

The Senate

Community Affairs Legislation
Committee

Aged Care Legislation Amendment
(Financial Transparency) Bill 2020

June 2021

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Abbreviations

AASB	Australian Accounting Standards Board
ACFR	Aged Care Financial Report
Aged Care Act	<i>Aged Care Act 1997</i>
ANMF	Australian Nursing and Midwifery Federation
bill	Aged Care Legislation Amendment (Financial Transparency) Bill 2020
CICTAR	Centre for International Corporate Tax Accountability and Research
Corporations Act	<i>Corporations Act 2001</i>
Explanatory Memorandum	Aged Care Legislation Amendment (Financial Transparency) Bill 2020, Explanatory Memorandum
FECCA	Federation of Ethnic Communities' Councils of Australia
GPFS	General Purpose Financial Statement
HSU	Health Services Union
QNMU	Queensland Nurses and Midwives' Union
Royal Commission	Royal Commission into Aged Care Quality and Safety

List of Recommendations

Recommendation 1

2.45 The committee recommends that the bill not be passed.

Chapter 1

Introduction

Purpose of the bill

- 1.1 The Aged Care Legislation Amendment (Financial Transparency) Bill 2020 (bill) was introduced in the Senate on 12 June 2020 by Senator Stirling Griff.¹
- 1.2 The bill seeks to introduce additional financial reporting requirements for providers of residential aged care in Australia in receipt of Commonwealth funding, with the aim of increasing financial transparency in the sector.²

Background

- 1.3 Under the *Aged Care Act 1997* (Aged Care Act), subordinate legislation and contractual arrangements, all aged care providers in receipt of Government subsidies have compulsory annual financial reporting requirements:
 - all approved providers of residential aged care and home care are required to submit an annual Aged Care Financial Report (ACFR) to the Department of Health;
 - for non-government providers, their ACFR must also include an independently-audited General Purpose Financial Statement (GPFS) prepared in accordance with the Australian Accounting Standards; and
 - any approved providers which held refundable deposits, accommodation bonds and/or entry contributions during the year must also include an Annual Prudential Compliance Statement in their ACFR.³
- 1.4 These financial reports and statements are not currently published by aged care providers or by the Australian Government however, under the Accountability Principles 2014, an approved provider must provide a copy of the most recent report to a care recipient or their representative on request.⁴

What is measured in an ACFR

- 1.5 The ACFR requires providers to report on sources of funding, such as federal and state funding and resident contributions, and detail expenditure against specified categories. Expense categories in the ACFR include:

¹ *Journals of the Senate*, No. 54, 12 June 2020, p. 1872.

² [Aged Care Legislation Amendment \(Financial Transparency\) Bill 2020, Explanatory Memorandum](#) (Explanatory Memorandum), [p. 2].

³ Department of Health, answer to written question on notice IQ 20-000619, 16 October 2020; Detailed requirements are listed in the Department of Health's [Aged Care Financial Report \(ACFR\) User Guide](#).

⁴ Accountability Principles 2014, cl. 37A.

- labour costs, including contract labour;
 - accommodation costs, including property maintenance, rent for buildings;
 - catering, cleaning and laundry services; and
 - administration costs, including capital and financing expenses.⁵
- 1.6 The Department of Health recently introduced additional requirements for the 2020–21 ACFR to improve transparency and accountability in reporting and support work towards the proposed new Australian National Aged Care Classification funding model.⁶ These changes include:
- detailed residential segment income and expense statements at the individual facility level;
 - enhanced approved provider reporting to bring the ACFR closer in line with information included in the provider's audited GPFS and to improve reporting around liquidity;
 - a consolidated parent-level segment report to capture data across a consolidated group of facilities; and
 - reconciliation of permitted uses of refundable deposits and accommodation bonds.⁷

Accounting Standards

- 1.7 Australia's accounting standards are set by an independent accounting body, the Australian Accounting Standards Board (AASB). Australian Accounting Standard AASB 1053 sets out two tiers for all entities preparing a GPFS:
- Tier 1: Australian Accounting Standards; and
 - Tier 2: Australian Accounting Standards – Reduced Disclosure Requirements.⁸
- 1.8 Tier 1 reporting applies to any for-profit entities in the private sector that have public accountability as defined in the standard, and to Australian, state, territory and local governments. Tier 2's reduced disclosure requirements are designed to reduce the burden and the costs of preparing and auditing financial statements for all other entities needing to prepare a GPFS who are not otherwise required by a relevant regulator to produce a Tier 1 report.⁹

⁵ Department of Health, answer to written question on notice IQ 20-000619, 16 October 2020.

⁶ Further information about the proposed funding model is available at www.health.gov.au/health-topics/aged-care/aged-care-reforms-and-reviews/residential-aged-care-funding-reform.

⁷ Department of Health, [Revised Aged Care Financial Report](#), March 2021; Department of Health, [Guide to changes to the Aged Care Financial Report](#).

⁸ [Australian Accounting Standard AASB 1053](#), p. 5.

⁹ [Australian Accounting Standard AASB 1053](#), p. 5; Australian Accounting Standards Board, [Reduced Disclosure Requirements](#).

- 1.9 All for-profit aged care providers listed on the ASX currently comply with Tier 1 requirements and the majority of other for-profit providers meet Tier 2. Not-for-profit aged care providers have a choice of which tier to report against and the majority choose to disclose under Tier 2.¹⁰

Senate inquiry into financial transparency in Aged Care

- 1.10 In 2018, the Tax Justice Network Australia was commissioned by the Australian Nursing and Midwifery Federation to analyse possible tax avoidance by for-profit aged care companies. The findings of that report led to the Senate Economics References Committee conducting an inquiry into the financial and tax practices of for-profit aged care providers later that year.¹¹
- 1.11 A key theme raised by submitters to that inquiry was the lack of publicly available information about the financial reporting and tax affairs of aged care providers, and how this was linked to concerns about quality of care in residential aged care facilities.¹²
- 1.12 In considering the evidence of that inquiry, the Senate Economics References Committee noted the considerable volume of financial information already provided to regulators by aged care providers and recommended that the Australian Government should investigate options to increase the public transparency of providers' financial information held by the Department of Health and explore ways to better share information about quality of care across the sector to assist consumers and their families.¹³
- 1.13 That committee also recommended that the Royal Commission into Aged Care Quality and Safety (Royal Commission) consider the tax and financial structures of aged care providers as part of its deliberations.¹⁴

Government response to the Royal Commission

- 1.14 The final report of the Royal Commission, titled *Care, Dignity and Respect*, was delivered on 26 February 2021 and considered matters relating to the current aged care system, proposals for a new aged care system, and a special report on the impact of COVID-19 on aged care. Of the 148 recommendations made in

¹⁰ Department of Health, answer to written question on notice IQ20-000623, 9 September 2020.

¹¹ Centre for International Corporate Tax Accountability, *Submission 11*, p. 1; Senate Economics References Committee, *Financial and tax practices of for-profit aged care providers*, 27 November 2018, pp. xi; 3–5.

¹² Senate Economics References Committee, *Financial and tax practices of for-profit aged care providers*, 27 November 2018, pp. ix–xii, 55.

¹³ Senate Economics References Committee, *Financial and tax practices of for-profit aged care providers*, 27 November 2018, pp. 43, 57.

