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Pre-amble

I have never been a great advocate for regulated minimum staffing ratios, but prefer regulation of the things that are really important around provision of care services to the people, our care recipients. If you like, having enough of the right people at the right time, and not just to fulfil a compliance requirement around the number of pairs of hands. In completing this Review my own views around staffing, quality of care, industrial considerations and the like have changed – for the better. It remains to be seen if those with the capacity to make an even more profound difference to improve care outcomes for frail, vulnerable, mainly elderly recipients of care – the Australian Government and Parliament – will actually choose to support those whom we serve.

1 Introduction

It seems that in Australia rarely a month goes by where the public is not informed of another aged care failing. There is wide spread public perception of a lack of care and low quality of life for residents within the aged care system. The call for greater regulation of minimum staffing standards and additional funds to meet them is prominent but seems to fall on deaf ears of the Australian Government. Without residential aged care provision, residents would likely be inpatients in State based hospitals at several times the daily cost of care of a residential aged care facility. However, the proportion of funds spent on care and service provision should be acquitted on what really matters – the care of people.

This Review discusses the question “If implemented, how will regulated minimum staffing ratios impact on business viability and quality of care in residential aged care services?”

The Review considers:

- 1 Introduction;
- 2 Regulated minimum staff ratios – child care versus residential aged care;
- 3 Review of nursing and aged care literature ranging from the 1980s to current time;
- 4 A brief critique of quality care and the effectiveness of staff ratios;
- 5 An indicative cost impact of suggested reform;
- 6 Reforming the law on minimum regulated staffing in residential aged care; and
- 7 Recommendations and concluding remarks.

2 Regulated Minimum Staff Ratios – Child Care versus Residential Aged Care

In aged care in Australia:

- In 2015-16 almost 240,000 people received permanent residential aged care;¹
- The proportion of people aged 65 years or over is projected to increase from 15.3 per cent in 2017² to 22 per cent in 2061,³ when one in twenty people will be aged 85 years and over.
- Frailty of residents is increasing as people ageing in place in care, or are being admitted at an older age, with multiple morbidities.

In child care in Australia, today 52 per cent of all child care recipients, some 660,000 children⁴ predominantly aged four years and below, attend long term day care centres. Child care centres and other children's services fall under the current National Quality Framework, of which Quality Area 4 of the Framework⁵ specifies and regulates for minimum staffing ratios for children receiving child care services. The 'staffing requirements will vary on the number of places a service is licensed for'.⁶

The following advert appeared in the Weekend Australian of Saturday 12 May 2018.⁷

¹ Commonwealth of Australia as represented by the Department of Health, *2016–17 Report on the Operation of the Aged Care Act 1997* (2017), 19.

² Productivity Commission, 'Report on Government Services' (Productivity Commission, 2018), Table 14A.1.

³ Australian Bureau of Statistics, 'Population Projections, Australia, 2012 (base) to 2101' (ABS, 2013), Series B.

⁴ Colliers International, 'Child Care in Australia: Child Care White Paper | An Industry Review' (Colliers International, 2016), 4.

⁵ Australian Children's Education and Care Quality Authority, 'Guide to the National Quality Framework' (ACECQA, 2017), 404-449.

⁶ Marianne Fenech, Miriam Giugni and Kathryn Bown, 'A Critical Analysis of the "National Quality Framework": Mobilising for a Vision for Children beyond Minimum Standards' (2012) 37(4) *Australasian Journal of Early Childhood* 5

⁷ Australian Nursing & Midwifery Federation, 'Advertisement: Ratios for Aged Care - Make them law now' (2018) (May 12-13 2018) *Weekend Australian*, 42.

(The unreadable text in the advertisement above is "Chronic understaffing in aged Care homes is leaving thousands of elderly Australians unfed, unwashed or even in soiled pads for hours because there's simply not enough staff. The Federal Government must act now to make staff ratios law for Aged Care. Find out more at MoreStaffForAgedCare.com.au")



A direct comparison of residential aged care with child care is difficult. The *Aged Care Act 1997* (Cth) (“Act”) provides various forms of legislative and regulatory constraint, accreditation, and practice requirements for service provision. Unlike the child care sector, there is no minimum staffing ratio that protects frail and vulnerable residential aged care recipients. Division 54-1(1)(b) of the *Act* requires an approved provider ‘to maintain an adequate number of appropriately skilled staff to ensure that the care needs of care recipients are met’.⁸ Bowlblis comments that in the USA in 1987, nursing homes were required to ‘have sufficient nursing staff to provide nursing and related services to attain and maintain the highest practicable physical, mental, and psychosocial well-being for each resident’.⁹ These are surprisingly similar words, likely reflecting a similar structural basis in each jurisdiction.

