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### **Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill 2021**

Carers NSW welcomes the opportunity to provide a submission to the Senate Standing Committees on Community Affairs (the Committees) in response to the *Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill 2021* (the Bill). Carers NSW supports a number of proposed reforms that will be enacted through the Bill, however has concerns that proposed changes may further financially disincentivise the provision of residential respite and that proposed amendments may not extend far enough to enable significant improvement of aged care quality and safety.

Carers NSW is the peak non-government organisation for carers in NSW. A carer is any individual who provides care and support to a family member or friend who has a disability, mental illness, drug and/or alcohol dependency, chronic condition, terminal illness or who is frail. Carers NSW is part of the National Carer Network and a member of Carers Australia. Our vision is an Australia that values and supports all carers, and our goals are to:

- Be a leading carer organisation in which carers have confidence
- Actively promote carer recognition and support
- Actively support carers to navigate a changing service landscape that will be characterised by ongoing policy reform
- Promote connected community experiences and opportunities for carers that are inclusive of diverse carer groups
- Lead and advocate for carer-specific and carer-inclusive policy making, research and service delivery
- Continue to be a quality-driven, responsive and carer-focused organisation.

For further information, please contact Melissa Docker, Policy and Development Officer, on  
or

Yours sincerely,

Elena Katrakis  
CEO  
Carers NSW

## Introduction

Carers NSW thanks the Committees for the opportunity to provide feedback on the *Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill 2021* (the Bill). Carers NSW commends the Australian Government on the development of the Bill as a number of proposed amendments will likely have a positive effect on the quality and safety of paid care and other services received in residential and community settings, in turn reducing the strain on family and friend carers to provide this support themselves.

The 2018 Survey of Disability, Ageing and Carers (SDAC) found that approximately 1.7 million people who are ageing or frail require assistance with at least one everyday activity, with 70% (approximately 1.2 million) receiving some assistance with everyday activities from informal supports, most commonly their spouse who is often ageing themselves.<sup>1</sup> The SDAC found that of primary carers caring for someone over the age of 65, 43.4% reported that one of the main reasons for taking on their caring role was that they felt that they could provide better care than alternative care options.<sup>2</sup>

Carers NSW has previously advocated for a number of reforms that will be implemented through the this Bill, including improvements in residential aged care funding models, the introduction of a worker screening scheme, improvements in serious incident reporting and response, increased governance and transparency of aged care providers, greater information sharing between care service systems and regulatory bodies, and greater regulation and oversight of residential aged care accommodation fees and payments. While Carers NSW supports a number of proposed amendments, we have ongoing concerns about the impact of funding model reforms on access to residential respite, which is already difficult for many carers to access, and believe that a number of proposed amendments could be further extended to further improve the quality and safety of care.

## Schedule 1 – Residential aged care funding

Carers NSW supports the shift away from the Aged Care Funding Instrument (ACFI) and the associated residential care funding model, enabled through the proposed amendments within the Bill. Carers NSW has previously raised concerns throughout the Royal Commission into Aged Care Quality and Safety (the Royal Commission) about the ACFI model, highlighting the financial disincentives created through the tool and associated funding model in regards to the provision of residential respite, and taking a strengths-based or reablement approach to providing care. However, Carers NSW has significant concerns that changes to residential aged care funding assessments and models, such as the removal of the *respite supplement* and removal of minimal requirements or incentives for the provision of respite, may further limit access to residential respite for carers and the people that they care for.

*“The one time we did use respite (local aged care facility) it felt like the facility had to move heaven and earth to enable Mum to stay. And then she had to stay for two weeks when she only wanted one week.”*

- Carers NSW 2018 Carer Survey respondent

Residential respite is a key component of the aged care system, providing carers with an opportunity to take breaks from the caring role to focus on their own health and wellbeing, and ultimately continue providing informal care. In the 2019-2020 period, there were 82,685 admissions to residential respite care, greater than half of the admissions to residential aged care for the entire period.<sup>3</sup> However, despite

<sup>1</sup> Australian Bureau of Statistics (ABS) (2019), *Disability, Ageing and Carers, Australia: Summary of findings, 2018*, New South Wales Tables, Canberra.

<sup>2</sup> Ibid.

