Overview of the Aged Care Royal Commission's Final Report

Catholic Health Australia
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The Government released the Final Report of the Royal Commission into Aged Care Quality and Safety on 1 March 2021. The seven volume Final Report, titled *Care Dignity and Respect*, includes 143 recommendations and countless sub-recommendations.

The Final Report's recommendations are, in the main, consistent with the draft recommendations for reform proposed to the Commissioners by Counsel Assisting in his final submissions on 23-23 October 2020.

The Final Report also reprises the findings in the Royal Commission's Interim Report, *Neglect*, about the poor and variable quality of aged care services in Australia and the systemic weaknesses in the current system that have led to the current situation. These systemic issues are now well known and are not repeated here.

The main addition to the Counsel Assisting's October submissions is the Commissioner's views on how the reforms are to be funded, a topic that Counsel Assisting acknowledged in his final submissions last October was still to be fully investigated by the Commission.

Perhaps the most notable development in the Final Report is the crystallisation of the differences in views of the two Commissioners that first surfaced during the October final submissions concerning system governance, which have since extended to system financing. These differences of views have flowed through to numerous other recommendations, and have resulted in a disjointed and complex Final Report.

The following provides a summary of the major recommendations, as well as some commentary. In the interests of time, this assessment is primarily based on an analysis of recommendations covered in Volume 1. It is possible that a closer examination of the other six volumes, especially Volumes 3A and 3B which discuss the new system in greater detail, may well introduce different perspectives.

Because a large number of the recommendations are the same or similar to Counsel Assisting's proposals, much of the assessment contained in CHA's Consultation Papers is still relevant.

1. A new Act

The Commissioners have agreed that the current *Aged Care Act 1997* should be replaced by July 2023 with a new Act incorporating a rights-based approach that would provide the foundation of the new aged care system. The new Act would specify a number of objects for an aged care system, including:

- to provide a system of care based on universal right to high quality, safe and timely support and care;
- to enable people to exercise choice and control;
- to ensure equity of access; and
- to provide for regular and independent review of the system.

These objects, if adopted by Government, would bring to an end the current rationing of aged care services and service types, which is the foundation stone of the current Act and aged care system.

The Commissioners have identified that the "paramount principles" for the administration of the Act should be to ensure the safety, health, and wellbeing of people receiving care, and to put older people first so that their preferences and needs drive the delivery of care. These would be elaborated upon in the new Act by the inclusion of 19 sub-principles.

When the Government released the Final Report, it announced that work on the drafting of a new Act had already commenced.

2. Governance of the new aged care system

The Commissioners have presented substantially different approaches for the administration of the new aged care system at the Australian Government level.

Pagone is recommending an **Independent Commission model** based on establishing an independent Australian Aged Care Commission, which would be independent of Ministerial direction except for Board appointments. The new Commission would encompass the roles of systems governor, quality regulator and prudential regulator.

Briggs, being a former Australian Public Service Commissioner, recommends a conventional **Government Leadership model** which is more in keeping with the Westminster tradition of Ministerial control and accountability. Under Briggs' model, the renamed Department of Health and Aged Care (responsible to a senior Cabinet Minister) would remain as the system governor and prudential regulator, and a new independent statutory authority – the Aged Care Quality and Safety Authority – would replace the current Australian Aged Care Quality and Safety Commission as quality regulator.

It would be unusual for any government not to favour the Briggs model.

Both models, however, would involve the creation of regional offices to deliver or manage the delivery of assessment and care finder services, administer the aged care program, and provide general assistance to the public. This was the model that a former Minister for Aged Care, Brian Howe, pursued but which was ultimately abandoned by government due to cost.

Both models also provide for the establishment of an **independent pricing authority which** would determine prices for the services that providers deliver, but Pagone recommends a dedicated pricing authority for aged care – the Australian Aged Care Pricing Authority – whereas Briggs recommends that aged care pricing be added to the functions of the existing Independent Hospital Pricing Authority. CHA, in correspondence with Minister Hunt, has made the case for an independent authority dedicated to aged care mainly because the funding and financing of an essentially non-government aged care system is substantially different to public hospitals.

Both Commissioners recommend that an independent office of the **Inspector-General of Aged Care** be established to investigate, monitor, and report on the administration and governance of the aged care system. This is a sensible recommendation.

