



Aged Care Royal Commission

Final Report – what does “care, dignity and respect” look like at the bottom line

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The Royal Commission into Aged Care Quality and Safety (**Aged Care Royal Commission**) has released its Final Report, [Care, Dignity and Respect](#).

This alert distils some of the key findings of the Final Report. As we analyse the Final Report, which spans 8 volumes and over 2,800 pages, we will provide further updates on the implications for the aged care sector.

The Aged Care Royal Commission was established in October 2018 to investigate the quality and safety of residential and in-home aged care following community concerns over incidences of older people suffering from failures of care in these facilities. It conducted 100 days of hearings between January 2019 and October 2020, which involved 641 witnesses and over 10,500 public submissions.

The Commissioners agreed that our community aspires to an aged care system that has at its centre, caring for recipients of care and ensuring their individual dignity, respect and a high quality of care. In many specific aspects, however, the Commissioners were not in agreement on how to proceed, and careful attention will need to be paid to what recommendations are adopted by the Government, and which reform proposals are going to be implemented. The Government has immediately pledged nearly \$500 million to address some of the issues identified. Because so many of the proposed reforms are

dependent on significantly extra funding, the Government’s response will not be known until the Budget is handed down in May.

The Final Report builds on the findings of the Interim Report previously published on 31 October 2019, focusing on the future of aged care and the development of a new aged care system that responds to the problems identified in the regulation, funding and oversight of the existing aged care sector. The Commissioners have recommended a far-reaching structural overhaul of aged care moving towards an individualised care model akin to the National Disability Insurance Scheme, with care pathways based on individual needs and choices. It is clear that if adopted, the recommendations will have major structural and economic implications for existing aged care providers. While the recommendations of the report impose the potential for greater penalties and risks to aged care providers, they also present significant opportunities for the sector to be better funded and reinvigorated.

As the Prime Minister has said, the Report is harrowing and it calls for what the Government has labelled “generational change”, meaning a significant reform of the aged care sector. At its essence the report acknowledges that the aged care sector is seriously underfunded with some operators being financially unsustainable.

Key report take-outs:

- **Care is to be at the centre of the aged care system** – a more individualised model is required in which the participant has more control and better access to allied care services.
- **Funding changes** – a new funding system is to ultimately reflect the costs of providing services, potentially including a \$10 a week increase to the basic daily fee and the phasing out of Refundable Accommodation Deposits.
- **The role of technology in aged care** – there are a range of recommendations that touch on the role technology can play to increase the use of data in aged care and allow increased transparency and safety monitoring – meaning significant opportunities for tech providers in the aged care sector.
- **Minimum staff time** – prescribed minimum time for staff per resident in residential aged care, and the requirement for registered nurses on site.
- **New prudential requirements** – broad liquidity and minimum capital requirements are likely.
- **Performance ratings for operators** – the integration of data about health and aged care.
- **Implications for governance** – penalties and damages for breach of care obligations.
- **Regulatory overhaul** – potentially including a new regulator.
- **Medicare style levy is possible** – there are calls for the introduction of new income tax levy, possibly of 1%.

Below we set out key recommendations of the Final Report and some initial comments on the potential implications for the aged care sector.