¹⁴ Senate Economics References Committee, *Financial and tax practices of for-profit aged care providers*, 27 November 2018, p. 43.

the final report, recommendations 130 through to 137 directly related to prudential regulation and financial oversight of aged care, and while several other recommendations related to improving transparency in the sector and the reporting requirements of providers.¹⁵

- 1.15 The Australian Government announced its response to the recommendations of the Royal Commission on 11 May 2021, including \$17.7 billion in additional investment in aged care and a five-pillar aged care reform plan to address matters relating to home care, residential aged care services and sustainability, residential aged care quality and safety, workforce, and governance.¹⁶
- 1.16 The Department of Health has indicated that the government response to the Royal Commission's recommendations about transparency and reporting will be implemented over the next three years as part of this reform plan. Some key measures include:
 - a requirement that residential aged-care providers include information in the ACFR about how much they spend on daily living services (such as food, nutrition, linen and cleaning) in order to receive a new basic daily fee supplement of \$10 per resident;
 - the introduction of residential aged care staffing minutes reporting, initially in the ACFR and then reported quarterly from July 2022; and
 - the introduction of a monthly care statement from providers to residents and their families, outlining the care received and any significant changes or events during that month.¹⁷
- 1.17 The Department of Health is also reviewing legislation which currently precludes the public release of some information from aged care providers.¹⁸

Provisions of the bill

- 1.18 The bill includes one Schedule amending two Acts: the Aged Care Act and the *Corporations Act 2001* (Corporations Act).
- 1.19 Items 1 and 2 of the bill amend sections 9-2 and 96-10 of the Aged Care Act to introduce an obligation for aged care providers to provide an annual financial report for each of its aged care facilities to the Aged Care Quality and Safety Commissioner that is then made publically available. Item 1 also sets out several key financial areas to be included in these reports, such as costs of

¹⁵ Royal Commission into Aged Care Quality and Safety, *Final Report: Care, Dignity and Respect, Volume 1: Summary and Recommendations*, pp. 298–301.

¹⁶ Hon Greg Hunt MP, Minister for Health and Aged Care, '[\\$17.7 billion to deliver once in a generation change to aged care in Australia](#)', *Media release*, 11 May 2021.

¹⁷ Ms Eliza Strapp, First Assistant Secretary, Department of Health, *Committee Hansard*, 14 May 2021, pp. 23–24.

¹⁸ Ms Eliza Strapp, First Assistant Secretary, Department of Health, *Committee Hansard*, 14 May 2021, p. 24.

accommodation, salaries and wages for staff, operating costs, and payments to related bodies corporate.¹⁹

- 1.20 Item 3 of the bill introduces a definition of 'financial transparency report' into Schedule 1 of the Aged Care Act.²⁰
- 1.21 Item 4 of the bill amends the Corporations Act to require all aged care providers in receipt of more than \$10 million in Commonwealth funding to produce annual financial reports which comply with Tier 1 requirements of the Australian Accounting Standards.²¹
- 1.22 Under Item 5 of the bill, the new requirements would apply for financial reporting from the commencement of the next financial year.²²
- 1.23 The Explanatory Memorandum does not outline any financial implications of the changes proposed in the bill.

Previous introduction of provisions

- 1.24 In December 2019, Parliament considered the Aged Care Legislation Amendment (New Commissioner Functions) Bill 2019, which transferred certain aged care regulatory functions of the Secretary of the Department of Health to the new Aged Care Quality and Safety Commissioner.²³
- 1.25 During the Senate's committee-of-the-whole consideration of that bill, Senator Stirling Griff proposed an amendment on behalf of Centre Alliance to amend the Aged Care Act to insert:
 - financial transparency reporting provisions nearly identical to Items 1 and 2 of the current bill; and
 - staff-to-care-recipient ratio reporting provisions.²⁴
- 1.26 That amendment to the Aged Care Legislation Amendment (New Commissioner Functions) Bill 2019 was not passed by the Senate.²⁵
- 1.27 In his second reading speech for the current bill, Senator Griff characterised that he had 'brought that amendment back and finessed it into this private senator's bill'.²⁶

¹⁹ Aged Care Legislation Amendment (Financial Transparency) Bill 2020 (Bill), Schedule 1, Items 1–2; Explanatory Memorandum, [pp. 4–5].

²⁰ Bill, Schedule 1, Item 3; Explanatory Memorandum, [p. 5].

²¹ Bill, Schedule 1, Item 4; Explanatory Memorandum, [p. 5]. This was one of transparency recommendations of the 2018 Tax Justice Network–Australia report.

²² Bill, Schedule 1, Item 5; Explanatory Memorandum, [p. 5].

²³ See Parliament of Australia, [*Bills of the Current Parliament: Aged Care Legislation Amendment \(New Commissioner Functions\) Bill 2019*](#).

²⁴ *Journals of the Senate*, No. 35, 5 December 2019, pp. 1112–1113.

²⁵ *Journals of the Senate*, No. 35, 5 December 2019, p. 1113.

Parallel introduction of the bill in the House of Representatives

1.28 On 19 October 2020, the Member for Mayo, Ms Rebekha Sharkie MP, introduced the Aged Care Legislation Amendment (Financial Transparency) Bill 2020 [No. 2] in the House of Representatives.²⁷ This second bill was identical in form to the bill introduced in Senate and is not proceeding, as it was not called upon and therefore removed from the Notice Paper in accordance with the House of Representatives Standing Order 42.²⁸

Legislative scrutiny

1.29 Both the Senate Standing Committee for the Scrutiny of Bills and the Parliamentary Joint Committee on Human Rights considered the bill and neither committee raised any scrutiny concerns.²⁹

1.30 The Statement of Compatibility with Human Rights for the bill also notes that the bill does not raise any human rights issues.³⁰

Conduct of the inquiry

1.31 On 18 June 2020, the Senate referred the provisions of the bill to the committee for inquiry and report by 23 November 2020.³¹ The reporting date was then extended by the committee to 18 March 2021 and then 24 June 2021.³²

1.32 Details of the inquiry, including a link to the bill and associated documents, were placed on the committee's website.³³ The committee wrote to relevant organisations inviting submissions to the inquiry by 31 July 2020 and inviting further and supplementary submissions by 30 April 2020. Submissions continued to be accepted after those dates.

1.33 The committee received 24 submissions and held a public hearing on 14 May 2021. Submitters and witnesses are listed at Appendices 1 and 2.

1.34 The committee thanks all who contributed to the inquiry.

²⁶ Senator Stirling Griff, *Senate Hansard*, 12 June 2020, p. 2937.

²⁷ Ms Rebekha Sharkie MP, *House of Representatives Hansard*, 19 October 2020, pp. 7283–7285.

²⁸ See Parliament of Australia, [Bills of the Current Parliament: Aged Care Legislation Amendment \(Financial Transparency\) Bill 2020 \[No. 2\]](#).

²⁹ Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 8 of 2020*, 17 June 2020, p. 24; Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report 8 of 2020*, 1 July 2020, p. 37.

³⁰ [Aged Care Legislation Amendment \(Financial Transparency\) Bill 2020, Statement of Compatibility with Human Rights](#), [p. 6].

³¹ *Journals of the Senate*, No. 58, 18 June 2020, p. 2009.

³² These extensions were made by the committee in accordance with the temporary order of the Senate agreed on 23 March 2020.

³³ Available at www.aph.gov.au/senate_ca.

Notes on references

- 1.35 References to the committee Hansard are to the proof transcript. Page numbers may vary between the proof and official Hansard transcript.

Chapter 2

Key issues

- 2.1 The committee received evidence of broad support for the bill's aim to increase financial transparency in residential aged care, with many submitters and witnesses emphasising the importance of knowing that Commonwealth funding for residential aged care is being spent directly on quality care and service provision and not diverted for other purposes.¹
- 2.2 However, concerns have been raised about the measures proposed, their suitability for achieving the bill's aims, and their application in relation to existing and proposed financial reporting frameworks for aged care. These concerns are discussed below.

