

Australian Nursing and Midwifery Federation submission to the

# SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE INQUIRY INTO THE AGED CARE LEGISLATION AMENDMENT (FINANCIAL TRANSPARENCY) BILL 2020

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Australian  
Nursing &  
Midwifery  
Federation



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## INTRODUCTION

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The ANMF is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 295,000 nurses, midwives and carers across the country.

Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.

Our strong and growing membership and integrated role as both a professional and industrial organisation provide us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.

Through our work with members we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.

With regard to care of older people, ANMF members work across all settings in which aged care is delivered, including over 40,000 members who are currently employed directly in the aged care sector. Many more of our members are involved in the provision of health care for older persons who move across sectors (acute, residential, community and in-home care), depending on their health needs. Being at the fore-front of aged care, and caring for older people over the twenty-four hour period in acute care, residential facilities and the community, our members are in a prime position to make clear recommendations to improve the care provided and enhance processes for access to that care.

The ANMF is deeply concerned about the quality of the operations of Australia's aged care sector and welcome the opportunity to provide feedback to the Inquiry into the *Aged Care Legislation Amendment (Financial Transparency) Bill 2020*. This legislation should serve as a mechanism to hold aged care providers receiving government funding to account for the acquittal of those funds and subsequently the quality of care provided.



## Recommendation

The ANMF strongly recommends that the Aged Care Legislation (Financial Transparency) Bill 2020 be supported and passed by the Parliament as a matter of urgency.

## Key Messages

- The Australian public and residents of aged care facilities, who together fund aged care in Australia, have a right to know where their money is spent by aged care providers.
- There must be a higher level of accountability on aged care providers, as the sector is funded predominately by taxpayer funds, and the Australian community rightly expects that this money will be spent on a decent standard of care for residents.
- Currently over \$20.1 billion of taxpayer dollars<sup>1</sup> has been provided to fund nursing homes in Australia in 2020 to date. There is no way of knowing where that money is spent by aged care providers.
- Residents and families, when making the emotional decision about which nursing home is appropriate for them, have the right to know what the facility spends on basic care needs, such as food, medicines, medical products, continence aids, management wages, staff wages, and staffing numbers and categories.
- Families and residents, when considering an appropriate nursing home, cannot make informed decisions regarding the available nursing and medical care for their loved ones without knowing the composition and qualifications of the workforce and the training provided to them.
- The Royal Commission into Aged Care Quality and Safety in Australia is currently underway, however their *Interim Report: A Shocking Tale of Neglect*, has already exposed that the “aged care system fails to meet the needs of its older, vulnerable, citizens. It does not deliver uniformly safe, quality care, it is unkind and uncaring towards older people and, in too many instances, it neglects them.”<sup>2</sup>
- The Royal Commission also noted in its recently released interim report, the lack of “*fundamental transparency*” across the sector.
- Nurses and carers are at the frontline in aged care every day and every night. They have provided firsthand accounts of shortages of staff, lack of resources and care, and the heartbreaking results this has on the residents they care for. Further evidence of this has clearly emerged during the current COVID-19 pandemic with some approved providers failing to provide the necessary staff and resources to meet residents care needs. Their commitment to the residents and families is why nurses and carers are asking all senators and politicians to support this Bill.
- Aged care providers are currently able to spend taxpayer subsidies as they choose and, as the Royal Commission has exposed, this is not delivering in some cases even basic standards of care. Nurses, carers and the community believe that it is time for genuine reform to the system and that means transparency and accountability across the sector.
- Proof of government funding being directly spent on the care of elderly residents needs to be mandated as a prerequisite to receiving a subsidy.
- The ANMF submits that we should not have to wait for the final report of the Royal Commission to make this vital and necessary change to aged care. The Parliament of Australia should act now to protect residents in Australian nursing homes.



## Current Lack of Transparency

The ANMF believes all elderly Australians have a right to safe, dignified care and that taxpayers' contributions to funding aged care providers must be directed to ensuring the provision of that care for every aged care resident.

Current legislation does not require government funding for aged care providers to be spent directly on the provision of care to the older people who engage with the sector, and for whom the funding is intended to support. Notably, there is no requirement for funding to be spent on ensuring fundamental supports, crucial to the delivery of dignified and respectful care, are in place. Importantly these supports include appropriate staffing levels, the provision of decent and adequate food, medicines, staff training, wages and salaries.