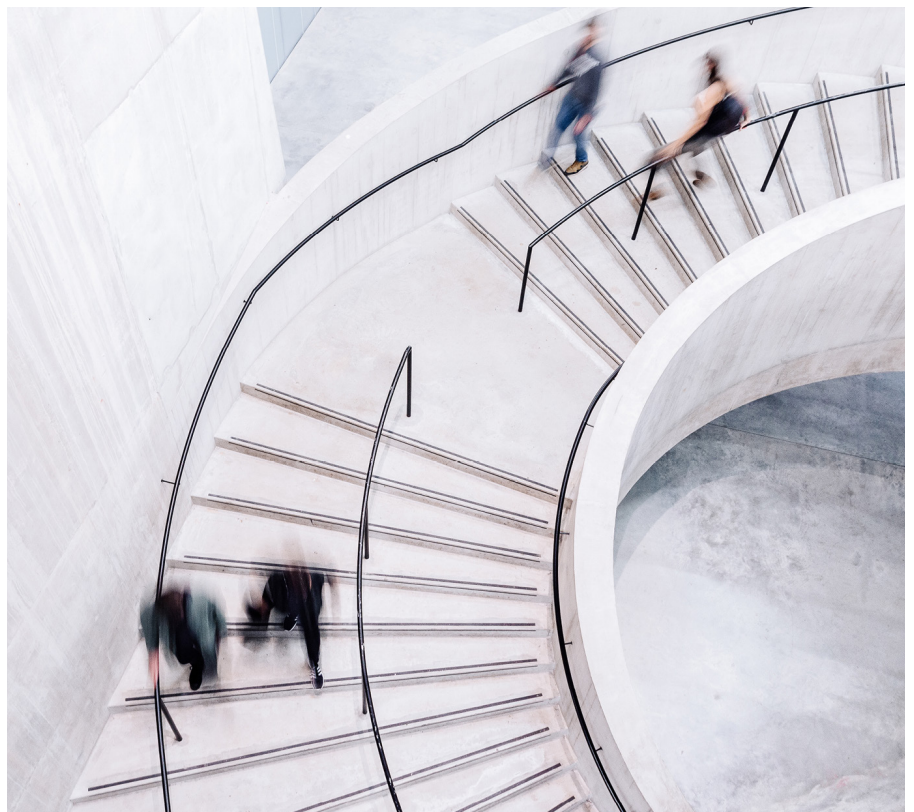
Recommendations – key themes

Foundations and Governance of a New Aged Care System

Theme	Key recommendations and analysis
A new Act	<p>A complete new Act is needed, to commence no later than 1 July 2023, to found a new aged care system – one that “<i>places people at the centre</i>”. The new Act must focus on the safety, health and wellbeing of older people and put their needs and preferences first. A universal right to the required support and care, and freedom from mistreatment, neglect and harm, is to be at the centre of the Act.</p> <p>Considering the last legislative reforms took around a decade to implement, this timeline is extremely ambitious.</p>
Better integration of long-term support and care for older people	<p>An integrated aged care system coordinating welfare support, community services, housing, health care and aged care should be established. The new system should consolidate a number of existing Commonwealth programs and incorporate a common set of eligibility criteria under a single comprehensive assessment process, certainty of funding and availability based on need, and genuine choice and flexibility.</p> <p>An integrated program of care is a significant (and intentional) departure from the present system of discrete components. If implemented, it will create a more holistic system that is simpler for older people and their families to navigate, and will help ensure that people are provided the funding and services they are entitled to.</p> <p>There is likely to be a pathway of care, designed around individual need and choice and having different elements at different life stages. This approach resembles the National Disability Insurance Scheme (NDIS) care model.</p>
Improved governance	<p>The Commissioners agreed that better system governance is crucial to the reform of aged care, but disagreed about how this aspiration should be implemented.</p> <p>Commissioner Pagone considered that this systemic redesign should include a new Commonwealth entity, the Australian Aged Care Commission, to manage and administer the aged care system and with responsibility for the approval and monitoring of eligible service providers, and an Australian Aged Care Pricing Authority to determine prices for specified aged care services. Commissioner Briggs, however, considered that the Department of Health could retain responsibility for aged care, however recommended that an independent Aged Care Safety and Quality Authority (replacing the Aged Care Quality and Safety Commission) be established to safeguard the quality and safety of aged care.</p>
Care at home	<p>Support for people living at home to preserve capacity for independent living and prevent inappropriate admission to residential care should be fully funded. This should be in the form of an entitlement (for example, a budget) based on assessed needs. This category will require a ‘lead provider’ to be responsible for ensuring appropriate services are delivered. The home care package waiting list should be cleared by the end of this year.</p> <p>While the Government has previously announced increases to funding of home care packages, if it adopts this recommendation, further funding and an increase in services to individuals at their home, will be required, offering opportunities for service providers.</p>
Allied health	<p>Allied health care should be included in both residential care and care at home packages.</p> <p>The Commissioners differed in whether this was to be implemented in residential aged care – that is, whether it is to be by way of arrangements with allied health professionals, or by a requirement that approved providers employ certain allied health professionals. However, it presents opportunities for aged care businesses to diversify to provide a range of services, including allied health care or for business offering allied health services to partner with aged care providers to provide an expanded range of services to residents.</p>