Amendments to the *Aged Care Act 1997*

- 2.3 As outlined in Chapter 1, the bill proposes amendments to the *Aged Care Act 1997* to require providers of residential aged care in receipt of Commonwealth funding to make annual public financial transparency reports about their expenditure on areas such as accommodation, staff salaries and wages, operating costs, and payments to related bodies corporate.

Clarification of categories

- 2.4 The committee received evidence about these amendments, largely relating to the scope and definitions of the proposed reporting categories included in Item 1. Witnesses and submitters recommended that the categories be amended, or otherwise clarified, to ensure that the data collected and reported provides the scope of information necessary to achieve the bill's aim.

Information to be reported

- 2.5 Several submitters told the committee that the categories in the proposed list at subsection 9-2A(2) would require further definition to clarify what costs should be included and ensure consistency in reporting. For example, it is unclear what is intended to be captured by 'direct and indirect care' under 9-2A(2)(e) or by 'medical products' at 9-2A(2)(e)(ii), as both are undefined in the bill and Explanatory Memorandum.²

¹ See, for example, Dr Marie dela Rama, *Submission 1*, p. 2; Australian Council of Trade Unions, *Submission 9*, p. 2; Mrs Heather Brown, *Submission 2*, p. 1; Centre for International Corporate Tax Accountability and Research (CICTAR), *Submission 11*, p. 1; Aged Care Crisis Inc, *Submission 14*, pp. 3–4; Ms Marta Hodul Lenton, *Submission 16*, p. 1.

² ACT Government, *Submission 18*, pp. 1–2; Queensland Nurses and Midwives' Union (QNMU), *Submission 7*, p. 5; Health Services Union (HSU), *Submission 10*, [p. 3]; Federation of Ethnic

- 2.6 The Explanatory Memorandum notes that the bill is intended to capture expenditure on medication, although there is no specific category for medication in the list.³ Aged and Community Services Australia told the committee that it was unclear about ‘the value of a provider publicly reporting on the amount spent on medicines’, as prescribing of medicines is a matter between an individual resident and their health practitioner, and the costs of medicines are incurred by the resident and not the aged care facility.⁴
- 2.7 Queensland Health also raised concerns about the definition and scope of the categories listed, submitting that:
- In order to deliver the required information consistently, it is essential that a standard template with detailed instructions and clearly articulated definitions of key terms is supplied to approved providers.⁵
- 2.8 The Department of Health currently publishes such a template for the Aged Care Financial Report (ACFR) that providers are required to make each year, to provide this kind of guidance and consistency.⁶ One submitter, a family member of an aged care recipient, proposed that the ACFR template could be used to assist in developing definitions for the financial transparency report.⁷

Staffing categories

- 2.9 Other submitters raised concerns that the aged care staffing categories at subsection 9-2A(3) of the bill, which are the categories by which staff wage and salary expenditure is to be reported under subsection 9-2A(2)(g), do not capture all of the types of workers who support delivery of aged care in residential settings.⁸
- 2.10 For example, the bill uses the term ‘personal care assistants’ but does not include assistants in nursing or nursing support workers, which are other recognised roles delegated and supervised by a registered nurse to deliver care in certain states and territories.⁹

Communities' Councils of Australia (FECCA), *Submission 17*, p. 1; National Council of Women Australia, *Submission 24*, p. 2.

³ Aged Care Legislation Amendment (Financial Transparency) Bill 2020, Explanatory Memorandum (Explanatory Memorandum), [p. 2].

⁴ Aged and Community Services Australia, *Submission 22*, pp. 2–3.

⁵ Queensland Health, *Submission 19*, p. 2.

⁶ Department of Health, answer to written question on notice IQ 20-000621, 6 November 2020.

⁷ Ms Hariklia Nguyen, *Submission 12.1*, pp. 11–12.

⁸ See, for example, QNMU, *Submission 7*, pp. 5–6; HSU, *Submission 10*, [pp. 3–4]; Australian Association of Social Workers, *Submission 23*, p. 4.

⁹ QNMU, *Submission 7*, pp. 5–6; HSU, *Submission 10*, [pp. 3–4]; Dr dela Rama, *Submission 1*, p. 8.

- 2.11 The Queensland Nurses and Midwives' Union proposed that subsection 9-2A(3)(c) be amended to read 'personal care attendants, or however titled which includes assistants in nursing (AINs)' as a way to encompass all aged care workers who perform that function.¹⁰
- 2.12 The bill notes that the category 'other staff members' at subsection 9-2A(3)(h) should be 'further broken down into appropriate categories', but does not provide any further guidance about this breakdown in the text of the bill or in the Explanatory Memorandum. The Health Services Union recommended that further detail be provided on the kinds of workers intended to be included in this category and whether it covers staff such as food services workers, cleaners, laundry attendants, therapy assistants and lifestyle coordinators.¹¹
- 2.13 Similarly, the Australian Association of Social Workers proposed that the category 'allied health staff' be broken down into specific professions to 'better understand the nature of allied health services being provided to residents of aged care'.¹²

Proposals for additional reporting categories

- 2.14 The committee received evidence that the proposed reporting categories in subsections 9-2A(2) and (3) of the bill do not capture the full scope of information which many submitters and witnesses deemed necessary to achieve transparency about expenditure and the delivery of quality care in aged care facilities.¹³
- 2.15 Several additional categories which could be captured by the proposed financial transparency report were recommended, such as:
- expenditure on medical devices, specialised bedding products and wound care, which may or may not be already captured under 'medical products';¹⁴
 - expenditure on lifestyle, such as social and sport activities and outings, and mental health services;¹⁵
 - additional corporate financial information, such as the amount of tax paid and the amount of any political donations made by a provider;¹⁶ and

¹⁰ QNMU, *Submission 7*, pp. 5–6.

¹¹ HSU, *Submission 10*, [p. 4].

¹² Australian Association of Social Workers, *Submission 23*, p. 4. See also, Ms Annie Butler, Federal Secretary, Australian Nursing and Midwifery Federation (ANMF), *Committee Hansard*, 14 May 2021, p. 11.

¹³ See, for example, Dr dela Rama, *Submission 1*, p. 6; QNMU, *Submission 7*, p. 4; HSU, *Submission 10*, [pp. 4–7]; FECCA, *Submission 17*, p. 1.

¹⁴ QNMU, *Submission 7*, p. 4; Ms Nguyen, *Submission 12.1*, p. 11.

¹⁵ Mr Corey Irlam, Deputy Chief Executive, COTA Australia, *Committee Hansard*, 14 May 2021, p. 1; Mr Craig Gear, Chief Executive Officer, Older Persons Advocacy Network, *Committee Hansard*, 14 May 2021, p. 3; FECCA, *Submission 17*, p. 1.

- various types of non-financial data, such as information about:
 - external consultants and other contracted agencies, including types of consultancies entered into and their relationship with the provider organisation;¹⁷
 - service specialisations, such as culturally and linguistically diverse services or dementia care, and the impact of those specialisations on operational costs and requirements;¹⁸
 - how providers accommodate professional development and training for their staff, and staff member's professional qualifications;¹⁹ and
 - cultural diversity of residents, including language preference and country of birth.²⁰

2.16 The Australian Medical Association also recommended that the financial transparency report could be simplified to an overall breakdown of funding and expenditure on a per-resident basis, as:

A breakdown of funding “per resident”, across a matrix of services would provide a potential consumer with information to compare between providers and make an informed decision before they enter a [residential aged care facility]...²¹

Amendments to the *Corporations Act 2001*

2.17 As outlined in Chapter 1, the bill also amends the *Corporations Act 2001* to require all residential aged care providers in receipt of more than \$10 million in Commonwealth funding to produce annual financial reports which comply with the Tier 1 requirements of the Australian Accounting Standards.

