CHANGING AGED CARE

Health Services Union

SUBMISSION: Department of Health and Aged Care

Aged Care Act Exposure Draft

February 2024

HSU NATIONAL

Title

About the HSU

The Health Services Union (HSU) is one of Australia's fastest growing unions with over 100,000 members working in the health and community services sector across the country.

Our members work in aged care, disability services, community health, mental health, alcohol and other drugs services, private practices and hospitals. Members are health professionals, paramedics, scientists, disability support workers, aged care workers, nurses, technicians, doctors, medical librarians, clerical and administrative staff, managers and other support staff.

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Introduction

"Very little has changed. We may have a few extra people on the floor but change needs to come from the top." - HSU member, regional Tasmania.

The Health Services Union (HSU) supports a new aged care Act centred on the rights of older people and ensuring access to consistently high-quality, person-centred services.

Whilst the majority of our submission is advocating for changes to the Exposure Draft, we support the introduction of a new rights-based Act and the many positive changes within. A new Act has been needed for a long time and the exposure draft goes a long way towards a welcome focus on people in aged care, rather than providers.

Our main points are:

1) Worker development needs to be prioritised.

2) Workers should not be liable for penalties.

3) There needs to be a commitment to full "across the board" regulation, across anyone providing care. This includes digital platforms, outsourced providers, and contractors.

Workforce Development needs to be prioritised.

"The payrates and qualifications standards need to be higher." - HSU member, residential care, Melbourne

"I think that personal care workers need more education and training for providing high quality aged care." - HSU member, home care, Melbourne

Our members think this by a wide margin: 79% of survey respondents support a minimum qualification of Cert III. 93% think skilled and qualified workers are important for high quality care.

The workforce is largely missing from the Act. We appreciate that previous submissions have been considered, but the Act suffers from an undervaluing of the workers who actually provide care to older Australians.

The complete and utter lack of worker registration with a minimum qualification, as per the Royal Commission's recommendations 77 and 78, is deeply concerning.

Whilst we appreciate consultation is ongoing around this, we continue to press that full implementation of Recommendation 77 be implemented swiftly. This is core to professionalising aged care work, increase the status of aged care workers (which aids attraction and retention of workers to the sector) and increase the quality of care. This is a top priority for the HSU and for our members across the country. The HSU has been calling for this for a long time.

This position is supported by the Australia Institute which, in its recent report titled "*Professionalising the Aged Care Workforce*"[1], recommended worker registration as critical step in professionalisation of the workforce, stating "increasing the status of care work is critical to building a sustainable workforce and a sustainable care system".

[1] https://australiainstitute.org.au/report/professionalising-the-aged-care-workforce/

The Institute lists multiple benefits, including:

- Valued work, better jobs and pay
- Workforce stability and sustainability
- Improved ability to plan to meet workforce needs
- Better quality care
- Reduced inequalities

Attached to this submission is the above report, as well as a one-page document outlining our view of positive registration that moves beyond the Code of Conduct and screening to encompass minimum qualifications and continued professional development.

In a wider sense, not enough care is paid to developing the workforce (including growing skills and capacity) in this Act. In 2022, CEDA forecast an annual shortfall of 30,000 to 35,000 direct care workers, and a cumulative shortfall of 110,000 workers by 2030.[2]

Given this, the Act needs to do more in improving workforce development, including lifting the status of aged care work and its attractiveness as a career, as well as supporting the training and development of staff.

We also note that unions and delegates are not mentioned in the Act. Whilst this isn't necessarily an impediment to their involvement in the system through member involvement, this seems like an oversight.

Workers should not be liable for penalties.

Overall, the Act is punitive towards workers. Liabilities and penalties should not apply to workers, who already have defined responsibilities (which include potential disciplinary processes) through the employment relationship. The responsible person, as defined, is cast too wide. Neighbouring industries such as disability do not have penalties for workers. This could see movement from the sector, exacerbating workforce shortages.

Currently, the regulatory framework (the Act) and the broad approach of the sector is one that is negative and seeks to punish, rather than one which is positive and seeks to support. To support a flourishing aged care sector, this needs to change. This includes fundamentally changing the positioning of workers by the Act.

Front line aged care workers are the people with the closest knowledge of the system. They know what good care looks like and they know how to provide it. They should be supported and promoted to do so. The Act currently does not recognise workers as an important part of the aged care system and treats them as a problem to be regulated.

Commitment to full "across the board" regulation.

The Acts protections, including registration, should apply to all aged care services.

There needs to be a refocussing of regulation, not based on the economic unit, but on the actual provision of care. All employers providing care services to the aged care sector must be subject to equal regulation.

91% think any company providing services should be subject to the same minimum level of regulation to ensure high quality care.

[2] Duty-of-Care-Aged-Care-Sector-in-Crisis.pdf (ceda.com.au)

The current draft of the Act effectively carves out third-party providers of aged care services as "associated providers", which carry no legal responsibility to meet the aged care quality standards. This comes despite many being such labour-hire companies designating themselves as 'aged care specialists' and contracting staff almost exclusively to the residential aged care sector.

For example, it makes no sense for a catering service employed directly and one employed through other means, who both provide the same services and care, to be regulated differently. An even playing field needs to be imposed across the whole sector.

About this submission

To support the policy analysis, a survey was conducted of Aged Care worker members. Quotes from HSU members and results from the survey have been included throughout.

This submission follows the order of the Act. We have recommendations at the end of each section, and in Appendix 1.

The Act needs more focus on workforce development.

There is positive inclusion of workforce in many parts of the Act, including in the objects, rights, principles, definition of high-quality care and elsewhere. This is a positive step and helps recognise the central role aged care workers play in providing care to older Australians.

However, given the current difficulties regarding workforce retention, recruitment and satisfaction, and the need to recognise and support further skill development of the aged care workforce, the Act must focus more on workforce development.

Otherwise, the Act falls into the trap of discussing workforce at a high level but failing to deliver tangible outcomes that actually support workforce development. Combined with the Acts' negative (albeit important) emphasis on workers in the section regarding worker screening, the Act needs to provide a more positive legislative basis for workforce and its continued professional development.

Positive Worker Registration and a minimum qualification

> *"Make certificate 3 minimum for carers" – HSU member, residential aged care, regional Victoria.*
>
> *"Workers deserve to be supported through ongoing, meaningful training and career development. In recognition of our ageing population and the importance of this industry to the nation's future, Labor will invest in aged care as an attractive, stable and well-paid career."* 2023 ALP National Platform | Chapter 4 65
>
> *"Labor will continue the implementation of the recommendations in the royal commission's final report."* 2023 ALP National Platform | Chapter 4 72

The Act completely fails to adopt the Royal Commission's recommendations 77 and 78, which called for the following:

> *By 1 July 2022, the Australian Government should establish a national registration scheme for the personal care workforce with the following key features:*
>
> *a. a mandatory minimum qualification of a Certificate III*
>
> *b. ongoing training requirements*
>
> *c. minimum levels of English language proficiency*
>
> *d. criminal history screening requirements*
>
> *e. a code of conduct and power for a registering body to investigate complaints into breaches of the Code of Conduct and take appropriate disciplinary action.*

We note that e) has been introduced and the Act provides the national framework for d) to be introduced. Whilst we support these introductions, they impose requirements on workers to prevent unwanted types of behaviour, which is inherently designed with a negative view of workers, that lacks balance. In the absence of balance, the regulatory framework treats workers as a cohort to be wary of and punished, rather than a group to be respected and supported. There is also no

support in terms of training or qualification requirements, to allow workers to be seen as care professionals with specific and valuable skills sets.

We have been consistently calling for this requirement for years. Attached at Appendix 2 is the HSU submission to the Department of Health from June 2020, much of which remains relevant. At Appendix 3 is the Australia Institutes research paper supporting positive worker registration.

There needs to be clear support for active recognition and development of the workforce in the Act. Introducing minimum qualifications in primary legislation is the best and simplest way to do this. We strongly urge the Government to amend the Act to include this.

Recommendation 1: Insert the requirement for a full registration scheme, including parts a, b and c in the Royal Commission recommendation 77 into the Aged Care Act.

Commencement

We advocate for a 1 July start date. It is important to get the new legislative scheme in place as soon as possible.

However, we are support transition arrangements being implemented for a defined period of time, to ensure the impact of new requirements on workers (and providers) is manageable. We are aware training will be needed, along with integration with various other systems. These transition periods could range from 6 to 24 months, as appropriate.

Specifically, transition arrangements for the worker screening requirements will depend on state and territory arrangements. This should not impact negatively on workers.

Recommendation 2: The Act should start on 1 July, but with transition arrangements as necessary to reduce impact on workers and aged care providers.

Object of the Act

The HSU notes that whilst workforce is mentioned in the object of the Act, it is linked to the issue of sustainable funding. Whilst these two issues are deeply interrelated, we think there should be a standalone object in the Act regarding workforce, and funding should be a separate clause. Continuing to link workforce to funding would continue to entrench the problem around government funding being a determinant of wages and conditions, causing lower wages and retention and attraction issues. The Act should be clear that it intends to support the development of a valued and skilled workforce.

Recommendation 3: The workforce object at 5(g) should say:

~~g) provide for sustainable funding arrangements~~ provide for the delivery of funded aged care services by a diverse, qualified, trained and ~~appropriately~~ highly skilled workforce, of sufficient numbers; and

Rights

Rights of residents and clients

Older persons should have the right for the people looking after them to be accredited to a consistent minimum level of qualification, in order to provide reliable assurance on quality.

Rights of workers

Further, the rights of workers must be included in the Act. Workers are key to the system and should be recognised as such. They work in difficult, and sometimes unsafe situations, and so should have certain legislative protections including the right to be safe, the right to be supported in terms of training and skill development, and the right to be an active and respected contributor to the delivery of care in their workplace.

Right to Equitable Access

The rights described in section 20(2) are insufficient. The right to equitable access must include the actual care services required. As written, there is a right to an assessment, and to palliative care, but nothing in-between. Recommendation 2 in the Royal Commission states there should be a right to equitable access to care services.

Specifically regarding the assessment of care for potential aged care recipients, this assessment must be provided by a qualified workforce, which is not privatised or outsourced, nor delivered by an "associated provider" which is currently proposed to be excluded from the regulatory framework of the Act.

Further, there must be equitable access to services within a defined and appropriate amount of time. We recommend no more than 30 days from application to the service actually being provided. This should be stated in the Act.

Without a right to equitable access, and with the likelihood of user contributions in the funding of the system, there is a real danger of services becoming subject to people's ability to pay. This is not equitable and not acceptable. The Act needs to guarantee a right to aged care services, which it currently does not.

There is a weak 'function' assigned to the Department of Health and Aged Care 'to facilitate equitable access to funded aged care services' (section 132) but no parallel right that needed services exist. A government role for services needs to exist, particularly where no services are provided by the market.

Section 20 does not create a right to information about quality of care that a person might experience, thus marring a key assumption that market participants can make informed choices.

The idea of a government role in service development is missing from the Act. Without this, the adequacy of service provision is left entirely to the market. As noted before, with the increased prominence of user pays, this will result in some service areas being inadequate unless government intervenes.

We advocate for the inclusion of the United Nations Declaration on the Rights of Indigenous Peoples to be incorporated into the Act, and preferably in the Rights section. This is a key part of closing the gap.

Recommendation 4: Similar to the Object regarding workforce, the right under (20)(3)(c)(iii) should refer to:

services being delivered by "sufficient numbers of aged care workers, who have a minimum level of qualification, recognised quality care skills and experience".

Recommendation 5: A section on the rights of workers should be included, including the right to be safe, and an active and respected part of their workplace.

Recommendation 6: Section 20(2) should include a right to care services as per the Royal Commission, as well as a right to information about those services.

Recommendation 7: A government role for service provision should be written into the Act, including the provision of services where there are none.

Recommendation 8: Aboriginal and Torres Strait Islander Peoples rights under The United Declaration on the Rights of Indigenous Peoples should be stated in this section.

Principles

Whilst it is welcome that there is a principle regarding workforce, it should be strengthened as below. Further, the Act is silent on the need for workforce development, which is a significant deficiency, particularly given the chronic shortage of workers (both historically and at present, as well as projected) and lack of value attributed to this type of work.

Diversity

Section 4 in the Statement of Principles needs to bring the diversity list up from being merely a note, to include it as a specific section. This list needs to be carefully considered to ensure it is wide enough to capture all vulnerable groups. There should be some form of catch-all note added to the end to ensure the list does not exclude any potential groups.

Recommendation 9: the Workforce principle under section 22(6) be amended as follows:

(6) The Commonwealth aged care system:

(a) supports funded aged care services being delivered by a sufficient number of diverse, qualified, trained and highly ~~appropriately~~ skilled workforce who are valued and respected;

(b) supports the active development of the workforce, including supporting providers, in conjunction with unions, to improve careers, wages, conditions and provide professional development opportunities and ongoing training and

(~~b~~c) supports aged care workers, however engaged, being empowered, including through access to relevant information, to:

(i) provide feedback, suggest measures and take actions that support innovation, continuous improvement and the delivery of high quality care; including through gaining qualifications, training and ongoing professional development and

(ii) participate in governance and accountability mechanisms related to the delivery of funded aged care services; including respecting an active role for unions in improving the aged care workplace and

Recommendation 10: Bring the diversity list in section 22(4) up from being a note to include it as a section, and include a catch all section.

Definitions

Aged care worker screening check

The definition at Section 7 needs to be future proofed for the introduction of a positive registration scheme with a minimum qualification.

Recommendation 11: Amend the definition of 'aged care worker screening check' to include the following:

> the definition of 'aged care worker screening check' means an assessment, under an aged care worker screening law, of whether a person who works, or seeks to work, with individuals accessing funded aged care services poses a risk to such individuals and possesses any qualification and training requirements as prescribed by the rules and required to carry out their duties as an aged care worker.'

Aged care worker

Volunteers, whilst important and needing to be legislated for, should not be defined as aged care workers. A worker is someone performing paid work, which could be through direct employment or working as sole trader with an ABN (including via an employment platform). The draft Act muddies the important distinction between the two and could lead to confusion as to the definition of work, coverage of awards, contracts and so on. With respect to volunteers, it also diminishes the professional role of aged care workers, who have specific skills and responsibilities, beyond that of untrained and unpaid volunteers.

Recommendation 12: Remove the definition of a volunteer as an aged care worker.

Responsible person

This definition is too broad, and as written can capture many more people than the current arrangements. This could include personal care workers who are team leaders in a situation of responsibility, but not one of control over the conditions and decisions that lead to the impact on care. We are concerned that this will have the unintended consequence of many more people becoming liable. Therefore, we recommend that this definition be tightened significantly using transparent criteria to avoid the potential significant impacts of the current definition.

Recommendation 101 of the Royal Commission discusses "key personnel" which is a better description of the types of persons who should be captured. Section 121 places a strict liability on responsible persons. This is a consequential liability, reversing the onus of proof. The definition of a responsible person is therefore very important. Further consultation is required to get this right.

Further, education will be required in the workplace to make sure workers are aware of their new responsibilities and liabilities under the Act, if they fall under the definition of a responsible person.

Recommendation 13: That the definition of responsible person be significantly tightened, including that

- 11(1)(b) be rewritten, as "planning, directing or controlling the activities of the registered provider" is too broad.
- section 11(1)(c) (ii) "any person who is responsible for the day-to-day operations of the registered provider" be removed.

Recommendation 14: Further consultation on exact definition of who should be captured as a responsible person.

Recommendation 15: Education on the responsibilities and liabilities of a responsible person.

Supporter and representatives

Recommendation 16: Aged care workers should be defined as **not** being able to be supporters and representatives, for the avoidance of doubt.

High quality care definition

Section 19) xi) needs to include 'qualified' as part of its description of workers. 'Well-skilled' is a welcome and positive description of workers, but as elsewhere, qualifications must be included and described explicitly. Further, high quality care needs to state a sufficient number and skills mix of staff. This is critical to ensuring quality care is delivered consistently across the sector.

We also note that high quality care should be a floor rather than an aspiration. Whilst noting current challenges and resourcing issues, there should be a long-term plan to transition the whole system to high quality care. A current definition of quality care may be required as a temporary measure, with high quality care defined on top and given a specific time to take effect.

Recommendation 17: Sub-paragraph xi) needs to include 'qualified' as part of its description of workers.

Eligibility

The HSU supports the proposals for a single-entry point and clear, common eligibility requirements.

We emphasise the importance of an assessment tool that is tested and verified with health professionals, older people, advocates and loved ones, and people with a wide range of needs. The HSU supports a streamlined assessment team, provided it is genuinely and appropriately multidisciplinary, not privatised, and appropriately funded. We note there has already been a tender put out for assessment services and are concerned about the privatisation of this important part of the care system.

In section 40, we support the call for the age of eligibility for Aboriginal and Torres Strait Islanders to be 45 and above. This recognises the specific needs of this cohort such as, lower life expectancy and the limited services available, and responds to those needs by building in specific flexibility to assist them.

Recommendation 18: We advocate strongly that assessment services should not be privatised.

Recommendation 19: Aboriginal and Torres Strait Islanders age of eligibility from 45.

Provider regulation

The draft Act creates a two-tiered regulatory system that risks quality care by excluding "associated providers" from any legal obligations or requirements under the Act, such as delivery of the Aged Care Quality Standards. There must be an even regulatory playing field for all providers, including associated or outsourced service providers and digital/gig platforms.
This is crucial to ensure that the quality of care delivered is consistent, and that all companies involved in the delivery of services are held to equal standards and expectations.

Associated Providers

The HSU submits that there needs to be a refocussing of regulation, not based on the economic unit, but on the actual provision of care. For example, it makes no sense for a catering service employed directly and one employed through other means, who both provide equivalent services and care, to be regulated differently. An even playing field needs to be imposed across the whole sector.
If someone is performing aged care work, that worker and their employer, should both be subject to regulation under the Act. It should not matter who the employer is. "Associated Providers" must not be excluded from regulation. This definition should be deleted.

Inconsistent and inadequate provider registration will inhibit the effective implementation of other important regulatory measure such as positive worker registration.

The care system should have consistent minimum protections across all of it. This risk-based approach will allow for differences in the type of work being done, but will not let providers use loopholes that the 'associated provider' approach will create.