Provider and Workforce Reform

Theme	Key recommendations and analysis
Providers should have a duty to provide high quality and safe care	There should be a general duty on approved providers to ensure, so far as is reasonable, the quality and safety of their aged care services. Failure to comply with this duty, where that failure exposes residents to a risk of harm, will expose a provider, and its key personnel, to a civil penalty.
More robust training requirements	Regular training should be mandatory for provider workers in dementia and palliative care, and cultural safety training should be required as a condition of approval or renewal of providers. Commissioner Briggs made additional recommendations intended to ensure that aged care workers have the required competencies and accreditation, including that a national registration scheme for personal care workers should be established, with mandatory minimum qualifications and ongoing training requirements.
Performance ratings	The Government should develop and publish a system of star ratings based on measurable indicators (like service performance and staffing levels) to allow older people to make meaningful comparisons of the quality and safety performance of services and providers. This may be an activity that the Government seeks to contract out.
Care managers	Approved providers should assign a ‘care manager’ to each person unless the person is eligible for home care without the need for any care management. Care managers should have relevant qualifications and experience suitable for the range and complexity of the care needs. This recommendation, if implemented, is representative of the more individualised care model the Final Report aspires to – with greater transparency requirements, so that the individual can exercise choice in relation to their care. The care model may be akin to the NDIS, where care pathways are based on individual needs and choices. This recommendation, if implemented, is similar to the NDIS system of plan managers (although, under that Scheme, plan managers are NDIS, not provider, personnel).
Better conditions for aged care employees	Remuneration for aged care employees should be increased, with the new pricing authority taking into account the need to attract staff with appropriate skills. Further, approved providers should engage nurses and personal care workers for a minimum amount of time per resident per day. This recommendation has clear cost and funding implications.



Better Access to Health Care

Theme	Key recommendations and analysis
New voluntary primary health care model	The Government should trial (Commissioner Pagone) or implement (Commissioner Briggs) a new voluntary primary care model. The new model would govern accreditation of aged care general practices.
Outreach services	Federal, State and Territory Governments should introduce local hospital-led multidisciplinary outreach services. These services should be available to all people receiving residential or personal care at home. Governments should also fund outreach services delivered by Older Persons Mental Health Services to people receiving residential aged care or personal care at home.
Medicare Benefits Schedule	The Australian Government should create specific Medical Benefits Schedule items by 1 November 2021 for comprehensive health assessments, mental health assessments and reassessments, as well as allied mental health services. The General Practitioner Aged Care Access Incentive payment should also be amended to increase the minimum number of services required by general practitioners to qualify for the payment.
Access	By 1 November 2021, the Australian Government should expand access to specialist telehealth services and require aged care providers to have the necessary equipment and trained personnel to support telehealth services.
Restricted prescription of antipsychotics	By 1 November 2021, the PBS Schedule should be amended to ensure that antipsychotics can only initially be prescribed by a psychiatrist or geriatrician. The goal of this proposal would be to control over prescription of these drugs to aged care residents.
Interaction between the health and aged care systems	In order to better monitor the interaction between health and aged care systems, Federal, State and Territory Governments should implement a legislative framework for health and aged care data to be linked, shared and analysed. Data should indicate whether a person is receiving aged care services and the type of aged care they are receiving. By 1 July 2022, the Government should require aged care providers to use a digital care management system to store updated care records. Software and hardware providers to the sector would need to scale up to assist with the expected increased demand for these systems.

Expanding the Diversity and Suitability of Aged Care

Theme	Key recommendations and analysis
Culturally appropriate services	The new aged care system needs to address the specific needs of Aboriginal and Torres Strait Island (ATSI) peoples and should focus on delivering integrated and culturally respectful services regardless of location. This provision of services should be delivered in a manner that supports the ability of ATSI peoples to maintain their connection with Country and communities.
Aged care delivery by ATSI organisations	The Government should assist existing ATSI organisations to expand into aged care service delivery and provide flexible grant funding streams that facilitate the continuing development and advancement of ATSI peoples within the aged care system.
Increased services in regional, rural and remote locations	Areas where aged care services are not sufficiently available should be identified and services supplemented to ensure equitable access for older people in regional, rural and remote locations.
No younger people in residential aged care	The Government should immediately put in place the means to achieve, and to monitor and report on progress towards, the commitments announced by the Prime Minister in November 2019, which include that no person under the age of 65 years enters residential aged care from 1 January 2022.