<sup>3</sup> Australian Institute of Health and Welfare (AIHW). (2021). “Admissions into aged care”, *GEN: Aged Care Data*. Available online at: <https://www.gen-agedcaredata.gov.au/Topics/Admissions-into-aged-care>, last updated: 09 August 2019.

this, it has been reported that it is increasingly difficult for carers to access residential respite when needed.<sup>4</sup> A survey conducted in 2017 by Carers Australia of respite brokerage services reported that 80% of respondents agreed low availability made it difficult to access residential respite.<sup>5</sup>

The Royal Commission, most notably the Mildura Hearing focusing on carers, highlighted that barriers to accessing emergency or planned residential respite remain ongoing, with significant impacts on carer health, wellbeing and employment. Carers NSW has continued to advocate for improved financial incentives and minimal requirements for residential aged care facilities to offer residential respite that is appropriate, can be organised in advanced, and meets the needs and expectations of carers and the people they care for.<sup>6</sup>

*“Hurt my shoulder... moving my husband in lifter. To have an operation done. I found it hard to get respite. I found respite 25th of June to 2nd July now I need to find a doctor who will operate with this date - still trying.”*

- Carers NSW 2018 Carer Survey respondent

In the present aged care system, residential respite tends only to be available when a facility has an unoccupied bed that has not yet been filled by a permanent resident. These vacancies are unpredictable, as they often become available only as the result of the death of an existing resident. Additionally, service providers are often unwilling to provide residential respite for less than two weeks due to the administrative costs associated with short-term respite placements.<sup>7</sup> During COVID-19, respite placements have become even more challenging, especially where facilities have been particularly concerned about admitting short term residents due to transmission risks and already stretched resources.

Carers NSW acknowledges that the proposed AN-ACC model aims to address any disparities in care subsidies between permanent and respite residents. However, Carers NSW has concerns that given the impermanence of respite funding, especially within a market-based system, providers may still be financially disincentivised to maintain or increase their respite offerings, when securing ongoing funding from permanent residents will remain more financially attractive and secure.

Additionally, Carers NSW believes that there must be minimum requirements for aged care providers in relation to the provision of residential respite to ensure that this remains available, as previous funding models have illustrated that financial incentives alone are not sufficient for ensuring ongoing access to residential respite for carers. However, given that the current aged care system continues to have difficulties meeting residential respite needs of carers, Carers NSW supports the removal of any provisions that may create a limit or ‘maximum’ for the amount of residential respite that providers may be able to offer or claim.

Furthermore, Carers NSW on behalf of the Carer Respite Alliance, a working group consisting of peak bodies, researchers, service providers and carers, has recently published a policy paper on respite,

<sup>4</sup> Carers Australia (2018), *Improving access to aged residential respite care*. Available online at: <http://www.carersaustralia.com.au/storage/residential-respite-care-report.pdf>, last accessed 10 September 2019.

<sup>5</sup> Carers Australia (2017), *Improving access to aged residential respite care*, available online at: <http://www.carersaustralia.com.au/storage/residential-respite-care-report.pdf>, viewed 10 September 2019; Carers Australia (2020), *Submission to the Royal Commission into Aged Care Quality and Safety: Carers need a place to call home within aged care*, available online at: <https://www.carersaustralia.com.au/wp-content/uploads/2020/08/2020-21Carers-Australia-Pre-budget-submission.pdf>, viewed 03 March 2021.

<sup>6</sup> Carers NSW (2019), Carers NSW submission to the Department of Health in response to the ACAR Impact Analysis

<sup>7</sup> Carers Australia (2017); Department of Health (DoH) (2017), *Legislated Review of Aged Care 2017*, available online at: [https://agedcare.health.gov.au/sites/default/files/documents/08\\_2017/legislated\\_review\\_of\\_aged\\_care\\_2017.pdf](https://agedcare.health.gov.au/sites/default/files/documents/08_2017/legislated_review_of_aged_care_2017.pdf), viewed 12 September 2019.

*Repositioning respite within consumer directed service systems.*<sup>8</sup> The paper provides a comprehensive analysis of the impacts of aged care reform on access to respite, including ongoing and emerging barriers and opportunities to improve access to residential respite. The paper also provides a number of tangible recommendations for the Australian Government in order to improve access to respite for carers within the aged care system which Carers NSW believes that the Committees should consider in relation to proposed amendments within the Bill:

- Review the aged care legislation as recommended by the Royal Commission into Aged Care Quality and Safety, reframing the entitlement to access respite services as a carer right rather than only as a funding limit for service providers.
- Implement the Royal Commission's recommendations regarding identification and inclusion of carers at all stages of assessment, referral and support delivery.
- As recommended by the Royal Commission, explore additional block funded respite options alongside the CHSP and Home Care Packages to prevent discontinuity and inequity in moving between the two programs.
- Build greater incentives into the funding models for residential aged care facilities to maintain respite beds.

## **Schedule 2 – Screening of aged care workers, and governing persons, of approved providers**

Carers NSW supports the introduction of aged care worker screening, as previously advocated for in our submissions to the Royal Commission.<sup>9</sup> Additionally, Carers NSW also highlighted to the Royal Commission that ongoing changes to the workforce, including an increase in multi-purpose services and increased casualisation have resulted in a growing number of paid care workers finding employment across multiple care sectors (i.e. aged care, disability and health). Carers NSW recommends that any legislative amendments in regards to the introduction of a worker screening database enable for the eventual merging of the aged care and disability worker databases, developing one national body overseeing all care industry workers not covered under pre-existing regulation to maximise the safety of care recipients and their carers.