Pagone also recommends the creation of an **Aged Care Advisory Council** with its own secretariat to provide advice on aged care policy, service arrangements and any aspect of the performance of the aged care system to the system governor, be it the Aged Care Commission or the Department of Health and Aged Care. Both Commissioners are silent on the future of the Aged Care Financing Authority.

3. Program design

A new aged care program

The Commissioners recommend that a new aged care program should be created that combines the existing Commonwealth Home Support Program (CHSP), home care packages and residential care (including respite and short-term restorative care), while "retaining the benefits of each of the component programs".

Taken together with an entitlement approach and consumer control, this recommendation has merit.

A better description instead of a new program, however, may have been reforms to achieve greater integration of the component programs, which the recommendation describes as "categories" of the new program. Their recommendations, sensibly, fall short of creating a single home-based care program.

The Commissioner's recommendation would achieve better integration through the following attributes:

- a common set of eligibility criteria identifying need to prevent or delay deterioration in a person's capacity to function independently or to ameliorate the effects of such deterioration;
- an entitlement to all forms of support and care which an individual is assessed as needing
- a single comprehensive scalable regionally based needs assessment process;
- certainty of funding;
- genuine choice and flexibility accorded to each person about how their aged care needs are met, including choice of provider and level of engagement in managing care

- access to one or multiple categories of the aged care program; and
- portability of entitlement between providers.

The Commissioners define the new program as comprising five categories:

- respite support (up to 63 days of respite per calendar year)
- social support (includes centre-based care and social support, delivered meals and transport service types currently provided under the CHSP)
- assistive technology and home modifications (also currently funded under the CHSP)
- care at home
- residential aged care

The **respite, social support and assistive technology and home modification categories** would be grant funded programs, with Pagone recommending that the grant funding should comprise a mix of block funding and activity based payments thereby allowing a degree of competition between providers in attracting custom and increased consumer choice and control. Pagone's approach is more in keeping with consumer choice and control.

The concept behind a single home-based care program would be reflected to the more confined **care at home category** (commencing from July 2024 and to be "developed and iteratively refined in consultation with the aged care sector and older people").

The care at home category would cover the balance of home-based care and support services under the CHSP and home care packages not included under the first three categories above – respite, social support and assistive technology and home modification. It would offer episodic or ongoing care from low needs to high needs across the following types of services: care coordination; living supports such as cleaning, laundry, preparation of meals, gardening and home maintenance; personal, clinical, enabling and therapeutic care, including nursing care, allied health and restorative care intervention; and palliative and end of life care. It would also include an allied health component to meet any identified needs for allied health support.

Funding under the care at home category would take the form of an entitlement, similar to the individual budget approach currently under the home care package program, with assessment of needs based on a case-mix classification approach (likely to be an adaptation of the AN-ACC classification system developed for residential aged care, and which the Department of Health has already been exploring).

Importantly, people eligible for care under the care at home category should also be able from July 2022 to access support under the respite, social support and assistive technology and home modifications categories, but with access to the latter subject to a short assessment of need.

Maximum funding amounts for someone supported under the care at home category would be no more than the funding amount that would be available to provide care for them if they were assessed for care in a residential aged care service. However, people receiving support under the care at home category would also be eligible to access support from the other categories viz. respite, social supports, assistive technology and home modifications. The net effect is likely to be that individuals will be able to access more services than is possible under the current funding and program arrangements, thereby further shifting the balance in favour of home-based aged care consistent with community preferences.

The **residential care category** will essentially remain as it is currently configured to ensure that care is available for people "who can no longer live at home due to their frailty, vulnerability or behavioural and psychological symptoms of dementia, or other reasons". Although not explicitly stated, it seems that the eligibility criteria would be as applies currently, thereby giving older people with higher care needs with the choice of residential or home-based care, thereby creating the potential in an entitlement based system for consumers to benefit from some competitive tension between residential and home care providers.

The main change to current residential care arrangements is that both Commissioners recommend the provision of funding to approved providers for the engagement of **allied health** professionals through a blended funding model, including a capped base amount and an activity based payment, with quantum to be determined by the independent pricing authority. Briggs also recommends that providers be required to employ specified categories of allied health professionals, whereas Pagone only requires that providers have arrangements with allied health professionals in place that suit the needs of the residents in each home.

As noted later in this paper, the Commissioners also recommend that the current ACFI model being used to fund care in residential care be replaced by a **case-mix classification and funding model**. The Department is well advanced in developing the AN-ACC case-mix funding model.