2.18 The Health Services Union noted the importance of such a measure to ‘build a fully transparent picture of expenditure across the sector’ and recommended that it should apply to all aged care providers, regardless of their level of Commonwealth funding, at least in the first year of reporting after commencement of the bill:

... having everyone report at least once would really help to build that picture which we talked about before—to build that data. We will also understand where the wastage is going elsewhere; where things are

¹⁶ Dr dela Rama, *Submission 1*, p. 6.

¹⁷ HSU, *Submission 10*, [pp. 4–5]; Mr John Mullen, *Submission 15*, [p. 4].

¹⁸ FECCA, *Submission 17*, pp. 1–2.

¹⁹ Ms Lauren Palmer, National Research and Policy Officer, HSU, *Committee Hansard*, 14 May 2021, pp. 10–11; Ms Butler, ANMF, *Committee Hansard*, 14 May 2021, p. 11; FECCA, *Submission 17*, p. 1. See also, HSU, *Submission 10*, [p. 5].

²⁰ FECCA, *Submission 17*, p. 1; Dr Romy Listo, Policy and Project Officer, FECCA, *Committee Hansard*, 14 May 2021, p. 17.

²¹ Australian Medical Association, *Submission 4*, p. 2.

slipping through the cracks elsewhere that may need to be diverted to those smaller providers; and, on the flipside, where people are who perhaps have less funding, or fewer resources available in a thin [market], who are able to provide really good care. How are they doing that and how are they allocating those resources effectively?²²

- 2.19 The Queensland Nurses and Midwives' Union likewise recommended that the provisions of the bill be amended by omitting the '\$10 million' threshold, to require all approved aged care providers that receive Commonwealth funding to comply with Tier 1 reporting requirements.²³
- 2.20 The Department of Health told the committee that the Royal Commission into Aged Care Quality and Safety (Royal Commission) did not make any specific recommendations relating to Tier 1 or Tier 2 requirements for aged care providers, but that the proposed changes to financial reporting under the aged care reform plan will include a number of Tier 1 reporting requirements tailored to the aged care sector.²⁴

Financial transparency and quality of care

- 2.21 Some submitters and witnesses questioned whether the financial transparency reports proposed in the bill would provide an appropriate measure of, or support improvements in, the quality of care provided in residential aged care facilities receiving Commonwealth funding.²⁵
- 2.22 Queensland Health submitted that the reporting measures in the bill, while 'useful to promote financial transparency and the discharge of public funds', represented 'input indicators' and that their interest was in the outcomes of the aged care system:

Indicators that measure resident wellbeing and show that people are ageing well are preferable.²⁶

- 2.23 COTA Australia similarly told the committee that 'dollars mean nothing if they don't improve outcomes' and that other measures need to be considered to gain transparency about the quality of care provided:

... things like consumer experience and feedback, quality-of-life measures, quality outcomes and whether or not staff have particular levels of

²² Ms Palmer, HSU, *Committee Hansard*, 14 May 2021, p. 10; HSU, *Submission 10*, [p. 2].

²³ QNMU, *Submission 7*, p. 4. See also, HSU, *Submission 10*, [p. 2]; Ms Nguyen, *Submission 12.1*, p. 12.

²⁴ Ms Jessica Evans, Acting Assistant Secretary, Residential Sector Support Taskforce, Department of Health, *Committee Hansard*, 14 May 2021, p. 27.

²⁵ See, for example, Queensland Health, *Submission 19*, p. 1; Mr Irlam, COTA Australia, *Committee Hansard*, 14 May 2021, p. 2; Mr Gear, Older Persons Advocacy Network, *Committee Hansard*, 14 May 2021, p. 3.

²⁶ Queensland Health, *Submission 19*, p. 1.

qualification. What are the actual metrics, the outcomes, that we're trying to achieve by looking at this financial transparency?²⁷

2.24 The Older Person's Advocacy Network shared this view, explaining:

... high costs of care do not necessarily translate to high-quality outcomes or high levels of resident satisfaction, and we maintain that there needs to be a marrying of financial transparency alongside other information sources, such as quality outcomes and experience reports. Things like the Serious Incident Response Scheme and the incidents reported under there, particularly around sexual assault, need to be incorporated in broader measures around transparency.²⁸

Staff numbers and care minutes reporting

2.25 Under the proposed financial transparency report, residential aged care providers would be required to report on the total cost of staff members' salaries and wages, broken down by staff categories, and their training. Submitters and witnesses expressed support for publishing this information as a measure of care quality, with the Federation of Ethnic Communities' Councils of Australia submitting that:

... financial reports with clear staffing categories [are] an important tool in understanding providers' level of capability to deliver care.²⁹

2.26 However the bill in its current form does not require a provider to directly report on either the number of staff employed by a facility or the hours of care which a resident receives from those staff.

2.27 Submitters noted their support for transparent reporting of staff numbers and total staffing care minutes, stressing the importance of ensuring that there are adequate staff members with the correct skill mix to deliver quality care in residential aged care facilities,³⁰ with some pointing to the recent *Health Transparency Act 2019 (Qld)* as an example of establishing transparency for this kind of information not addressed by the bill.³¹

²⁷ Mr Irlam, COTA Australia, *Committee Hansard*, 14 May 2021, p. 2.

²⁸ Mr Gear, Older Persons Advocacy Network, *Committee Hansard*, 14 May 2021, p. 3.

²⁹ FECCA, *Submission 17*, pp. 2–3.

³⁰ FECCA, *Submission 17*, pp. 3–4; QNMU, *Submission 7*, p. 5; Derryn Hinch's Justice Party, *Submission 5*, pp. 1–2; National Council of Women Australia, *Submission 24*, p. 2.

³¹ The *Health Transparency Act 2019 (Qld)* established a requirement for Queensland Health-operated residential aged care facilities to have a minimum nurse skill mix and provide minimum average hours of care to residents, and that their staffing numbers are published. All other residential aged care providers in Queensland have an option not to publish this same information, but a decision to opt out would also be published. See, Australian Council of Trade Unions, *Submission 9*, p. 1, ANMF, *Submission 13*, pp. 6–7, Queensland Health, *Submission 19*, p. 1.

Introduction of mandatory staffing minutes reporting

- 2.28 At the public hearing, witnesses expressed their support for the recent announcement from the Commonwealth Government that aged care staffing minutes reporting will become a mandatory part of the ACFR from October this year and move to quarterly reporting from July 2022.³²
- 2.29 The Department of Health confirmed that the staffing minutes information in those reports will be broken down by care type – registered nurses, enrolled and licensed nurses, personal care staff, allied health, care management, divisional therapy, lifestyle, recreation and other – not just reported on an aggregate level, and that this information will form part of the star rating system for My Aged Care from the end of 2022.³³

Interaction with new and existing reporting requirements

- 2.30 The aged care reform plan, announced by the Australian Government on 11 May 2021 in response to the Royal Commission's recommendations, will include significant changes to financial and care reporting requirements for residential aged care providers. These new reporting requirements, as well as existing reporting requirements for the annual ACFR, largely overlap with the provisions in the current bill.³⁴
- 2.31 For example, as of the 2020–21 financial year, the ACFR already requires reporting against all categories in the proposed financial transparency report, except for the total number of residents (stored elsewhere by the Department of Health) and certain information about non-operational costs (captured in the report, but across different categories than the bill).³⁵
- 2.32 Additionally, the public reporting of financial and quality of care information will largely be addressed through the new monthly care statement to residents and the new star rating system for better comparison between facilities in 2022, and strengthened governance and reporting requirements for providers with the introduction of a new Aged Care Act in 2023.³⁶
- 2.33 The department further explained that the government has accepted the Royal Commission's recommendation to amend current legislation to allow for the public reporting of the sorts of information included in the ACFR and the

³² Mr Irlam, COTA Australia, *Committee Hansard*, 14 May 2021, p. 1; Ms Butler, ANMF, *Committee Hansard*, 14 May 2021, p. 9; Mr Malcolm Larson, Executive Director, Government and Public Affairs, Aged and Community Services Australia, *Committee Hansard*, 14 May 2021, p. 16.