## **Schedule 3 – Code of conduct and banning orders**

Carers NSW supports the introduction of a code of conduct and banning orders within the aged care system as this is likely to improve the quality and safety of care. However, Carers NSW believes that this must be able to be integrated with the National Disability Insurance Scheme (NDIS), with banning orders issued under the NDIS implemented within the aged care sector as well. Ensuring that providers that are found to have breached the NDIS code of conduct are restricted from also providing aged care services or supports is pivotal as these providers pose a significant risk to the health and safety of people who are ageing and their carers.

## **Schedule 4 – Extension of incident management and reporting**

Carers NSW supports the introduction of Serious Incident Reporting Schemes (SIRS) in residential and community-based aged care. Carers NSW has previously highlighted the importance of mandatory

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<sup>8</sup> Carers NSW (2021), *Repositioning respite in consumer directed service systems*, available online at: <https://www.carersnsw.org.au/news/carer-respite-alliance-policy-paper-launched>.

<sup>9</sup> Carers NSW (2020), *Carers NSW submission to the Royal Commission into Aged Care Quality and Safety on the Workforce*.

reporting of serious incidents and clear investigation and redress pathways where serious incidents occur in recent consultations.<sup>10</sup>

Carers NSW believes that where an incident occurs in the provision of in-home or community care or services, it should also be mandatory for providers to identify and notify an older person's carer as soon as reasonably practicable. The Statement for Australia's Carers<sup>11</sup> states that carers should be considered partners in care. As partners in care, carers require vital information regarding incidents or near-misses to ensure that they are aware of any potential impacts of these incidents on the health, wellbeing and care needs of the person that they care for.

Additionally, Carers NSW believes that carers should be notified of serious incidents as soon as possible to ensure that they have the opportunity to follow up investigations and outcomes of these incidents. This will ensure that carers have confidence that where incidents have occurred or potential risks have arisen, these are appropriately addressed and the potential for future incidents has been reduced. It will also better enable carers to pursue further actions where they feel that an incident has not been managed or addressed appropriately or within the prescribed time frame.

Furthermore, Carers NSW previously raised concerns during the consultation with KPMG on the SIRS for in-home aged care about the need for consistency in reporting requirements between formal care service systems, such as My Aged Care and the NDIS. With current workforce shortages and thin markets in the aged care and disability sectors, especially in regional and remote areas, there is a need for consistency in quality and safety measures to ensure that providers and paid care workers working across multiple sectors do not have a range of different reporting requirements for serious incidents. Inconsistencies in reporting requirements are likely to lead to confusion, increased administrative work and subsequently, poor compliance with quality and safety measures.

## **Schedule 5 – Governance of approved providers**

Carers NSW supports the improved governance of approved providers as this is likely to improve the quality and safety of care through transparency, accountability and the minimisation of risk. Additionally, Carers NSW has also previously advocated for greater transparency of aged care operations by aged care providers to ensure that funding received by aged care services is used as intended and is reflected in the care received by people who are ageing and their carers.

## **Schedule 6 – Information sharing**

Carers NSW supports increased information sharing between Commonwealth care systems, as well as quality and safety agencies. While Carers NSW acknowledges the importance of privacy and confidentiality, improved information sharing, where consent to share information between departments or agencies is provided, will enable easier navigation of services by carers who often navigate the aged care and surrounding systems with or on behalf of the person that they care for. Improved information sharing is likely to improve and streamline referrals between service systems and reduce the need for carers to tell their story multiple times.

Additionally, information sharing between quality and safety agencies is also likely to reduce risks to people who are ageing and their carers, with workers or providers unable to move easily between schemes where they may have breached quality and safety regulations within one care service system.

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<sup>10</sup> Carers NSW (2021), *Carers NSW submission to Department of Health on a Serious Incident Response Scheme for in-home care*.

<sup>11</sup> *Carer Recognition Act 2010* (Cth).

## **Schedule 7 – Use of refundable deposits and accommodation bonds**

Despite often facing financial hardship themselves, many carers provide financial support to the person that they care for. This financial support can sometimes come in the form of assistance with refundable deposits or bonds, or financial support where the financial security of the person they care for is jeopardised by unconscionable, deceptive or exploitative practices. Carers NSW supports the improved oversight and regulation of refundable deposits and accommodation bonds, as unconscionable practices by residential aged care providers can significantly impact on the financial wellbeing or long-term financial security of carers or the people that they care for.

## **Conclusion**

Carers NSW again thanks the Committees for the opportunity to respond on this matter and commends the Australian Government on a number of their proposed amendments which seek to implement recommendations stemming from the Royal Commission. Carers NSW believes that improvements to the proposed amendments will likely provide greater protection for consumers and carers, ensuring clarity, confidence in and compliance within the aged care system, as well as ensuring the ongoing availability of residential respite, an integral service for the sustainability of informal care arrangements and the health and wellbeing of carers.