In 2020, over \$20.1 billion dollars<sup>3</sup> was paid to aged care providers with the intention that this funding will be used to deliver aged care services for vulnerable elderly and frail residents. Almost none of these aged care providers will be required to detail how this taxpayer money is spent.

Aged care providers regularly report a requirement for more substantial funding in the form of subsidies and commonwealth grants provided by the Australian government, and ultimately paid for by the Australian taxpayer. They consider the funding currently provided is still not enough.<sup>4</sup>

Specific analysis of how funds have been spent, the benefits generated, and transparent accounting and reporting of each funding stream must be required of provider recipients. Future funding should be determined based on evidence-based analysis of what has proven effective in protecting vulnerable older people and staff working in aged care.

The ANMF has long argued that the current aged care funding arrangements are no longer fit for purpose. They do not reflect the actual costs of care using an efficient price/cost approach, and particularly, lack transparency and accountability on the part of aged care providers for funding expenditure. Given the increasing concerns regarding some provider's financial viability, particularly as this now seems to be used to justify staffing reductions, greater transparency of information around providers' financial positions is essential. This will ensure that situations of genuine need can be differentiated from opportunistic behaviour.

## Risk Associated with Lack of Accountability and Transparency

### Tax Avoidance

Research commissioned by the ANMF in 2016<sup>5</sup> demonstrated that aged care residents receive one and a half hours less care than they should, every day. Yet there are no rules to ensure that government subsidies given to aged care providers are spent directly on their care. Further research commissioned by the ANMF in 2018<sup>6</sup> demonstrated that large for-profit aged care providers in particular are, like many businesses, using known loopholes and complex corporate structures and tactics to maximise earnings and profits and avoid tax. All while taking advantage of generous, taxpayer funded government subsidies.

This research, *Tax avoidance by for-profit aged care companies: Profit shifting on public funds*, prepared by the Tax Justice Network – Australia, revealed these providers have the financial capacity to bridge the gap in care hours by employing more nurses and carers. However, instead they are placing their profits and shareholders before safe care for their residents, who are also paying considerable amounts of money to access nursing home care.



In May 2019, The Tax Justice Network –Australia, and Centre for International Corporate Tax Accountability & Research (CICTAR) examined Australia’s six largest family-owned aged care providers. According to the Report, *All in the Family: Tax and Financial Practices of Australia’s Largest Family Owned Aged Care Companies*, the country’s six largest family-owned aged care providers received over \$711 million in annual federal funding (\$60,000 per year per resident) - operating 130 facilities, with almost 12,000 beds.<sup>7</sup>

The Report finds the providers have ‘complex corporate structures, intertwined with trusts, that appear specifically designed to avoid tax,’ which are ‘clear examples of why simple reforms are needed to restore public integrity in both aged care and the broader tax system’.<sup>8</sup>

Both reports are examples of why aged care providers that receive millions of dollars via Australian Government subsidies should be required by law to meet higher standards of transparency in financial reporting. Simple and common-sense reforms are needed to ensure that these heavily subsidised providers, which also charge residents and their families for their services, use tax-payer money first and foremost for the care of their residents. Proof of government funding being directly spent on the care of elderly residents needs to be mandated as a prerequisite to receiving a subsidy.

Along with the lack of transparency regarding financial and business dealings, aged care providers are also not transparent regarding the staffing of their facilities, how much they spend on food, continence aids, external consultants, executive salaries, or the skills mix of workers at their facilities.

Neither the Government, residents, nor the Australian community have any way of knowing whether nursing homes are staffed in a way that will guarantee safe and quality care for every resident.

### Collapse/Insolvency

Following the shock closure of Earle Haven Retirement Village in July 2019, where nearly 70 residents were left abandoned by management over a contract dispute, the Queensland Government established a new standard of transparency for private and public health and aged care facilities. This involved the introduction and successful passing of the *Health Transparency Bill 2019*.<sup>9</sup>

The *Health Transparency Bill 2019* introduced a new level of scrutiny and accountability for public health and aged care facilities, giving Queenslanders information about the aged care facility they choose, the number of staff, qualifications of staff and skills mix. Residents and families are now able to make more informed decisions about the care they are seeking and which facility they may choose.<sup>10</sup>

Private aged care facilities can opt out of disclosing this crucial information, as regulation of their facility is overseen by the Federal Government, but the Queensland Government can publicly disclose that a facility has opted out of providing this level of transparency.