³³ Ms Eliza Strapp, First Assistant Secretary, Residential and Flexible Aged Care Division, and Ms Evans, Department of Health, *Committee Hansard*, 14 May 2021, pp. 23–24.

³⁴ Department of Health, [A generational plan for aged care](#), 13 May 2021; Ms Evans, Department of Health, *Committee Hansard*, 14 May 2021, p. 27.

³⁵ Ms Evans, Department of Health, *Committee Hansard*, 14 May 2021, p. 27.

³⁶ Ms Strapp, Department of Health, *Committee Hansard*, 14 May 2021, pp. 23–24.

publication of provider's financial statements, although it is not yet confirmed when this will occur in the reform program:

What we now need to do, as part of the legislative reform program, is work out whether it's more effective and efficient to introduce it at the point of the quarterly reporting amendments or integrate it once into the new legislation.³⁷

Risks of duplication

2.34 There were some concerns raised that the bill's provisions risked duplication with both new and existing reporting requirements, and that this could increase the administrative burden for aged care providers.³⁸

2.35 Aged and Community Services Australia cautioned that introducing any new requirements for financial reporting ahead of the Government's response to the Royal Commission would be premature and risked duplication of reporting for providers.³⁹

2.36 COTA Australia likewise noted the importance of avoiding duplication should the current bill be passed ahead of the reform program:

I'd like to see the Senate, in its debate, discuss removing these requirements as other legislation comes on. So, if the bill is introduced by the government to do X, and that's also here, a supplementary amendment should be included to remove it from here, so you start dwindling down this report to the items that are not covered off elsewhere—I think that's an appropriate way forward to ensure that you are not overburdening the sector with double regulation.⁴⁰

2.37 Other submitters expressed a view that the added administrative burden for providers would be limited, given that this data is largely collected for the ACFR and other reports already, and that the resultant financial transparency would be in the public interest.⁴¹

The bill as an interim measure

2.38 Several submissions received at the start of the inquiry described the bill as a significant 'first step' towards improving financial transparency in the sector⁴²

³⁷ Ms Evans, Department of Health, *Committee Hansard*, 14 May 2021, p. 25. See also, Ms Strapp, Department of Health, *Committee Hansard*, 14 May 2021, p. 24.

³⁸ See, for example, Queensland Health, *Submission 19*, p. 1; Aged and Community Services Australia, *Submission 22*, p. 1; Mr Irlam, COTA Australia, *Committee Hansard*, 14 May 2021, p. 3.

³⁹ Aged and Community Services Australia, *Submission 22*, p. 1.

⁴⁰ Mr Irlam, COTA Australia, *Committee Hansard*, 14 May 2021, p. 3.

⁴¹ Aged Rights Advocacy Service (SA) Inc, *Submission 6*, p. 2; Australian Association of Social Workers, *Submission 23*, p. 5; HSU, *Submission 10.1*, p. 3.

⁴² Dr dela Rama, *Submission 1.1*, p. 7; CICTAR, *Submission 11*, p. 2; Ms Nguyen, *Submission 12*, p. 11; Aged Care Crisis, *Submission 14*, p. 3.

and, following the announcement of the aged care reform plan, witnesses proposed that the Senate instead consider the bill as an interim measure until the new financial reporting arrangements are established by the Australian Government over the coming years.⁴³

- 2.39 The Health Services Union and the Australian Nursing and Midwifery Federation both raised concerns that the announced \$10 per resident supplement to the basic daily fee, intended to be used on daily living services such as food and nutrition, appeared as though it would be given to providers with 'no strings attached' and that using the current bill as an interim approach would ensure providers report how this money is spent.⁴⁴
- 2.40 The Department of Health reassured the committee that providers will not be able to receive this supplement without an undertaking to report the adequacy of their daily living services expenditure in their annual ACFR. It also confirmed that providers will be closely monitored to ensure that their supplements are being appropriately spent:

We'll be wanting to understand, and providers to demonstrate, exactly how they've spent that money to provide adequate nutrition and services to residents.⁴⁵

- 2.41 Not all witnesses supported the use of the bill as an interim approach. Aged and Community Services Australia reiterated at the hearing that aged care providers are already required to report on how funds are expended through the ACFR and that financial transparency information could be extracted from that without a requirement for additional and separate reports:

We therefore ask the committee, government and parliament to consider provider reporting requirements in total and establish a singular framework for reporting that is fair and reasonable, is at regular intervals and uses a portal or mechanism that is easy to navigate and requires providers to report information once only so that they can put their efforts and resources where it really counts in providing care to elderly Australians, not filling out multiple forms for bureaucracy.⁴⁶

Committee view

- 2.42 The committee recognises that there is strong support across the community for measures which increase financial transparency in aged care, particularly in the residential aged care sector, to ensure that funding is spent on providing quality care and not diverted for other purposes.

⁴³ Mr Irlam, COTA Australia, *Committee Hansard*, 14 May 2021, p. 2; Ms Palmer, HSU, *Committee Hansard*, 14 May 2021, p. 9; Ms Butler, ANMF, *Committee Hansard*, 14 May 2021, p. 9.

⁴⁴ Ms Palmer, HSU, *Committee Hansard*, 14 May 2021, p. 9; Ms Butler, ANMF, *Committee Hansard*, 14 May 2021, p. 9.

⁴⁵ Ms Strapp, Department of Health, *Committee Hansard*, 14 May 2021, p. 27.

⁴⁶ Mr Larson, Aged and Community Services Australia, *Committee Hansard*, 14 May 2021, p. 16.

- 2.43 However, the committee has concerns that introducing the provisions in this bill, particularly in light of the significant coming reforms to the aged care sector, would result in duplication and create an unnecessary burden on aged care providers who would be required to make these financial reports in addition to their existing reporting obligations.
- 2.44 The committee is satisfied that the changes proposed in the Australian Government's aged care reform plan will provide the transparency and quality of care reporting sought by aged care recipients, their families, advocates and the community more broadly, without requiring the current bill.

Recommendation 1

2.45 The committee recommends that the bill not be passed.

- 2.46 However, the committee recognises that the categories of information captured by the financial transparency reports proposed in this bill, as well as the many further financial and quality reporting measures proposed by submitters, reflect the types of information that people wish to see in public reporting about aged care going forward.
- 2.47 The committee understands that work is currently underway for the new aged care financial reporting arrangements in response to the Royal Commission into Aged Care Quality and Safety and is of the view that this presents an opportunity to ensure that any new reports, such as the quarterly care aged care reports and monthly care statements, are designed to meet the expectations of the Australian community.
- 2.48 The committee therefore sees value in the Department of Health considering the reporting requirements proposed in the current bill and by submitters and witnesses in its designs for the new aged care financial reporting arrangements and any future improvements to the annual Aged Care Financial Report.

