LASA
LEADING AGE SERVICES AUSTRALIA
*The voice of aged care*

# Productivity Commission Inquiry into Indirect Employment in Aged Care

**LASA Submission**

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# About LASA

## Who We Are

LASA is the national association for all providers of age services across residential care, home care and retirement living/seniors housing.

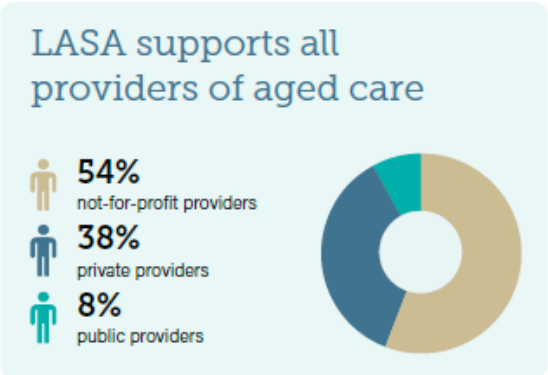
## Our Purpose

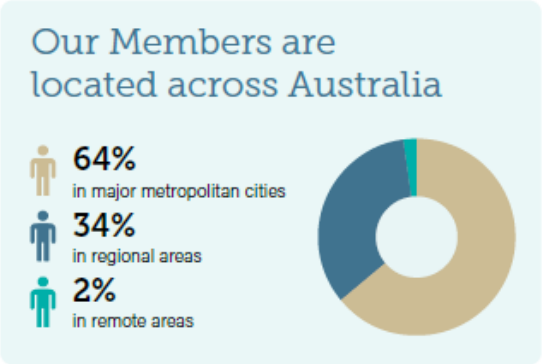
Our purpose is to enable high performing, respected and sustainable age services that support older Australians to age well by providing care, support and accommodation with quality, safety and compassion—always.

## Our Members

We represent providers of age services of all types and sizes located across Australia's metropolitan, regional and remote areas. We are dedicated to meeting the needs of LASA Members by providing

- a strong and influential voice leading the agenda on issues of importance;
- access to valuable and value-adding information, advice, services and support; and
- value for money by delivering our services and support efficiently and effectively.




## Our Affiliates

LASA Affiliates are proud supporters of the critical role played by the age services industry in caring for older Australians. Their value-adding products and services help age services providers apply innovative solutions that improve the provision of efficient and quality care.

## Our Strategic Objectives

1. Be the credible and authoritative voice of aged care representing the views of our Members for the benefit of older Australians.
2. Build sector capability and sustainability by delivering valued services and support to Members
3. Lead continuous improvement by promoting and celebrating excellence and innovation in age services
4. Deliver value for money for Members and Affiliates.
5. Be a high performing, respected and sustainable association that cares for our purpose, our Members and our people.

# Contents

# Key points

- Providers generally prefer direct employment or permanent/part-time staff, as it allows greater control over quality and supports continuity of care.
- However, indirect and casual employment arrangements are sometimes necessary and even beneficial to:
    - provide access to staff,
    - allow dynamic changes to rosters,
    - obtain the benefits of specialisation and economies of scale, and
    - support choice.
- Indirect employment through approved providers differs fundamentally from the direct engagement of independent contractors by clients, which may occur outside the protections of the Aged Care Act, professional regulation and employment and workplace health and safety law.
- While we do not propose prohibiting these arrangements, they should not be publicly funded as this would create a regulatory arbitrage opportunity that undermines the integrity of existing protections for both employees and vulnerable older people.

# General preference for direct employment

Aged care providers generally prefer staff delivering clinical and personal care to older people to be directly employed. This is because the direct employment relationship enables providers to train, supervise and direct their employees' work performance and to have intimate knowledge of their employees' skills, knowledge base and personal strengths.

Aged care providers also generally prefer to employ staff on a permanent or part-time rather than casual basis. This is because permanent or part-time arrangements provide greater continuity of care for clients and lower turnover also means fewer onboarding costs for new staff.

# Reasons for not always directly employing staff

Aged care providers nevertheless make extensive use of casual staff, staff employed through labour hire arrangements, and services delivered through contracts with third party suppliers. This occurs for various reasons that we have attempted to summarise below.

## Access to staff

In some cases, casual or agency staff or contract arrangements may be the only way that providers can access the staff they need.

Some staff do prefer casual or agency arrangements – either because they value the flexibility or they believe it offers them a way to earn a higher wage. Some employees also choose casual or agency work as a way to supplement their permanent or part-time roles.