Both Commissioners support the establishment under the new program of a workforce of personal advisers for older people, their families and carers, known as **care finders**. Briggs separately recommends that the care finders should be employees of the Department of Health and Aged Care, a state or territory or local government, therefore not necessarily part of the regional office network recommended under the system governance arrangements. The Commissioners also recommend that providers be required to **assign a care manager** to people receiving aged care, unless a person is receiving home care and has been assessed by an assessment team as not needing care management.

On balance, while challenging and time consuming to implement, the program design has a lot to commend it and should serve future older people well.

Supply of aged care services

Consistent with taking a rights based approach in a new Act, including entitlement to care based on assessed need, the Commissioners recommend that the current population based target provision ratio that rations the supply of aged care services and service types should be replaced "with a new planning regime which supports a funding allocation that is sufficient to meet people's entitlements for their assessed needs and provides for demand-driven access".

The Commissioners have adopted Counsel Assisting's proposal that the home care package waiting list be cleared by 31 December 2021, and be kept clear by ensuring that new entrants to the queue are offered a package within one month of their assessment. It would surprise if Government was to accept the 31 December 2021 timeline given workforce and related quality concerns associated with a rapid expansion of services.

Improving the design of aged care accommodation

Both Commissioners recommend that the Australian Government should guide the design of best and most appropriate residential aged care by publishing by July 2022 a set of National Aged Care Design Principles and Guidelines on accessible and dementia-friendly design, including design that is amenable to 'small household models'.

They also recommend that from January 2022, the Australian Government should provide additional capital grants for building or upgrading residential aged care facilities to provide small-scale congregate living, targeted at low-means recipients, people with special needs and people who do not live "in a major city".

Briggs went further by recommending that capital grant funding be increased by $300m in 2021-22, rising to $1b in 2023-24, indexed. At noted later, Briggs has also recommended the phasing out of Refundable Accommodation Deposits (RADs).

Introducing such a large government capital grants program would be a major departure from existing policy, introduced under the 1997 reforms, which saw a greatly diminished role for the former capital grants program (ie reduced essentially to targeting small rural and remote services). Instead, the government in 1997 introduced accommodation bonds for those low care residents with sufficient assets (ie who owned their own home), a daily accommodation charge for high care residents and a daily accommodation supplement for low means residents. In 2014, accommodation bonds (renamed RADs) were extended to all (means tested) new residents.

It is hard to see the government accepting the Briggs recommendation given the impact on the Budget, not to mention that the equitable administration of a capital program of this nature would be challenging when implemented in conjunction with providers accessing commercial debt and equity.

The summary volume of the Final Report does not include any discussion about the implications of small-scale congregate models for operating costs. Presumably this would be something for the independent pricing authority to assess.

4. Quality and Safety

Quality and safety regulation

Both Commissioners are on the same page concerning the quality and safety recommendations.

As well as recommending that the new Act should include "a general, positive and non-delegable statutory duty on any approved provider to ensure that the personal care or nursing care they provide is of high quality and safe so far as is reasonable", the Final Report includes the following recommendations:

- establishment of a post-diagnosis dementia pathway incorporating information, facilitating access to peer support networks, education and counselling services and assistance with planning for continued independent living
- review of the effectiveness and adequacy of the network of Specialist Dementia Care Units currently being rolled out by the government
- further tightening of the restraint regulations whereby the use of restrictive practices would be prohibited unless based on the assessment of an independent expert accredited by the Quality Regulator, or when necessary in an emergency and as a last resort to avert the risk of immediate physical harm
- transferring responsibility for formulating standards, guidelines and indicators relating to aged care safety and quality to the (to be renamed) Australian Commission on Safety and Quality in Health, including an urgent review of the current aged care standards by December 2022 and periodic reviews thereafter
- expansion of the current suite of clinical and quality indicators and introduction of a star rating system, noting though that Pagone recommended that the star rating system should be the responsibility of the system governor (the Australian Aged Care Commission).

The following sets out a number of other recommendations concerning quality regulation:

- From July 2024, providers of high level care at home should be accredited by the quality regulator
- The quality regulator should periodically publish a report on the experience of people receiving aged care, and graded assessments of service performance against the aged care standards
- Introduction of a serious incident response scheme, which the government has already legislated for, commencing 1 April 2021

- Protections for whistleblowers
- Civil penalties for certain contraventions of duty of care attaching to providers and key personnel, and the payment of compensation for any loss and damage suffered by a person receiving care

The Commissioners also recommend additional funding for advocacy services under the National Aged Care Advocacy Program.