Senator Wendy Askew
Chair

Additional Comments by Labor Senators

- 1.1 Labor Senators support the Bill's aim to increase financial transparency and accountability in the aged care sector. They also note that the Royal Commission into Aged Care Quality and Safety (the Royal Commission) found that:

A lack of transparency and accountability is a pervasive feature of the current aged care system. The consequences for the quality and safety of care have been profound. The aged care system needs to be far more open to feedback on its own performance and more accountable to older people receiving care and the community more generally.¹

- 1.2 Labor Senators believe that the Government's response to the Royal Commission falls well short of meeting many of the recommendations the Royal Commission sets out, in its Final Report, regarding transparency and accountability in the aged care sector.
- 1.3 Labor Senators also believe that the Government's entire response to the Royal Commission's Final Report, not just those sections relating to transparency and accountability, falls well short of solving a number of key issues within the aged care sector. They also believe that the Government's response fails to deliver enduring long term improvements and reforms to the sector.
- 1.4 Notably Labor Senators believe that the Government's response to the Royal Commission:
- Fails to deliver meaningful recognition and support for the workforce. It did not contain anything to improve the wages for overstretched, undervalued aged care workers. We know that many of the issues in the aged care sector will not be fixed without reform to the workforce.
 - Fails to clear the Home Care Package waitlist of 100 000. The Government have promised 80 000 packages over the next two years while thousands of older Australians continue to join the waitlist.
 - Ignores the recommendation to require a nurse to be on duty 24 hours a day, 7 days a week, in residential aged care homes. This is a measure core to improving clinical care for frail Australians.
 - Fails to deliver the full recommendation of 215 mandatory care minutes per aged care resident per day.
 - Fails to implement appropriate checks, balances and transparency measures around the use of public funding. This includes ensuring the \$3.2 billion commitment to increasing the Basic Daily Fee actually goes to improving care and nutritional outcomes for aged care residents.

¹ Aged Care Royal Commission, 'Open accountable and honest', *Final Report: Care, Dignity and Respect*, Vol. 1, 2021, p. 52.

- 1.5 Labor Senators note that one of their major concerns with the Government response to the Royal Commission is the number of recommendations which the Government claims to be accepting but doesn't actually intend on fully implementing. This includes Royal Commission recommendations or sections of recommendations that directly relate to transparency and accountability.
- 1.6 For example *Recommendation 112: Immediate changes to the Basic Daily Fee*² of the Aged Care Royal Commission recommended an immediate increase to the Basic Daily Fee of \$10 per resident per day as a Government supplement paid directly to aged care providers. This increase was intended to immediately lift the quality of food and the meeting of basic needs in residential aged care. The Royal Commission found that two thirds of aged care residents are either malnourished or at risk of malnourishment.
- 1.7 The Royal Commission's recommendation included strict accountability measures including public reporting from an aged care provider of the 'adequacy of the goods and services it has provided to meet the basic living needs of residents, and in particular their nutritional requirements'³ that includes:
- i. details of the provider's expenditure to meet the basic needs of residents, especially their nutritional needs, and will include spending on raw food, pre-processed food, bought-in food, kitchen staff (costs and hours), and the average number of residents
 - ii. changes in expenditure compared with the preceding financial year
 - iii. the number of residents who have experienced unplanned weight loss or incidents of dehydration.⁴
- 1.8 The Government has claimed to have accepted this recommendation – at a cost of \$3.2 billion – but rather than include the reporting requirements laid out by the Royal Commission their response simply says:
- ... the supplement will be payable once the residential aged care provider has given an undertaking that they will report to Government on expenditure on food on a quarterly basis.⁵
- 1.9 Labor Senators are concerned that these funds will end up as a gift for providers to be spent on whatever they please because the reporting

² Aged Care Royal Commission, 'Recommendations', *Final Report: Care, Dignity and Respect*, Vol. 1, 2021, p. 286.

³ Aged Care Royal Commission, 'Recommendations', *Final Report: Care, Dignity and Respect*, Vol. 1, 2021, p. 286.

⁴ Aged Care Royal Commission, 'Recommendations', *Final Report: Care, Dignity and Respect*, Vol. 1, 2021, p. 286.

⁵ Department of Health, *Australian Government Response to the Final Report of the Royal Commission into Aged Care Quality and Safety*, 2021, p. 76.

requirements the Government requires are not strong enough to ensure this money is spent on food and meeting the basic needs of residents.

- 1.10 Recommendation 112 is not the only example of a transparency and accountability measure recommended by the Royal Commission not to be included in the Government's response. *Recommendation 136: Tools for enforcing the prudential standards and guidelines and financial reporting obligations of providers*⁶ clearly sets out powers the Prudential Regulator should be provided to deal with aged care providers that do not comply with new prudential standards or financial reporting requirements. While the Government accepts this recommendation it does not commit to providing the Prudential Regulator with these powers, instead stating:

The Government is committed to developing and maintaining a strong, independent Prudential Regulator with sufficient legislative backing, including tools for enforcing standards.⁷

- 1.11 As such, Labor Senators do not agree with paragraph 2.44 of the committee's majority report which states:

The committee is satisfied that the changes proposed in the Australian Government's aged care reform plan will provide the transparency and quality of care reporting sought by aged care recipients, their families, advocates and the community more broadly, without requiring the current bill.⁸

- 1.12 Labor Senators note that the current Morrison Federal Government are the same Government who have overseen the 'lack of transparency and accountability' in the aged care sector of which the 'consequences for the quality and safety of care have been profound'.⁹

Senator Nita Green

Senator Helen Polley

⁶ Aged Care Royal Commission, 'Recommendations', *Final Report: Care, Dignity and Respect*, Vol. 1, 2021, pp. 300–301.

⁷ Department of Health, *Australian Government Response to the Final Report of the Royal Commission into Aged Care Quality and Safety*, 2021, p. 91.

⁸ Senate Community Affairs Legislation Committee, *Aged Care Legislation Amendment (Financial Transparency) Bill 2020*, p. 18.

⁹ Aged Care Royal Commission, 'Open accountable and honest', *Final Report: Care, Dignity and Respect*, Vol. 1, 2021, p. 52.

Dissenting Report from the Australian Greens

- 1.1 The Greens welcome the introduction of the Aged Care Legislation Amendment (Financial Transparency) Bill 2020. This Bill represents an important step towards increased financial transparency and accountability in aged care, by requiring providers to make annual public financial transparency reports about their expenditure on areas such as accommodation, staff salaries and wages, operating costs, and payments to related bodies corporate.
- 1.2 There is widespread support for increased financial transparency from consumer groups, unions and older Australians.
- 1.3 In the past, there have been no requirements for providers to disclose how much money is actually spent on care. Some aged care providers also have opaque corporate structures which make it difficult to link money spent with care provided. This lack of transparency has no doubt allowed providers to get away with providing substandard care.
- 1.4 The Greens acknowledge that the Government has made some commitments to improving financial transparency and accountability. This includes the requirement to disclose how much is being spent on daily living services like food, nutrition, linen and cleaning, in return for the \$10 increase in the daily basic fee. In addition, providers will be required to report financial information on a quarterly basis from July 2022. However, the design and scope of these quarterly reports are still being finalised by the Department of Health.¹
- 1.5 We also recognise that the measures in this Bill may need amending. For example, some submitters noted that the categories of staff wages, lifestyle, and third-party reporting are missing from the current Bill. We understand the Senator Griff is open to amending the Bill to accommodate stakeholder suggestions.
- 1.6 While the measures in this Bill are not perfect, they represent a crucial first step towards increased financial transparency and could act as an interim measure while the Government is working through implementing its reform agenda. This Bill would provide us with a better understanding of any possible gaps in care, quality and safety for the time being.
- 1.7 As noted by the Australian Nursing & Midwifery Federation:
... the ANMF considers that this legislation should serve as a mechanism to hold aged-care providers receiving government funding to account for the acquittal of those funds and subsequently the quality of care provided.²

¹ Ms Evans, Department of Health, *Committee Hansard*, 14 May 2021, p. 24.