Case Study

By way of example, let's return to the case of a catering company that provides food services in a residential aged care facility. Under the proposed model, such a company would be an "Associated Provider" and would effectively be exempt from any regulation under the Act (as that obligation is passed on to the Registered Provider for whom the Associated Provider is performing work).
Let's now consider a senior manager working for the above catering company. Such a person would not be considered a "responsible person" under the Act, as they are not responsible for or have authority over the activities of the Registered Provider. They would therefore be excluded from all the obligations and expectations of a "responsible person" under the Act. Nor would they be considered "aged care workers" themselves, as they are not engaged in conduct with the Registered Provider's delivery of funded aged care services.
So, despite the senior manager holding considerable influence over their own employees (who would be regulated as "aged care workers") the manager themselves is exempt from all responsibilities under the Act, has no onus on them to ensure delivery of the Aged Care Quality Standards (despite being directly responsible for a workforce who is) and completely avoids any obligation or scrutiny as a Responsible Person.

Gig platforms

This includes digital platforms. The growing prominence of gig platforms increases the casualisation of work, leads to less scrutiny of work quality, undermines working conditions due to the lack of regulatory clarity in this area, and increases exploitation of workers by eroding minimum standards and not recognising workplace rights.

We note the NDIS review proposed a risk proportionate model which would cover gig platforms. We propose a similar approach be deployed across the wider care and support system. The NDIS Review model called for:

- transparency of information on providers, including not providing less information than other providers, and transparency of ownership, conflicts of interest and any preferential treatment to providers.
- transparency in pricing structures, including the total price of connecting with service providers and how much would go to the gig platform.
- compliance with price regulation, stating there should be no fee for participants to use the platform, but providers could be charged.

The HSU is concerned that only Registered Providers will have an obligation to establish and maintain practices that uphold the Statement of Rights (SoR). This would create an "uneven playing field," for both providers and consumers, as conveyed in HSU feedback during the second round of consultations on the regulatory model and demonstrated by the approach of the National Disability Insurance Scheme (NDIS) Review toward provider registration.

This is a complex area, and we believe it needs more attention than is paid to it in this Act, potentially through further consultation and design.

Regulation must create an even playing field and remove opportunities for exploitation by unscrupulous employers, particularly at the expense of the majority of good providers who are doing the right thing.

Recommendation 20: Further work is required on the regulation of digital platforms. The Department should consult further, including through a roundtable with industry stakeholders.
Recommendation 21: A risk proportionate model as suggested in the NDIS review should be added to the section on digital platforms.

Registered providers

Providers must have a positive duty to uphold the rights detailed in the Act, as the actual deliverers of care to those older persons within in the system. This is crucial if the Act is truly intended to be a rights-based Act.

Licencing

Section 74 which details the registration period, should give the Commission the ability to provide licences **up to** 3 years, and not past that. 3 years is a substantial amount of time, and the crucial checks that a renewal of registration process would provide, are necessary. We also want to avoid the potential for pressure or undue influence to be placed on the Commission, if there is discretion to provide longer licences. Making a clear maximum registration time would avoid this argument, whilst giving the Commission powers to provide shorter times for providers it may wish to keep an eye on.

Regulatory inconsistency

The provider registration process will entrench different standards and expectations than those applied to aged care workers. For example, section 87 ‘Register of Registered Providers’ requires the Commissioner to establish and maintain a Provider Register. The register can be kept in any form the Commissioner considers appropriate and the draft Act is silent as to the public availability and search

function of the register. In contrast, section 166 'Aged care worker screening database' states the database must be kept in electronic form and will contain personal and sensitive information about the individual and the risks they pose to care recipients. The same standard should be applied to both.

Workforce minimum standards

Section 90(b) should include a statement supporting training and qualifications as part of a providers registration. These need to be explicitly named to ensure providers know what 'reasonable steps' include.

Section 91 needs modification to support a minimum level of qualification for workers.

Adequate size and appropriate skill mix of a provider's workforce also must be included in the obligations on a registered provider. We suggest section 91 is an appropriate place to include this.

Section 95 on Incident Management needs to provide procedural fairness for aged care workers who may be investigated as a result of reported incidents. We recommend this be included as a sub-paragraph (d). Procedural fairness is vital to ensure workers rights to a fair hearing is delivered.[3]

Workforce advisory body

Section 101 on advisory bodies, which outlines quality care and consumer advisory bodies, must be expanded to include a workforce advisory body. It is a requirement of the Aged Care Quality Standards for Registered Providers to have a workforce that is sufficient, and is skilled and qualified to provide safe, respectful and quality care and services. It is also a requirement for Registered Providers to have effective organisation wide governance systems relating to both continuous improvement and workforce governance, including the assignment of clear responsibilities and accountabilities.

A complete lack of any real or meaningful input into the structure and composition of the workforce, is one of the main concerns of our members.

> *"I don't think the people who are making the rules really understand how hard it is working on the floor" -HSU member, residential aged care, regional New South Wales.*

A workforce advisory body, similar to those outlined in section 101, will enable a structured system for worker feedback to be given to a Registered Provider, and delivers on key workforce requirements of the Aged Care Quality Standards, specifically standards 7 (2) and 7 (3) (a) relating to Human Resources, and standards 8 (3) (b) and 8 (3) (c) relating to Organisational Governance. Without a clearly structured approach, Registered Providers will continue their current approach which fails to meaningfully involve workers in any genuine way.

Section 109, on reporting should provide specifically for workforce data to be reported in full, whether in primary legislation or secondary. This is important information that will help all stakeholders to see the full system image more clearly.

[3] The Aged Care Quality and Safety Commission discusses procedural fairness here: https://www.agedcarequality.gov.au/resource-library/rb-2023-21-procedural-fairness

Further, all Registered Providers that state they are providing 'high quality care' must comply with, and be audited against, that definition. The legislation needs to provide for this. Similarly, a providers ongoing commitment to service improvement needs to be demonstrated.

Recommendation 22: Remove associated providers as a definition
Recommendation 23: Apply risk-based registration to all who provide aged care across the sector, similar to the NDIS review recommendation
Recommendation 24: Providers should have a positive duty to uphold the rights detailed in the Act
Recommendation 25: Section 74 which details the registration period, should give the Commission the ability to provide licences **up to** 3 years.
Recommendation 26: section 87 detailing the provider register should have the same standards as the worker screening register, in order to avoid double standards.
Recommendation 27: Section 90 (b) needs modification as follows:

> (b) take reasonable steps to ensure that the aged care workers, and the responsible persons, of the registered provider 3 comply with the Aged Care Code of Conduct, including through sufficient training and support for qualifications

Recommendation 28: Amend section 91 to include adequate size of a provider's workforce, appropriate skills and correct ratios.
Recommendation 29: Section 95 on Incident Management needs to provide for procedural fairness.
Recommendation 30: Section 101 on advisory bodies including quality care and consumer advisory bodies should be expanded to include a workforce advisory body.
Recommendation 31: Section 109, detailing reporting should provide for workforce data to be reported in full.

Aged care worker penalties and liabilities

It is imperative that aged care workers must not have any penalties placed on them.

Workers already face formal disciplinary processes through the employment relationship, including the loss of employment and potential loss of career through the worker banning orders. In addition, registered professionals have their own respective regulatory systems in place.

Given workers are not generally in charge of the systematic conditions and organisational decisions in their place of work, making them liable for civil penalties is grossly unfair. Penalties should be limited to Responsible Persons of a Registered Provider.

Specifically, in section 118, we advocate for the complete removal of civil penalties on workers.

We also note that the proposed number of penalty units potentially applying to aged care workers is very high. Further we note that the number of penalty units is the same for a responsible person and an aged care worker, despite the significantly higher scope of responsibility that applies to a responsible person.

Further still, the potential penalties applying to responsible persons and to aged care workers, are equal to that of a provider. This is grossly unfair, given the latter can be a large company and the former is by definition always an individual. Penalties need to be revised to ensure the appropriate units for the applicable individuals/organisations.

Recommendation 32: Remove the civil penalties in section 118.

Aged Care Quality and Safety Commission

We are concerned that the wording around the Commission is not strong enough to give it the tools it needs, to be a strong regulator. Use of words such as 'build capacity', 'promote', 'support' and 'oversee' used in the Act to describe the functions of the regulator will only give the Commission scope to regulate from an advisory capacity. These words must be replaced, or statements of intent supplemented, by use of wording which **requires** the Commissioner to ensure compliance by registered providers.

The Aged Care Quality and Safety Commission should have a function in section 141 regarding publishing information about relative quality of care.

The safeguarding function of the Commissioner in clause 142 should separate out aged care workers of registered providers into its own clause. The use of 'promote' in 142(c) is particularly inappropriate, and should be replaced by ensure, uphold, protect or other stronger language that provides the highest burden for a requirement to be met.

The Safeguarding functions should also include a sub-paragraph on making sure that funding is used on things it is provided for.

Section 159 regarding consultants should be amended to include guidance and limitations on what the appropriate use of consultants is. It is completely inappropriate to outsource the regulatory functions of the system to private providers who operate with an inherently different purpose (including a clear commercial interest) to that of the regulator itself.

Recommendation 33: The safeguarding function of the Commissioner in clause 142 should separate out aged care workers of registered providers into its own clause. We suggest the following:

To ~~promote~~ ensure

iv) continuous development and improvement of the aged care workforce and industry conditions, including through minimum qualifications, ongoing training and professional development, increased remuneration and improved career pathways.

Recommendation 34: The Safeguarding functions in section 142 should also include a sub-paragraph on making sure that funding is used on things it is provided for.

Recommendation 35: the inclusion of limitations in section 159 on the appropriate use of consultations.

Recommendation 36: the inclusion of a function in section 141 regarding publishing information about relative quality of care.

Aged Care Quality and Safety Advisory Council

Section 172(3) should include representatives from the relevant unions to be included as observers to the Council. This will increase transparency and ensure worker access to this body.

The Royal Commission discussed this in Recommendation 7.

Thought should also be given to who other appropriate members of the Council could be, including for example a First Nations voice.

Recommendation 37: Representatives from the relevant unions to be included as observers to the Council.

Worker screening

As written, the worker screening database is little more than a blacklist. It should be future proofed for a positive worker registration and qualification scheme, with a subsection set aside for 'information in the database' that refers to any qualifications undertaken by the individual and which meet any requirements and standards (however titled) as prescribed in the rules to ensure the database reflects the worker registration scheme to be introduced.

We also have significant concerns that a wide range of agencies and individuals will be able to access the database and that there is potential for unwarranted breach of privacy of individuals.

Recommendation 38: a subsection set aside in Division 7 for 'information in the database' that refers to any qualifications undertaken by the individual and which meet any requirements and standards (however titled) as prescribed in the rules'.

Complaints

The Complaints Commissioner should have its own independent statutory powers, separate from the Aged Care Quality and Safety Commissioner. Similarly, the Complaints Framework should be included in the Act. This is necessary to ensure that complaints are taken seriously and have their own framework that is legislatively protected.

Procedural fairness needs to be included throughout the Act in order to ensure investigations, complaints and reviews have to follow principles of natural justice. Section 183(2)(h) details procedural fairness for the review or reconsideration of decisions. The provision for procedural fairness must be required in the actual investigation process.

This would ensure there is full regulatory alignment with the NDIS Code, improve the transparency and operation of incident reporting for both providers and workers, and send a positive message to the workforce. It would also empower and protect workers to positively engage in incident reporting, which is in line with the aims of the Aged Care Quality Standards.

Recommendation 39: Recommendation: The Complaints Commissioner should have independent statutory powers.
Recommendation 40: In Section 183, the provision for procedural fairness needs to be required in the actual investigation process.

Transparency

Section 322 needs tightening up regarding 2(b) “disclosure that could reasonably be expected to prejudice the financial interests of an entity”. Disclosure of information which might impact on a provider’s commercial interests is absolutely protected, with no offsetting consideration about how that protection might impact adversely on consumers’ interests. We advocate for a public good exemption in this clause.

Across the Act, terms such as ‘reasonably’ need to be used with clear thresholds in place. This is a rights based Act, and should default to the right to transparency and information rather than over-protecting commercial information.

Recommendation 41: Section 322 should be redrafted to include a public interest principle, and a higher bar for allowing the protection of information that could prejudice financial interests.

Computers and info

We are concerned about the potential misuse of computer programs in the management of information and in decision making. Transparency needs to be prioritised here. Decisions should at first principle be made by humans, and if not, they should be advertised as such. People affected by decision making should be able to question the use of computer programs in making decisions for them.

The draft Act recognises decisions might be automated (Part 7), but nothing seems to have been learned from the Robodebt tragedy, and there is no requirement that decision algorithms are consistent with the Act’s right-based principles or any of the other provisions of the Act.

Recommendation 42: Section 398 and 399 should include the principle that Decisions should at first be made by humans, and if not, they should be advertised as such. People affected by decision making should be able to question the use of computer programs in making decisions for them.

Review of the Act

A review of the Act must be scheduled sooner than the 5 years named, as that is too long a period of time and will not respond to issues quickly enough. We propose a review commence in 3 years, or alternatively an ongoing review on a rolling basis with different parts reviewed in different stages. Given the various parts of the system that will be bedded down over the next months and years, a review needs to be sooner rather than later, to ensure problems do not become entrenched.
We also advocate that a subsequent review should occur on a recurring basis.

Recommendation 43: Review of the Act under Part 10 should be sooner than 5 years, for example on a rolling basis, and should be recurring.

First Nations Commissioner

A statutory, legislatively independent First Nations Commissioner needs to be created, with a statutory link to UNDRIP. This is an important step to ensure the aged care sector is doing its part in closing the gap.

Recommendation 44: Creation of an independent First Nations Commissioner.

Appendix 1: List of recommendations

1. **Recommendation:** Insert the requirement for a full registration scheme, including parts a, b and c in the Royal Commission recommendation 77 into the Aged Care Act.
2. **Recommendation:** The Act should start on 1 July, but with transition arrangements as necessary to reduce impact on workers.
3. **Recommendation:** The workforce object at 5(g) should say:

   ~~g) provide for sustainable funding arrangements~~ provide for the delivery of funded aged care services by a diverse, qualified, trained and ~~appropriately~~ highly skilled workforce, of sufficient numbers; and
4. **Recommendation:** Similar to the Object regarding workforce, the right under (20)(3)(c)(iii) should refer to:

   services being delivered by "sufficient numbers of aged care workers, who have a minimum level of qualification, recognised quality care skills and experience".
5. **Recommendation:** A section on the rights of workers should be included, including the right to be safe, and an active and respected part of their workplace.
6. **Recommendation:** Section 20(2) should include a right to care services as per the Royal Commission, as well as a right to information about those services.
7. **Recommendation:** A government role for service provision should be written into the Act.
8. **Recommendation:** Aboriginal and Torres Strait Islander Peoples rights under The United Declaration on the Rights of Indigenous Peoples should be stated in this section.
9. **Recommendation:** The Workforce principle under section 22(6) be amended as follows:

   (6) The Commonwealth aged care system:

   (a) supports funded aged care services being delivered by a sufficient number of diverse, qualified, trained and highly ~~appropriately~~ skilled workforce who are valued and respected;

   (b) supports the active development of the workforce, including supporting providers, in conjunction with unions, to improve careers, wages, conditions and provide professional development opportunities and ongoing training and

   (~~b~~c) supports aged care workers, however engaged, being empowered, including through access to relevant information, to:

   (i) provide feedback, suggest measures and take actions that support innovation, continuous improvement and the delivery of high quality care; including through gaining qualifications, training and ongoing professional development and

   (ii) participate in governance and accountability mechanisms related to the delivery of funded aged care services; including respecting an active role for unions in improving the aged care workplace and
10. **Recommendation:** Bring the diversity list in section 22(4) up from being a note to include it as a section, and include a catch all section.

11. **Recommendation:** Amend the definition of 'aged care worker screening check' to include the following:

    the definition of 'aged care worker screening check' means an assessment, under an aged care worker screening law, of whether a person who works, or seeks to work, with individuals accessing funded aged care services poses a risk to such individuals and possesses any qualification and training requirements as prescribed by the rules and required to carry out their duties as an aged care worker.'
12. **Recommendation:** Remove the definition of a volunteer as an aged care worker.
13. **Recommendation:** That the definition of responsible person be significantly tightened, including that
    - 11(1)(b) be rewritten, as "planning, directing or controlling the activities of the registered provider" is too broad.
    - section 11(1)(c) (ii) "any person who is responsible for the day-to-day operations of the registered provider" be removed.
14. **Recommendation:** Further consultation on exact definition of who should be captured as a responsible person.
15. **Recommendation:** Education on the responsibilities and liabilities of a responsible person.
16. **Recommendation:** Aged care workers should be defined as **not** being able to be supporters and representatives, for the avoidance of doubt.
17. **Recommendation:** Sub-paragraph xi) needs to include 'qualified' as part of its description of workers.
18. **Recommendation:** We advocate strongly that assessment services should not be privatised.
19. **Recommendation:** Aboriginal and Torres Strait Islanders age of eligibility from 45.
20. **Recommendation:** Further work is required on the regulation of digital platforms. The Department should consult further, including through a roundtable with industry stakeholders.
21. **Recommendation:** A risk proportionate model as suggested in the NDIS review should be added to the section on digital platforms.
22. **Recommendation:** Remove associated providers as a definition.
23. **Recommendation:** Apply risk-based registration to all who provide aged care across the sector, similar to the NDIS review recommendation.
24. **Recommendation:** Providers should have a positive duty to uphold the rights detailed in the Act.
25. **Recommendation:** Section 74 which details the registration period, should give the Commission the ability to provide licences **up to** 3 years.
26. **Recommendation:** section 87 detailing the provider register should have the same standards as the worker screening register, in order to avoid double standards.
27. **Recommendation:** Section 90 (b) needs modification as follows:
    (b) take reasonable steps to ensure that the aged care workers, 2 and the responsible persons, of the registered provider 3 comply with the Aged Care Code of Conduct, including through sufficient training and support for qualifications

28. **Recommendation:** Amend section 91 to include adequate size of a provider's workforce, appropriate skills and correct ratios.
29. **Recommendation:** Section 95 on Incident Management needs to provide for procedural fairness.
30. **Recommendation:** Section 101 on advisory bodies including quality care and consumer advisory bodies should be expanded to include a workforce advisory body.
31. **Recommendation:** Section 109, detailing reporting should provide for workforce data to be reported in full.
32. **Recommendation:** Remove the civil penalties in section 118.
33. **Recommendation:** The safeguarding function of the Commissioner in clause 142 should separate out aged care workers of registered providers into its own clause. We suggest the following:

    To ~~promote~~ ensure

    iv) continuous development and improvement of the aged care workforce and industry conditions, including through minimum qualifications, ongoing training and professional development, increased remuneration and improved career pathways.
34. **Recommendation:** The Safeguarding functions in section 142 should also include a sub-paragraph on making sure that funding is used on things it is provided for.
35. **Recommendation:** the inclusion of limitations in section 159 on the appropriate use of consultations.
36. **Recommendation:** the inclusion of a function in section 141 regarding publishing information about relative quality of care.
37. **Recommendation:** Representatives from the relevant unions to be included as observers to the Council.
38. **Recommendation:** a subsection set aside in Division 7 for 'information in the database' that refers to any qualifications undertaken by the individual and which meet any requirements and standards (however titled) as prescribed in the rules'.
39. **Recommendation:** The Complaints Commissioner should have independent statutory powers.
40. **Recommendation:** In Section 183, the provision for procedural fairness needs to be required in the actual investigation process.
41. **Recommendation:** Section 322 should be redrafted to include a public interest principle, and a higher bar for allowing the protection of information that could prejudice financial interests.
42. **Recommendation:** Section 398 and 399 should include the principle that Decisions should at first be made by humans, and if not, they should be advertised as such. People affected by decision making should be able to question the use of computer programs in making decisions for them.
43. **Recommendation:** Review of the Act under Part 10 should be sooner than 5 years, for example on a rolling basis, and should be recurring.
44. **Recommendation:** Creation of an independent First Nations Commissioner.