Further, the Bill requires residential aged care providers to report on the number of staff they have employed, the skills mix of those staff, and provide a quarterly indication of daily care hours provided to residents. At a minimum, facilities are required to provide an average of 3.64 hours of nursing and personal care to residents daily, and a minimum nurse mix of 50 percent, with 30 percent of the total care staff to be registered nurses. The legislation requires facilities to provide an interactive website to ensure information is publicly available.

Comments made on the introduction of the Bill into the Queensland Parliament by the State Government make a clear acknowledgment of critical issues within the sector, directly relating to a lack of transparency and accountability:



*“The (sic) Government is sick of dodgy contractors and greedy owners exploiting vulnerable Queenslanders for profit... even though the Federal Government is responsible for the sector’s regulation, this is one way we can make them more accountable.”*

*“When (sic) enacted, this Bill will help open up private and public facilities to similar levels of scrutiny, which will help improve the care provided to older Queenslanders.”*

*“Queensland families want to know if their loved one gives their life savings to a company to care for them in their old age, what exactly are they paying for? Enough staff with the right skill mix to care for them? Or another Lamborghini for the CEO?”<sup>11</sup>*

### **Lack of care**

Witness testimonies and evidence brought before the Royal Commission into Aged Care Quality and Safety have identified frequent occurrences of understaffing within nursing homes. Chronic understaffing, widely recognised as a key contributor to the poor quality of care delivered in many parts of the sector, has been brought to light by the proceedings of the Royal Commission.<sup>12</sup>

A research paper was requested by the Royal Commission to compare Australia’s aged care staffing levels with international and national benchmarks. The research, conducted by Professor Kathy Eagar from the Australian Health Services Research Institute, has indicated that, when compared to other nations of comparable development, more than half (57.6%) of aged care residents in Australia are in nursing homes that have inadequate staffing levels. Professor Eagar argues that on average Australian nursing homes require an increase in their level of staffing to the order of approximately 37%. This is compelling evidence for an increase to resourcing to the sector to facilitate improved staff skills mix and staffing levels.<sup>13</sup>

Industry responses to evidence of understaffing generally elicits a response that links the issue with industry wide lack of funding.

Professor Joseph Ibrahim of Monash University’s Health Law and Ageing Research Unit notes, however, that a lack of transparency, and subsequently a lack of understanding as to the cost of delivering services within aged care, is largely due to there being no requirement for nursing homes to report how many staff they have or how they spend government subsidised funding.<sup>14</sup>

Professor Ibrahim suggests a lack of transparency of funding obscures understanding of the true issues that face the sector. He suggests three potential scenarios. The first, that facilities do in fact receive funding appropriate to increase their staffing, however the use of the funds are mismanaged and thereby misappropriated; the second being that facilities in fact do not receive enough funding to ensure appropriate staffing and delivery of care to residents; and the third, that the nature of the open and competitive market in which the aged care sector operates, distorts the viable operation of facilities and that regardless of management, operation within the sector and the delivery of appropriate care will be impacted.

As a suggested resolution to the issue, Professor Ibrahim indicates facilities could voluntarily participate in a forensic accounting program. It is the insight that would be provided by such a program that would facilitate the level of understanding required to advance policy and reform to ensure the appropriate use of public funds that best delivers care to Australians as intended.<sup>15</sup>

This commentary suggests transparency of funding throughout the sector is required to identify where and how the delivery of services are underfunded, and or where resources are misappropriated, either at the fault of providers or rather the model of privatised delivery and the competitive market within which the aged care sector operates.



## Increased Aged Care Funding

Findings from the Royal Commission suggest there is need for greater support throughout the sector, it is conceivable that this support would be facilitated through increases in the amount of government subsidised funding that is delivered to the sector.

Further, recent research published by the Caring Futures Institute at Flinders University<sup>16</sup> suggests there is strong support throughout the community for increases to funding in the sector. This funding increase would be supported by both increases to personal income tax and subsequent increased government contributions, and through increased co-contributions from individuals and families. It is worth noting that this strong community support may however be provided under the premise that current legislation and regulation warrants direct translation of an increase in funding to an increase in the quality of care delivered.