Workforce

The Commissioners recommend that an **Aged Care Workforce Planning Division** be established in the Department of Health or the Australian Aged Care Commission, depending on which governance model is adopted by government, which would be required to prepare a ten-year workforce strategy. The Planning Division should be supported by an Aged Care Workforce Fund which Briggs recommends should be $100m per year.

Both Commissioners recommend that the Australian Government should be a member of the recently established **Aged Care Workforce Industry Council,** and that membership should be reviewed to ensure it comprises individuals who represent the breath and diversity of the aged care workforce. This is probably a reference to the ANMF not being a current member of the Council. Briggs' recommendation also specifies a program of work to be undertaken by the Council.

Both Commissioners recommend a **national registration scheme for personal care workers** with minimum mandatory qualifications (Certificate III), English proficiency requirements, criminal history checks and a code of conduct, and that consideration be given to having the scheme regulated under the Health Practitioner Regulation National Law. The Department of Health initiated consultations with the sector in 2020 on the design of registration scheme for personal care workers.

Both Commissioners agree on key recommendations to increase the remuneration of aged care workers and to increase staffing levels.

With regard to **increasing staff remuneration levels**, the Commissioners recommend that relevant employee organisations, providers and the Australian Government should apply to the Fair Work Commission to vary wages in relevant awards (home care and residential care) to reflect the work value of aged care employees and to ensure equal remuneration for men and women. The history of such approaches to the Fair Work Commission is not encouraging, and the recommendation assumes that funding will be available to cover the cost. But if it can be pulled off, it has the advantage of giving some comfort to critics that additional funding for staff remuneration will not be diverted by providers.

With regard to increased staffing levels, the Commissioners recommend the introduction of **minimum staff time standards in residential aged care**.

From July 2022, the Commissioners recommend that the required minimum staff time for RNs, ENs and PCWs should be 200 minutes per resident per day for the **average** resident, with at least 40 minutes provided by RNs. From July 2024, the minimum requirement becomes 215 minutes with at least 44 minutes provided by RNs, with an RN on site at all times. The minimum required minutes vary slightly from those proposed by Counsel Assisting.

The Commissioners recommend that the minimum staff time standard for each service should be linked to a case-mix adjusted classification and funding model, reflecting resident profiles. It is unclear how the costing and funding models would capture this in practice eg will funding be based on the minimum standards so that the funder is effectively setting staff rosters?

The recommendation includes provision for time-limited exemptions from the staffing standards to be sought by services eg homeless services, services that are co-located with health services, rural and remote services who have difficulty recruiting staff, services trialling innovation in skill mixes, a process that will add to administration costs for providers and government.

The Commissioners also recommend that all approved providers be required to report of a quarterly basis from July 2022 setting out total direct care staffing hours provided each day in each facility, specifying different categories of employees. The remit of the independent pricing authority would include, inter alia, taking the minimum standards and award wages into account when setting the price for the efficient provider. In the words of the Commissioners' recommendation, "in setting prices for aged care, the pricing authority should take into account the need to deliver high quality and safe care , and the need to attract sufficient staff with the appropriate skills to the sector, noting that relative remuneration levels are an important driver of employment choice".

Reporting to an independent pricing authority (and the quality regulator) on minimum staffing levels using customised software developed for the purpose might be a small price to pay if it means that funding for care is improved, and this gives government cover, along with having salary increases reflected in awards, that additional funding is going towards staffing costs. This would be preferable to a formal system of expenditure acquittal which has been advocated in some quarters. How effectively and accurately prices reflect staffing standards is the key question to be addressed.

As an immediate measure pending the establishment of the independent pricing authority whose price setting function would include taking the minimum standards into account when setting the price for the

efficient provider, the Commissioners recommend the establishment from July 2021 of a fund to reimburse providers of home support, home care and residential care for the cost of education and training of direct care staff, including the cost of additional staffing hours to enable existing staff to attend training and education.

With regard to the **informal workforce (carers),** Briggs recommends that provision should be made in the National Employment Standards for an employee to take extended unpaid leave to care for an older family member. As well as greater integration of My Aged Care and the Carer Gateway, the Commissioners recommend that assessment processes have greater regard to the needs of the carer, including referral for assessment for respite services.