Appendix 2: Submission of the Health Services Union 'Aged Care Worker Regulation Scheme - Consultation Paper' to the Department of Health, June 2020 consultation

Submission of the Health Services Union

'Aged Care Worker Regulation Scheme - Consultation Paper'

Department of Health

Authorised by Lloyd Williams, National Secretary

HSU National

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About the Health Services Union

The Health Services Union (**HSU**) is a growing member-based union with nearly 90,000 members working across the health and community services sectors in every state and territory.

Our members work in aged care, disability services, community health, mental health, first response, alcohol and other drugs, public hospitals and private practices.

HSU members include, but are not limited to, health professionals, social workers, paramedics, disability support workers, aged care workers, personal care workers, community and social care workers, catering staff, cleaners, physiotherapists, occupational therapists, diagnosticians, nurses, scientists, technicians, clerical and administrative staff, doctors, and medical librarians.

We are committed to advancing and protecting the wages and conditions, rights and entitlements of our members through campaigning, education and workplace activism. The HSU also provides a range of services and support to assist members with many aspects of working and family life.

We are a driving force to make Australia a better place. We work to ensure the rights of not just our members, but all working Australians, are protected. Our work and advocacy are in recognition of the inextricable link between accessible, quality and safe healthcare and meaningful social and economic participation. A valued health workforce is central to delivery of outcomes.

HSU members in aged care work in roles including personal care worker, physiotherapist, occupational therapist, therapy assistant, lifestyle assistant, assistant in nursing, enrolled nurse, catering and food service, laundry attendant, cleaner, and administration. In addition to those directly employed in the aged care sector, the HSU has members working in health professions that require them to interact on a regular basis with older Australians. This includes paramedics, mental health clinicians (psychologists and social workers), administration officers, disability support workers, radiographers, and technicians. Our members work in residential facilities, community services and home care and are employed in not-for-profit, privately owned, and public organisations. The HSU is also a founding member of the National Aged Care Alliance, which for nearly twenty years has represented the interests of the whole sector: consumers, workforce, providers, peak and professional bodies.

The HSU is expertly placed to make a submission in response to the Aged Care Worker Regulation Scheme Consultation Paper (**the consultation paper**) and our responses contained within this submission must be taken in the broader sectoral and reform context. This submission has been prepared based on the first-hand experiences of our members. Data and anecdotal evidence have been collected through a recent survey of 1,471 aged care workers and HSU members conducted in accordance with ethical data collection practice. While this submission has been prepared by the HSU National, it is made on behalf of our branches Australia-wide.[1]

[1] HSU National is the trading name for the Health Services Union, a trade union registered under the *Fair Work (Registered Organisations) Act 2009*. The HSU has registered branches with coverage of aged care workers in New South Wales, Victoria, Tasmania, Western Australia, South Australia/Northern Territory. The HSU also has coverage of aged care workers in the Australian Capital Territory and Queensland.

Executive Summary

Given its prominence in public policy and conversation, and its ever-growing share of the Australian social and economic infrastructure, the aged care system has been subject to myriad reviews commenting on its effectiveness and making recommendations for improvement. Central in these reviews has been examinations of the workforce and the relationship between its structure and capacity to deliver safe, quality, person-centred care. Throughout inquiry processes, including the Royal Commission into Aged Care Quality and Safety (**the Royal Commission**), it has repeatedly been made clear that a valued, supported and professionalised workforce is the logical and moral imperative to improving Australia's aged care system. At the outset, the HSU notes that the Royal Commission has provided clear indications of its intent to make recommendations in this area and has cautioned any reforms that pre-empt its final report. It is in this context we make this submission.

Regulation can form an important component of the sectoral transformation needed. To make sure that it serves this purpose, the HSU is opposed to an exclusionary system centred on individual worker blacklisting. We advocate for a regulatory authority that is empowered to consider individual worker actions and organisational practices and systemic issues, for example how low staffing levels and poor ongoing training and support adversely impact the workforce and care outcomes. Similarly, despite a complex regulatory environment, there is nothing under legislation or policy that addresses (inadequate) funding of the sector and a requirement by aged care providers to be transparent and accountable for how public funds are allocated to care provision. Discussions and reform measures on workforce regulation must be undertaken against, and take into account, this broader context.

The HSU is of the firm belief that a positive regulation scheme is essential to a high-quality sector. It must be built on the objectives of attracting and retaining an appropriately qualified and trained workforce, reflected in an uplift of its value and professionalisation. The scheme must be designed to capture all workers, including but not limited to personal care workers (**PCWs**)[2], therapy assistants, food services, laundry services, and cleaning; reflecting that these roles are directly involved in the delivery of holistic care. Training and qualification requirements must appropriately align with clear job classifications. The attainment of mandatory minimum qualifications must contain recognition of prior learning (**RPL**) alongside grandparenting provisions that accommodate the skills and knowledge of the existing workforce. While it should not mirror the National Disability Insurance Scheme (**NDIS**) Quality and Safeguarding requirements, a scheme should be compatible to enable cross-sector labour mobility. This can be achieved by establishing shared standards and having the mechanism of a positive, public register in place for verifying appropriately qualified workers.

Such measures will professionalise the sector and raise its status as a skilled occupation. A skilled workforce is a more valued workforce, and a more valued workforce is reflected in improved care outcomes. For workers, the direct link between professionalisation measures, higher valuation, and clear career pathways will make aged care a more attractive career to enter and remain in. We recognise workforce regulation reform, if underpinned by the right core objectives, as providing an opportunity to improve Australia's aged care system and push important shifts in social perceptions of the value of the aged care professions.

[2] Personal Care Workers can also be referred to as Personal Care Assistants or Extended Care Assistants. For the purposes of this submission, Personal Care Workers will be used to capture each of these job titles.

Who should the scheme apply to?

Providers

The HSU supports a scheme covering all aged care services, across residential and home care settings. The consultation paper[3] outlines valid reasons for the consistent application of a scheme to all providers. Creating divisions between providers will only exacerbate gaps in the current regulatory framework and drive inconsistency in standards and expectations of service delivery. In a sector where providers may operate across settings, and where workers often work across settings, it is efficient from an administrative and cost perspective, while also an important element in raising workforce profile and value consistently. Applying a scheme to only one setting will also hinder intra and inter-sector workforce mobility, particularly where there is opportunity for an aged care scheme to intersect with the disability sector.

Workers

The HSU acknowledges the argument for only PCWs to be covered by a scheme however, we disagree with this proposal. In June 2020, 87.2 percent of surveyed members working in aged care in Tasmania, Victoria and New South Wales supported a positive regulation scheme applying to workers in:

- direct care including PCW, assistant in nursing, therapy assistant, lifestyle assistant.
- administration and management staff.
- support staff including catering, cleaning, laundry, gardening, maintenance.

Covering only one group of workers within a scheme fails to recognise and capture the day-to-day function and role of other occupation groups in delivering care to older Australians. There is a fluidity between roles that is expected by providers and which enriches the relationship between the worker and care recipient. As a member in catering services from Illawarra, NSW describes it:

> *I think everyone in aged care should be treated as an aged care worker because that's what we are… I get to know their eating habits, preferences, dietary requirements, and really get to know them.*

The expectation and need for workers to operate across roles should be met with improved recognition from industry and government, via professionalisation, value uplift and job security measures. The Aged Care Retention Bonus (the bonus), announced as a measure to ensure workforce continuity in the sector during the COVID-19 pandemic, serves as a prime example of the adverse effect of arbitrarily dividing the workforce (and providers and care settings). Food services, cleaners and administrative staff, as examples of non-traditionally direct care roles excluded for the bonus, are fundamental to the quality and continuity of care provided within residential facilities. Yet, these groups of workers were excluded from bonus eligibility on the false basis they are not involved in the provision of care or substantial contact with residents. These workers are equally important in protecting older Australians during crises or otherwise, and their skills and value deserve to be equally invested in. Further, it was unclear to the HSU, providers, and peak bodies why the bonus for home care workers was set at a substantially lesser rate than for workers in residential settings, as the work they do is of an equally skilled and important nature.

[3] MP Consulting prepared for the Department of Health, 'Aged Care Worker Regulation Scheme', consultation paper, May 2020, pp. 14-15.

The HSU is concerned that excluding these critical groups of workers from the outset will mean they are not captured in the future, and they will miss out on the benefits of recognising and raising their skill and value via a positive scheme. Moreover, it will create confusion for care recipients about the varying quality standards which apply to the whole range of professions which support them.

NDIS definition: more than incidental contact

The HSU draws attention to the NDIS worker screening requirements for NDIS registered providers. Risk assessed roles under the Rules of the NDIS[4] are:

- key personnel roles
- roles for which the normal duties include the direct delivery of specified supports or specified services to a person with disability
- **roles for which the normal duties are likely to require more than incidental contact with people with disability. Contact includes physical contact, face-to-face contact, oral communication, written communication and electronic communication [emphasis added]**

The normal duties of a role are likely to require more than incidental contact with a person with a disability if those duties include:

- Physically touching a person with disability; or
- Building a rapport with a person with disability as an integral and ordinary part of the performance of those duties; or
- Having contact with multiple people with disability –
    - As part of the direct delivery of a specialist disability support or service, or
    - In a specialist disability accommodation setting.

Almost all occupation groups in aged care would meet the above definition. This further demonstrates the fluidity of roles, their involvement in care provision and supports the case for broad scheme coverage that allows cross-sector mobility.

Key features of a scheme

Assessments of criminal history

A centralised system would assist in improving consistency in both the processes to obtain and update worker criminal history screening, and also in the assessment of criminal history by employers and the relevant regulatory authority. As outlined in the consultation paper,[5] there is inconsistency in the application of the Police Certificate Guidelines and this can have an unintended (or intended) perverse outcome of (arbitrary) exclusion from the workforce, and/or deterrence of good and suitable workers from entering the workforce. Assurances of consistency in assessment of criminal history would improve worker, provider and consumer confidence in the system.

HSU members often hold secondary employment (e.g. home and residential care; two residential care jobs) largely as a consequence of the low wages and insecure/under-employment arrangements in the sector. At present, our members report additional administrative and cost burdens due to having to

[4] NDIS Quality and Safeguards Commission, 2020, https://www.ndiscommission.gov.au/providers/worker-screening#01. The HSU notes that different Rules will apply to different registration groups and that these have not yet been determined.
[5] Ibid 3, pp. 17-18.

provide current police checks to multiple employers, and largely having to manage this process themselves. A centralised system captures the workers working across employers and/or settings, avoids duplication costs for the individual, as well as streamlining processes for providers administering the collection, storage and cross-checking of criminal history assessment requirements. It would facilitate cross-sector checking and inter-sector mobility where the register is applied to disability and other social care sectors. It is essential that worker ownership of the clearance, akin to the ownership of a Working With Children Check (**WWCC**), is an element of a centralised criminal history assessment model.

The HSU notes that the consultation paper discusses the adoption of the NDIS Worker Screening Check and explicitly references its rollout as 1 July 2020. This is incorrect, not all jurisdictions have finalised the legislative requirements to give effect to the scheme and as such, the 1 July date is pushed back. Until such time that the NDIS Code and its effect and regulation of it is established and assessed, it would be premature to apply it to aged care.

Assessments of disciplinary information or other misconduct

The HSU advocates for a scheme that is positive to workers and clearly linked to raising the value of the workforce. It is important that only relevant information is considered in any assessment process. Assessment of criminal history should focus only on convictions that have been identified as being a genuine risk to clients and other staff. Assessment of information from other bodies, such as health complaints bodies, government agencies, or civil courts and tribunals, should similarly be narrow in focus so as to not unnecessarily exclude suitable individuals from the ability to work in aged care.

82% of surveyed members across four occupation groups[6] supported, in addition to the current criminal history check, the consideration of information relating to proven misconduct, and 71% supported the consideration of information on previous disciplinary action. However, disciplinary information from past employers should be treated prudently if included in clearance processes. There is no overarching standard that governs how and under which circumstances employers take disciplinary action. Therefore, the nature of the information is likely to make it inconsistent, varied, and potentially unfair. We recognise that in some instances, employer information may raise important concerns about particular workers that should be taken into consideration for the protection of clients and the reputation of the profession.

To be as fair as possible, independent appeals processes for workers who are not cleared or excluded should be readily available, simple and affordable. Further, workers must have genuine access to representation of their choice throughout any appeals process.

We are alarmed and disturbed by any instance of wilful abuse and neglect or serious misconduct. However, as noted above, there are valid concerns of the individual worker being scapegoated and framed in ways that place the full onus of responsibility for neglect and abuse on individuals. This overlooks the serious instances of neglect that arise from structural and systemic issues, such as inadequate funding, low staffing levels, and poor employment practices such as lack of supported

[6] For the purposes of the survey, occupations groups were classified into clinical care (Registered Nurse, Enrolled Nurse, Allied Health Professional); personal care (PCW, Assistant in Nursing, Therapy Assistant, Lifestyle Assistant); Administration/Management; Support (Catering, Cleaning, Laundry, Gardening, Maintenance).

training and inadequate supervision. Throughout submissions given to the Royal Commission, and in its damning interim report, the prevalence of systemic neglect and abuse is raised. In that context, the HSU cautions against a scheme that cannot weigh up the actions (or lack of action) on the part of an individual worker against the environment and organisational context in which they work. Workers, providers and Government have a shared duty to ensure the delivery of safe and quality care to older Australians.

Data collection

The HSU notes that despite recommendations from various inquiries, a serious incident reporting scheme has not been introduced for the aged care sector. Currently, providers have responsibilities under the *Aged Care Act 1997* as to how they respond to complaints, suspicions, and allegations of misconduct. As was raised by multiple stakeholders in 2019 consultations on the Government's proposed Serious Incident Reporting Scheme, the data collected under the current system does not allow for a breakdown of information including unfounded and/or vexatious claims; how many complaints received are downgraded from alleged serious misconduct to a minor or different matter; and provider or employer compliance history and history of complaints meaning structural and systemic factors are not accounted for in individual matters. Data is therefore not analysed and published in a way that can meaningfully inform a well-functioning quality and compliance regime.

We have concerns about a scheme capturing information that is not relevant and breaching ethical and privacy obligations to individuals. Additionally, mandatory review of non-relevant information produces lengthy and subjective assessment processes, thereby reducing public trust in the system and contributing to a poor experience for workers seeking employment. The consideration of other matters in a scheme can only exist effectively where all design elements are known and considered, and if one of the core objectives of the scheme is to produce better care outcomes via building workforce value, skill and professionalism.

Code of Conduct

We do not support the application of the National Health Worker Code of Conduct in aged care as it does not align with the nature of personal care and other work in the sector; it has a clinical care focus. The HSU leans towards adoption of the NDIS Code of Conduct (NDIS Code) however, critical caveats accompany this selection.

Firstly, the NDIS Code simply provides the NDIS Quality and Safeguards Commission a mechanism to exercise its use of banning and other compliance powers once the Code had determined to be breached. The NDIS Code does not in itself support the development of a skilled, high-quality and competent workforce, instead leaving this solely at the discretion of NDIS service providers (with the exception of a mandatory 90-minute online learning module that tells workers their obligations under the NDIS Code). That said, the seven principles of the NDIS Code are sound and are reflective of community attitudes as to what constitutes the minimum level of acceptable care and support to care recipients. We would also note that the NDIS Code is applicable to both workers and providers, and we support this approach as being fair and holistic. The provision of guidance material to accompany an aged care code would have to be reviewed to ensure it is aged care appropriate, and the question of its enforcement under legislation would need to be determined. The HSU notes that the NDIS Code's guidance material does not form part of the legislative instrument.

Secondly and similarly, the Aged Care Quality Standards (the Quality Standards) and Charter of Aged Care Rights (the Charter) have only been in effect since 1 July 2019. Regulation under the status quo has not been duly assessed, and positive impacts and/or opportunities, namely relating to regulatory oversight, function and the correlation between the workforce behaviour, support and care outcomes, have not had ample time to be assessed.

The introduction of any Code of Conduct, as with the consideration of any disciplinary or other matter in reviewing and regulating worker behaviour, must be accompanied by fair right of reply and appeal mechanisms, and privacy measures.

Proficiency in English

The HSU holds concerns regarding an English proficiency requirement. Nearly 30% of the direct care workforce in aged care (PCWs, ENs, RNs, allied health) come from culturally and linguistically diverse backgrounds. Introducing a minimum English proficiency requirement that is not clearly aligned to improvements in training and qualification standards across the sector for all workers is unnecessary and sends a harmful exclusionary message to prospective employees, as well as compounding racism which exists within the sector. Furthermore, many providers market themselves to older Australians from different cultural and linguistic backgrounds and these providers and the consumers they serve prize workers who possesses a language other than English. Implementing an overly onerous English proficiency standard risks excluding these valuable workers from the sector and should be treated cautiously.