With no measure to best understand how under-resourced aged care providers may or may not be, and in understanding the competitive, profiteering nature of sections of the aged care market, it is not unreasonable to suggest that without appropriate action and accountability the current issues evident throughout the aged care sector may not be resolved or even ameliorated simply by increasing funding. The introduction of the proposed legislation is a crucial step towards ensuring that appropriate care is in fact delivered to those whom it is intended to support.

From 11 March 2020, and in response to the COVID-19 pandemic, the Federal Government has made a range of funding announcements for the aged care sector. A full summary of this additional funding has been compiled by the ANMF.<sup>17</sup>

As of the 26 June 2020, around \$850.8 million for aged care has been promised by the Commonwealth Government in support of responses to COVID-19. In addition to funding of \$234.9m for the retention bonus, funding initiatives have included:

- \$78.3m in additional funding for residential care to support continuity of workforce supply.
- \$26.9m for a temporary 30 percent increase to the Residential and Home Care Viability Supplements and the Homeless Supplement. This includes equivalent viability funding increases for National Aboriginal and Torres Strait Islander Flexible Aged Care Program providers, Multi-Purpose Services and homeless providers.
- \$92.2m in additional support to home care providers and organisations which deliver the Commonwealth Home Support Programme (CHSP), operating services including meals on wheels. This includes services for people in self-isolation such as shopping and meal delivery.
- \$12.3m to support the My Aged Care service to meet the surge in aged care specific COVID-19 enquiries, allowing for additional staff to minimise call wait times.
- \$205m additional funding in recognition of COVID-19 comprising payments of \$900 a bed in metropolitan areas and \$1350 per bed in regional areas.
- \$101m to support upskilling care workers in infection control, boosting staff numbers, support and training for residential staff and a range of other measures.
- \$52.9m for grants to reimburse approved aged care providers for eligible expenditure managing direct impacts of COVID-19 in the period from 24 February to 31 May 2021.
- \$70.2 m in short term support for CHSP additional support to provide care.



- \$22m additional in Home Care Packages to assist workforce supply pressure as a result of COVID-19.<sup>18</sup>

The ANMF contends that while this investment is much needed, particularly due to the known and pre-existing systemic issues regarding safety and quality in aged care, making this funding available to aged care providers without defining and regulating how or what the funds are used for runs the very real risk of this added funding not being used appropriately or effectively to protect vulnerable residents, staff, or residents' families and loved ones from potential infection, as is currently apparent in Victoria. Recent reports indicate that outbreaks of COVID-19 cases in aged care in Victoria are almost exclusively a private sector issue.<sup>19</sup> Presently, privately owned and operated nursing homes in Victoria do not have mandated ratios for registered nurses. However, the state government run nursing homes operate under the Safe Patient Care Act with mandated ratios for registered nurses and have reported a far lower number of cases of COVID-19.<sup>20</sup> This further highlights the direct impact on resident care when staffing and skills mix do not meet the needs of the residents.

The ANMF is seriously concerned that there is no clear requirement for providers to demonstrate their use of this funding for activities that would help protect and provide care to vulnerable older people such as through the employment of skilled staff, more personal protective equipment or improved training.

## CONCLUSION

A considerable and growing body of research, both published and independent as well as commissioned by the ANMF and further evidenced by the Royal Commission into Aged Care Quality and Safety demonstrates that there is a commensurately growing crisis in Australia's aged care system. This evidence indicates that residents are adversely affected by widespread staff shortages and episodes of missed care (such as hygiene, oral health, medicines, pressure care and mobility) and are consequently placed at higher risk of harm and death. Residents are not receiving the care that they deserve and that they and the Australian public pays for through their taxes. This is because there are no rules to ensure that government subsidies given to aged care providers are spent directly on resident care.

The ANMF believes all older Australians have a right to safe, dignified care and that taxpayers' contributions to funding aged care providers must be directed to ensuring the provision of safe and effective care for every resident. The proposed Aged Care Legislation Amendment (Financial Transparency) Bill 2020 must be implemented to ensure quality of service delivery, the sustainability of the sector, and value and transparency of funding for government.



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