The Aged Care Workforce

Theme	Key recommendations and analysis
Minimum staff time standard for residential care	<p>Contrary to the anticipated requirements for a particular quota of workers per resident, the report has recommended various proposed minimum standards for the requirement of staff time spent with residents.</p> <p>The proposed requirements include that the minimum staff time standard should require approved providers to engage registered nurses, enrolled nurses, and personal care workers for at least 200 minutes per resident per day for the average resident, with at least 40 minutes of that staff time being provided by a registered nurse.</p> <p>From 1 July 2022, there should also be at least one registered nurse on site for each facility for the morning and afternoon shifts of 16 hours per day. This would then transition from 1 July 2024 to at least one registered nurse on site at all times.</p> <p>The report recommends that all approved providers are to report on a quarterly basis setting out total direct care staffing hours provided each day at each facility they conduct, specifying employment categories. These reports will be assessed against the minimum staffing requirements.</p> <p>However, the prescriptive time per resident proposed requirements leave significant room for uncertainty. It will be necessary to await potential future legislation to know precisely how these time requirements would be implemented, let alone measured and evaluated. This recommendation will put extra strain on the operating models of operators and would need to be adequately funded.</p>
Employment status and related labour standards	<p>Commissioner Briggs proposes that by 1 January 2022, the Australian Government should require as an ongoing condition of holding an approval to provide aged care services that approved providers preference the direct employment of workers engaged to provide personal care and nursing services on their behalf. In circumstances where personal care or nursing work is contracted to another entity, it is a condition of approval that the entity has policies and procedures that preference direct employment of workers for work performed under that contract.</p> <p>If accepted, this recommendation is likely to significantly limit the capacity to contract for personal care or nursing positions via other entities.</p>

Governance of Approved Providers

Theme	Key recommendations and analysis
Legislative amendments to improve provider governance	<p>The corporate governance procedures of Approved Providers are the subject of a number of recommendations regarding governance standards and the identity of members. Recommended updated governance standards require leaders and managers of approved providers to have a mix of skills and experience including in relation to care governance. Further, the boards of Approved Providers should have a majority of independent non-executive directors unless granted specific exemption. .</p>
“Fit and proper person” test	<p>Key personnel will need to satisfy a “fit and proper person” test. Such a test would be similar to the suitability criteria used for the NDIS. So an entity will not be able to approved as an Approved Provider unless its key personnel satisfy the “fit and proper person” test.</p>
Annual attestation to safety and quality standards	<p>To ensure the maintenance of adequate standards, a nominated member would be required to attest annually on behalf of members that the provider has systems to deliver safe and high-quality care. If the Approved Provider is unable to provide the attestation, they must explain the reasons why and how those reasons will be remedied.</p>
Care and governance committee	<p>The governance standards will also require the implementation of a care governance committee to monitor care provision, introduction of a system to deal with complaints and the allocation of resources to support feedback from people receiving care.</p>

Quality of Regulation and Advocacy

Theme	Key recommendations and analysis
Updated approved provider suitability requirements	<p>Updated Approved Provider requirements have been recommended for either a specific type of aged care or general approval with a proposed commencement date of 1 July 2024. The assessment of suitability by the Quality Regulator would include the fitness of the provider and key personnel, previous performance in delivering services and capacity to deliver high quality and safe services. For existing Approved Providers, the recommendation includes that those providers would be taken to be approved to provide the services they are already providing.</p>
Accreditation of high-level home care services	<p>In line with the intent expressed throughout the report to extend the options available to aged care recipients, the report recommends extending accreditations to various types of care. For these various types of care including care management, personal care, clinical care, therapeutic care and palliative care the accreditation will be necessary in order to receive subsidies.</p>
Civil penalties for contravention of general duty	<p>The report recommends various measures that could impose significant financial penalties on providers and key personnel if adequate standards are not met.</p> <p>It recommends the introduction of civil penalty provisions for breaches of the general duty to provide high quality safe aged care, if that also gives rise to a breach of the Aged Care Quality Standards and to harm or a reasonably foreseeable risk of harm to a person receiving care. This liability is recommended to extend to key personnel who are in any way knowingly concerned in or party to the contravention.</p> <p>Further, the report has recommended including specific provision in the new legislation for approved providers who have contravened civil penalty provisions to pay damages for loss or damage suffered by a person receiving aged care as a result.</p> <p>Accordingly, if adopted, these recommendations could give rise to the risk of significant penalties, both in civil penalties and also damages potentially payable to aged care recipients, in the event the duty of care is breached.</p>