There is a responsibility that rests with training providers and employers to support (financially and otherwise) employees to achieve and maintain training and qualification standards that enable high-quality care, and this encompasses more than would be captured by the proposal set out for an English proficiency requirement.

As was raised by employers and provider peak bodies during the consultation session held afternoon of 17 June, and as has been raised in various previous inquiries and reviews, private registered training organisations are poorly regulated and often graduate students without ensuring a minimum English proficiency is met, as they should be doing. The HSU advocates for the regulatory and compliance oversight of aged care training and qualifications to be improved through returning to fully subsidised TAFE placements and harmonisation of training standards. Greater penalties for non-compliant RTOs should be enforced, to ensure they exit the VET sector and others are deterred from poor practice.

Minimum Qualifications and ongoing professional development

Any planning for a potential registration scheme for aged care workers should be seen as an opportunity to shape a future where care workers are afforded the respect and status that they deserve. In turn, such a future would ensure the best possible care outcomes for aged care residents and clients.

All workers (as identified throughout this submission) in aged care should be incorporated into a sector-wide registration scheme. The scheme must be a mandatory positive registration and accreditation scheme with protected titles. 71.83% of surveyed members believe that a Certificate III in Individual Support/Aged Care was an appropriate starting qualification for personal care work.

Any scheme requiring minimum qualifications to register as a personal care worker should be phased in over at least three years to enable workers without the qualification to undertake studies. Previous experience in personal cares role should be recognised and workers must be supported financially so that the cost of studying does not become prohibitive.

Done well, a registration scheme will enhance the status of aged care workers in society and facilitate broader recognition of the unique skills involved in caring work. Coupled with the improvements in pay and conditions that must flow from any increase in stringency and minimum standards around training and qualifications, the impacts of implementing such a scheme would lead to attraction and retention of the highest calibre of staff. With an ageing workforce, and one subject to high turnover either by premature exit of the sector or retirement, it is critical that attention is turned to development and retention of a skilled and stable future workforce. Further, the potential for career progression pathways to become entrenched within the profession should be prioritised.

Minimum qualifications

The absence of mandated minimum training and qualification standards, a dearth of specialty training for specific care needs, and a sectoral culture of placing the onus of responsibility on individual workers to upskill, undermines the quality of care available in Australia's aged care system. The current training and qualification environment is marked by inconsistencies in quality and job readiness. PCWs, as an example, do not have professional training of the kind that underpins nursing or allied health and as such, the wages and opportunities for career development are also much lower for this group of workers. A personal care worker in Victoria described the qualifications and training landscape as:

> *I believe my qualifications [Certificate III in Aged Care and Certificate IV in Medications Management] were adequate for my role, plus time spent in this role has put my practical experience high. However, ongoing training from the company will continue to be important to make sure you are doing the right thing properly and respecting the standards and the high quality of care that the residents deserve.*

Aged care workers report that ongoing training, namely specialised training, and continuing professional development is not readily available and where it is, it is often unaffordable for them to access. Furthermore, the training and qualification standards of staff does not relate to the regulation and accreditation of providers, including no reporting requirements or standards as to how funding should be allocated to training and career pathways and linked to approved provider status.

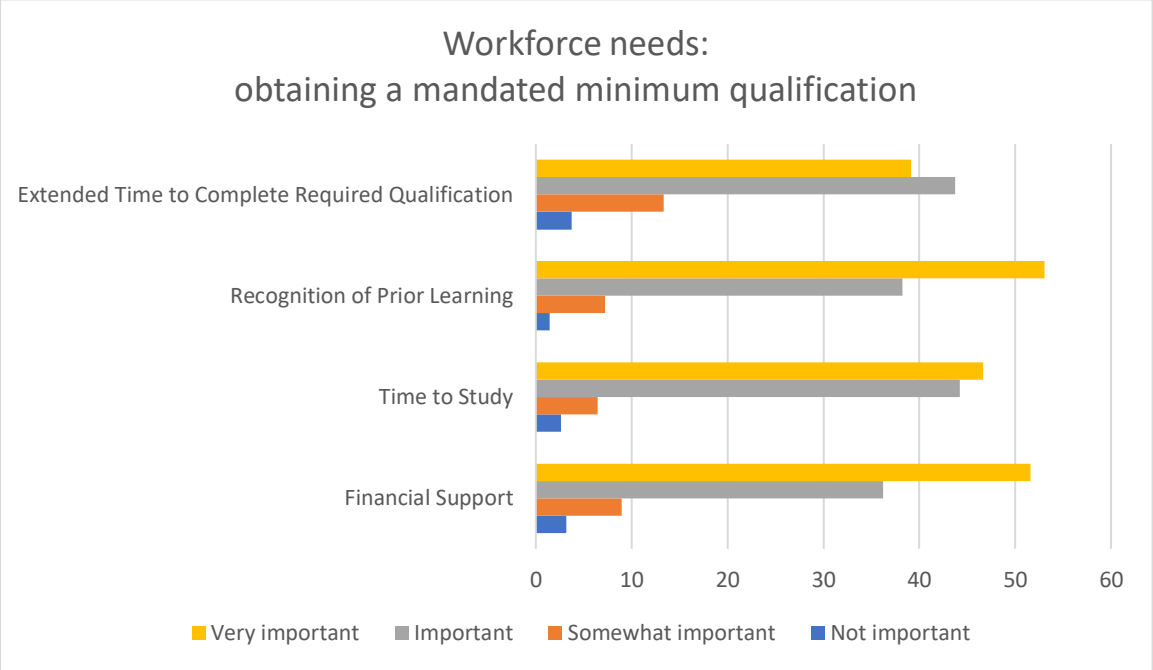
Investment in the workforce, as the pathway to serious positive reform, must encompass:

- Introduction of a positive worker registration (licensing) scheme.
- Introduction of mandated minimum training and qualifications.
    - Introduction of stronger regulation and compliance requirements for training providers.
- Introduction of mechanisms to ensure appropriate workforce size and skills mix.
    - Examine funding allocation and industrial practices; introduce transparency and accountability measures.

A qualified, well-trained and supported aged care workforce will improve outcomes for care recipients, their loved ones, workers, providers, government and regulatory authorities. It is imperative that any scheme introduced is done so in a way that does not present overly burdensome or costly barriers to the workforce and subsequently, to care recipient wellbeing and choice.

The introduction of a mandated minimum training and qualification standard should not serve as a barrier to prospective employees entering the sector, nor should the requirement become a deterrent to stay working within the sector. To ensure workers achieve minimum training and qualifications, there should be RPL and generous grandparenting. An RPL and grandparenting scheme must centre on flexibility, including a staged transition period for current and future workers to achieve the standard, with the support (financial and otherwise) of their employer, backed up by government funding.

Graduates from RTOs must receive comprehensive supervision upon entry into the workforce. Currently, this is not uniformly provided by organisations and varies employer-to-employer, state-to-state. Minimum standards of supervision must be harmonised across jurisdictions and must include an ongoing professional development component for which they receive adequate support from their employer.



Professional Development

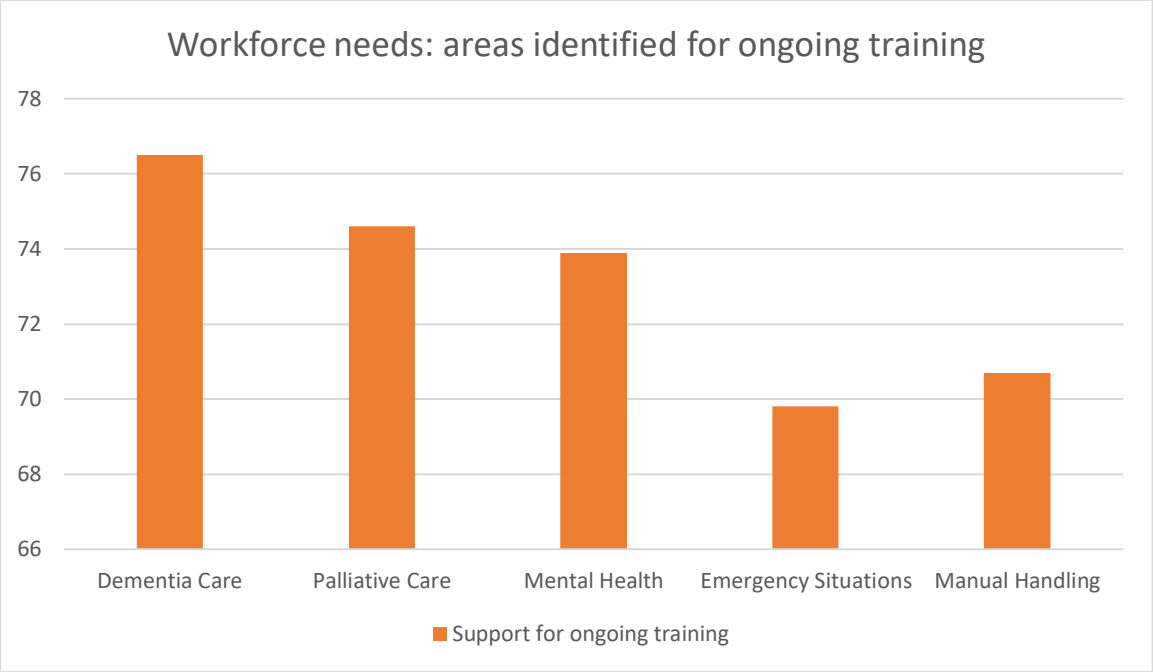
See previous comments regarding minimum training and qualifications.

Substantial pressures to the existing workforce are arising from absence of ongoing quality training and lack of continued structural support. Experienced workers report a lack of confidence in the capacity of new workers and a need to divert resources and attention to them with additional on-the-job supervision. In short-staffed environments, this increases the risk of 'missed care' and impinges upon the confidence of new employees, making them less likely to stay in the sector.

Surveyed members overwhelmingly supported ongoing professional development for all occupation groups. 94% of respondents want to see the roles in the personal care occupation group receive a minimum amount of ongoing training each year, with 87.8% and 84% of respondents calling for ongoing training to also apply to administration/management and support staff, respectively.

HSU members overwhelmingly report feeling unprepared to meet the increasingly complex needs profile of older Australians in their care, across care settings. Namely, HSU members identify the following areas as urgently needing additional, focused training:

- Mental health
- Dementia
- Wound management
- Palliative care
- Fall prevention
- Emergency and serious incident response.



At present, there is no requirement for RTOs or employers to provide training in specialised areas that would assist workers to manage complex, interrelated care needs. Aged care workers should be receiving training in best practice management of the specific conditions outlined above, and in responses to workplace incidents and resident mistreatment.

Additionally, HSU members report that where training is provided for these areas, it is not always mandatory nor is time paid for courses to be undertaken. Worse still, for workers that complete additional training or higher qualifications, often paid for by themselves, there is no connection to an improved wage structure or career path. A personal care worker in Tasmania describes the current professional development environment:

I believe in mandatory ongoing training and buddy shifts, instead of what we have now. We don't get paid for any training we do. We should be paid for our training. It shouldn't be done through internet courses as not every employee does it, understands it, or has the necessary tools to complete it. All training should be provided by the employer, done onsite and face-face.

The national training package for aged care qualifications must be amended to mandate core competencies for the above outlined specialty areas, and employers must be compelled to support workers to build on these skills via ongoing professional development embedded in a worker regulation scheme.

The HSU recognises that funding for the sector is grossly inadequate. We also recognise the current link between low Award rates and the funding instrument, with no transparency or accountability measures for provider funding expenditure, as unacceptable and compounding the low wage and high turnover issues in the sector. Reform should capture all of these systemic and structural issues, with the improvement of qualifications training and skills, accompanied by better pay and career opportunities, as an immediate priority and centre-point of any registration scheme objectives.

The HSU recognises that in a sector marked by low wages, it is not fair or sustainable to have individuals bear the financial and administrative costs of obtaining and demonstrating the meeting of any minimum requirement. This is why RPL, grandparenting and adequate sector funding for both education and aged care, resting with the Commonwealth as the primary funder, must be incorporated into any scheme.

Presentation of register

Any database must be positively geared, as opposed to a worker exclusion or 'blacklist'. Where any disciplinary or criminal matter is under investigation, an individual's details should not be published until the matter is concluded. The right to appeal a decision must be embedded, along with clear criteria for any proposed deregistration of a worker. This approach ensures that any scheme is centred on uplifting workforce value and the principles of procedural fairness. The database must also be linked to employer responsibilities, including reporting on the employment of registered staff and compliance to ensure employers appropriately support and fund employees to obtain and retain regulation requirements. The criteria for approved provider status must be amended to include the employment and professional development of regulated workers.

HSU members surveyed were supportive of a positively presented register. As an allied health professional in Sydney recognised:

I think registration is important to try and prevent the 'bad apple carers' just working their way around different providers, but there needs to be a register of the 'good apples' that providers must check before recruiting.

A register is a key element of ensuring the scheme facilitates sector mobility and the qualifications, working history and background verification of a worker should be accessible in real time, in accordance with relevant privacy laws and protections.

How should the scheme be managed?

The HSU supports the ACQS as the regulatory body managing the scheme.

The introduction of any scheme must be carefully implemented and overseen to ensure it delivers what it sets out to do, being to professionalise the aged care workforce, improve its social value and meet community expectations of quality and safety. A positive regulation scheme should be overseen by an independent authority reporting to the Aged Care Quality and Safety Commission and comprised of a wholly representative board of key stakeholders from across the sector. The board must include the workforce and its representatives (unions), providers and industry peak body representatives, consumers and advocates, and the Government as the primary funder.

Key functions may include:

- Review and approval of individual training and qualifications (i.e. accreditation functions).
- Advising on the appropriateness of training, including the content and training providers.
- Ensuring background check responsibilities have been complied with by workers and employers.
- Regulate applicable Code of Conduct/the Charter/the Quality Standards.
- Maintain a positive database.

We note that the NDIS Quality and Safeguards Commission regulates both providers and workers. A sole-purpose regulatory agency, such as that which we propose should be established, can take into consideration whether misconduct or neglect is attributable to an individual workers behaviour or if the behaviour arose from systemic shortcomings of a provider e.g. not enough staff or training to enable the workforce to deliver safe and quality care. Therefore, the managing regulatory body must have the ability to view situations holistically with the appropriate investigatory powers. While the consultation paper notes that there is a higher cost and administrative burden in establishing this, the principles and medium to long-term benefits of a new body able to assess the whole picture, counters the initial barriers.

How should the scheme intersect with other schemes?

Cross-sector harmonisation: Disability and aged care competing workforces

The health and community services sector, which encompass aged care and disability workforces, is one of the fastest growing sectors in Australia. In the 2013-2018 period, one in every four jobs created were in these fields. In addition to the approximate 640,000 aged care workers expected to be required by 2050 , the disability workforce will need to more than double from approximately 73,600 full-time equivalent (FTE) workers to 162,000 FTE workers to cope with the full implementation of the NDIS. A crossover between the roles of, and demand for, disability support workers and aged care workers is increasing, in particular in the home care environment where service providers will often employ support workers to attend to both older clients and those with disabilities.

The National Disability Insurance Agency (NDIA) views this trend as accelerating as the number of suppliers who operate in both systems continue to generate opportunities for work in both sectors, thereby increasing the risk of competition for the same pool of workers. While the interdependencies between the workforces increases, coordination between relevant agencies and authorities has not,

posing a threat to the achievement of successful policy and care outcomes. The same poor wage and employment conditions that beleaguer aged care and hinder attraction and retention are present for the disability workforce also, especially as the NDIS continues to roll out with prices linked to low Award rates of pay.

Harmonised and standardised quality safeguards, namely a portable, visible licensing scheme where shared elements between the sectors (background checks, common training and qualification units, common ongoing professional development requirements) should be introduced, while still being flexible enough to allow workers to specialise in one sector or the other and be appropriately recognised by the regulatory regime for their expertise in their chosen field. Doing so would allow for inter-sector mobility, streamlined and therefore more efficient regulatory oversight, and reduced administrative and cost burdens for workers operating between the sectors. Such standardisation will serve to attract and retain workers within the sectors, as well as improving care outcomes across a wide cross-section of care recipients.

The HSU supports a model that avoids unnecessary duplication and cost to individual workers.

Appendix 3: Professionalising the Aged Care Workforce: The case for worker registration and a mandatory qualification

Professionalising the Aged Care Workforce:

The case for worker registration and a mandatory qualification

By Fiona Macdonald
Policy Director
The Centre for Future Work at the Australia Institute

March 2024

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The author thanks the numerous people who gave their time, insights and/or feedback on this project. The final report is the work and represents the views of the author and the Centre for Future Work.

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Summary

This paper presents the case for an aged care worker registration and accreditation scheme. In accordance with the recommendations of the Royal Commission into Aged Care Quality and Safety (Aged Care Royal Commission) the proposed scheme includes a requirement for attainment of a Certificate III qualification and engagement in ongoing training or continuing professional development (CPD).

Increasing the status of care work is critical to building a sustainable workforce and a sustainable care system. Foundation skills standards and ongoing professional development requirements are important foundations for professionalising the workforce to increase workers' skills and status, along with other strategies for improving pay, job quality and working conditions.

A national care worker registration and accreditation (or occupational licensing) scheme with a minimum qualification and CPD requirements is necessary to ensure workers are adequately equipped to do their jobs and meet their obligations under existing aged care regulation. A national scheme will provide the basis for building the required capability for quality care. It can ensure ongoing learning and specialisation for responding effectively to the diversity and growing complexity of care needs across all aged care services.

Benefits of the scheme would accrue to people receiving care, aged care workers and providers, government and the general community. Benefits include higher quality and safe care, a foundation for better jobs and careers, and increased system responsiveness and stability to meet growing demand and complex needs. Combined with other strategies to ensure adequate staffing, fair pay and improved working conditions, the scheme can support reduced gender and other inequalities.

The most significant costs would be short-term establishment and initial training costs. Limiting costs is the fact that around two-thirds of care workers already hold relevant qualifications. Further, work is already underway to build national worker registration. Already new regulatory and organisational supports are in place for a more coordinated approach to ensuring skills and training that meets industry needs.