3 Review of nursing and aged care literature

Quality of Care

Pillemer and Moore commented that since ‘the 1960s, patients’ rights advocates have portrayed nursing homes as substandard environments in which patients run the risk of maltreatment’, ‘limitations of patient freedom’, ‘substandard nutrition and living quarters’, and ‘verbal and physical abuse’¹⁰ as being fundamental problems experienced in nursing home life. Making use of the Maslach Burnout Inventory,¹¹ Pillemer concluded that nursing home staff are working in highly stressful, complex care environments, where the

⁸ *Aged Care Act 1997* (Cth), at s 54-1(1)(b).

⁹ John R. Bowlblis, 'Staffing ratios and quality: an analysis of minimum direct care staffing requirements for nursing homes.(RESEARCH ARTICLE)' (2011) 46(5) *Health Services Research*, 1497.

¹⁰ Pillemer Karl and Moore David W, 'Abuse of patients in Nursing Homes: Finings from a Survey of Staff' (1989) 29(3) *Gerontologist*, 314.

¹¹ C Maslach, *The cost of caring* (Knopf, 1982).

work is ‘physically very taxing, the wages are poor, and the prestige of the job is low.’¹² Bowers et al concur adding that, as a strategy, nurses devise ways of ‘keeping up and making up’,¹³ and that the emotional care and support of residents and clients is often afforded a lower priority. Wiener, and Shipman and Hooten agree, noting that there is a ‘logical relationship between staffing and quality of care’.¹⁴

Staffing Mix

In 2000 the the Queensland Nurses’ Union applied for minimum staffing ratios in residential aged care facilities.¹⁵ Cohen and Spector confirm that ‘higher professional staffing intensity has a positive outcome on resident outcomes’¹⁶. Harrington et al concurred, adding that in the USA a higher minimum standard should be ‘adjusted for resident acuity’. A greater supply and minimum mix of staff seems to be the answer to continuing calls for quality improvement in residential aged care in Australia.

Perhaps Not Mandated Minimum Nursing Staff Ratios

In his review of implementation of staff ratios in California and Victoria, Buchan found that nursing staff ratios are ‘a blunt instrument for achieving employer compliance’.¹⁷ While essentially agreeing, Douglas adds that any solution (to the staffing mix) must ‘strengthen the use of professional nurses; their knowledge, experience, and wisdom are essential’ in care for very frail and vulnerable residents.

Emerging from the literature is the need for a two factor minimum staff ratio. The first is a regulated minimum staff mix that can be a benchmark for all care recipients, and the second is an added component of funding specifically based on the care acuity level of each resident. That acuity level is best described by Park as ‘may be the most important factor in determining both staffing decisions and observed health outcomes’.¹⁸

The following chart shows comparable, but only indicative, hours per resident day averaged across all Australian residential aged care, and how it remains well below similar western jurisdictions. The Australian data is sourced from StewartBrown¹⁹ and the

¹² Pillemer Karl and Moore David W, above n 10, 319.

¹³ Barbara J. Bowers, Cathy Luring and Nora Jacobson, 'How nurses manage time and work in long-term care' (2001) 33(4) *Journal of Advanced Nursing*, 486.

¹⁴ Joshua M. Wiener, 'An Assessment of Strategies for Improving Quality of Care in Nursing Homes' (2003) 43(suppl_2) *The Gerontologist*, 19 ; Debra Shipman and Jack Hooten, 'Are nursing homes adequately staffed? The silent epidemic of malnutrition and dehydration in nursing home residents. Until mandatory staffing standards are created and enforced, residents are at risk' (2007) 33(7) *Journal of gerontological nursing*, 16; Barbara M. Bates-Jensen et al, 'The Effects of Staffing on In-Bed Times of Nursing Home Residents' (2004) 52(6) *Journal of the American Geriatrics Society* .

