

## Article Information

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## The creation of a mature aged-care “profession”: is your organisation ready?

**With the tabling of the *Final Report of the Royal Commission into Aged Care Quality and Safety* on 1 March 2021 into Federal Parliament, there was plenty for aged care organisations to digest. Some of the key recommendations relate specifically to employment law issues.**

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The Final Report confirms that aged care is big business in Australia, and is one of Australia’s largest service industries, employing more than 360,000 people. With an ageing population, the need for aged care services will only grow, as will the requirement for such care to be particularly tailored for individual needs.

One of the key themes from the Final Report is that to survive, and thrive, an aged care “profession” needs to be established, with clearer career pathways and continuous improvement and professional development. While the Federal Government is yet to announce any specific policies or changes for the staffing of the industry, for aged care organisations the recommendations from the Final Report can provide goals to aim for, and a sign of the expectations to come.

The recommendations in the Final Report will have implications for organisations in being able to meet client expectations, finding the right staff for the work, as well as increasing compliance requirements. Recommendations for changes to the staffing in the aged care industry included:

- Certificate III minimum qualifications for personal care workers;
- Setting mandatory ongoing training, English proficiency, and criminal background checks for staff working in aged care. Commissioner Lynelle Briggs recommended a registration system, similar to other healthcare workers through the Australian Health Practitioners Regulatory Authority;
- Dementia and palliative care training for workers as a condition of accreditation for providers;
- Increases to wages under the Aged Care Award 2020 through work value cases in the Fair Work Commission (see below); noting that such a case has already been commenced: <https://www.fwc.gov.au/cases-decisions-orders/major-cases/work-value-case-aged-care-award>);
- Setting a minimum staff time standard, with residents receiving at least 200 minutes of care per day, 40 minutes of which is provided by a Registered Nurse (with the minimum times to increase by 2024);
- Mandating that at least one Registered Nurse be on site for at least 16 hours per day (increasing to at all times by 2024); and
- Commissioner Briggs recommended that it be a condition of accreditation that providers have policies to preference direct employment (that is, decreasing reliance on agency staff).

The Federal Government’s detailed response to the Royal Commission’s recommendations is expected to be published in May 2021. Commissioner Pagone and Commissioner Briggs differed on their recommendations regarding a number of structural and technical issues.

At this stage, it is not yet certain which workforce, quality and oversight recommendations of each Commissioner will be adopted by the Federal Government. However, a major case has already commenced at the Fair Work Commission that could result in the quick implementation of the Royal Commission’s recommendations regarding wages.

### Aged care sector “Work Value Case”

The Final Report highlighted that a wages gap exists between aged care sector workers, and workers performing “*equivalent functions in the acute health sector.*”

Two recommendations were made in relation to this issue, which may have a significant impact on aged care providers in coming years. First, the Commissioners recommended that the Federal Government, aged care providers, and relevant unions should collaborate in bringing a work value case and equal remuneration application before the Fair Work Commission.

At the time of writing, a major Work Value Case has already commenced in the Fair Work Commission. The current case was originally commenced by the Health Services Union by bringing a section 158 application to vary the *Aged Care Award* to increase sector wage rates. The original application lodged by the Health Services Union seeks to have full-time weekly wage rates increased by increments of \$200.35 to \$243.35 per week (depending on the classification level under the *Aged Care Award*). In a letter to the Fair Work Commission, the Australian Nursing and Midwifery Federation and United Workers Union have both foreshadowed an intention to lodge similar applications in relation to the *Nurses Award* and the *Social, Community, Home Care and Disability Services Industry Award*.

The second recommendation of the Commissioners specifically relating to closing the aged care sector pay gap concerned a body that would be responsible for setting the pricing for aged care services. However, Commissioner Pagone and Commissioner Briggs had differing ideas on how this should be established. Commissioner Pagone recommended the establishment of an independent body, the Australian Aged Care Pricing, consistent with the overall Independent Commission model that he favoured. In contrast, Commissioner Briggs recommended expanding the current Independent Hospital Pricing Authority to cover aged care sector services.

It is expected that the Federal Government’s detailed response in May will respond to these recommendations.

### **Next steps for providers**

Implementing such changes will clearly involve additional cost for providers. Organisations will need to start planning now for what changes they may need to make to their existing workforce to meet best practice.

The Final Report also recognised the valuable role unpaid carers and volunteers play in caring for the elderly, and some of the more interesting recommendations included amending the *Fair Work Act 2009* (Cth) to provide additional entitlements to unpaid carer’s leave (Commissioner Briggs only), and creating a scheme to encourage and promote volunteering in aged care and to require organisations to employ volunteer coordinators.

While these proposals have not yet been formally legislated or otherwise implemented, with more than 3,000 providers of aged care services in Australia, many of which are not for profit organisations, preparing for even potential changes to staffing requirements will take significant planning and foresight. Organisations will need to consider whether consultation or other processes under industrial instruments are required to occur before significant change can commence.

Where your organisation needs to work through such change, Piper Alderman can assist. We will keep you updated as these proposals progress.