There are new aged care worker screening requirements and a new mandatory Code of Conduct for Aged Care (Aged Care Quality and Safety Commission [ACQ&S Commission] 2023b). However, these new requirements are only partial responses to the recommendations of numerous recent inquiries and other investigations and consultations. The screening system is designed to exclude unsuitable workers, while

the Code of Conduct places expectations–and obligations–on workers to behave in accordance with new standards. However, there is no system-wide positive recognition of the full range of skills and knowledge required by aged care workers, no requirements for workers to maintain and develop their skills and knowledge, and no recognition of workers who do. The current strengthening of risk assessment in relation to workers is not accompanied by any concrete initiatives to ensure professionalisation and career progression. Yet the objectives of the 2023 Draft National Care and Support Economy Strategy (the Draft National Strategy) include that '(j)obs are professionalised and there are pathways for skilling and career progression' (Australian Government 2023c, 5).

Minimum education and accreditation requirements can provide the basis for workforce professionalisation to improve workforce stability, support workforce growth and improve care quality. A minimum qualification requirement and opportunity for, and accreditation of, further learning can lead to better recognition of the skilled nature of care work, fairer valuation and reward for this work, and increased job satisfaction. Accompanied by strategies to improve recognition of work value and ensure adequate staffing of aged care services, they can provide the basis for pathways to higher-paid jobs and career opportunities. They are a key part of a broader professionalisation strategy that is essential for building workforce stability and growth through increased attraction and retention of workers.

Increased retention can reduce workforce turnover, support workforce capability and enable better continuity of care which is a key factor in care quality and consumer satisfaction. Along with improvements to care quality, other benefits include improved information for better workforce planning and system sustainability and reduced gender inequalities. The aged care workforce is a large and highly gender-segregated workforce in which work has long been undervalued and low paid. Professionalising the aged care workforce is critical for reducing gender inequality in Australia.

Possible risks and negative consequences of introducing mandatory requirements include restricting occupational entry and increasing worker exits, and a potential lack of regulatory alignment with the NDIS, which could negatively impact on attraction and retention of personal care workers. However, these risks can readily be mitigated. Action is already being taken to reduce risks associated with availability of suitable training that could be a potential barrier to an effective registration system.

Some key design and implementation considerations are identified, including who should be covered by the scheme, how best to regulate it, what CPD should look like, and how to ensure costs are shared. One key element of a new scheme will be a readily accessible and affordable workforce-specific process for recognition of prior

learning. It is also important for initial registration to be very low-cost or free for workers and, in the longer-term, for costs to workers to be reasonable.

The report summarises the costs and benefits (see Table 1 overleaf) and concludes that the potential for multiple ongoing and longer-term social and economic benefits strongly supports implementation of a new registration and accreditation scheme.

The report is organised as follows: After Table 1, a background section provides context for the establishment of a positive worker registration scheme. The next section discusses the benefits of worker registration with minimum qualification and continuing professional development (CPD) requirements. After this, the perceived risks of a registration scheme are considered, along with ways to mitigate any real risks. Key details of a positive worker registration scheme with a mandatory minimum qualification are discussed. The final section outlines key costs, which are weighed up against the scheme's benefits.

Table 1: Weighing up the costs and benefits	
Costs	**Benefits**
Aged Care worker registration scheme with mandatory Cert. III and CPD Short-term: Establishment (funded by government and mitigated by ACQ&S oversight). Ongoing: (shared) Year 1: up to $200 per worker* (mitigated by phase-in across service types). Thereafter around $100 per worker p.a. (or less if combined with screening). * initial fee-free period for workers.	**Valued work, better jobs and pay** Long-term benefits for workers: - Higher pay, higher status*. - Professional community of practice. - Career pathways & mobility. - More secure jobs*. - Greater job satisfaction. *In conjunction with other strategies to improve pay and job quality.
Certificate III training costs Medium-term: Training places – as per current govt. investment in free VET (minimal additional costs). Short-term: Scholarships for Cert. III attainment by current workers. Short-term and ongoing: Employer investment in paid training time. Short-term: Establishment of sector RPL (costs to be borne by Jobs & Skills Council)	**Workforce stability and sustainability** Long-term system benefits: - Increased attraction. - Increased job tenure/reduced turnover generating savings on recruitment, induction, supervision and training, - Reduced reliance on migrant worker programs, and their costs, - Increased public confidence in system.
Continuing professional development Ongoing: Little additional cost, mostly to be borne by employers, in line with current practice standards (with increased incentive for employers to provide to maintain worker registration).	**Workforce planning** Ongoing: Improved ability to plan to meet growing care needs and complexity and to ensure quality and safety
Possible reduced occupational entry: Short-term: Potential exacerbation of workforce shortages (mitigated by phase-in arrangements including provisional registration)	**Better quality care** Ongoing: A high quality, effective care system with reduced incidents, better health outcomes, greater user satisfaction.
	Reduced inequalities Long-term: Social and economic benefits of reduced gender inequality incl. pay gap, reduced gender segregation. More opportunities for disadvantaged groups.

Background

THE PERSONAL CARE WORKFORCE IN AGED CARE

There are around 370,000 aged care workers in Australia working in residential aged care, home care and home support and in Aboriginal and Torres Strait Islander aged care. Workers in direct care roles include personal care workers, health and welfare support workers, support staff, social professionals, registered and enrolled nurses, and allied health practitioners and assistants and medical practitioners. Around four in every five direct care workers are women (Australian Government 2021, 15, 30).

Historically, there has been little regulation of personal care workers – the largest aged care occupation – and no formal qualification requirement, for these roles. At the same time there has been a growing reliance on these workers. Low pay, poor bargaining power, overwork and insecure work are all problems for these aged care workers. Employee turnover is high.

Personal care work in aged care is undervalued in relation to the skills and knowledge it requires relative to other occupations that have similar level skills requirements. Nursing in aged care is also undervalued, with registered nurses in the sector paid less than nurses working in health care. The problem of undervaluation has been recognised by the Fair Work Commission (FWC) in a case fought by three unions covering aged care workers: the ANMF, HSU and UWU. So far, the FWC has awarded an interim 15% pay increase in this continuing case. However, long-term systemic recognition of skills requirements for personal care cannot be achieved without formalising recognition in workforce training and development requirements and in government and sector investment.

THE ROYAL COMMISSION AND AGED CARE POLICY

The Australian government has committed to establishing a national registration scheme for aged care workers that is consistent with Recommendation 77 of the Royal Commission into Aged Care Quality and Safety (the Aged Care Royal Commission) (Australian Government, 2023b). The National Aged Care Worker Registration Scheme is intended to 'add additional safeguards to manage risk of harm to older people and further professionalise' the aged care workforce (Australian Government 2023a, 24).

A full response to the recommendations of the Aged Care Royal Commission would see a national registration scheme with a mandatory minimum qualification of a Certificate

III, ongoing training or continuing professional development (CPD) requirements, and minimum levels of English language proficiency, along with the planned screening requirements and code of conduct that are now being established**.** Government policy documents make reference to the government's commitment and actions to implement the Aged Care Royal Commission's Recommendations 77. This is also consistent with Recommendation 78, which reiterates that Certificate III should be the mandatory minimum qualification for personal care workers performing aged care work. In addition, the government has made the professionalisation of care and support jobs an objective in the 2023 Draft National Strategy (Australian Government 2023c). However, to date, there has been no move by the Commonwealth government to include a minimum education qualification requirement in the aged care worker registration scheme as recommended by the Aged Care Royal Commission (2021, vol 1, 260-61).

The Aged Care Royal Commission recommendations followed those of numerous other inquiries, studies and policy consultations that identified the need for centralised registration, training and accreditation for personal care workers in aged care. These include a 2016 Senate inquiry that recommended nationally consistent accreditation standards and continuing professional development requirements (Australian Parliament 2016, xv) and the Aged Care Workforce Strategy Taskforce that recommended centralised registration and accreditation and 'transitions to new competency standards and qualifications' frameworks (2018, 24-29).

The government is implementing a registration scheme including a new code of conduct that sets standards for behaviour and requires workers to be able to apply a broad range of knowledge and skills. This new quality and safety regulation places obligations on workers but is yet to be matched by any system for recognition of workers' capabilities. Nor have there been enough concrete actions and investment to support workers to attain required capabilities. The registration system is a 'negative' one which has as its key focus the exclusion of workers deemed unsuitable.

A Certificate III requirement would provide for formal recognition and establish the basis for a systemic approach to building workforce capability though continuing professional development, including to create clear pathways to attainment of Certificate IV and higher-level qualifications. As noted in the discussion that follows, without a mandatory requirement it is likely that the provision of poor quality care will continue.

HISTORIC APPROACHES AND CURRENT ARRANGEMENTS

Successive Australian governments have been reluctant to mandate a minimum Certificate III qualification for personal care workers in aged care, despite the Aged Care Royal Commission's clear recommendations to do so.

Multiple inquiries, reviews and studies prior to the Aged Care Royal Commission found existing arrangements – where reliance is mainly on employers to build workers' skills through training and supervision – have not been effective. There are many reports of poor quality care and support and accounts of workers' lacking access to training and supervision. While workers in other direct care occupations, such as registered and enrolled nurses and many allied health occupations, must undertake professional registration and accreditation via professional bodies this is not the case for personal care workers.

Further, diverse working arrangements and the continuing growth of home-based care and support services mean increasing numbers of workers are located at a distance from day-to-day organisational oversight and from employer-provided opportunities for on-the-job training and peer support. Multiple job-holding and the use of independent contractor models of worker engagement in this sector are anticipated to grow (Australian Government 2022), and will likely exacerbate these issues.

In response to the Aged Care Royal Commission's workforce recommendations the direct regulation of workers has recently been increased. Since 2023, strengthened regulatory arrangements are in place to ensure aged care workers are suitable for their roles. These are largely preventative and corrective measures that place obligations on workers, and exclude some people from the workforce. There is little evidence of system-wide action directed to ensuring personal care workers are supported to gain knowledge and skills, or to have their qualifications, knowledge and skills recognised.

At present, the more positive and developmental element of the current regulation scheme is a broad requirement placed on aged care providers to provide training. To comply with quality standards, aged care providers must ensure workers have training. Yet, there is no foundation standard underpinning training requirements.

Further, similar requirements were in place prior to the Royal Commission and were found to be ineffective. Without strong accountability mechanisms, as could be provided through a professional registration scheme requiring CPD, reliance on employers to initiate and ensure ongoing training will not be enough.

Current *direct* worker regulation includes new worker screening requirements and a new Aged Care Code of Conduct. Worker screening enables the exclusion from the workforce of people considered unsuitable. The focus is on screening for criminal convictions and on certain identified problems with conduct or performance (e.g. upheld complaints, disciplinary findings). The Code of Conduct applies to approved aged care providers of residential, home care and flexible care services, their governing persons, and aged care workers employed by and contracted to these services. The Code of Conduct is intended to strengthen protections for consumers, including through providing the ACQ&S Commission with the ability to ban certain workers entirely from working in the aged care sector (ACQ&S Commission 2023a).[1] Worker screening is clearly a 'negative' form of registration as its purpose is not to accredit workers as suitably qualified; rather, it is to exclude people considered to be unsuitable or non-compliant with obligations to behave in accordance with certain standards. Although, clearly, certain skills and knowledge are required to meet these standards, these have not been articulated.

Home care workers who provide domestic assistance and support (e.g. with mobility) to aged care consumers in their homes through the Commonwealth Home Support Programme (CHSP) are not required to comply with the Code of Conduct. This appears to be based on an assessment of reduced risk due to the assumed lesser vulnerability of CHSP consumers and the nature of the services being provided (see Appendix A for proposed provider registration category service types). However, there is a strong argument that the Code of Conduct should apply to these homecare workers, in part because these workers are undertaking their roles away from direct supervision, mostly without direct support and are in ongoing care relationships in circumstances requiring application of independent judgement and decision-making. Stage 3 of the Aged Care Work Value case being heard by the Fair Work Commission (2023) is considering evidence and submissions relating to the classification definitions and structures in the relevant industrial awards. The outcomes of this case may provide some clarity, by articulating current work requirements.

The ACQ&S Commission's (2022) draft revised aged care quality standards make clear that service providers are responsible for ensuring their workers are skilled and competent in their role, hold relevant qualifications and have relevant expertise and experience to provide quality care and services. Providers are required to take actions to achieve this outcome including by engaging the right people, ensuring workers have access to supervision, support and resources, and providing workers with competency-

[1] The Code of Conduct does not apply to workers with the Commonwealth Home Support Programme (CHSP) or the National Aboriginal and Torres Strait Islander Flexible Aged Care Program (NATSIFACP) providers. See ACQ&S Commission (2023a).

based training. These requirements appear to be little different from those in place before the Aged Care Royal Commission. The Royal Commission found that 'inadequate staffing levels, skill mix and training are principal causes of substandard care in the current system' (2021, vol. 1, 76) and that 'not all personal care workers have the level of education and training required to provide safe and effective care services to older people (2021, vol. 2, 215).

The 2023 draft strengthened aged care quality standards clarified providers' responsibilities (ACQ&S Commission 2023c). 'Workforce planning' outcomes require aged care services providers to 'identify the skills, qualifications and competencies required for each role' and to 'engage suitably qualified and competent workers'. 'Human resource management' outcomes require that workers have access to supervision, support and resources, and that the provider maintains and implements a training system that 'includes training strategies to ensure that workers have the necessary skills, qualifications and competencies to effectively perform their role'. All workers must 'regularly receive competency-based training in relation to core matters, at a minimum' including 'the delivery of person-centred, rights-based care'; 'culturally safe, trauma aware and healing informed care'; 'caring for people living with dementia'; and 'responding to medical emergencies and the requirements of the Code of Conduct, the Serious Incident Response Scheme, the Quality Standards and other requirements relevant to the worker's role' (ACQ&S Commission 2023c, 44-45).

It is hard to see how the clarification of providers' responsibilities and the establishment of the Code of Conduct will lead to any significant building of worker capabilities. There is a continued reliance on employers and limited articulation of the basic standards and capabilities underpinning some of the core matters that workers are to receive training in.

Most, if not all, of the training required under the new arrangements is in the required skills areas of the Certificate III in Individual Support (Ageing).[2] If providers were required to engage and support workers who had attained or were making progress towards attaining the Certificate III this should strengthen the incentive for them to ensure workers have access to suitable training and development opportunities. As noted, without any mandatory qualification requirements, reliance on employers to ensure workers are adequately trained has proven to be ineffective to date. Australia is not alone in this, with similar problems identified in the United Kingdom's (UK) social care systems (Hayes et al. 2019; Needham and Hall 2023).

[2] See Appendix C for structure and content of the Certificate III in Individual Support.

Employers have few incentives to invest in training. Pricing, market settings and existing regulatory arrangements do not always support ongoing learning or career development for workers, especially for workers in the diverse employment arrangements that have grown in this workforce. Some of the training that has been provided to workers leaves them without 'the specific knowledge and skills to meet the needs of older people who require care' (Aged Care Royal Commission 2021, vol. 2, 215).

It has been proposed that the mandatory Code of Conduct will support 'best practice' in care (Australian Government 2022, 26s). The Code of Conduct guidance directed to care workers runs to 50 pages, comprising mainly case studies and examples of what not to do, while providing little or no guidance on how to behave in accordance with best practice in the types of circumstances many care workers encounter every day: for example, needing to complete set tasks in a limited timeframe, working in isolation and making decisions without access to guidance from a supervisor. While the Code of Conduct establishes national standards for behaviour, the determination of capabilities required for workers to attain competence to meet these standards and the responsibility for assessing whether workers are competent, continues to be left almost entirely to individual providers, and to workers themselves. There is no systemic positive recognition of the skills and knowledge required by workers.

The strengthening of risk assessment in relation to workers is not accompanied by any concrete initiatives to ensure professionalisation of jobs and pathways for skilling and career progression as required to meet the objectives of the National Care and Support Economy Strategy. Consultations continue on a national registration scheme without any progress towards establishing a mandatory minimum qualification requirement.

THE INTERNATIONAL EXPERIENCE

Much of what is known about the impacts of occupational licensing is not especially relevant to personal care worker occupations due to particular features of care systems and labour markets, including public management, and public funding systems that can largely determine workers' pay. However, a recent review of countries' experiences of professionalisation of care workers published by the British Nuffield Trust (Hemmings et al. 2022) provides some valuable insights that are highly relevant to aged care in Australia.

Professionalisation can be defined to include registration and regulation; education, training and development; values and vocation; pay and progression; working terms and conditions; and elevation of status (Hemmings et al. 2022, 9-10). Thus, registration

with a mandatory qualification is just one dimension of a larger professionalisation process. This is important for consideration of the potential benefits and risks of a worker registration scheme with a qualification requirement, as those benefits and risks of a scheme will depend in part on the broader professionalisation reform process. For example, a worker registration scheme with a qualification requirement has potential to lead to better pay and progression; but, if there are no other strategies in place to improve pay and progression, a registration scheme alone will probably have limited impact (Hayes et al. 2019, Hemmings et al. 2022).

In most countries moves to professionalise the care workforce are fairly recent and lessons are still being learned about the best way to implement requirements. However, there is clear evidence of benefits of registration and mandatory training for workers, service users and system stability. On the basis of the experience of the four UK nations[3], Hemmings et al. (2022) conclude that registration and professional regulation of the occupation, including mandatory minimum training requirements, can reduce risk to the public, improve outcomes for service users, improve confidence in the workforce, and drive up workforce standards. There is also emerging evidence of the risks of schemes if they are not implemented with care.

Specific lessons from the international experience are noted in the relevant sections of this paper. First, the question of the need for formal qualifications and training in the person-centred aged care system is addressed. While the Aged Care Royal Commission was clear on this requirement, arguments continue to be made that formal qualifications and training are unnecessary, must be balanced against personal qualities or may even be counter-productive and stifle innovation in a person-centred care system. In fact this is far from being the case, as person-centred care requires more skills and knowledge than a task-based care system, as outlined below.

QUALIFICATIONS AND TRAINING IN PERSON-CENTRED AGED CARE

A mandatory minimum Certificate III requirement for personal care workers was recommended by the Aged Care Royal Commission in 2021 on the basis of extensive consultations, investigation and hearings over more than two years. Since then, aged care reforms responding to the Royal Commission's recommendations have strengthened the need for a comprehensive, systemic approach to building a skilled

[3] See Appendix B for detail of social care worker registration schemes in the UK.

and professional aged care workforce, with a minimum education requirement as its foundation.

