

**Morrison Government response to four key
workforce recommendations**
*two rejected, one accepted only in principle
and one accepted*

**Registration scheme
for carers**

NO
*aligning personal care
with disability not health*

**Mandatory minimum
qualification**

MAYBE ONE DAY
weasel words & evasion

**Minimum staff time
standard for nursing
homes**

YES!

**Increase in award
wages**

NO
*leave it to employers and
unions and the Fair
Work Commission*



see pages 4-8

Improving the food
expert advice not heeded

see page 2

COVID cases and deaths
public vs private homes

see page 8



Class action
St Basil's & Epping Gardens
*alleged breach of
duty of care*

see pages 2 - 3

Improving the food: advice not heeded

Pessimistic chefs

A chef who gave evidence at the Royal Commission was quoted in The Age post budget as saying (an extra) \$10 a day for each resident will not get them better food.

The \$10 was a reference to the Morrison government's pledge in the 11 May Budget to pay \$10 more each day per nursing home resident. Nicholas Hall and Tim Deverell, another chef who also gave evidence, said the \$10 had little chance of leading to improved food for residents.

Spurious link

The Government adopted a loose requirement regarding nutrition. It created a spurious link between the extra money and food: to get the money, providers only have to commit to future quarterly reporting on "*expenditure on food*" (Response to recommendation 112).

Less than the Report

The response appeared a lot weaker than the Report recommended. The more stringent requirement included an expenditure breakdown



Chef Nicholas Hall

Dietary regulations needed

"There is just this constant 'bang, bang, bang' what's next vibe ... it's a race to the bottom, applying free market rules to run a place where there needs to be quotas and ratios to keep people safe There should be a minimum amount and it should be at least \$15 per day"

N. Hall, quoted in C. Lucas, 'Food for thought: The problem with aged care', The Age, 16 May 2021

by raw, pre-processed and bought-in food plus details of residents with unplanned weight loss and dehydration.

So more paperwork but no **guarantee** of better meals. As chefs have argued, the money should be tied to a measurable standard, namely a minimum daily amount to be spent on dietary needs.

Class action *alleged breach of duty of care*

COVID outbreaks

In 2020, 45 residents at St Basil's Home for the Aged in Fawkner died during a COVID outbreak with 223 cases. At Epping Gardens there were 162 cases of COVID among residents and staff and 38 residents died.

Civil action

Civil action has begun in the Victorian Supreme Court. The group taking action, represented by Carbone lawyers comprises families of some residents who died after contracting the virus plus residents who became infected and survived and their families. The lawyers will not charge legal fees unless there is a successful outcome.

Opening tactics

Lawyers for the two providers recently argued before Justice Dixon that the two types of allegation should be

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Class action
alleged breach of
duty of care



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separated namely (1) that some residents died or fell ill from COVID-19 and (2) that some residents died or became sick from alleged neglect. A ruling is pending. A ruling in favour of the nursing homes could reduce the number of plaintiffs and thereby reduce damages if the claim was to succeed.

A. Cooper, 'Move to cut plaintiffs in aged care case', The Age, 14 July, 2021

“The claim alleges that St Basil’s [and Epping Gardens] failed to care for its residents adequately and to protect them from the SARS-CoV-2 virus, causing death or serious injury to its residents and mental or nervous shock to those people close to them”

Extract from Carbone Lawyers,
Class Action Summary Statement,
Case: S ECI 2020 03339
Filed on 21/10/2020

Government response to
Royal Commission Report
workforce
two of four critical
recommendations rejected
and one accepted only in-principle

The critical four

*national registration scheme for personal care workers (R77)

*mandatory minimum qualification for personal care workers (R78)

*increases in award wages (R84)

*minimum staff time standard for residential care (R86).

In the case of the registration scheme, the Government position is much less than what is recommended but was helped by a somewhat equivocal Royal Commission recommendation.

The mandatory qualification is “*subject to further consideration*” and the position on wages is a hands-off cop-out and a major disappointment.

The response on staffing is positive.

Department of Health, Australian Government Response to the Final Report of the Royal Commission into Aged Care Quality and Safety, May 2021.