Provider governance

The Final Report includes a number of recommendations aimed at strengthening provider governance.

These include a requirement for majority independent non-executive Board membership (with provision for exemptions); key personnel reporting; 'fit and proper person' tests; changes to the current 'protected information' provisions to facilitate greater disclosure; and new governance standards (including annual attesting by a Board member that the governing body has satisfied itself that the provider has in place structures, systems and processes to deliver safe and high quality care).

The Commissioners also recommend that the government establish an ongoing program to provide assistance to approved providers to improve their governance arrangements. The Government's initial response to the Final Report included funding for a governance training program.

5. Funding and financing of the aged care system

This topic has several dimensions and is complicated by differences in the views of the two Commissioners.

Independent pricing

As discussed earlier, there is a difference of opinion as to whether the independent pricing authority should be one dedicated to aged care (Pagone) or integrated into the Independent Hospital Pricing Authority (Briggs).

While the Commissioners disagree on which body should perform the independent pricing function, both Commissioners recommend that the functions of the pricing authority in relation to aged care should include:

- providing expert advice on optimal forms for funding arrangements for particular types of aged care services and in particular market circumstances eg the combination of block funding and activity based payments for the social support, respite, and assistive technology and home modifications categories;
- reviewing data and conducting studies relating to the costs of providing aged care;
- determining prices for particular aged care services (whether constituted by government subsidies or user contributions or both);
- evaluating the extent of competition in particular areas or markets; and
- advising on appropriate forms of economic regulation.

Both Commissioners also agree that participation in the pricing authority's cost data reviews and other data activities should be a requirement for maintaining approved provider status.

A major disagreement is whether the government can alter the prices determined by the independent pricing authority. Pagone's recommendation is that the pricing authority should determine and set prices that are binding, consistent with his preferred system governance approach which is based on maximum independence from government and the Parliament. Briggs' recommendation is that the determination of prices by the pricing authority should be in the form of a legislative instrument which is subject Parliamentary disallowance. If the responsible Minister makes a new determination, it should similarly be subject to Parliamentary disallowance ie Briggs' approach would include a provision for the Minister and the Parliament to set the prices.

History shows that governments are reluctant to lose Budget control by not having a capacity to adjust prices to suit Budget circumstances and priorities. In this case, the increased transparency involved would act as a discipline on a government's discretion to vary the price set by an independent authority.

User contributions and means testing

The Commissioners agree with the principle that, consistent with Medicare, there should be no requirement to pay a co-contribution toward care (as distinct from the ordinary costs of living or accommodation costs) in any community setting or residential aged care, including respite. The Final Report acknowledges that this is a significant departure from current government policy. It is also an expensive principle if adopted by government, both in terms of current revenue foregone and foregoing the potential to increase user contributions.

In effect, this principle, if adopted by Government, would mean that there is very limited scope to increase user contributions, noting that residents who can afford to already contribute towards their accommodation and everyday living expenses. This means that the cost of the reforms will fall on taxpayers in some way, or some of the reforms would be unaffordable.

Drawing on the above, the following sets out the Final Report's recommendations on user contributions where the Commissioners are in agreement:

- Individuals who are assessed as eligible for support under the **social support, assistive technologies and home modifications categories** should not be required to contribute to the costs of that support. This is a departure from Counsel Assisting's proposal which contemplated nominal contributions.

- Individuals receiving **respite care** should only be required to contribute to any services related to the ordinary costs of living up to a maximum of 85% of the single pension. No contribution should apply for costs of the accommodation and care services that they receive.

- **Residential aged care** residents should not be required to contribute to the costs of the care component of their support, but user contribution arrangements should apply to everyday living expenses and accommodation.

  The pricing authority should determine the maximum amount payable for residents' daily living services as specified under Schedule 1 of the current *Aged Care Act* (the Services Fee Amount), with the maximum level of the fee that an individual resident can be asked to pay is equal to the sum of a base fee (85% of the single age pension) and a means tested amount. In the case of supported residents, the Government would pay the difference between the resident contribution and the maximum amount set by the pricing authority.