Requirements of aged care workers are articulated in the behavioural expectations outlined in the recently implemented Code of Conduct for aged care. These expectations are identified as being 'consistent with community expectations, consumer rights and existing standards and expectations' and as reflecting similar standards of behaviour to the NDIS Code of Conduct (NDIS Quality and Safeguards Commission [NDIS Commission] 2022a).

The implementation of the NDIS Code of Conduct was accompanied by the development of the NDIS Workforce Capability Framework that details the skills and knowledge requirements of workers necessary to meet behavioural expectations in the NDIS Code (NDIS Commission 2022b). The NDIS Workforce Capability framework describes skills and knowledge that would be extremely difficult for workers to acquire without formal training such as provided in a Certificate III or IV level course. Content from the training modules developed for the NDIS Code of Conduct have been integrated into the Certificate III in Individual Support.[4] While no framework for the aged care personal care workforce has yet been developed, the NDIS Workforce Capability Framework provides some guide to the type and level of foundational skills and knowledge required by aged care workers under the new Code of Conduct for aged care.

In short, the introduction of the Code of Conduct in aged care strengthens the argument made in the Royal Commission final report that a mandatory minimum Certificate III qualification is required to ensure minimum standards for care quality and safety and to recognise the skills and knowledge requirements of personal care work. The NDIS experience demonstrates the likely congruence between the attainment of a Certificate III in Individual Support and the attainment of competencies care workers require to comply with their obligations to behave in accordance with aged care standards.

Despite this, some resistance to the implementation of a mandatory qualification arises from a view that person-centred care *reduces* the need for formal qualifications. One version of this argument is that training is important but it does not need to be gained through a formal qualification. This argument plays down the extent and level of the skills required. It reflects the current situation under proposed new provider practice standards whereby workers will be required to have undertaken training but there will be little formal oversight of training quality. Moreover, the training offered

[4] The Certificate III in Individual Support has two streams: 'Ageing' and 'Disability'. See Appendix C.

may not provide any credit towards a recognised education qualification. Of course, existing workers without qualifications who have gained required skills and knowledge through a variety of means, including lengthy experience, should be able to have their skills and knowledge recognised and this can happen through RPL and provision of alternative pathways to registration for such workers.

Another version of the argument that workers do not need qualifications is that workers do not need to be formally trained. Rather, it is considered that, first and foremost, workers need to be responsive and flexible to meet individual needs and preferences and that this does not require training to attain a Certificate III. However, this argument may fail to recognise that the provision of person-centred care does require skills and knowledge. As social care workforce experts in the UK have argued:

> Personalisation challenges orthodox understandings of what it means to be 'a professional' because the professional care worker is not a 'know-it-all' expert. Instead, the expertise of the care worker must be deployed to enable service-users in complex circumstances, with complex care or support needs, to co-design or direct their support and care. (Hayes et al. 2019, 6)

In Box 1 on the next page the basis for person-centred aged care in Australia and some of the ways in which this changes the nature of care are described. The box also includes a checklist, developed by Hayes et al (2019), showing what workers are required to do to provide person-centred care. As shown, person-centred care requires considerable skills and knowledge as it shifts work requirements from task-based functions to require the greater exercise of judgement, independent decision-making and negotiation, among other skills.

The demands of person-centred care provision and the findings and recommendations of the Aged Care Royal Commission provide very strong rationales for establishing mandatory qualification and CPD requirements. In addition there are many other benefits of establishing a registration or licensing scheme with these requirements, as outlined in the section that follows.

Box 1: Person-centred care requires a trained, skilled workforce

The legislative reforms taking place in aged care in Australia, including the introduction of a new Aged Care Act, are introducing new requirements for a skilled professionalised workforce.

The proposed new model for regulating aged care contains four foundations: it is rights-based, adopts a person-centred approach, a risk-based approach and a continuous improvement approach (Australian Government 2022).

The reformed aged care system places new demands on the aged care workforce that are in addition to the critical competencies identified by the Aged Care Royal Commission.

Person-centred care, whereby people requiring care are expected and supported to have greater control over their daily lives and to take reasonable risks, entails greater risks for workers: it entails greater ambiguity than task and rules-based care, increasing requirements on workers to exercise judgement and apply specialised knowledge.

Workers need to be empowered and skilled to provide person-centred care. Appropriate regulatory standards and investment in education and training for the care workforce are essential to achieve this.

For person-centred care to be effective 'it must be evident in the day-to-day interactions between care workers and service-users' (Hayes et al., 2019).

Person-centred care requires workers to:

- *Be open to direction by service-users instead of prioritising managerial instruction.*
- *Be confident in making their own professional judgements.*
- *Respect and understand human rights.*
- *Support people who lack capacity in making some decisions.*
- *Balance risk-taking with the need to help some people stay safe. Support others to understand, and manage, risks.*
- *Know how to achieve outcomes that individuals want to pursue.*
- *Involve service-users in the design of their care and support as appropriate.*
- *Help others make complex, as well as straightforward, decisions.*
- *Assist others to express their views and facilitate choices by people who find it hard to communicate with others.*
- *Be highly skilled at conversation.*
- *Engage in complex negotiations about matters of personal health and wellbeing.*
- *Be innovative.*
- *Be flexible in order to adapt care plans in response to service-user requests, sometimes diverting efforts to tasks that are not on a care plan.*
- *Manage time and adapt established ways of doing things.*
- *Be a co-facilitator of solutions, not a fixer of problems.*

Source: Hayes et al. (2019, 10).

Benefits of worker registration with a qualification and CPD

A minimum qualification requirement is an important measure to raise the skill level of the workforce to support aged care workers in complying with quality and safeguarding requirements, as well as formally recognising existing capabilities. In addition, benefits of a registration scheme with a mandatory qualification and CPD requirements include improving the value of the work, quality of jobs and prospects for higher pay. Increased retention reduces workforce turnover, supporting greater workforce capability and sustainability and enabling improving continuity of care -- a key factor in care quality and consumer satisfaction with care. These and other benefits are discussed in more detail in this section. Following that, consideration is given to the possible risks and negative consequences of introducing these requirements.

VALUED WORK, PROSPECTS FOR BETTER PAY

Formal recognition of the foundational skills and knowledge requirements of aged care work is necessary to address long-standing undervaluation of the work and meet the government's objective to professionalise care and support workforces. Aged care labour is currently poorly valued and has a low status. Occupational licensing would not guarantee improved wages for aged care workers, but it can facilitate improved recognition of the skilled nature of the work, and, combined with other strategies, can lead to higher wages.

Requirements for minimum education and ongoing CPD provide the foundation for better remuneration through providing for better evaluation of skills relative to other occupations, increased bargaining power of workers, and facilitating skills-based progression pathways. The Aged Care Royal Commission heard considerable evidence that many employers have taken 'low road' human resource (HR) strategies. Requirements for a minimum qualification and CPD require investment in the provision of ongoing training, along with mentoring, supervision and peer support, which can support worker retention and encourage high-road HR strategies that include progression and careers paths.

New requirements may provide a basis for reviewing industrial award classifications. At the time of writing the Fair Work Commission is reviewing the Aged Care and

SCHADS Awards classification structures as part of the Aged Care Work Value case hearing unions' claims for higher pay to address undervaluation of the work.[5] With recent legislative changes that make gender equality an objective of the Fair Work Act 2009 *(Cth)*, there is greater potential for ensuring wages and progression pathways are better linked to skills and experience (see Jericho et al. 2023).

Occupational licensing has potential for enhancing the professional status of care work, including as it requires clearer specification of the role and of specialisation pathways. As noted in the Draft National Strategy (2023, 40), workers 'value sectors where they see they can build a strong professional identity, have opportunities to specialise or enjoy a diverse career while they become more senior'. The international experience supports this view, with Hemmings et al. arguing:

> The symbolic meaning attached to a title and licence to practice should not be underestimated – removing vague job titles and identifying what is distinct about a role compared to others may help strengthen and validate a sense of collective professional identity. (2022, 18)

GREATER WORKFORCE STABILITY AND SUSTAINABILITY

Reducing employee turnover is extremely important for the aged care sector, in which high turnover undermines workforce sustainability, increases costs and is damaging to quality care and service users' experience.

Workforce stability and sustainability can be enhanced by occupational licensing, in conjunction with other strategies to improve jobs and support workers' engagement in training, including ensuring paid work time for training. The international experience has been that '(c)are workers who receive relevant, high-quality training are more likely to stay in their role' leading to reduced turnover (Hemmings et al 2022, 22). In Australia there is plenty of evidence that job satisfaction is strongly associated with care workers feeling they are able to do their jobs well and provide good care (Isherwood et al. 2018, p. 14). Engagement in meaningful training provides confidence in skills that underpins this retention and stability.

At the workplace level, improved retention and greater investment in appropriate training can build competencies that support better work health and safety (WHS) outcomes in a sector with very high levels of WHS injuries (Safe Work Australia 2018).

[5] For detail see Fair Work Commission, Work value Case – Aged Care Industry. https://www.fwc.gov.au/hearings-decisions/major-cases/work-value-case-aged-care-industry.

Safer work means better quality jobs and care, better worker retention, and reductions in the overall costs of providing care services.

IMPROVED WORKFORCE PLANNING

New aged care screening arrangements will see the introduction of a central registry of aged care workers. In other countries central registries have been valuable sources of data for workforce planning (Hemmings et al. 2022, 13). The absence of a register in Australia during the Covid-19 pandemic demonstrated the risks of inadequate information on the workforce. A scheme with a mandatory qualification can provide important additional information to enable planning to ensure workforce capacity building is well-targeted to respond to changing care needs across the diversity of service types and geographic regions.

The benefits of having good data can extend to the education and training system. As noted in the recent Employment White Paper, '(i)mportantly, workforce planning grounded in data and insights from industry and educators can drive a responsive skills and training sector' (Australian Government 2023f, 97).

BETTER QUALITY CARE

Training to consistent minimum standards means all aged care workers are equipped to uphold the same standard of care. Sector-wide minimum standards make expectations clear for workers, and provide the basis for further skills development to respond to diverse needs and more complex care. Quality care is not guaranteed by a mandatory minimum qualification requirement. However, without a minimum qualification there is no solid basis for establishing a standard on which to build skills necessary for an effective response to the growing complexity of needs of aged care clients and acknowledged need for specialisation. Without CPD requirements workers may receive no support at all to keep up to date with good practice or to develop their capabilities to meet changing demands and needs. Improved practice can also lead to increased productivity.

Experience to date has shown that reliance on providers and provider practice quality standards has not ensured workers have the necessary skills to provide quality care and ensure people being cared for are safe. The logic of the market-based system includes assumptions that providers of good quality care will thrive while providers of poor quality care will not survive, as consumers exercise choice to access the best quality care that meets their needs. However, largely publicly-funded human services markets for essential care services, including aged care in Australia, do not conform to

this idealised market model of demand and supply, as the Royal Commission findings made clear. One of the clearest findings, as detailed above, is that not all aged care workers will gain the necessary skills and knowledge needed to provide quality care without positive system-wide action to ensure workers are trained to a consistent benchmark. Given past experience and the size, diversity and complexity of the aged care system – and the expectations this complexity places on the quality and safety regulator – it is unrealistic to rely on strengthened practice standards alone to produce the necessary changes, including as incentives to minimise labour costs are still present in the aged care market.

The review of international evidence by Hemmings et al. supports the case for a mandatory qualification, with key findings including:

> … workers who receive relevant, high-quality training are more likely to be equipped with the skills and confidence to deliver better care. Mandatory minimum training, or the right to receive training, are approaches used internationally to good effect. Benefits to these approaches include improved outcomes for people drawing on services, improved confidence and status among workers, improved person-centred care, and reduced turnover. (2022, 2-3)

Hemmings et al. (2022) cite survey evidence from the UK suggesting that most providers believe mandatory qualifications lead to improved care outcomes. In addition, registration and qualification requirements contribute to worker confidence and can influence employers to improve their performance monitoring and appraisal. Of course, adequate staffing and decent working conditions are also critical for quality care. Nevertheless, to the extent that professionalisation strategies, including formal recognition and accreditation of skills and knowledge, do support better quality jobs, this will also support better quality care.

REDUCED INEQUALITIES

Addressing the low status of aged care work and workers will address some of the gendered and other (including racialised) inequalities that are perpetuated through low pay and poor quality jobs in this sector. Revaluing work and professionalising the workforce can reduce gender segregation and impact positively on the gender pay gap across the economy. Providing opportunities for training and development for all workers should act to reduce the current overrepresentation of recent migrants and other disadvantaged groups in the sector's lowest-paid and insecure jobs (Charlesworth and Isherwood 2021).

Perceived risks of registration with a mandatory qualification

In their review of the international experience Hemmings et al. (2022) point to several risks of mandatory training – including that it may introduce unnecessary rigidity that leads to loss of some staff if not implemented carefully (for example, by providing flexible pathways to registration). They also caution that having the appropriate infrastructure and governance in place is important to the success of registration and mandatory training.

In Australia, concerns about the introduction of registration and accreditation with a mandatory qualification and CPD requirements include fears that the requirements may exacerbate workforce shortages, concerns about available training, and uncertainty that formal training will indeed improve the quality of care. There are also some concerns about possible negative impacts if there is a lack of alignment between aged care worker and disability support worker regulation. These issues are considered in this section. Most of these risks can be mitigated with careful implementation of the registration system. Subsequent sections include a closer look at some of the design and implementation considerations for establishing an effective system in which the potential for unintended negative consequences is minimised.

RESTRICTING OCCUPATIONAL ENTRY AND INCREASING WORKER EXIT

One of the main concerns about a mandatory minimum qualification requirement for aged care workers is that it might create barriers to recruitment and retention of workers. In consultations over the past few years, underlying concerns have been voiced relating to: the costs to workers of gaining qualifications; that registration and qualifications requirements may deter occupational entry; and that the introduction of a regulated minimum qualification in aged care would not be consistent with the NDIS regulation (MP Consulting 2020b). Concern that a mandatory qualification requirement will act as a disincentive to entry to the aged care worker occupation is amplified in the context of current workforce shortages and a clear need to grow the workforce to meet growing demand.

Occupational licensing can generally be expected to restrict entry to an occupation, although this depends on the level of the qualification in relation to the qualifications

currently held by workers in the occupation, and the costs to workers of registration and acquiring the qualification. Many aged care employers already require new workforce entrants to hold a relevant Certificate III qualification, and the majority of existing workers (estimated at between 60% and 71%) hold a relevant Certificate III or higher level qualification (Australian Government 2021). Given this, and with staged implementation of a mandatory education requirement and ongoing support for affordable access to training, the introduction of a mandatory qualification requirement need not be a significant barrier to workforce entry or retention. The majority of the workforce should not require additional training to meet the mandatory minimum Certificate III qualification requirement for registration. Transitional and grandfathering arrangements, along with an aged care worker Recognition of Prior Learning (RPL) scheme, will be needed to minimise losses of existing workers by formally recognising existing skills and assisting workers to upskill to meet registration standards. Targeted strategies will be needed to ensure support for pathways into care work and attainment of a Certificate III qualification for people from culturally and linguistically diverse groups and others from disadvantaged groups. Meanwhile, the broader professionalisation project, including better pay and working conditions, can be expected to slow occupational exits through improved job quality and satisfaction and opening up progression opportunities in areas of specialisation, countering negative impacts of any decline in entry.

The risk that fees act as a barrier to registration must be mitigated during the scheme's implementation phase and potentially also in the longer term if costs to workers are disproportionately high in relation to earnings. The UK social care experience points to these risks where there is no funding support for training. However Hemmings et al. (2020, 20) conclude findings are not clear that registration fees and mandatory qualifications have had any negative impact on turnover.

LACK OF ALIGNMENT WITH NDIS

There have been concerns expressed that the introduction of a minimum qualification and CPD requirements will impact adversely on the aged care labour market as it may divert potential aged care workers into the disability support workforce (unless mandatory registration is introduced in the NDIS).

Existing regulation of NDIS support workers is highly uneven. There are worker screening requirements but these are not universal, and only some providers are required to be registered and meet associated service standards. There are no mandatory qualifications requirements for many NDIS support workers. All workers and providers are required to comply with the NDIS Code of Conduct.

However, the direction of future reform is towards increased regulation and professionalisation of the disability support workforce. The 2023 Final Report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) recommended a national disability support worker registration scheme be established by 1 July 2028. The recommendation included that the design of the scheme should consider 'recognition and accreditation of workers' qualifications, experience, capabilities and skills' and 'continuing professional development requirements for disability support workers' (Disability Royal Commission 2023, 333).

The NDIS Review panel has recognised the need for workers to be supported to engage in training to build skills and support retention. The May 2023 NDIS Review workforce report identified a lack of access and incentives for investment in training as problems and canvassed a range of approaches for increasing access to training for accredited qualifications, including traineeships and micro-credentials (NDIS Review 2023a, 2).[6] The final report of the NDIS Review (2023b) recommended 'a risk-proportionate model for the visibility and regulation of all providers and workers', and a strengthened regulatory response to quality and safeguards issues. A taskforce has been established to provide advice on the design of a new regulatory model for provider and worker registration (Australian Government 2024, 15).

NDIS support workers do have some well-established qualification requirements for progression in their occupation which potentially would limit any negative impacts of a mandatory qualification requirement on aged care staff recruitment. Further, the establishment of grandfathering arrangements and a transition phase would reduce the potential for this to be a barrier.

Another uncertainty is that wage relativities between aged care and disability support workers are in flux due to the ongoing aged care work value case. However, recent increases in aged care workers' award rates have reduced the wage disadvantage faced by these workers and, in all likelihood, further review of the SCHADS Award pay rates and classifications for disability support workers will see some evening out of other disparities between aged care worker and disability support worker wages.

Taking a longer-term view, while it may be important to align conditions and requirements across the care and support sectors, this should not derail aged care reforms for improving standards that are responding to clear and urgent needs. The

[6] Note, within the NDIS there is a commitment to developing accredited micro-credentials that can be recognised for credit towards AQF qualifications. See DSS (2021) *NDIS National Workforce Plan: 2021 – 2025. https://www.dss.gov.au/sites/default/files/documents/06_2021/ndis-national-workforce-plan-2021-2025.pdf.*

NDIS also has significant problems of poor quality support and lack of skilled workers, and is in the early stages of reform that will include strategies to address these problems. Aged care reform cannot wait for this to occur.

Over time, an aged care worker registration scheme should support opportunities for increased mobility between care and support sectors. There should be few barriers to building a national scheme that fully aligns the regulatory requirements for aged care workers and support workers in the NDIS.

