

FAIR WORK COMMISSION

MATTER NUMBERS AM2020/99; AM2021/63; AM2021/65

WORK VALUE CASE – AGED CARE INDUSTRY

COMMONWEALTH’S RESPONSE TO WAGE ADJUSTMENT ISSUES

1. These submissions are filed in accordance with paragraph [4] of the Commission’s further amended directions in this proceeding dated 27 October 2023.
2. In their submissions in relation to the **wage adjustment issues**, being issues 17 and 18 in the revised Stage 3 Issues summary published on 2 August 2023, the applicants and the United Workers Union (**UWU**) submit that one factor leading to an increase in work value for aged care workers is understaffing in the industry.¹
3. The Commonwealth does not wish to be heard for or against a particular outcome on these issues. However, the Commonwealth does wish to raise some matters of context to assist the Commission in considering them.

Previous observations by the Full Bench

4. The Commonwealth notes that in the Stage 1 Decision, the Full Bench accepted that:

‘The evidence before us paints a picture of chronic understaffing across the aged care sector which has contributed to increasing workloads and work intensity.’²
5. The Full Bench noted that given the parties accepted that an increase in minimum wage rates would assist in attracting and retaining aged care employees, it would be necessary to consider ‘whether work intensification is a permanent feature of the work in question; or a transitory phenomenon which will abate when staffing levels increase’, and that in this context ‘[a] cautious approach to the assessment of workload and work value is warranted’.³ However, the Full Bench went on to note that:

‘the overwhelming evidence that the needs of those living in residential aged care facilities and those being cared for in their homes, have significantly

¹ Australian Nursing and Midwifery Federation Submissions on “Wage Adjustment Issues” dated 15 September 2023 (**ANMF wage adjustment submissions**) at [33]-[64]; HSU Submissions re Stage 3 – Issues 17 and 18 dated 22 September 2023 (**HSU wage adjustment submissions**) at [73]-[80]; Submissions of the United Workers Union in respect of Stage 3: Wage Adjustment Issues dated 15 September 2023 (**UWU wage adjustment submissions**) at [17.3].

² [2022] FWCFB 200 at [216].

³ [2022] FWCFB 200 at [220].

increased in terms of clinical complexity, frailty and cognitive and mental health. There is no evidence that these factors are transitory or that they can be entirely mitigated by increased staffing levels, particularly where the skills necessary to deal with these needs are not appropriately recognised and valued.⁴

6. The Full Bench ultimately stated that it had not taken ‘the issues arising from understaffing into account’ in arriving at the interim wage increases awarded at Stage 1.⁵ However, it is apparent that the Full Bench did take into account the increased workload, intensity and complexity of aged care workers’ work generally in awarding those increases.⁶

Measures to increase workforce and skills

7. The Commonwealth actively monitors the aged care workforce and remains committed to growing and skilling the aged care workforce to support the delivery of quality care to older people. In addition to funding the interim wages increases awarded by the Commission, the Commonwealth has implemented a number of specific initiatives directed to achieving increased staffing and skills in the aged care industry, including by implementing:

- 7.1. the following measures to increase the supply of aged care workers through migration:

- 7.1.1. in 2023, a further 500 Pacific Australia Labour Mobility (**PALM**) Scheme workers will be supported to complete a Certificate III in Individual Support (Ageing);⁷ and

- 7.1.2. on 5 May 2023, an Aged Care Industry Labour Agreement was established, which provides a streamlined pathway for aged care providers to access direct care workers from overseas where standard visa programs are not available, while also ensuring providers continue to support existing domestic workers.⁸

⁴ [2022] FWCFB 200 at [220].

⁵ [2022] FWCFB 200 at [973].

⁶ [2022] FWCFB 200 at [890] item 1, [899], [957] (‘having regard to the evidence canvassed earlier in this chapter’), [961] (same comment), [965]-[966].

⁷ See, eg, media release from the Hon Pat Conroy MP and the Hon Anika Wells MP, ‘Aged Care Expansion program celebrates first PALM scheme graduates’ dated 24 August 2023 <<https://ministers.dfat.gov.au/minister/pat-conroy/media-release/aged-care-expansion-program-celebrates-first-palm-scheme-graduates>>.