¹⁵ With AAP, 'QNU seeks minimum staff ratios for aged care' (2000) 8(4) *Australian Nursing Journal*, 9.

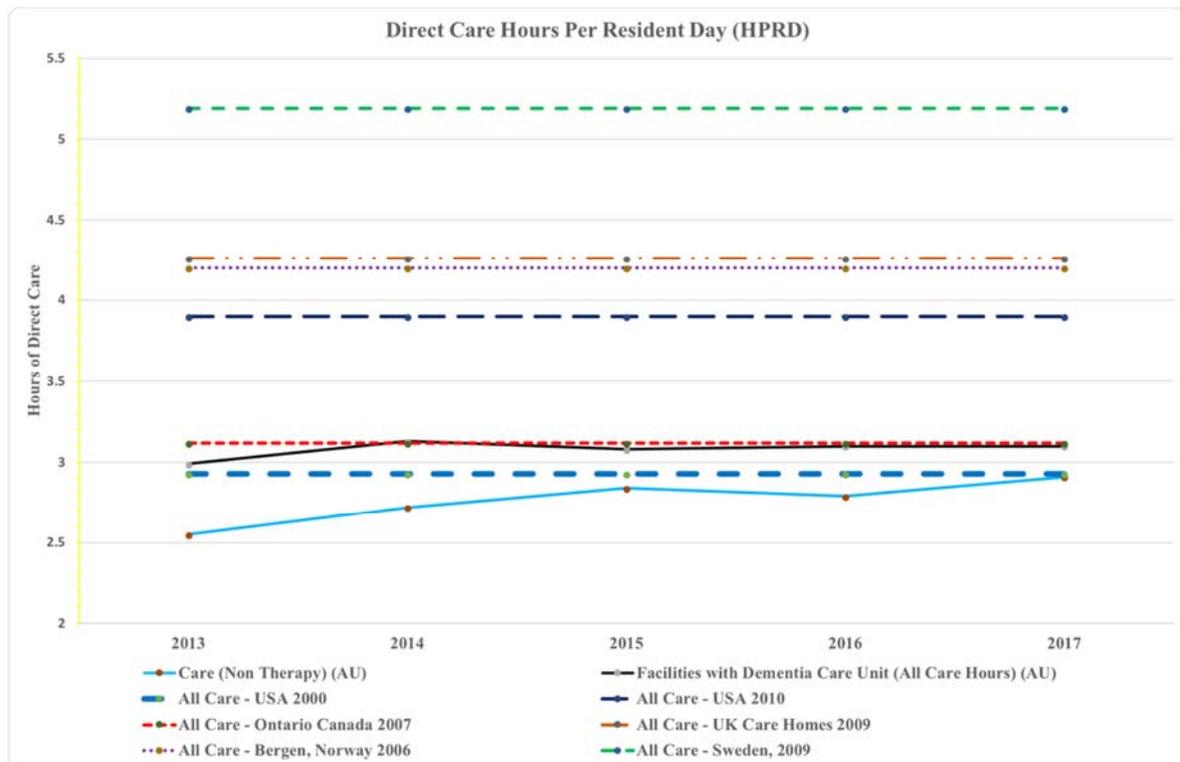
¹⁶ Joel W Cohen and Spector William D, 'The effect of Medicaid reimbursement on quality of care in nursing homes' (1992) 15 *Journal of Health Economics*, 46.; Charlene Harrington et al, 'The need for higher minimum staffing standards in U.S. nursing homes' (2016) *Health Services Insights*, 17.

¹⁷ James Buchan, 'A certain ratio? The policy implications of minimum staffing ratios in nursing' (2005) 10(4) *Journal of Health Services Research and Policy*, 239; Kathy Douglas, 'Ratios - If It Were Only That Easy' (2010) 28(2) *Nursing Economics*, 125.

¹⁸ Jeongyoung Park and Sally C Stearns, 'Effects of State Minimum Staffing Standards on Nursing Home Staffing and Quality of Care' (2009) 44(1) *Health Services Research*

¹⁹ StewartBrown, 'Aged Care Performance Financial Survey: Residential Care Report – December 2017' (2018); StewartBrown, 'Personal Correspondence with Data' (2018); Park and Stearns, above n 18, 70;

international data from Park (USA 2000) and Harrington et al. The summation is that Australia clearly lags behind in its provision of staff resourcing of care for frail and vulnerable care recipients.