  As is currently the case, contributions to accommodation costs would continue to be subject to a means test, with low means residents either not required to contribute to accommodation costs or to contribute only part of the cost, depending on their means. As is currently the case, low means residents would have all or part of their accommodation paid on their behalf by the Government through an accommodation supplement.

  However, the Commissioners have recommended changes to the current means testing arrangements which, on the limited information available, would result in an increase in the

proportion of supported residents, which would increase Budget costs. The Commissioners have not recommended any changes to the current 'protected resident' provisions.

The pricing authority would set the amount of the accommodation supplement from time to time based on an analysis of the efficient cost of delivering high quality accommodation and a reasonable rate of return on capital investment (potentially a different price depending on date of construction or refurbishment age, location, size of rooms any other features). The pricing authority would cap the accommodation price for non-supported residents by determining a Provisional Accommodation Charge Limit, as currently applies under the Pricing Commissioner arrangements.

The Final Report recommendations do not address the vexed issue of fees for additional services, an important consideration for increasing consumer choice and control.

Refundable Accommodation Deposits

Commissioner Briggs recommends that, from July 2025, the Government should commence the phasing out of Refundable Accommodation Deposits (RADs), and assist providers with the transition away from RADs by establishing an aged care capital facility.

The Minister for Aged Care will be releasing a review undertaken by the Aged Care Financing Authority on the future of RADs by the end of March 2021.

Pagone's view is that if a hypothecated levy is legislated by Government (see below), user contributions for accommodation should no longer apply on the basis that people have already contributed through the levy.

Funding and financing

The Final Report acknowledges that the recommended reforms will require significantly increased expenditure on aged care. The Royal Commission has not estimated the cost of each of its reform recommendations. However, it reports that modelling undertaken for the Royal Commission "implies" that expenditure on aged care in 2050 is likely to be 2.75% of gross domestic product. This is 1.41% of gross domestic product higher than would be if the current policy settings were maintained.

To help finance the cost of the reformed aged care system, Pagone recommends that the Productivity Commission should be tasked to inquire into and report on the potential benefits and risks of adopting an appropriately designed financing scheme based on the imposition of a hypothecated levy through the taxation system. In calling for this referral to the Productivity Commission, Pagone concludes that there is a persuasive case for a hypothecated levy, but time and resources did allow the Royal Commission to develop the model.

Commissioner Briggs, on the other hand, recommends that by July 2022 the government should introduce an aged care improvement levy of a flat rate of 1% of taxable personal income, to be known as the aged care improvement levy. Unlike the Pagone approach, this levy would not be hypothecated which means it would be paid into Consolidate Revenue (like the Medicare levy) – unlike a hypothecated levy which legally must be expended on the purposes for which it was legislated. The assumption is that branding the levy (an increase in income tax by another name) as being to improve aged care would make the levy more acceptable to the community.

Prudential regulation

Both Commissioners have accepted Counsel Assisting's recommendations for strengthening prudential regulation and financial oversight of providers.

Key recommendations include:

- Introduction by July 2023 of liquidity and capital adequacy requirements; and continuous disclosure requirements concerning material developments that would affect a provider's ability to pay its debts or deliver safe and high quality care

- Strengthening the financial monitoring capacity of the prudential regulator, including to obtain information (modelled on the powers available to APRA)

Immediate measures to improve viability

The Commissioners have accepted that the residential sector, in particular, is currently facing financial pressures linked to the operation of ACFI.

Pending the establishment of independent pricing arrangements and a new case-mix classification and funding model for care in residential care, the Commissioners have made the following recommendations to improve the viability of providers.

- Amend the current indexation formulas in residential care and home care from July 2021 so that indexation more closely reflects wage movements in related sectors. The current indexation formulas extract unrealistic labour force productivity gains

- An increase in the Basic Daily Fee by $10 per resident per day for all residents, but providers charging the fee increase would be required to submit an annual report with details how provider's expenditure meets the basic needs of residents, especially their nutritional needs

- The government should continue the 30% increase in the Viability Supplement that was introduced in March 2020 on a time-limited basis in response to COVID.

In its initial response upon the release of the Final Report, the Government announced that the 30% Viability Supplement would be extended to 30 June 2021, and that the equivalent time-limited COVID top-up introduced for all aged care providers would also be extended to 30 June 2021.