WHAT DIFFERENCE DOES A QUALIFICATION MAKE?

While recognising that professionalisation will require changes to education and training, the Draft National Strategy also cautions against use of 'rigid' or 'prescriptive' regulation, including 'minimum qualifications', on the basis that such measures of 'inputs' are 'proxies for good outcomes' that 'limit new and different approaches' (Australian Government 2023c, 49). This argument misses the point that minimum qualifications are a measure of acquired skills and knowledge. Nor does it recognise that good outcomes cannot be left to chance when workers need to keep up with changing care practices and new knowledge.

Certainly, good care outcomes – including outcomes related to care aspects as diverse as wound care, caring for a person with dementia, or understanding the human-rights basis and implications of person-centred care – are not guaranteed by inputs. But, if workers do not have the necessary 'inputs' of skills and knowledge, quality of care is left to chance. Time and again it has been demonstrated that some aged care workers do not have the skills required for the provision of care that meets people's needs and keeps them safe.

The argument made in the Draft National Strategy cannot reasonably be applied to the current situation of aged care workers, to whom no formal requirement for foundation skills, knowledge and abilities applies. Yet, despite this, workers are required to provide care in accordance with regulated behavioural standards that assume the application of specific – including specialised – knowledge and skills.

Moreover, the argument that regulating for particular 'inputs' might limit new and different approaches echoes arguments that have been made for years that good care does not require training or skills, but rather simply requires the right attitudes, or even can be assumed to exist on the basis of women's supposed natural tendency to care. The introduction of person-centred care has seen the re-emergence of this type of claim that regulated training standards are not required for care workers. It has also been suggested that 'the need for formal qualifications must be balanced with the

need for workers to also have other competencies and qualities that are important to consumers' (MP Consulting 2020a, 13). Considerations are also often plagued by assumptions that training leads to standardisation of service provision. To the contrary, as outlined in Box 1 on page 15, person-centred care requires workers to demonstrate a wide range of expertise, predicated on the acquisition of skills through training, that equips them to respond to consumer preferences.

Linked to concerns such as those raised in the Draft National Strategy about a focus on inputs are questions about the suitability and quality of available training. These are considered in the next section.

ACCESS TO SUITABLE, GOOD QUALITY TRAINING

While the need to build workforce capability through training has been acknowledged, discussions of mandatory qualifications requirements for workers have often been dominated by a focus on shortcomings of the training systems, training providers and concerns about outmoded training packages. Recent aged care, jobs and skills and vocational education and training (VET) reforms and initiatives are responding to these concerns, although it is too early to judge their effectiveness.

For example, the revised Certificate III of Individual Support represents a major update of the training package to reflect contemporary expectations and standards in a person-centred care system. Core units include 'Provide individualised support', 'Facilitate the empowerment of people receiving support' and 'Support independence and wellbeing' (see Appendix C for full course details). The new Certificate III aligns with the NDIS Workforce Capability Framework and takes in the recommendations of the Aged Care Royal Commission. The Certificate III comprises core units and electives that provide for specialisation in 'Ageing', 'Disability' or 'Ageing and Disability'. The structure provides a clear pathway to a certificate IV qualification to advance skills in care and support or management (NDS 2022).

New Jobs and Skills Councils have been established as not-for-profit industry-led tripartite (employer, union and government) bodies with responsibilities for workforce planning, training product development, implementation and monitoring and industry stewardship roles. HumanAbility (2023) is the Jobs and Skills Council for Children's Education and Care, Health, Human Services, and Sport and Recreation; it has established an Industry Advisory Committee for Aged Care and Disability Support. The introduction of mandatory training can provide the basis for better identification, and possibly accreditation, of quality training.

There are Commonwealth and some state initiatives in place to increase access and affordability of VET, including fee-free TAFE and industry-specific initiatives responding to workforce shortages (including in the aged care sector). Care and Support remains a priority critical 'industry' in the new National Skills Agreement between the Commonwealth and the states (Australian Government 2023d).

An aged care worker professional registration scheme

An effective registration system that enhances workforce capabilities and is part of a broader strategy to professionalisation must be designed to maximise the benefits of the scheme while avoiding unintended negative consequences. Important considerations include who should be covered by the system, the design and delivery of CPD, how best to regulate the system, and how to ensure costs are reasonable and fairly shared. Along with implementation, pathways to registration and key costs, these issues are considered in the sections that follow.

SCHEME COVERAGE

As a key principle, a national registration scheme, including requirements for a minimum qualification and ongoing training, should cover all aged care workers providing personal assistance, support and care in all aged care service contexts. In full implementation it should apply to all workers in roles that are directly involved in the delivery of holistic care. In residential care, this would include workers in areas such as food and laundry services and cleaning; However, this inclusion should not create barriers to entry for workers who have little or no personal interaction with aged care residents; and it will require further development of qualifications and pathways appropriate to these roles. In home care services, workers providing domestic assistance and social support should be included. So, the eventual full rollout of a scheme would see workers in all provider categories included (see Appendix 1 for details).

A staged approach to implementation could first require attainment of Certificate III for workers in all types of aged care services who provide personal care. Requirements for completion of accredited training for key competencies could subsequently be established for other homecare workers providing direct assistance and support to aged care consumers in their homes (including domestic assistance and social support), with completed modules providing building blocks towards qualification in the full Certificate III in Individual Support. Full implementation over a number of years would eventually see all workers providing personal care and/or assistance covered by a minimum Certificate III qualification requirement. However, this would not necessarily mean the 30-40% of workers currently lacking a relevant qualification would need to complete a Certificate III. The scheme could offer a professional

experience pathway for workers with lengthy experience and specific CPD requirements that could apply for a limited or unlimited period.

The current aged care regulatory reform process is establishing a risk-based approach whereby different regulatory requirements will apply to different services, based on perceived levels of risk to aged care consumers. This is the approach that has been taken in determining which groups of workers are covered by the new Code of Conduct. As argued in relation to the Code of Conduct, workers providing domestic assistance in private homes and providing social support should not be excluded from regulatory standards, including a minimum qualification requirement. Minimum requirements are needed to ensure that workers can meet baseline standards for better quality care and support, and to build a more skilled and sustainable workforce. Without mandatory standards and training pathways for all aged care workers, this will not be achieved. The exclusion of a large category of aged care workers who provide direct assistance and support to aged care consumers would create new barriers to mobility within the aged care workforce; mobility that is critical to building a skilled and sustainable workforce. Professionalisation of the aged care workforce, as aspired to in the Draft National Strategy, will require the creation of pathways for workers matched by adequate investment in education and training, and recognition of skills and work value, for all aged care workers.

The introduction of a mandatory minimum Certificate III qualification for personal care workers should include transitional provisions and recognition of existing skills and knowledge of the current workforce. This could be achieved by providing multiple pathways to registration for a transition period to accommodate the skills and knowledge of the existing workforce.

Aged care workers, such as allied health professionals and nurses, who hold an approved qualification and are registered under other system-wide worker regulations, such as under a Board of the Australian Health Practitioner Regulation Agency (AHPRA), would be deemed to be registered. For other care and support workers in occupations not covered by the existing National Registration and Accreditation Scheme (NRAS) for health professionals or another professional body, standards of equivalence should be established to enable inclusion of those occupations in the new regulatory scheme. This could apply to some allied health professions and other roles generally requiring certificate, diploma or degree qualifications.

CPD REQUIREMENTS

Ongoing registration should include a requirement for continuing professional development to ensure knowledge and skills are current and pathways for advancement and specialisation are supported, including to provide access to better paid work and to improve workforce retention. CPD requirements must support pathways to higher level qualifications, with accredited formal training made available to all workers. However, CPD involves both formal and informal learning, and opportunities for the latter should be available providing alternative means for workers to demonstrate their skills (Byrne 2016, Hemmings et al. 2020). The exact nature of CPD requirements could change over time.

It will be important for CPD arrangements to be designed to ensure there are clear, accessible training pathways allowing all workers to gain Certificate IV and higher-level accredited qualifications – and employment at higher classification levels with higher pay rates. HumanAbility (2023, n.p.) has responsibility for developing qualifications and training packages 'that are responsive to and meet the needs of industry and lead workforce development initiatives'. These requirements should be reflected in the Aged Care Quality Standards, ensuring sector-wide investment in competency development opens pathways for personal care workers. Regulation or guidance should ensure that CPD time is paid work time (Hayes et al. 2019). CPD pathways should include higher-level apprenticeships.

The costs and often onerous and complicated processes for gaining Recognition of Prior Learning (RPL) certification are likely to continue to be barriers to skills recognition for experienced workers who do not hold a Certificate III qualification. A specific RPL scheme including an assessment process should be established for the sector to facilitate registration of current aged care workers.

THE REGULATOR

A positive aged care worker registration and accreditation scheme with mandatory qualification and CPD requirements would ideally be regulated by a professional body that was separate from the aged care system regulator. This would ensure the scheme's consistent focus on professional development and standards. However, it may be more practical to initially establish a scheme using the ACQ&S Commission as regulator.

The ACQ&S Commission is to be the national registration body for the new worker screening scheme to commence in mid-2024, with screening to be undertaken by states' and territories' worker screening units. Work is currently underway to build a

cross-sector centralised registration system for both aged care and NDIS worker screening, as part of aligning regulation across sectors, supporting mobility and reducing duplication. As with worker screening arrangements, states and territories would hold responsibility for managing registration requirements while the ACQ&S Commission manages the central database.

These arrangements could provide the foundation for inclusion of a mandatory minimum education qualification requirement as part of the national registration scheme for aged care workers that is to be overseen by the ACQ&S Commission. To some extent, the scope of care worker practice and specification of capabilities is now set by this body through its governance of aged care quality standards and the Code of Conduct (although alignment of these requirements with education qualifications needs to be articulated clearly). Having the ACQ&S Commission as occupational regulator could provide a basis for alignment of regulatory approaches in aged care and disability services.

However, if the ACQ&S Commission's functions were expanded to incorporate the requirement for a minimum qualification for workers and continuing professional development, the Government would have to fully implement the recommendations of the recent independent capability review of the body (Tune 2023). The ACQ&S Commission has not been a strong and effective regulator in the past. Further, a quality care system requires a regulator that supports providers and workers to achieve high standards of care. This requires strong, open and positive engagement across the sector and it requires a positive approach that supports capacity building for best practice. Even with recommended changes, it may not be reasonable to expect that the ACQ&S Commission with its focus on exclusion and compliance– including responding to complaints and screening to exclude unsuitable workers – can be an effective regulator for a positive occupational licensing scheme that aims to build the professional value of care work and status of care workers.

In summary, any advantages of having the ACQ&S Commission as single regulator for the sector should be weighed up carefully against the benefits of alternative options for occupational licensing via a professional body, such as professional regulation through AHPRA. Existing bodies such as the Australian Nursing and Midwifery Accreditation Council (ANMAC) and the Australian Community Workers Association (ACWA) could perform skills and qualifications assessments and manage CPD requirements, while the ACQ&S Commission maintains the central registration function. Currently, both ANMAC and the ACWA undertake skills assessments for migrant workers employed under new Aged Care Industry Labour Agreements (Australian Government 2023e). The most practical option may be to establish the

scheme (through tripartite arrangements) under ACQ&S Commission oversight with a plan for it to transition to a professional body once implementation issues are settled.

REASONABLE COSTS FOR WORKERS

Achieving the maximum social and economic benefits from a worker registration and accreditation scheme that supports professionalisation and quality care requires investment and ongoing secure funding through shared arrangements. A shared arrangement recognises the value of a skilled professional workforce to the state, to providers and to consumers, as well as workers.

Implementation costs should be minimised. Recent aged care reforms have established the building blocks for a registration and accreditation scheme. While public funds are key to the establishment of a scheme, Hemming et al. (2022) note there are lessons from the English experience where financial dependence on the government led to challenges to the registration scheme's effectiveness.

At the outset, registration should be fee-free for workers. Once the scheme is well established, fees to be paid by workers should be proportionate to wages. It should be anticipated that the scheme will require funding in addition to any fees paid by workers on an ongoing basis. The Aboriginal and Torres Strait Islander Health Practice Board of AHPRA collects annual fees for practising registration of about $150. This level of fee may be appropriate for aged care workers, although a lower fee may be possible due to economies of scale given the large size of the workforce. Unlike occupational licensing for some health professionals through AHPRA, it is not feasible for the scheme to be fully-funded by fees – due to the low wages of care workers. Costs of CPD may be a particular problem for lower-paid workers, as has been the case for Aboriginal Health Practitioners (New South Wales Government 2019, 38).

Nationally consistent screening for aged care and NDIS workers is currently under development. Costs to workers of screening must be taken into account, whether registration with a minimum qualification operates separately or as a part of the planned national aged care registration process. The costs to workers of NDIS worker screening checks (by states and territories) currently range from $80-$146 with most checks valid for five years.[7] Employers must be responsible for supporting workers'

[7] See https://www.service.nsw.gov.au/transaction/ndiswc-apply; https://www.service.vic.gov.au/services/national-disability-insurance-scheme. Scope and fees for screening checks vary in each state and territory

access to ongoing training and development, including through providing this in paid work time. This is currently a responsibility employers have that many are not meeting.

SYSTEM IMPLEMENTATION AND REGISTRATION PATHWAYS

Effective transition arrangements will be critical for the successful implementation of an accreditation and registration scheme based on a minimum qualification of Certificate III in Individual Support (Ageing) and CPD. Arrangements must be established in consultation with all stakeholders across the sector. To support recruitment and retention without disruption to labour supply, phased introduction should apply to both new and existing workers.

For example, during a transition period multiple registration pathways should be available to workers. International experience suggests such an approach offering flexibility of registration pathways can be key to successful implementation of a registration system (Hemmings et al. 2022, 19).

The Victorian Disability Worker Registration Scheme provides a model that could be adapted to aged care worker registration transition arrangements. The Victorian scheme provides for workers to register under a qualification pathway, a training pathway or a professional experience pathway. The scheme also provides for limited registration (Victorian Disability Worker Commission 2023).[8]

In aged care **a qualification pathway** would require attainment of the Certificate III in Individual Support (Ageing) or equivalent (such as the predecessor Certificate III in Aged Care). Registration based on other qualifications (such as disability support or community services qualifications) would be assessed on a case-by-case basis.

A training pathway would require completion of significant and relevant training in aged care that aligns with the outcomes of the Certificate III in Individual Support.

A professional experience pathway would provide for registration on the basis of work experience as an aged care worker. For example, the Victorian Disability Worker Registration Scheme requires a minimum of 15 hours per week over a period of two years within the past 10 years.

A limited or provisional registration type could allow workers who do not currently meet the registration requirements to practice as care workers. The circumstances in

[8] See Appendix D for details of the Victorian scheme.

which provisional registration would apply should include to allow workers to undertake training or supervised practice, or where there is an area of particular need (to be determined by the Minister). Provisional registration may be required across the sector beyond the transition period to meet growing demand. Continuation of a worker's provisional registration would be on the basis of engagement in CPD, and this could include a requirement for progress toward attainment of a Certificate III. In the longer term it may be appropriate to require all new workers to register via a qualification pathway only. However, this will likely require better recognition of work value and competency requirements in these roles, in order to achieve better pay, mobility, and career pathways for care workers.

Transition arrangements could provide for variations in requirements across aged care programs with, for example, a longer transition period, and/or graduated requirements for homecare workers who provide domestic assistance in CHSP. Variation in transition arrangements may be needed to enable the continued engagement of migrant care workers in Australia under Aged Care Labour Agreements, to address temporary worker shortages.[9]

The international experience highlights the importance of engagement with workers – including older workers who may not hold formal qualifications – at the outset to ensure workers understand requirements. The role of trade unions was seen as important for engagement. In the UK (in Scotland, Northern Ireland and Wales), starting out with a voluntary scheme and phasing in mandatory requirements was seen 'to have potentially mitigated against an initial loss of staff' (Hemming et al. 2022, 19).

KEY COSTS

An aged care worker registration scheme with a requirement for a minimum Certificate III level qualification and CPD entails additional costs beyond existing commitments that have been made for centralised worker registration, screening and managing compliance with the Code of Conduct by the ACQ&S Commission.

Significant costs of establishing and maintaining a mandatory Certificate III qualification and CPD elements include establishing the scope of professional practice

[9] Under current Aged Care Labour Agreements a worker is required to hold a relevant AQF Certificate III or equivalent, or higher qualification or to have 12 months of relevant work experience or part time equivalence. A positive skills assessment must be obtained from the Australian Nursing and Midwifery Accreditation Council or the ACWA for overseas-obtained qualifications overseas and where work experience is claimed in lieu of the formal qualifications. See *https://immi.homeaffairs.gov.au/what-we-do/skilled-migration-program/recent-changes/new-aged-care-industry-labour-agreement*

and practice standards, and maintaining professional registration and accreditation processes. Investments to establish a sector-specific RPL system should be borne largely by HumanAbility. Funding to establish an accessible and affordable system should be provided to TAFEs and professional bodies. With the establishment of a centralised worker registration body the foundations will be in place for a system of regulatory oversight. Training and CPD costs should not require large-scale new investment beyond that already required and/or anticipated under current and planned arrangements (which should already include additional funding in response to the Aged Care Royal Commission's recommendation 114 for funding for additional training). A lengthy transition phase and grandfathering arrangements should minimise the costs of registration and training for the existing workforce.

The registration system

The introduction of registration and accreditation based on a mandatory minimum qualification and CPD, even if managed and overseen by the ACQ&S Commission, would require establishment of a new body to develop practice standards, manage the assessment of worker applications, and manage compliance functions.

Indicative costs can be gleaned from the schedules of fees for occupational licensing under AHPRA's various practice boards which operate on a full-cost-recovery basis. Annual fees for practising registration through the Aboriginal and Torres Strait Islander Health Practice Board of AHPRA are $154 a year, in addition to a one-off initial application fee of $94. This level of fee may be appropriate for aged care workers although it may be onerous for part-time workers. Annual fees for practicing registration for workers in other occupations range from $123 for occupational therapists, to $180 for occupations covered by the Nursing and Midwifery Board (AHPRA 2023).

Training and development

At the present time, most of the direct costs of training new entrants to the aged care workforce to attain a Certificate III qualification are borne by the Commonwealth and/or some state/territory governments, and by individual workers (including the opportunity cost of foregone income while enrolled in training). Continued access to subsidised or free training will be necessary during the transition phase, and for as long as significant workforce shortages exist.