4 Quality care and the effectiveness of staff ratios

Wiener observes that quality of care in aged care facilities remains ‘a major problem for which there is no simple solutions’, and that despite the ‘considerable regulatory apparatus’²⁰ the lack of quality may well be a significant reason why so few people would choose to live in them. Admission to a nursing home today is a health-based decision along with the need to receive high quality hospital like care. Wiener adds, ‘increasing staff and raising wages of nursing home workers seem likely to be a necessary precondition to improving quality of care and should be a priority.’²¹ Shipman et al, Hodgkinson et al, Kim et al, Schnelle et al, Lin, and Konetzka et al, all agree, commenting about the evidence of additional registered nurse staff, or additional other nurse and care staff, having a direct positive impact to positively improve the level of quality of care in nursing homes.²²

Charlene Harrington et al, 'Nursing Home Staffing Standards and Staffing Levels in Six Countries' (2012) 44(1) *Journal of Nursing Scholarship*, 88-98.

²⁰ Wiener, above n 15, 25.

²¹ *ibid*, 26.

²² Shipman and Hooten, above n 15, 16; Hodgkinson B et al, 'Effectiveness of staffing models in residential, subacute, extended aged care settings on patient and staff outcomes (Review)' (2011) (Issue 6) *Cochrane Database of Systematic Reviews*, 4; Hongsoo Kim, Charlene Harrington and William H. Greene, 'Registered Nurse Staffing Mix and Quality of Care in Nursing Homes: A Longitudinal Analysis'

5 Indicative Cost Impact of Suggested Reform

Including direct care from registered nurses, enrolled or otherwise certified nurses, and carers howsoever called, and excluding any administrative support nursing and any therapy service hours, on average residential aged care in Australia reaches 2.9 hours per resident day (“HRPD”) as at 31 December 2017.²³ (This only now equates with the minimum benchmark set in the United States of America back in 2000.²⁴) The overall cost of residential care services at 30 June 2016 was approximately \$11.4 billion²⁵ for all residential aged care services nationwide. If, for example, the minimum staffing ratio of HRPD was raised to 3.2 HRPD, that is, an increase of 0.3 HRPD, and all of this increase was apportioned across the direct care services of registered nurses, enrolled/certified nurses, and carers, on average that will be an approximate increase of ten per cent. That indicates the annual spend on residential aged care increasing by approximately \$1.14 billion to \$12.54 billion, providing some compensation for the 2016-17 \$1.2 billion ‘efficiencies’ reduction.²⁶ If the increase were to rise to the level recommended by Collier and Harrington²⁷ of 4.1 HRPD, the increase in HRPD is approximately 41 per cent meaning an immediate shortfall in funding of almost \$4.72 billion.

6 Reforming the Law on Regulated Minimum Staffing in Residential Aged Care

In September 2017 the *Aged Care Amendment (Ratio of Skilled Staff to Care Recipients) Bill 2017*²⁸ (“Bill”) was introduced in the Australian Senate. The Bill still sits before the Senate in its Second Reading stage.²⁹ Whilst not solely focusing on mandated minimum registered nurse ratios, the Bill does suggest that area of primacy. Reflecting on the literature, with the exception of night duty staff, mandating a minimum number of people may be too blunt a manner in which to ensure greater provision of services in any given

(2009) 49(1) *The Gerontologist*, 81; John F. Schnelle et al, 'Relationship of Nursing Home Staffing to Quality of Care' (2004) 39(2) *Health Services Research*, 225; Haizhen Lin, 'Revisiting the relationship between nurse staffing and quality of care in nursing homes: An instrumental variables approach' (2014) 37 *Journal of Health Economics*, 23; R. Tamara Konetzka, Sally C. Stearns and Jeongyoung Park, 'The Staffing–Outcomes Relationship in Nursing Homes' (2008) 43(3) *Health Services Research*, 1025.

²³ StewartBrown, above n 19, 3. StewartBrown includes “Care Management” and “Allied health and lifestyle” hours in their reporting. To maintain consistency with other sources I have removed both of those components to reduce the Australian figures to direct care only.

²⁴ Park and Stearns, above 19, 70.

²⁵ Aged Care Financing Authority, 'Fifth report on the Funding and Financing of the Aged Care Sector' (Australian Government, 2017), xii.