6. Access to health care

A major theme of the Hearings concerned access by people who receive aged care to services from the wider health care system. In response, the Final Report includes a number of recommendations to improve access to health care services, including:

- The introduction by 1 January 2024 of a new primary health care model which would allow general practices to volunteer to become accredited 'aged care general practices'. Aged care general practices would enrol people receiving residential care or care at home and be funded on a capitation basis. This model is an extension of the Health Care Home model for general practice introduced by Minister Ley.

  Pagone recommends that the model be trialled for six to ten years, whereas Briggs recommends that the model be ongoing.

- The establishment of Local Hospital Network-led multidisciplinary outreach teams for people in residential care or receiving home based care, to be funded under the National Health Reform Agreement between the Commonwealth and the states. Outreach teams operate in some Local Hospital Networks and the intention of this recommendation is to formally provide for them on a national basis.

- The introduction of a Senior Dental Benefits Scheme

- Changes to the Medical Benefits Schedule to improve access by people receiving aged care to mental health services, medication management reviews, specialist telehealth services and access by people in rural and remote areas to medical specialists.

In recognition of the long standing lack of clarity regarding Commonwealth and state/territory responsibilities for the provision of health services for older people in aged care, the Commissioners have recommended that by December 2021 the Commonwealth and state/territory governments should amend

the National Health Reform Agreement to include an explicit statement of the respective roles and responsibilities of approved aged care providers and state and territory health providers to deliver health care to people receiving aged care.

7. Research and development and aged care data

Both Commissioners recommend the establishment of an Aged Care Research and Innovation Fund with annual funding linked to 1.8% of total Australian Government funding on aged care – around $400m per annum currently – without derogating from the amount of funding through the Australian Research Council and the National Health and Medical Research Council.

Research and development projects proposed by researchers would be assessed by a dedicated Aged Care Research and Innovation Council.

There was a difference of views between the two Commissioners concerning the share of the funding that should be directed to particular research categories such as ageing-related health research, aged care related research and the socio-economics of ageing, and the approach to co-funding arrangements with the industry and providers.

Both Commissioners have recommended a significantly increased role and capacity for the Australian Institute of Health and Welfare to develop a National Aged Care Data Set which would be funded from the Aged Care Research and Innovation Fund.

Commissioner Briggs has also recommended that the Australian Government should invest from July 2022 in technology and information and communication systems, based on an Aged Care Information and Communications Technology Strategy which should be developed by the Department of Health and Aged Care (the system governor).

The Government's initial response

Upon release of the Final Report, the Government announced additional funding of $452m over the forward estimates for aged care as an initial response to address "immediate priorities".

Minister Hunt also announced that the Government's substantive response to the Royal Commission would be in the 2021-22 Budget context, and would be built on "five pillars":

1. Home care
2. Residential Care Quality and Safety
3. Improving Residential Aged Care Services and Sustainability
4. Workforce
5. Governance

The initial measures, also based on the five pillars, are as follows:

Home care:

It caught most people by surprise that the government did not announce another tranche of additional packages. Instead, the Government announced $18m to enhance oversight of the home care package program, including into what the Minister Hunt has previously referred to as “rent seeking” on the part of providers, in particular targeting unjustified administrative fees (noting that 7% of home care providers are still to publish their prices on My Aged Care). The funding will allow around 500 providers to be reviewed annually (there are about 930 home care providers).

There is also funding for an “end to end fraud program” for the home care program, but there is no clarity as to why this program is considered necessary now other than that all large Commonwealth expenditure programs should have a fraud program.

Quality and safety in residential care:

$32m has been allocated to enhance the capacity of the Aged Care Quality and Safety Commission by enabling it to undertake an additional 1,572 field audits in residential and home care (the official announcement did not specify a time period but presumably it is over the forward estimates period).

The additional funding is also to allow the Quality Commission to appoint a Senior Restraint Commissioner and to extend the current pharmacist program to 2025.

Improvements in residential aged care services and sustainability:

An additional $190m will be provided to residential aged care providers before 30 June 2021 through an extension of the COVID-related supplement for all providers and the 30% COVID Viability Supplement increase in order “to provide stability and maintain services while the government considers the recommendations of the Royal Commission”.

The Royal Commission has recommended that immediate financial pressures be dealt with through changes to indexation arrangements, an increase in the Basic Daily Fee and continuation of the 30% COVID-related increase in the Viability Supplement.

It is unlikely that the new AN-ACC funding model will be implemented much before the middle of 2022, which leaves a substantial period when the above supplements will not apply. It remains to be seen where this gap will be addressed in the 2021-22 Budget.