Funding the Aged Care System

Theme	Key recommendations and analysis
Increase to basic daily fee	An additional \$10 per resident per day is recommended to be provided by the Australian Government for the Basic Daily Fee. This amount is conditional upon the Approved Provider conducting an annual review and report of the adequacy of the goods and services that the Approved Provider has delivered to meet the basic living standards of residents. If the annual review and report is not provided the additional amount is to be repaid or set off against other government subsidy payments.
A new pricing model and the Pricing Authority	<p>It is proposed that the new Pricing Authority would set prices for particular aged care services across the sector. Commissioner Pagone has proposed that the Pricing Authority determine the maximum amounts payable for accommodation based on efficient costs of delivering high quality accommodation / services and a reasonable rate of return on capital investment. This may either be a flat rate or an amount dependent on factors such as the size and features of the development and the location of the facility. The amount to be paid will be comprised of a means tested fee for the resident and the gap (if any) paid by the Government.</p> <p>Until this new method of pricing is introduced then the present funding should be indexed to a new rate (one for home care and one for residential care) as the present indexation rate is not keeping up with increases in sector costs.</p>
Amendments to indexation arrangements	The proposed amendments include adjustments to the indexing arrangements to increase the minimum wage of aged care employees, including those providing home care, each year. These increased wages will presumably increase the costs of providing accommodation and services as determined by the Pricing Authority.
Government top up amount	Where an approved provider charges a resident an amount that does not exceed the Pricing Authority set price limit and the Basic Daily Fee is below the amount charged for the residents cost of living the Government should pay the approved provider a top up – the difference between the Basic Daily Fee for that resident and the amount charged by the approved provider for the resident’s costs of living.
Individualised accommodation charge limit	The Provisional Accommodation Charge Limit may be amended on application of an approved provider after the consideration of factors to that provider including the cost of investment or constraints of aged care services in the area.

Prudential Regulation and Financial Oversight

Theme	Key recommendations and analysis
Responsibility for prudential regulation	<p>System Governor to be given role of ensuring that providers of aged care have the ongoing financial capacity to deliver high quality care and meet their obligations to repay accommodation lump sums as and when needed.</p> <p>This of course raises the question of what steps may be taken to ensure this financial capability. There will be eager eyes watching if the Commonwealth Government were to accept this recommendation what regulations may look like to enforce this standard.</p>
Establishment of Prudential Standards	<p>The Commission has been more prescriptive with respect to the role of the prudential regulator. The report advises that the prudential regulator should be empowered to impose liquidity and capital adequacy requirements on approved providers to manage risks re financial viability and ability to repay refundable accommodation deposits. There is significant potential for these liquidity and capital requirements to have significant implications for the business models employed by approved providers and their upstream investors.</p> <p>While the report refers to various reviews that have suggested their own liquidity and capital requirements, it stops short of actually recommended specific controls. Instead commenting that this level of detail should be a matter for regulators. In any event, it is most likely that the Government will introduce some level of new liquidity and capital controls.</p> <p>It has also been recommended that the prudential regulator be empowered to require approved providers to submit financial reports.</p>

Financing the New Aged Care System – Differing Approaches

Theme	Key recommendations and analysis
Commissioner Pagone	<p>The Commissioners took somewhat similar, yet clearly distinct approaches to one of the key questions – how the various improvements to the aged care system will be funded by the Commonwealth.</p> <p>Commissioner Pagone has recommended that the Productivity Commission prepare a report into the potential benefits and risks of the adoption of an appropriately designed financing scheme based on the imposition of a hypothecated levy.</p> <p>A hypothecated levy would require that the amounts collected, could only be spent in the aged care sector.</p> <p>This recommendation currently provides only for the Productivity Commission to prepare a report, without specifically recommending that the hypothecated levy proceed.</p>
Commissioner Briggs	<p>Conversely, Commissioner Briggs has proposed an aged care improvement levy of 1% of personal income commencing on 1 July 2023. This levy is not proposed to be hypothecated and is recommended without the requirement for a report assessing its risks and benefits.</p>

Personal Contributions and Means Testing

Theme	Key recommendations and analysis
Maximum accommodation payments	<p>The report recommends that the new Act should provide that the maximum amount an approved provider can receive for the provision of accommodation services should be the accommodation supplement determined by the Pricing Authority.</p>
Phasing out of refundable accommodation deposits	<p>From 1 July 2025, the report proposes to begin a phase out of refundable accommodation deposits for new residents.</p> <p>Providers are to be assisted from this transition by establishing an aged care accommodation capital facility, with the terms and conditions of assistance designed to create incentives for providers to develop small household models of accommodation.</p>

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