According to the 2020 Aged Care Workforce Census, the proportion of personal care workers that has attained a Certificate III/IV or higher in a relevant direct care field is

71% in the Home Care Packages Programme (HCCP), 66% in residential aged care and just over 60% in Commonwealth Home Support Program (CHSP). An additional 2-4% of the workforce were studying for a Certificate III or higher (Australian Government 2021, 17, 32, 45).

Therefore, the majority of the workforce should not require additional training to meet a mandatory minimum Certificate III qualification requirements. Grandfathering and transitional or ongoing arrangements allowing for workers without relevant qualifications to gain initial registration via a professional experience pathway would limit any surge in demand for training by current care workforce member. This should include full-pay traineeships and scholarship programs to assist current aged care workers engage in training.

Currently, aged care providers are expected to provide training to their employees to ensure they have relevant competencies. In the new *Draft Strengthened Aged Care Standards* this requirement now includes core matters for which workers must 'regularly receive competency-based training … at a minimum' (ACQ&S Commission (2023c, 46). Hence the introduction of CPD requirements for workers should not require enormous additional investment by employers unless to remedy underinvestment in workforce training.

Conclusion: Weighing up the costs and benefits

This report has examined the case for an aged care worker professional registration or occupational licensing scheme, including a mandatory qualification requirement, and the likely benefits and costs of a scheme. The Aged Care Royal Commission's findings provide strong grounds for establishing a mandatory requirement for aged care workers to attain a Certificate II qualification and to engage in ongoing training and development. Workers must be adequately skilled to be able to provide quality care safely and meet their obligations under aged care regulations. This report has identified multiple additional benefits of a registration system with mandatory training requirements. These benefits far outweigh the likely costs of a scheme.

Table 1 overleaf provides a summary of the main costs and benefits of a registration system with mandatory qualification and CPD requirements. The costs of the system consist mostly of short-term fiscal costs of system establishment, and these costs are limited due to the large share of current workers and new entrants already holding Certificate III qualifications. Other potential economic costs can be mitigated through careful implementation. Ongoing costs would be shared between Commonwealth and state/territory governments, TAFEs, employers, and workers. The most attractive benefits of this reform would be the ongoing and longer-term social and economic benefits of a better-trained, better-motivated, more stable, and ultimately better-paid aged care workforce. These benefits would accrue to people receiving care, aged care workers, aged care providers, government and the general community. Higher quality and safe care, better jobs and careers in aged care, system responsiveness and stability in the face of growing demand and increasing complexity of care, and reduced gender and other inequalities offer ample motivation for moving forward with this proposal.

Table 1: Weighing up the costs and benefits	
Costs	**Benefits**
Aged Care worker registration scheme with mandatory Cert. III and CPD Short-term: Establishment (funded by government and mitigated by ACQ&S oversight). Ongoing: (shared) Year 1 up to $200 per worker* (mitigated by phase-in across service types). Thereafter around $100 per worker p.a. (or less if combined with screening). * initial fee-free period for workers.	**Valued work, better jobs and pay** Long-term benefits for workers: - Higher pay, higher status*. - Professional community of practice. - Career pathways & mobility. - More secure jobs*. - Greater job satisfaction. *In conjunction with other strategies to improve pay and job quality.
Certificate III training costs Medium-term: Training places – as per current govt. investment in free VET (minimal additional costs). Short-term: Scholarships for Cert. III attainment by current workers. Short-term and ongoing: Employer investment in paid training time. Short-term: Establishment of sector RPL (costs to be borne by Jobs & Skills Council)	**Workforce stability and sustainability** Long-term system benefits: - Increased attraction. - Increased job tenure/reduced turnover generating savings on recruitment, induction, supervision and training, - Reduced reliance on migrant worker programs, and their costs, - increased public confidence in system.
Continuing professional development Ongoing: Little additional cost, mostly to be borne by employers, in line with current practice standards (with increased incentive for employers to provide to maintain worker registration).	**Workforce planning** Ongoing: Improved ability to plan to meet growing care needs and complexity and to ensure quality and safety
Possible reduced occupational entry: Short-term: Potential exacerbation of workforce shortages (mitigated by phase-in arrangements including provisional registration)	**Better quality care** Ongoing: A high quality, effective care system with reduced incidents, better health outcomes, greater user satisfaction.
	Reduced inequalities Long-term: Social and economic benefits of reduced gender inequality incl. pay gap, reduced gender segregation. More opportunities for disadvantaged groups.

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Appendix A: Proposed Provider Registration Category Service Types

Six proposed registration categories group aged care services 'based on common characteristics, the associated service risks, and the provider obligations to address the risks' (Australian Government 2023a).

Table 1 The proposed six (6) provider registration categories

Provider	Description	Service Types	Rationale for grouping services into this registration category
Category 1	Home and community services	• Domestic assistance • Home maintenance and repairs • Meals • Transport	• Service provision in the person's home broadly relates to communication, companionship, housework, meal preparation, home maintenance and some movement assistance around and outside the house, e.g., stairs and transport • Services are more readily available in the private market. • Services do not require clinical skills. • Other regulators generally regulate services; therefore, a system of mutual recognition of regulatory requirements will be implemented to reduce red-tape and ensure older people's safety.
Category 2	Assistive technology and home modifications	• Digital technologies • Digital monitoring, education, and support • Goods, equipment, and assistive technologies (non-digital) • Home modifications	• Services involve the provision of equipment, aids, and modifications to assist the older person in activities of daily living. • Provision of equipment/modifications is often one-off (e.g., home modification) or for a time-limited period (e.g., while the provider is working with the person to identify the most appropriate aid and assisting them in using it). • Some of the risks relating to aids, equipment and home modifications are managed by other regulators (e.g., compliance with building codes, fair trading legislation, and medical devices regulation).
Category 3	Social support	• Social support	• Service provision is likely to be of high frequency and relationship driven. • Services are usually required for a more extended period, and trust is built through the relationship. Workers generally require greater access to the older person and their personal information.
Category 4	Clinical and specialised supports	• Personal care • Care management • Transition care services in the home • Specialised supports • Assistance with care and housing (hoarding and squalor support) • Nursing • Allied health	• Some workers require specific qualifications and professional registration (or need to be supervised by those that do). • Workers generally require greater access to the older person and their personal information. Service provision often requires communication and coordination with other family members and care providers (where this is the older person's preference). • Workers need to have the necessary skills and attributes to safely deliver the care (e.g., skills relating to dementia care, gentle care, and person-centred care). • Older people in need of clinical care are generally mildly, moderately, or severely frail and may have a degree of cognitive impairment. • There will likely be a stronger focus on coordination of care, including with medical practitioners. • The most common signs and symptoms to manage are breathing difficulties, pain, incontinence, movement disorders, disorientation and amnesia, speech disturbances, complex medication regimes, urinary/faecal incontinence, malaise, and fatigue. • A system of clinical governance to mitigate clinical risks to ensure safety and quality of care is likely required.

Provider	Description	Service Types	Rationale for grouping services into this registration category
Category 5	Home or community based respite	• Respite (home and community based)	• Care is delivered through a service environment that needs to be assessed as suitable. • A number of older people generally receive this care at the same location and the provider needs to manage their interactions to ensure the provision of safe, quality care to all of them. • There may be a heightened risk of restraint being used. • Older people often receive this care over a longer continuous period (e.g., for 5-8 hours at a centre). • This care generally requires several staff on site and for work to be coordinated. It is unlikely to be able to be delivered by an individual to meet safety requirements.
Category 6	Residential care	• Accommodation Services • Residential respite • Care and services • Transition care services (residential) • Transition care support services (residential)	• This category includes all services and support delivered in a residential aged care setting. • Provider is responsible for 24/7 ongoing care of the older person and meeting all their needs (food, accommodation, personal care, clinical care, social activity etc.). • A number of older people generally receive this care at the same location and the provider needs to manage their interactions to ensure the provision of safe, quality care to all of them. • The presence of effective incident management systems, care planning systems, systems for monitoring staff, emergency management systems etc. are critical to the delivery of safe and quality care. • Services are higher risk due to the more significant levels of frailty of older people accessing them. Risks include the inappropriate use of physical or chemical restraint, lack of health or other staff on-site resulting in unmet needs.

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Source: Australian Government (2023a). *A new model for regulating Aged Care Consultation Paper No. 2. Details of the proposed new model.* Department of Health and Aged Care, Table 1, The proposed six (6) provider registration categories, pp. 27-29.

Appendix B: Social care worker registration in the United Kingdom

While professionalisation of the social care workforce is generally seen as an important mechanism for care policy reform in the United Kingdom, progress on professionalising the workforce varies significantly across its four jurisdictions: England, Northern Ireland, Scotland and Wales (Hayes et al. 2019, Hemmings et al. 2022, Needham and Hall 2023). [10] Only Wales has adopted a mandatory registration scheme with a qualification requirement.

In England, problems of high staff turnover and unfilled vacancies have worsened over the past decade and are associated with insecure work, especially zero-hours contracts. Lack of training is considered to be a major factor in poor service and negative user experiences. (Hayes et al, 2019, 33). A licensing scheme was proposed in 2010 by the then-Labour government but never happened.

In Scotland, registration is mandatory for most care workers (and in all aged care settings) with workers having to register with the Scottish Social Services Council (SSSC) within six months of starting work. There is no mandatory qualification requirement for registration, but workers are required to acquire a relevant qualification within five years.

Registration of social care workers has been mandatory for residential care workers in Northern Ireland since 2017 and this requirement is being extended to home care workers. Registration does not include a qualification requirement.

In Wales, registration is mandatory for social care workers in all care settings and includes qualification requirements and a professional standards code. The Welsh Government describes registration as 'serving the dual purposes of professionalising and raising the status of the social care workforce, and reassuring service-users and their families that workers have the qualifications and skills required to perform their work professionally' (Hayes et al, 2019: 20).

[10] In the UK the social care workforce includes aged care and disability support workers.

Appendix C: Certificate III in Individual Support

Qualification Description

This qualification reflects the role of individuals in the community, home or residential care setting who work under supervision and delegation as a part of a multi-disciplinary team, following an individualised plan to provide person-centred support to people who may require support due to ageing, disability or some other reason.

These individuals take responsibility for their own outputs within the scope of their job role and delegation. Workers have a range of factual, technical and procedural knowledge, as well as some theoretical knowledge of the concepts and practices required to provide person-centred support.

The skills in this qualification must be applied in accordance with Commonwealth and State/Territory legislation, Australian standards and industry codes of practice. To achieve this qualification, the candidate must have completed at least 120 hours of work as detailed in the Assessment Requirements of the units of competency. No licensing, legislative, regulatory or certification requirements apply to this qualification at the time of publication.

Packaging Rules

Total number of units = 15 consisting of 9 core units, and 6 elective units consisting of:

- at least 3 units from those units listed under Group A or B
- the remaining units from any of the Groups A, B or C below.

Any combination of electives that meets the rules above can be selected for the award of the *Certificate III in Individual Support*. Where appropriate, electives may be packaged to provide a qualification with a specialisation

Packaging for each specialisation:

All Group A electives must be selected for award of the *Certificate III in Individual Support (Ageing)*.

All Group B electives must be selected for award of the *Certificate III in Individual Support (Disability)*.

All Group A and all Group B electives must be selected for award of the *Certificate III in Individual Support (Ageing and Disability)*.

All electives chosen must contribute to a valid, industry-supported vocational outcome.

Core units

CHCCCS031	Provide individualised support
CHCCCS038	Facilitate the empowerment of people receiving support
CHCCCS040	Support independence and wellbeing
CHCCCS041	Recognise healthy body systems
CHCCOM005	Communicate and work in health or community services
CHCDIV001	Work with diverse people
CHCLEG001	Work legally and ethically
HLTINF006	Apply basic principles and practices of infection prevention and control
HLTWHS002	Follow safe work practices for direct client care

Elective units

Group A electives – AGEING specialisation

CHCAGE011	Provide support to people living with dementia
CHCAGE013	Work effectively in aged care
CHCPAL003	Deliver care services using a palliative approach

Group B electives – DISABILITY specialisation

CHCDIS011	Contribute to ongoing skills development using a strengths-based approach
CHCDIS012	Support community participation and social inclusion
CHCDIS020	Work effectively in disability support

Group C Other electives

CHCAGE007	Recognise and report risk of falls
CHCAGE012	Provide food services
CHCAOD001	Work in an alcohol and other drugs context
CHCCCS001	Address the needs of people with chronic disease
CHCCCS017	Provide loss and grief support
CHCCCS033	Identify and report abuse
CHCCCS034	Facilitate independent travel

CHCCCS035	Support people with autism spectrum disorder
CHCCCS036	Support relationships with carer and family
CHCCCS037	Visit client residence
CHCCCS042	Prepare meals
CHCCCS043	Support positive mealtime experiences
CHCCCS044	Follow established person-centred behaviour supports
CHCDIS011	Contribute to ongoing skills development using a strengths-based approach
CHCDIS013	Assist with communication using augmentative and alternative communication methods
CHCDIV002	Promote Aboriginal and/or Torres Strait Islander cultural safety
CHCGRP001	Support group activities
CHCMHS001	Work with people with mental health issues
HLTAID011	Provide First Aid
HLTHPS006	Assist clients with medication
HLTOHC007	Recognise and respond to oral health issues

Source: Training.Gov.au https://training.gov.au/Training/Details/CHC33021.

Appendix D: Victorian Disability Worker Registration Scheme

The Victorian Disability Worker Registration Scheme is a voluntary and currently no-fee scheme. It has three pathways to general registration for disability support workers: on the basis of qualification, work experience, or a combination of qualifications and experience.

1. **Registration based on qualifications requires:**

    - a Certificate III level or higher in individual support or disability or a related field, **and**
    - relevant work experience providing disability services (which may include placement hours completed as part of the qualification). Other qualifications such as ageing support or community services will be assessed on a case-by-case basis.
      or
    - training as a disability worker equivalent to a Certificate III in Individual Support (Disability), **and**
    - relevant work experience providing disability services.

2. **Registration based on professional experience requires:**

    - at least 1,440 hours (38 weeks at 1 EFT) of relevant work experience providing disability services over at least two years in the past 10 years.

3. **Registration based on a combination of qualifications and relevant experience requires:**

    - a qualification in community services, health or a related field that is relevant to the worker's experience providing disability services, **and**
    - at least 120 hours of relevant work experience providing disability services.

Source: Victorian Disability Worker Commission.
https://www.vdwc.vic.gov.au/disability-worker-registration

Appendix E: The Aged Care Royal Commission Recommendation 114

Recommendation 114: Immediate funding for education and training to improve the quality of care

1. The scheme should operate until independent pricing of aged care services by the Pricing Authority commences. The scheme should reimburse providers of home support, home care and residential aged care for the cost of education and training of the direct care workforce employed (either on a part-time or full-time basis, or on a casual basis for employees who have been employed for at least three months) at the time of its commencement or during the period of its operation. Eligible education and training should include:

    a) Certificate III in Individual Support (residential care and home care streams) and Certificate IV in Ageing Support.

    b) continuing education and training courses (including components of training courses, such as 'skill sets' and 'micro-credentials') relevant to direct care skills, including, but not limited to, dementia care, palliative care, oral health, mental health, pressure injuries and wound management.

2. Reimbursement should also include the costs of additional staffing hours required to enable an existing employee to attend the training or education. The scheme should be limited to one qualification or course per worker.

Source: Aged Care Royal Commission (2021a, 287).

Appendix 4: HSU Positive Worker Registration proposal

POSITIVE WORKER REGISTRATION

A SYSTEM-WIDE RECOGNITION OF THE SKILLS & KNOWLEDGE OF AGED CARE WORKERS

THE ASK

AS RECOMMENDED BY THE AGED CARE ROYAL COMMISSION (REC 77)

A personal care worker registration and accreditation scheme, across residential aged care and home care.
Mandatory requirement for:

- a Certificate III qualification with an Aged Care specialisation
- continuing professional development (CPD)

HOW IT WOULD WORK

PROVISIONAL REGISTRATION WHILST TRAINING

REGISTRATION WITH CERTIFICATE III

CONTINUING PROFESSIONAL DEVELOPMENT

Transition pathways to get to the ongoing scheme

1. Qualification pathway – achieving Cert III
2. Training pathway – significant and relevant training equivalent to Cert III
3. Professional experience pathway – e.g. two years of service

Costs

- No cost to workers, registration costs covered by Government.
- Set-up costs mitigated by Aged Care regulator already existing.
- Full-pay traineeships covered by Government.
- Professional Development covered by employers.

Training

- Training places through the Government's investment in fee-free TAFE for care workers.
- Full-pay traineeships for provisionally registered workers.
- Employer investment in ongoing professional development.

The risk to the workforce is low

Transition is easy to implement, including recognition of experience.
+ 60-71% of workers already have Cert III
+ migration settings already require Cert III
+ ongoing training support
= the risk of registration affecting workforce is low

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CHANGING AGED CARE

POSITIVE WORKER REGISTRATION

A SYSTEM-WIDE RECOGNITION OF THE SKILLS & KNOWLEDGE OF AGED CARE WORKERS

GOOD FOR WORKERS

- Professionalisation & community recognition of a protected title.
- Ensures all workers have access to basic training.
- Higher rates of qualification makes pay rises easier to achieve.
- Supports career pathways, higher qualifications, and skills progression.
- Safer staffing ratios can be easily linked to new qualifications.
- More secure jobs through standardised recognition.
- Greater job satisfaction.

GOOD FOR QUALITY CARE

- A high quality, effective care system with a guaranteed minimum standard.
- Reduced number of incidents.
- Better health outcomes.
- Greater user satisfaction.
- Increased public confidence in system.
- Improved ability to plan to meet growing care needs.
- Sharing of best practice as workers continually upskill and share knowledge.

GOOD FOR EMPLOYERS

- Professionalising care work presents it as a career of choice.
- Long-term impacts on career progression, pay and conditions reduce workforce churn.
- Savings on recruitment, induction, supervision and training.
- Workers can easily market their skills to employers so that they can find the right workers with the right skills.

GOOD FOR AUSTRALIA

- Social and economic benefits of reduced gender inequality including the pay gap.
- More opportunities in a highly feminised and migrant workforce.
- Feminised work recognised as professional and skilled work.
- Flow on effects of better pay in the economy.