²⁶ The Department of Health, *Aged care provider funding – further revision of the Aged Care Funding Instrument* Australian Government

<<http://www.health.gov.au/internet/budget/publishing.nsf/Content/budget2016-factsheet20.htm>>. Accessed 22 May 2018.

²⁷ Eric Collier and Charlene Harrington, 'Staffing Characteristics, Turnover Rates, and Quality of Resident Care in Nursing Facilities' (2008) 1(3) *Research in Gerontological Nursing*, 167.

²⁸ *Aged Care Amendment (Ratio of Skilled Staff to Care Recipients) Bill 2017*.

²⁹ Parliament of Australia, *Second Reading Speeches: Aged Care Amendment (Ratio of Skilled Staff to Care Recipients) Bill 2017*

<<https://www.aph.gov.au/en/Parliamentary%20Business/Bills%20Legislation/Bills%20Search%20Results/Result/Second%20Reading%20Speeches?BillId=s1086>>. Accessed 15 May 2018.

residential aged care facility. The Bill may be used more as an industrial tool rather than focus on care of residents. However, this review shows the relationship between improved quality outcomes in care is directly related to an increase in both registered nursing staff, and the overall level of care staff.

In terms of law reform, Graycar and Morgan have commented that law reform uses ‘limited consultation processes that often leave out of account the concerns of the most affected.’³⁰ This comment echoes the sensitivity of what providers, clients, and family members alike experience. It is the Australian Government that is leading the change of the aged care sector to a commoditised care market, where people are essentially forgotten, and the balance of equity and justice is outweighed to pragmatic economic models. Of course, cost control is important. The Australian Government currently spends to procure its aged care provision from private providers. It is difficult to conceive that ‘a shift from a focus on person-centred care to organisational profitability’³¹ can always equally apply. Organisations often accommodate progressive funding reductions by trimming their operating budgets, of which workforce is the greatest single cost. The Australian Government should require that organisations demonstrate a level of expenditure on what matters most – care of frail and vulnerable people.

Hutchinson discusses the use of comparative analyses at length within and between jurisdictions, including articles including ‘recommendations for reforming the law informed by the law presented.’³² One hopes that the suggestions that follow will be accommodated in the same vein.

This review has considered non-legal matters of importance to the care of frail, vulnerable, recipients of residential aged care services. In so doing, the review suggests that workforce law reform is both obvious and compelling. One wonders where, now understanding what the literature reveals about the significant positive correlation between additional staffing and improvement in quality, if no change is made, the liability for continued poor service quality lies. Many providers would ideally provide additional staff for care, but the accompanying cost impact will drive them to failure. The Australian Government needs to reform the relevant provisions of the quality of care principles in the *Act*, and allocation the funds necessary to support that change.

³⁰ Reg Graycar and Jenny Morgan, 'Law Reform: What's in it for Women' (2005) 23 *Windsor Yearbook of Access to Justice*, 393.

³¹ Martin Woods, Suzanne Phibbs and Chrissy Severinsen, 'When morals and markets collide': Challenges to an Ethic of Care in Aged Residential Care' (2017) 11(4) *Ethics and Social Welfare*, 377.

³² Terry Hutchinson, 'The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law' (2015) 3 *Erasmus Law Review*, 135.

7 Recommendations and Conclusion

This Literature Review has shown that a regulated minimum staffing mix (“Mix”) is an important requirement for residential aged care in Australia. If well planned and implemented, such a Mix is likely to:

- i Have a direct correlation to improved quality of care;
- ii Build the hours of service for all direct care workers;
- iii Include mandatory 24 hours per day, seven days per week, registered nurse cover in all facilities where any one or more resident’s assessed acuity exceeds a certain point on the assessment scale;
- iv Include a minimum of 0.75 HRPD cover by registered nurses;
- v Be based on an immediate increase of HRPD to 3.2 HRPD, with no permissible diminution of current HRPD provision per provider, increasing to 4.1 HRPD over the forward estimates; and
- vi Provide for additional funding from the Australian Government above a minimum benchmark based on the overall acuity assessment per resident;

Further action should commence to amend the relevant legislation reflecting these recommendations, determine the veracity of the initial minimum and phased increase over time, make provision for funding in the forward estimates, and monitor improvements in quality of care and provider agency performance against the implemented minimum standards.

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