In some cases, aged care providers are also unable to offer enough work or sufficient variety of work to employ staff directly. This is often the case the case for allied health staff, and may also sometimes be the case for nursing staff in home care.

## Dynamic rostering

Providers also need the flexibility of casual and agency staff so that they can adjust their rosters quickly.

Rosters in aged care need to be adjusted at relatively short notice for a variety of reasons, including staff taking leave or resigning, changes in client need, or in the case of home care, services being cancelled or rescheduled.

The need for dynamic rostering in residential care will be reinforced from October 2023 with the introduction of minimum staffing requirements, which will vary according to case-mix, creating a formal requirement for providers to be able to flex up and down their staffing.

### Specialisation and economies of scale

Providers often use third party staff to access the benefits of specialisation and economies of scale.

A home care provider may only have a few clients that need nursing care. A residential care provider may only need a relatively small amount of support from a pharmacist, or other allied health professional.

In these circumstances, a provider may choose to use a contract arrangement with a specialist supplier, even if there is technically enough work to directly employ a staff member. The benefit here is that a third-party supplier delivering a large volume of, say, consulting pharmacy services, can offer more effective supervision, resources and training than a more generalist aged care provider would be able to offer one or two staff employed directly.

Similar reasoning explains the use of contracted support services, such as cleaning and maintenance.

Providers using such arrangements do however need to be diligent in ensuring that the third party delivers quality services that are high quality and consistent with the aged care standards.

### Choice

The third reason that aged care providers use indirect employment arrangements is to offer choice. In particular, some home care providers have built their entire business model around delivering choice through brokerage arrangements. This can be an effective model but great care is needed to ensure that those delivering services through this brokerage model are thoroughly vetted and supervised.

## Concerns about independent contractors engaged by clients

### Risks to older Australians

Providers are responsible for taking appropriate steps to ensure the quality of services delivered by all the staff that they engage, whether directly or indirectly.

The concern with independent contractors being directly engaged by clients is that providers will have little capacity to vet or monitor the work of the independent contractor.

Older people residing at home and requiring personal care tend to live with physical and/or cognitive loss of function, making them vulnerable. It will also be difficult for many if not most older people to judge the quality of clinical or personal care that they receive. Reviews and ratings are less effective mechanisms in care because each contractor is likely to have only a limited number of clients.

The aged care regulator could attempt to monitor independent contractors and require them to register as approved providers. But it seems impossible that independent contractors would be able to comply with requirements that are as rigorous as those that currently apply to approved providers.

It would also be impractically expensive to monitor and audit a large number of independent contractors with very few clients.

If the independent contractor is a regulated nurse this risk is mitigated to a degree because regulated nurses' practice is defined by professional codes and standards and registration requirements. If working as independent contractors regulated nurses' registration requires them to have professional indemnity insurance. The Australian Health Practitioner Regulation Agency (AHPRA) offers the employing person a complaints pathway. These protections are not in place for personal care workers.

### Risks to workers

Aged care providers also have obligations as employers, which are unlikely to apply for independent contractors.

Peoples' private residence tend to be less safe work environments for the delivery of personal and nursing care because they are not designed and build for this purpose. Independent contractors may experience an injury while delivering care but lack the protection of workplace health and safety laws.

Independent contractors may also choose to work at below award rates of pay or conditions, for a variety of reasons. This undermines broader employment protections and creates incentives for all providers to adopt similar structures to compete with the regulatory arbitrage that this allows.

Threats of complaints to regulators may also be used by clients to bully independent contractors and create opportunities for them to be exploited, particularly if those contractors are from non-English speaking backgrounds and have a limited understanding of their own rights.

# Appendix 1 – Member Feedback

The following Member feedback provides an illustration of the issues raised above from the perspective of a metropolitan home care provider.