² Ms Butler, Department of Health, *Committee Hansard*, 14 May 2021, p. 8.

- 1.8 The Greens urge the Government to consider this Bill as an interim measure to increase financial transparency and accountability while they implement widespread reforms.
- 1.9 Measures to improve financial transparency in aged care will fall short unless the Government acts to clarify that information about aged care services under Section 86-9 of the Aged Care Act is not considered to be 'protected information'. Key information about an aged care facility, such as fees, staffing levels, and services, should be made publicly available. The Greens, alongside COTA Australia, continue to call for reforms to these provisions which stop older Australians and their loved ones from gaining information about aged care facilities.
- 1.10 At the public hearing, the Department of Health noted that:
- ... the government has accepted the royal commission's recommendation to amend the legislation which currently precludes the release of information on the grounds that it relates to the affairs of an approved provider.³
- 1.11 The Greens will be watching these developments closely and push for information about aged care facilities to be made publicly available.
- 1.12 The Greens are concerned with the committee view expressed in the majority report that:
- The committee is satisfied that the changes proposed in the Australian Government's aged care reform plan will provide the transparency and quality of care reporting sought by aged care recipients, their families, advocates and the community more broadly, without requiring the current bill.⁴
- 1.13 It is clear that more needs to be done urgently to support transparency and accountability across the entire aged care sector now.
- 1.14 We call on the Government to consider this Bill and work with the Department and stakeholders to ensure transparency and accountability now.

Senator Rachel Siewert

³ Ms Strapp, Department of Health, *Committee Hansard*, 14 May 2021, p. 24.

⁴ Senate Community Affairs Legislation Committee, *Aged Care Legislation Amendment (Financial Transparency) Bill 2020*, p. 18.

Dissenting Report from Centre Alliance Senator Stirling Griff

- 1.1 The proposition embodied by this bill – that we should require transparency on how providers spend their public funding, and they should disclose what proportion of their funding is spent on care and what proportion is retained as profits, administrative and other non-care costs – was overwhelmingly supported by the majority of submitters to the inquiry.
- 1.2 A number of submitters called for the Aged Care Legislation Amendment (Financial Transparency) Bill 2020 to be introduced as a matter of urgency, as an important ‘first step’ towards improving financial transparency in the residential aged care sector¹ – a step which can occur independently of the broader, longer-term reform plans of the Federal government.
- 1.3 Aged Care Crisis told the committee:
- We think it is important to bring this in because a large amount of funding has been allocated now. In the past, when the industry got a large amount of funding, it didn't go where it was intended to go, particularly in 2014 and 2015. I think it is really essential that we monitor what happens very closely. So, we certainly support the legislation being brought in as soon as possible.²
- 1.4 The Health Services Union (HSU) said:
- Improving financial transparency is a necessary reform that can be achieved swiftly through adoption of this bill. The significant reform agenda for aged care set out in the Budget [in May] noting within that that the government has a particular focus on governance, first requires us to understand at a deeper level how providers operate and what resources are going to their care. This type of data can and should underpin the future of change in aged care, from effective regulation to high-quality care delivery, sustainable funding, and accountability from the industry and government to older Australians, their loved ones, the workforce and the taxpayer, who is funding the system. Taxpayer expenditure should be greater cause for curiosity from the government, the regulator, the Department of Health and other sector stakeholders. In fact, the royal commission found the regulator, the department and the government lacked this critical curiosity. There is no more time to delay, and we support the adoption of this bill.³
- 1.5 The Older Persons' Advocacy Network reported that:

¹ Dr dela Rama, *Submission 1*, p. 7; CICTAR, *Submission 11*, p. 2; Ms Nguyen, *Submission 12*, p. 11; Aged Care Crisis, *Submission 14*, p. 3.

² Dr Wynne, Aged Care Crisis, *Committee Hansard*, 14 May 2021, p. 3

³ Ms Palmer, HSU, *Committee Hansard*, 14 May 2021, p. 8

Older people have been telling us that they would like to see an increase in transparency now and for broader measures that align with quality indicators and other outcomes. The interim measure of reporting the hours by category of staff and the amount of spend by category of staff are both additions strongly supported by old people who are speaking to us at this stage.⁴

- 1.6 Transparency must be at the heart of any reform of the aged care system. This is a system that desperately needs a light shone in the darkest corners. Financial disclosure will help us move beyond blind assurances and a reactive system to one that demands proper public accountability from providers. It will also help policymakers and researchers understand the pinch points in delivering quality care, and flag potential issues before they manifest in adverse care.
- 1.7 This inquiry is not the first to acknowledge the pervasive lack of transparency in the aged care system. This is a problem which not only saps confidence in the system - it also leads to sometimes catastrophic outcomes for residents.
- 1.8 The final report of the Royal Commission into Aged Care Quality and Safety (Royal Commission), which was handed down in February 2021, revealed that virtually no aspect of the aged care system is accessible, transparent, affordable, adequately funded or adequately staffed. The Royal Commission estimated one-in-three people living in aged care in Australia experience neglect, physical or emotional abuse. The system we entrust to care for our senior Australians is broken and it is not fit for purpose. As Commissioner Briggs observed:

A lack of transparency is a pervasive feature of the current aged care system. The consequences for the quality and safety of care have been profound.⁵
- 1.9 The aged care system is poised for much-needed system reform as a result of the Royal Commission's report. I consider that requiring financial transparency from providers must be a key part of that and, further, that this is something that should occur as a matter of urgency.
- 1.10 The HSU whose members are front and centre of care delivery in aged care, told the hearing into the bill:

Our members tell us about the heartbreak and grief of not being able to provide time to care, to provide nutritious meals, or to access essential training to develop their skills. They have watched the rise of contract and outsourced jobs and the diversion of money and oversight that comes with this. They hear concerns about where the money is going directly from

⁴ Mr Gear, OPAN, *Committee Hansard*, 14 May 2021, p. 3

⁵ Commissioner Briggs, Royal Commission into Aged Care Quality and Safety, [*Final Report: Care Dignity and Respect*](#), Vol. 1, p. 76.

residents and their families, and it is frustrating and it is heartbreaking for everyone.⁶

- 1.11 Other submitters also demanded accountability to the public and transparent information on how taxpayer funds to the aged care sector are actually spent:

Enough is enough. Let the shine light [sic] on the sector and bring about accountability to the sector. It's time to publicly open the books on every aged care provider in receipt of public funds. As long as public monies are received by providers, public accountability on the expenditure of these public funds is fundamental for the community to ever have the confidence that taxpayer money is going to where it is intended. This is the integral string attached to public money: public accountability for private expenditure.⁷

- 1.12 There is too much secrecy of information regarding publicly funded providers caring for the most vulnerable members of our community. Our senior Australians deserve the best level of care.
- 1.13 I have regularly spoken out about the lack of available information on the quality and safety of services and questioned the lack of financial transparency by aged care providers over the significant public funds paid to them to provide care.
- 1.14 The Aged Care Legislation Amendment (Financial Transparency) Bill 2020, introduced on 12 June 2020 follows an earlier attempt, on 5 December 2019, to bring similar provisions through amendment to the Aged Care Legislation Amendment (New Commissioner Functions) Bill 2019. Regrettably, that amendment failed to pass the Senate by just one vote when Pauline Hanson's One Nation voted with the Government to oppose greater financial transparency of aged care providers.⁸
- 1.15 However, the pressure has been building for the Government to make significant changes regarding transparency. The Government says it is committed to fixing the broken aged care system, announcing \$17.7 billion of extra funding over five years to the aged care sector as part of its response to the Royal Commission. Whilst those figures sound impressive, it is not nearly enough to adequately fund aged care into the future. The Royal Commission recommended an injection of \$10 billion a year and the forecast budget falls well short of that. In fact, the Government's response falls well short in many areas.