National registration scheme for personal care workers
*NO keep personal carer regulation separate from
 health sector regulation, minimise it and align aged care with disability
 slow down reform*

Recommendation (R77)

The Commissioners recommended a national registration scheme and importantly it included a minimum English language proficiency, mandatory minimum qualification and ongoing training requirements.

The recommendation stopped short of the Counsel Assisting proposal that a National Board be established by the Australian Health Practitioner Regulation Agency (AHPRA) which would have made regulation of aged care personal carers part of health sector workforce regulation. Instead, the Report shunted the decision about AHPRA to the National Cabinet Health Council to be made by July 2023! Commissioner Briggs added a rider that in the meantime AHPRA should examine the feasibility of AHPRA being the regulator and to inform Council deliberations.

Government response

Accepts recommendation in principle but rejects operating the registration scheme through an AHPRA model. It argues this would be “*too burdensome*” for personal carers and too costly.

In fact, registration *per se* does not feature.

So the “acceptance in principle” response is misleading.

Instead the Government commits to a markedly less rigorous single *Code of Conduct* across the “*aged care, veterans’ care and disability support sectors*” by July 2022. This links aged care with disability rather than health. The new *Aged Care Act* will provide for national pre-employment screening with a register of cleared and excluded workers. Elder Care Watch considers this minimalist action a retrograde step and an inferior outcome.

Government response, pages 51-52.

Mandatory minimum qualification for personal care workers
NO Government weasel words response
recommendation “..is subject to further consideration”

Recommendation (R78)

The Report recommends a Certificate III as a mandatory minimum qualification. This straightforward recommendation should have been readily accepted but it wasn't.

Weasel words

Instead, the Government response was evasive: the recommendation would be “*subject to further consideration through [its] Care Workforce Strategy*”. The evasion continued with a detour into a patchwork of platitudes and piecemeal measures (*see text box*).

Government response evasive
a patchwork of platitudes and piecemeal measures

“... the Government will provide an uplift in funding to .. increase..worker skills and qualifications.... will provide funding for 2021-22 for 38,000 additional training places.....”

“The Government also supports training for aged care workers (for example in dementia, palliative care and infection control)”. The Review of the Aged Care Quality Standards will consider appropriate regulatory levers to require providers to ensure staff are appropriately trained. The reviewed Certificate III in Individual Support (Ageing) will require units of study on dementia and palliative care”

Government response, page 53.

The above ramble does not address the recommendation which is about a mandatory minimum qualification. Rather, the response is really about other matters, the supply of training places and (some of) the course content of any core qualification.

Commissioner Briggs had the right idea

Commissioner Briggs had recommended that, if a *Personal Care Worker Board* was established, it should establish an accreditation body to take charge of approving the curriculum for the mandatory minimum qualification and assess programs of study and education providers against the standards. This was eminently sensible but of course the Government rejected the idea of a National Board for PCWs (*see page 4*).

Minimum staff time standard for residential care
*YES adopts recommendation precisely except
 for later start date
 standard expressed in terms of minutes of care per
 average resident per day*

Recommendation (R86)

From 1 July 2022 providers should be required to engage RNs, ENs, and PCWs for at least **200 minutes per resident per day for the average resident** with at least **40** minutes of that staff time provided by an RN (**215** minutes and **44** minutes respectively from 1 July 2024). So the skills mix between the three occupations is at the discretion of the provider except for the stipulation of the minimum RN time of 40 minutes for the average resident.

The meaning of ‘average’ is not directly explained but it relates to a new resident classification scale (*see below*).

Further, there must be at least one RN on site per facility for the morning and afternoon shifts - **16** hours per day (**24** hours from 1 July 2024).

This is a complex recommendation because its operation is linked to a new funding model that is, a new formula for determining the care subsidy paid to providers. The new model is known as the *Australian National Aged Care Classification (AN-ACC)* to be introduced on 1 October 2022.

Government response

The Government has accepted this recommendation almost in its entirety: the exceptions are that there is no reference to the small increases recommended for 2024 and the standard will not become mandatory until October 2023. However, additional funding will be provided to meet the ‘200 minute care time’ and the ‘RN for 16 hours per day’ standard at the same time as the new funding model is introduced (*see below*).