*Page 18*

*There is a hugely transient workforce which is employed via digital platforms, many of whom are migrants, students and those who are unable to undertake permanent employment and who want the flexibility to choose when to and not to work. This inconsistency in the available workforce is a challenge for providers who may want to use the digital platforms to find surge workforce and for consumers who are unable to find workers who are able to meet their needs.*
*There are also state based issues with these platforms and worker availability in regional and remote locations. In many instances the platforms are unable to cover these areas.*

*Many organisations have moved away from casualisation as the costs are prohibitive in a retail environment. The rates of funding vs the award rates are not conducive to maintaining highly casual workforce and there is more consistency of workers and connection to consumers where permanency whether part-time or full time is engaged.*

*We have found in the past 2 years that agency and platforms have been unable to meet the gaps in our workforce and we have had to look to other ways of recruiting and retaining workforce to deliver services to our clients. We have a higher number now of traineeships than ever before and have found this to be a great way to attract people. However, the retention rate remains unchanged. Although our organisation's attrition rate is around 5% this is a market where there is less than 4% unemployment is still too high to meet the demands of the market.*

*I have not seen a significant increase in male workers with the platforms or with agency and many clients we work with would not accept a male worker.*

*All our nursing services are outsourced to other agencies who specialise in nursing services, particularly those clients with higher care needs. This has freed some capacity in our normal workforce to undertake other tasks. We individually source the agencies we would outsource to and we check their credential and that of their workforce to ensure that they meet our standards. We have not had to use a Mabel to this point, although in 2020 we did try and were unable to source any workers across our regions for the work or times needed.*

*I do believe that the independent workforce will increase, particularly where people believe they can earn more money working privately than in the funded areas of aged care such as CHSP or HCP. The pressure on workers over the past 2.5 years has been huge and the Commonwealth reluctance to acknowledge the whole workforce in bonuses preferencing residential care and hospitals, has not done the sector any favours. We have had to find other innovative ways to support our staff which has come from our own reserves when our profits are diminishing. Without the workforce however, we have no business~!*

*Page 21*

*The regulation of agency, platform or independent workers is something which needs to be*

*addressed as does the use of carers in the workforce. Many carers are now getting ABN's in order to access funding to support a loved one and have an expectation that providers will just allow them to do so and to collect the funding. In the new Support at Home program this will be a huge issue as there are no checks and balances on that invoice request when it goes through the platform other than it must meet any criteria which is in MAC. If that is just the item line i.e. domestic services, how will the system be able to ensure that it was not the spouse who was claiming the domestic service costs? I can see that providers will only be used for the services that carers and other family members do not wish to provide and as such, the needs of the community to access the aged care in home services will change.*

*With this, they will be able to employ other family members to deliver services through the Mable platform or other independent means so long as they meet the criteria for the platform to make the payment. With a reduction in the number of opportunities and an increased number of providers, the ability to manage a high-quality compliant framework will be overly complicated and it will be the approved providers who will be carrying the burden and costs.*

*It is important to ensure that there is effective legislation which is clear and transparent, and which defines what is within scope of the program, the expectations, credentials, qualifications and the costs which irrespective of provider are costs the same and are measured by clearly defined outcomes. If a person is self-employed, they must have all the appropriate insurances in place and it's the responsibility of the approval platform to ensure that these are maintained. It should not be the responsibility of the approved provider when using these platforms to ensure that the workers have been vetted and given a quality tick of approval. Providers are not funded for these extra layers of compliance obligations; however, I am sure would be prepared to undertake if funding supported.*

*Similarly, they should not be required to provide PPE to these individuals who should have similar responsibilities under their approval to run a quality business which meets all the compliance requirements.*

*A simple criterion can be applied for each level of employment for example, irrespective of whether on the platform, independent of employed, all should be required to have a minimum level of qualification. If an organisation is using a sub-contractor, they should be an approved provider and subject to appropriate high-quality vetting which is defined by the classification of their approval. All should have no police records for any criminal activity and if in transport, no speeding or other traffic fines. All should have ad hoc drug and alcohol testing. You cannot deliver a high-quality service from David Jones for KMart prices! If you want DJ quality, then pay DJ prices and have an expectation in relation to the quality of the purchase.*

*The support at home model has the potential to create a purely transactional market and this market will drive a transactional outcome, which depending on who delivers, the quality standards and expectations, their training and qualifications and the oversight, will deliver a poorer outcome for consumers. Even larger providers will struggle to employ people on terms which will allow them to have a good standard of living, where there are insufficient funds and an expectation that there will be a demand to work in the sector.*

*Many will turn to platforms and independence as a way to earn more, but not necessarily deliver more or better quality. We have experiences poor outcomes from providers we have contracted to in the past and now only have a small number we are prepared to use.*

*These lapses in service provision now, where contracted to an approved provider, become the providers responsibility. I agree with this. If we want them to be an extension of our business, we should state our terms and measure by our standards. If we want them to be their own independent contractor, then it's a purchase order and the responsibility is theirs.*