⁶ Ms Palmer, HSU, *Committee Hansard*, 14 May 2021, p. 8

⁷ Dr dela Rama, *Submission 1*, p. 2

⁸ See Parliament of Australia, [Aged Care Legislation Amendment \(New Commissioner Functions\) Bill 2019](#).

- 1.16 The Government has rejected a Royal Commission recommendation for a nurse to be on-site for 24 hours and delayed the start date for introducing mandatory reporting of care minutes per resident until October 2023.
- 1.17 Further, the Government's timetable in relation to a number of transparency measures is too slow and opaque and only serves to affect the quality of care provided to senior Australians in care. For instance, the current Aged Care Act prohibits publication of the Aged Care Financial Reports (ACFR) submitted annually by providers. While the Government has accepted the Royal Commission's recommendation to require publication of a governance report containing financial information, this will only occur once the new act is legislated, years from now.
- 1.18 It is also important to note that the ACFR does not contain the type and level of information this bill requires from providers. The Government has belatedly made changes to the ACFR which, like this bill does, includes a requirement that information is provided at the facility level instead of as aggregated data, but this is only a small step in the right direction. The ACFR does not provide a true and detailed spotlight on the funds spent on direct care, what money is spent on staff wages, what is pocketed as profits, and what is paid to related entities – as this bill requires - and it baffles me that, having introduced additional reporting requirements for the ACFR in 2020-21, the Government has missed the opportunity to do more.
- 1.19 The Department has indicated that the Government response to the Royal Commission's recommendations around transparency and reporting will be implemented over the next three years, which is too long for Australian families to wait for vital information to assist them in making an informed decision about residential care facilities.

Proposed amendments

- 1.20 A number of submitters have sought clarification of certain terms at 9-2A(2) such as 'direct' and 'indirect care'. While some of these categories have been developed in consultation with stakeholders, it is important that there be no ambiguity in the definitions of the categories the bill proposes to measure, if these categories are to be understood, applied and reported consistently by all providers. Some submitters also proposed broadening staffing categories at 9-2A(3) to capture worker categories across all jurisdictions and residential aged care settings. To that end, I would support such amendments and would propose to amend the bill to provide that clarity.
- 1.21 Some submitters wanted the transparency measures in the bill to go even further and sought various types of non-financial data including information about:
- the use of external consultants and contracted agencies;
 - service specialisations;

- staff members' professional qualifications; and
- cultural diversity of residents, including their language preference and country of birth.

1.22 Such information has evident value and is also worth considering for inclusion in the bill.

Conclusion

1.23 This bill stands on its own merits and will have immediate benefits that are not reliant on the federal Government to enact future reforms.

1.24 Australians currently in residential aged care and those who will enter the system in the next few years deserve better. They and their families deserve better accountability and public transparency; they deserve to feel confident that their provider is investing in the true costs of care and that residents will be safe, well-nourished and have access to in-house professional help as needed, day or night. They should be assured dignity and respectful treatment in their final years.

1.25 There are excellent providers around the country. But there have been too many stories of residents abused and neglected, of providers making exceptionally high profits, of inedible and unappetising meals bereft of fresh ingredients, and care delivered by inappropriately qualified and over-worked staff. This bill is aimed at the providers who preside over these travesties. Greater financial transparency leaves poor performers with fewer places to hide.

1.26 The Government's aged care reform plan will be slow and, with respect to transparent financial information, is not responsive or detailed enough to meet the needs of residents and their families and does not meet community expectation. We have an opportunity now – a rare, once-in-a-generation opportunity – to introduce meaningful reform that creates an aged care system we can be proud of. A system many of us may one day need to rely on. Financial transparency is at the core of this, as it exposes the funding underpinning decisions that result in good or poor care.

1.27 I urge Senators to support this bill.

Recommendation 1

1.28 That the bill be amended to provide further clarity to definitions at proposed subsections 9-2A(2) and (3).

Recommendation 2

1.29 That the amended bill be passed as a matter of urgency.

Senator Stirling Griff

Appendix 1

Submissions and additional information

Submissions

- 1 Dr Marie dela Rama
 - Supplementary submission
- 2 Mrs Heather Brown
- 3 Law Institute of Victoria
- 4 Australian Medical Association
- 5 Derryn Hinch's Justice Party
- 6 Aged Rights Advocacy Service (SA) Inc
- 7 Queensland Nurses and Midwives' Union
 - Supplementary submission
- 8 Mrs Margaret Airoidi
- 9 Australian Council of Trade Unions
- 10 Health Services Union
 - Supplementary submission
- 11 Centre for International Corporate Tax Accountability and Research
 - Attachment
- 12 Mrs Hariklia Nguyen
 - Supplementary submission
- 13 Australian Nursing and Midwifery Federation
- 14 Aged Care Crisis Inc
 - Supplementary submission
 - Attachment
- 15 Mr John Mullen
 - Supplementary submission
- 16 Ms Marta Hodul Lenton
- 17 Federation of Ethnic Communities' Councils of Australia
- 18 ACT Government
- 19 Queensland Health
- 20 *Name Withheld*
- 21 Aged Care Guild
- 22 Aged and Community Services Australia
- 23 Australian Association of Social Workers
- 24 National Council of Women Australia

Additional Information

- 1 Statement, from Leading Age Services Australia, received 13 May 2021

Answers to Questions on Notice

- 1 Answers to written Questions taken on Notice, received from Department of Health, 16 October 2020
- 2 Answers to written Questions taken on Notice, received from Department of Health, 20 October 2020
- 3 Answers to written Questions taken on Notice, received from Department of Health, 6 November 2020
- 4 Answers to written Questions taken on Notice, received from Department of Health, 14 December 2020
- 5 Answers to Questions taken on Notice during 14 May public hearing, received from Aged Care Crisis, 24 May 2021
- 6 Answers to Questions taken on Notice during 14 May public hearing, received from Aged and Community Services Australia, 31 May 2021
- 7 Answers to Questions taken on Notice during 14 May public hearing, received from Department of Health, 23 June 2021
- 8 Answers to written Questions taken on Notice, received from Department of Health, 23 June 2021

Appendix 2

Public hearings

Friday, 14 May 2021
Committee Room 2S1
Parliament House
Canberra

Aged Care Crisis

- Ms Lynda Saltarelli, Research and Analysis
- Dr Michael Wynne, Policy and Research

COTA Australia

- Mr Corey Irlam, Deputy Chief Executive

Older Persons Advocacy Network

- Mr Craig Gear, Chief Executive Officer

Health Services Union

- Ms Lauren Palmer, National Research and Policy Officer

Australian Nursing and Midwifery Federation

- Ms Annie Butler, Federal Secretary

Federation of Ethnic Communities' Councils of Australia

- Ms Mary Ann Geronimo, Director of Policy - Health and Ageing
- Dr Romy Listo, Policy and Project Officer

Aged and Community Services Australia

- Mr Malcolm Larsen, Executive Director, Government and Public Affairs
- Mr Derek Dittrich, Senior Manager, Strategic Policy

Department of Health

- Ms Eliza Strapp, First Assistant Secretary, Residential and Flexible Aged Care Division
- Ms Jessica Evans, A/g Assistant Secretary, Residential Sector Support Taskforce