The new minimum staff time standard will appear in the new *Aged Care Act*.

Government response, pages 56-57

Australian National Aged Care Classification (AN-ACC)

Each resident’s care needs will be assessed by looking at their “*functional, cognitive and physical capability*” in other words, their dependency level. The higher the dependency the higher the subsidy. Each resident will be allocated a classification of 1 to 13 based on the results of their assessment. Assessments commenced in April 2021.

A significant change is that the assessment will not be conducted by staff of the provider as occurs under the current ACFI funding model. Rather it will be conducted face-to-face (except for residents receiving palliative care) by “*dedicated and clinically trained assessors*” thus reducing the paperwork burden on nurses and so enable them to spend more time providing care (Australian Government, [The AN-ACC Funding Model: An Introduction](#), undated).

Increase award wages

***Government response = ‘hands-off’
leaving the issue to the employers, unions and
tribunal is another form of aged care neglect***

Recommendation (R84)

The Government should collaborate with employers (providers) and unions to seek wage increases before the Fair Work Commission based on work value and equal pay principles. This can now be seen as ‘pie in the sky’.

Government response

“The Government notes this matter is currently [before] the Fair Work Commission. Commission decisions are independent of Government. The Government will provide information and data to the Commission as required”.

Government response, page 56.

Government response

The Government ‘hands off’ response, that is, a decision to do nothing, is extraordinary given the compelling widely accepted case for improving **relative** wages of carers. It could have chosen to be involved directly.

It is always open to governments at least to make submissions to the tribunal, if not to negotiate. The decision to hold back is another form of aged care neglect. It makes a mockery of its touted concern for the advancement of women. Further, as the major funder of aged care, government is the effective employer.



Current wage case

The nurses’ union (ANMF) is seeking a 25 per cent increase in the wages of RNs, ENs and PCWs and also a separation of the carer classifications from the mainstream “aged care employees” stream in the *Aged Care Award*. It argues that the nature of carers’ work differs qualitatively from the work of general and administrative services and food services workers so it is appropriate that their pay rates be treated separately (ANMF Application, Annexure 2, paras. 8 & 9, 17 May 2021). The Health Services Union (HSUA) is seeking a 25 per cent increase for all three streams and does not seek to separate PCWs (HSUA Application, 17 November 2020). Notably, in discussing wages, the Royal Commission refers expressly only to nurses and personal care workers (Final Report, Volume 3A, page 416). *continued page 8*

Current wage case

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The ANMF told the tribunal that it was attempting to “collaborate” [read ‘negotiate’] on wage increases (Annexure 2, para. 3). That won’t get far unless the Government is directly involved.

Scheduling

A FWC conference on 24 June dealt with hearing dates and deadlines for provision of information by the Government, this being the shameful limit of Government involvement to date.

ANMF vs HSUA

The nurses’ union wanted longer than the HSUA for tendering written submissions due to the complexity of the case and to try to reach some common ground, at least on facts, with employers or Government, which could shorten the case.

The ANMF is the leading applicant with the greater responsibility because it covers the two occupations cited in *Recommendation 84*. HSUA however, has a claim for carers working

COVID-19 cases and deaths public and private nursing homes Victoria 2020

	Public	Private
Homes	178	596
Residents	5,600	NA
COVID cases	15	1,988
Deaths	0	655

C. Lucas, ‘COVID’s return to aged care homes puts workforce conditions under spotlight’, *The Age*, 5 June 2021.

The 5600 public beds are funded federally, via the same funding formula as private homes but funding is topped up by about \$98 million a year from the Victorian government. These homes are generally linked to public hospital services, especially in the regions, and the residents

in these homes are typically higher dependency than those in private homes.

In public homes, more than 80 per cent of hands on care is provided by nurses (RNs or ENs) while in private homes only around 25 per cent are nurses.

in home care.

A long road to 2022

Witness evidence is tentatively scheduled for March and April 2022 with union and employer submissions due in August and December 2021 respectively. The unions’ right of reply is booked for February 2022. Presumably, in May 2022 the Commission adjourns to consider its decision.

Independence

Elder Care Watch is independent. It does not accept funds from governments or private organisations.

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