*Many countries offer different models and there are some great examples of where this works in Northern hemisphere countries such as the Netherlands. However, they also have a different tax system and model of care!*

*Page 28/29*

*We created our own in-house platform to manage our aged care and disability services, one system which does both and has a user interface which allows the customers to see all their services and receive their invoices. This platform was agile enough in 2020 to move to deliver on line services to our clients where they felt able to engage. Some clients found it easy to use and were happy to join in and still do join in with online programs. Others found it too confusing and preferred to have a phone call and chat and where possible just go for a drive in the car.*

*There is no doubt that digital has a place in the new environment and future of care, however, providers in the majority are at the behest of the system developers and the IT providers to access systems which no only support the process but also deliver the reporting outcomes which the department wants in order to show whether a program is or is not being delivered according to the desired outputs measured. This form of process and measurement does not align with the wellness and self-management philosophy which is being promoted by the department nor the High-quality services which are desired by the ACQSC as it creates a very transactional process both from the objectives of the new Support at Home Program classifications and process and also from the capability of the systems to deliver the reporting needed.*

*The benefit of our system is that it was created with the consumer at the centre and the benefit of that is we can create dashboards to report on any field into which data is input and deliver reports in any format needed. We also used the same system to deliver a digital platform for clients which is built on the same system, so one source of truth.*

*During the first lockdown and outbreaks we had a number of workers who due to their own health conditions were unable to work however, they could work online and maintain a connection with our clients. This is now needed as much now as many are back to having their one-on-one social interactions which is the key component what they want and need to remain living well at home. Now not as much with high vaccination levels. We also offered all our staff extra PPE to continue services and we paid bonuses to CHSP and disability to ensure that there was parity with the HC workforce and to our disability staff. This means we have been able to retain workers and support them. We offered wellness days and extra EAP for staff to access. We gave them techniques to use to manage their mental health. We create a red/green card system for clients who didn't want to leave their homes and once we could invite them back to the social centre, we created the come fly with me program which used VR to take them on trips around the world. We continued to deliver training to staff, maintain staff meetings and not let up on our expectations around code of conduct and compliance with our quality requirements.*

*In order to be able to create a stable and productive work environment which embraces the agility that the Commonwealth wants in the new support at home system, the Commonwealth need to acknowledge the costs of providing these to the workers. This includes training, career progression, stable wages and conditions which are a true reflection of the work undertaken and the opportunity for investment into innovation which comes from actively supporting the Aged Care and Disability workforce to deliver these services in a High-Quality manner without the threats of compliance breaches and the carrot and stick approach which is enforced by the ACQSC. Providers in the most part do not go our of their way to provide a poor service to their clients, its quite the opposite and they do this without the supports needed from government to make it happen.*

*If the appropriate financial support was provided at the levels needed to fix the system, providers would be in a position to utilise a more permanent workforce. The use of agency and independent workers is something which if regulated and educated in the same way requiring the same level of qualifications irrespective of the source. For example, qualification at cert 3 level or above for all support workers which would ensure consistency in the workforce. Ongoing training requirements mandated annually for 4 quarters and flexible for another 2. Dementia specific training etc., Similarly for nursing care, EN or Rn? We have to stop shying away from making the sector more professional and a place where people want to have a career rather than something they fall into. I am sure many school leavers do not think of this sector as their first career choice. Often its migrant workers and those unable to get alternative employment that end up here and we then have issues, which we accept because there is no alternative!*

*The NDIS process works for some and not others. In regional and rural areas, you are unable to access workforce and therefore, people remain without support. The independent workforce and platforms seem to have a better profile however, struggle to get the workers. For some they supplement services with paid services from the platform at cheaper rates as the oncosts which providers carry allow workers to offer a lower rate. Quality of service is not measured and therefore, for many its just what they can get rather than high quality support.*

*There also needs to be a re-education of the consumers rather than this approach that Consumer Peaks have all the answers and solutions, that's not the case. The re-education of consumers needs to be independent of the peaks, as they have a conflict of interest when educating consumers and advocating for consumers. Providers also need to be excluded from the education process for consumers. In doing this you will get some regulation of the system and the process at the consumer level with the education delivering a truly customer centric approach to the services being provided.*

*There is no doubt that the indirect employment in aged care needs to be regulated at all levels from the bigger providers to the one-man band irrespective of the services provided in order to create parity and a fairer system for all involved. This regulation should be applied to anyone wishing* to be involved in the sector from the maintenance man to the retirement facility.

*A Strong voice and a helping hand*

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