⁸ See, eg, media release from the Hon Anika Wells MP, ‘A tripartite approach to address workforce shortages in aged care’ dated 5 May 2023 <<https://www.health.gov.au/ministers/the-hon-anika-wells-mp/media/a-tripartite-approach-to-address-workforce-shortages-in-aged-care?language=en>>; Department of Home Affairs, ‘Skilled migration program’ webpage <<https://immi.homeaffairs.gov.au/what-we-do/skilled-migration-program/recent-changes/new-aged-care-industry-labour-agreement>>.

- 7.2. a series of skills and training initiatives, including fee-free TAFE places (including 15,000 places reserved for aged care),⁹ and 20,000 new university places¹⁰ which includes 2,600 focused on nurses as an area of national priority or skills needs;
- 7.3. the Aged Care Registered Nurse (**RN**) Bonus Payment, which provides a lump sum payment to registered nurses delivering aged care who work for the same employer for six or 12 months;¹¹
- 7.4. the Workforce Advisory Service, which is a free, independent and confidential service to support residential and home care service providers with workforce advice;¹²
- 7.5. the Home Care Workforce Support Program to attract and train 13,000 new aged care workers for the home care sector;¹³
- 7.6. the Aged Care Transition to Practice Program to attract and retain up to 740 new aged care nurses with training and professional development;¹⁴
- 7.7. the Clinical Placements Program, which will provide up to 5,250 quality clinical placements for nursing students in the care and support sector;¹⁵ and

⁹ See, eg, 'Budget October 2022-23 – Skills and training' fact sheet <https://archive.budget.gov.au/2022-23-october/factsheets/download/factsheet_skills.pdf>.

¹⁰ See, eg, Department of Education, '20,000 additional Commonwealth supported places' <<https://www.education.gov.au/higher-education-funding/commonwealth-grant-scheme-cgs/20000-additional-commonwealth-supported-places>>.

¹¹ Department of Health and Aged Care, 'Aged Care Registered Nurses' Payment to reward clinical skills and leadership' dated 12 September 2023 <<https://www.health.gov.au/our-work/aged-care-registered-nurses-payment-to-reward-clinical-skills-and-leadership>>.

¹² See, eg, media release from the Hon Richard Colbeck, 'New service to support aged care providers' dated 11 October 2021 <<https://www.health.gov.au/ministers/senator-the-hon-richard-colbeck/media/new-service-to-support-aged-care-providers?language=en>>.

¹³ See, eg, Department of Health and Aged Care media release, 'Applications open: Home Care Workforce Support Program' dated 6 August 2021 <<https://www.health.gov.au/news/announcements/applications-open-home-care-workforce-support-program>>; Department of Health and Aged Care, 'Home care workforce support' fact sheet dated 18 September 2023 <<https://www.health.gov.au/sites/default/files/2023-09/home-care-workforce-support.pdf>>.

¹⁴ See, eg, media release from the Hon Richard Colbeck, 'Transition to Practice program to attract and prepare nurses in aged care' dated 8 June 2021 <<https://www.health.gov.au/ministers/senator-the-hon-richard-colbeck/media/transition-to-practice-program-to-attract-and-prepare-nurses-in-aged-care>>.

¹⁵ See, eg, Department of Health and Aged Care 'Aged Care Nursing Clinical Placements Program' dated 3 October 2023 <<https://www.health.gov.au/our-work/aged-care-nursing-clinical-placements-program>>; Department of Health and Aged Care Budget 2022-23, 'Workforce – growing and upskilling the workforce to improve care for senior Australians' dated April 2022: <<https://www.health.gov.au/sites/default/files/documents/2022/04/budget-2022-23-workforce-growing-and-upskilling-the-workforce-to-improve-care-for-senior-australians.pdf>>.

- 7.8. a separate Rural Locum Assistance Program stream to support aged care providers in rural and remote locations affected by workforce shortages to access a temporary locum workforce and permanent relocation payments and annual retention bonuses.^{16 17}
8. The Commonwealth is also committed to fully implementing the recommendation of the Royal Commission into Aged Care Quality and Safety relating to minimum care time standards (recommendation 86). From 1 October 2022, it is supporting residential aged care providers to engage staff to meet new requirements by providing a substantial funding boost (\$5.4 billion over four years from 2022-23) to support them to deliver a sector average of 200 care minutes per resident per day (including 40 RN minutes).¹⁸

