work practices and design must be promoted
- Government funding of aged care must be transparent and accountable.
- Both Government and providers must demonstrate accountability with respect to funding allocated to wages.
- Funding must be linked to quality of care outcomes and determined through an evidence-based methodology
- The aged care sector must be supported and promoted through policy and funding as an essential and valued part of the health sector. This is achieved through education pathways, transition to the workforce and career development.
- Positive cultural perceptions of aging and elderly people and those who care for them must be promoted
- The currently unregulated aged care workforce must become subject to minimum education and training standards and be regulated to ensure delivery of quality and safe care.
- Most importantly, mandated minimum staffing levels (numbers) and skills mix (type) must be legislated (made law) in residential aged care, in accordance with the ANMF's project, i.e. a national average of 4.3 hours of care per day with a skills mix of 30% RN/ 20% EN/ 50% care workers.

Australian Nursing and Midwifery Federation
24 January 2020

Appendix

Previous ANMF submissions to the Royal Commission

Document ID	Commission Reference	Title
ANM.0002.0001.0001	-	Aged Care in the Home
ANM.0003.0001.0001	AC 19/965	Residential Dementia Care
ANM.0004.0001.0001	-	Person-Centred Care
ANM.0005.0001.0001	-	Aspects of Care in Residential, Home, and Flexible Aged Care Programs, Rural and Regional Issues for Service Delivery of Aged Care, and Quality of Life for People Receiving Aged Care
ANM.0006.0001.0001	-	Regulation of Quality and Safety in Aged Care and How Aspects of the Current System Operate, Different Approaches to Regulation (including in other sectors) and How Regulation and Oversight of Quality and Safety in Aged Care can be Improved
ANM.0007.0001.0001	AWF.600.01255	Younger People in Residential Aged Care
ANM.0012.0001.0001	AWF.600.01309	Diversity in Aged Care
ANM.0013.0001.0001	AWF.600.01307	Aged Care Workforce
ANM.0014.0001.0001	AWF.600.01356	Aged Care in Regional and Remote Areas
ANM.0015.0001.0001; ANM.0015.0002.0001; ANM.0015.0003.0001	AWF.650.00048	Workforce Submissions
ANM.0016.0001.0001	-	Canberra Hearing: Interfaces between the Aged Care and the Health Care System