The Minister has also announced $90m for a Viability Fund to support services that are experiencing "financial stress". The Viability Fund seems to be an extension of the current Business Improvement Fund (BIF), or at least a complement to the BIF.

Workforce:

$92m has been allocated to create 18,000 training places for aged care workers by June 2023.

Governance:

$15.9m has been allocated for aged care specific governance training programs to train provider Boards, including clinical governance. It is expected that up to 3,700 individuals will be trained through this program.

$14.2m has been allocated to strengthen the Quality Commission's capacity in relation to governance standards, including the appointment of an Assistant Commission for Sector Capability and Education.

Concluding observations

- The overwhelming majority of the recommendations in the Final Report have considerable merit, though most are not new. It is to be hoped a Royal Commission label and process gives them greater traction.

  That said, a large majority of the recommendations are high level and will require considerable further detailed program design, systems development, enabling legislation and third party negotiations before they can be implemented in a risk-managed way. Hence for many recommendations, the issue will not be the policy intent, but rather the policy detail and their sequencing. In this regard, many of the Commissioners' timelines for implementation are unrealistic and would introduce unacceptable risks for the system and continuity of care.

- And then there is the issue of how to pay for the reforms.

  The Commissioners not only do not provide costings of their long list of reforms, they do not provide a practical pathway for funding the reforms, which they acknowledge will be very expensive. Moreover, both Commissioners have not only in effect ruled out additional consumer contributions to allow some sharing of costs between government and taxpayers, but have also recommended that existing legislation regarding consumer care contributions be repealed.

The Commissioners instead have identified a levy on income tax payers as the mechanism for paying for the reforms, notwithstanding well-known reservations on the part of governments to go down a levy path, more so for aged care because of intergenerational equity considerations.
If the Government was hoping a Royal Commission would provide the imprimatur to increase user contributions by those who can afford to pay more for their care costs in order to share the cost of improved services, this is not forthcoming. Instead, the Final Report simply states that "funding for aged care should not be subject to the fiscal priorities of the government of the day". Hence the Government is left to wrestle with how to fund the reforms. The obvious targets for spreading costs will be the big ticket items such as workforce remuneration and staffing levels and service rationing.

- The differences of opinion between the two Commissioners, however material in the grander scheme of things, together with the effective funding vacuum, will allow the government to cherry pick/prioritise the reforms. A saving consideration is that the reforms would not be implementable within the time frames envisaged by the Commissioners, which means there may be time to grow the economy in order to help afford the gradual introduction of the reforms before the oldest baby boomers reach their mid-80s. In this context, it is critical that the government's response to the Final Report provides certainty for the community, aged care providers and financiers concerning the attributes and sequenced implementation of the reformed aged care system to be achieved progressively.

- The recommendations collectively involve a significant stepping up of regulation and reporting, and increased disclosure and transparency, based on the premise that there is not an "ideal market" in aged care, and that therefore there is a need for government to take on a greater stewardship role.

  It was always the case that increased funding would come with additional regulation – witness the Government's initial response to the Final Report. The risk, as ever, however is that additional regulation will be introduced irrespective of funding outcomes because "more police on the beat" plays well in the court of public opinion.

  Arguably, however, increased disclosure and transparency sensibly applied is justified because of the vulnerability of the population being served and the high proportion of taxpayer funding involved. As long as the recommended independent pricing arrangements can ensure a secure and stable funding source that would allow an efficient provider to deliver high quality and safe care consistent with community expectations, the sector should embrace greater accountability through increased meaningful disclosure and transparency. Equally, the sector should embrace effective regulation to sort out the poorer performers who generate the negative community perceptions of aged care.

- A number of the key recommendations are directed at issues for which previous attempts at reform have been problematic. This includes addressing workforce remuneration (there is no Plan B if a combined application to Fair Work Australia does not succeed or is not funded), and improving the interface between the aged care and health systems, which depends on the successful negotiation of amendments of Commonwealth/state health funding agreements, a process that has proved to be a barrier in the past. It is to be hoped that these past impediments to reform can be overcome as a result of the impetus coming from the Royal Commission process.

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Disclosure statement: The author of this paper, Nick Mersiades, is a member of the Aged Care Financing Authority. The opinions in this paper should not be read as being an expression of the views of the Aged Care Financing Authority.