Impacts of these measures and wage increases

9. There are early indications that the interim wage increases awarded by the Commission, and the other measures being implemented by the Commonwealth as set out above, are having or will have an impact on staffing levels and the intensity of work of aged care workers. For example:
- 9.1. Workforce modelling undertaken by the Department of Health and Aged Care (**Department**) in 2022 estimated that in 2023-24 there would be a workforce gap of 26,670 direct care workers in residential aged care. The most recent update to the Department's workforce modelling, which includes data from the Department's 2022-23 Quarter 4 (1 April to 30 June 2023) quarterly financial reporting on the aged care sector, estimates the workforce gap as 17,437.¹⁹ This indicates the gap has closed (reduced) by an estimated 9,233 workers.
- 9.2. There have been approximately 214,000 enrolments in the fee-free TAFE courses referred to in paragraph [7.2] above since January 2023, with over 51,000 of these specifically in the care sector.²⁰

¹⁶ <https://www.health.gov.au/resources/publications/workforce-pillar-4-of-the-royal-commission-response-growing-a-skilled-and-high-quality-workforce-to-care-for-senior-australians?language=en> (p. 2).

¹⁷ Relocation incentives and retention bonuses - Bringing health and aged care locum assistance to rural Australia (rurallap.com.au).

¹⁸ See, eg, Department of Health and Aged Care 'Care minutes' dated 28 September 2023 <<https://www.health.gov.au/our-work/care-minutes-registered-nurses-aged-care/care-minutes>>.

¹⁹ Department of Health and Aged Care: Health Economics and Research Division 2023, Registered Nurses, Nurse Practitioners, Enrolled Nurses and Personal Care Workers supply and demand (headcount) in Residential Aged Care Facilities, FY 2023-24 as at August 2022 and October 2023.

²⁰ See, eg, media release from the Hon Anthony Albanese MP, 'Albanese Government's Fee-Free TAFE Blitz Smashes Target Six Months Early' dated 28 August 2023 <<https://www.pm.gov.au/media/albanese-governments-fee-free-tafe-blitz-smashes-target-six-months-early>>.

- 9.3. The Department's data indicates that daily care minutes are increasing towards the October 2023 target of 200 care minutes per resident per day. In particular:
- 9.3.1. since 2020-21 average total care minutes per resident per day have increased from 181 to 190 (as at March 2023),²¹ and average RN minutes per resident per day have increased from 30 to 35 (as at March 2023);²² and
- 9.3.2. between July 2023 and September 2023, the percentage of facilities that reported having an RN on-site 24/7 increased from 86% to 88.16%.²³

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These submissions were settled by David Chin SC and Dan Fuller, counsel for the Commonwealth of Australia.

²¹ Department of Health and Aged Care, 'Key Findings — Financial report on the Australian aged care sector 2020-21' dated 2 November 2022, page 31 <<https://www.health.gov.au/resources/publications/key-findings-financial-report-on-the-australian-aged-care-sector-2020-21?language=en>>; Quarterly financial snapshot of the aged care sector – Quarter 3 2022-23 – January to March 2023' dated 1 September 2023, page 9 <<https://www.health.gov.au/resources/publications/quarterly-financial-snapshot-of-the-aged-care-sector-quarter-3-2022-23-january-to-march-2023?language=en>>.

²² Compare the documents in the preceding footnote; also compare media release from the Hon Anika Wells MP, 'Nurses are back in nursing homes' dated 10 August 2023 <<https://www.health.gov.au/ministers/the-hon-anika-wells-mp/media/nurses-are-back-in-nursing-homes?language=en>>; and Department of Health and Aged Care, 'Registered nurse coverage in residential aged care dashboard' dated 16 October 2023 <<https://www.health.gov.au/resources/publications/registered-nurse-coverage-in-residential-aged-care-dashboard?language=en>>.

²³ Compare media release from the Hon Anika Wells MP, 'Nurses are back in nursing homes' dated 10 August 2023 <<https://www.health.gov.au/ministers/the-hon-anika-wells-mp/media/nurses-are-back-in-nursing-homes?language=en>>; and Department of Health and Aged Care, 'Registered nurse coverage in residential aged care dashboard' dated 16 October 2023 <<https://www.health.gov.au/resources/publications/registered-nurse-coverage-in-residential-aged-care-dashboard?language=en>>.