

Chapter 7

Workforce supplement

Introduction

Workforce issues in aged care

7.1 The aged care workforce currently accounts for 2.7% of all employees in Australia.¹ As the number of Australians aged 70 years and older continues to rise, there is a corresponding need for growth in the aged care workforce. The Department of Health and Ageing (the department) noted in 2012 that:

Based on estimated demand projections and assuming models of care are maintained, there will need to be approximately 827,100 aged care workers by 2050 (up from 304,000 in 2010).²

7.2 The need for increased support to boost the capacity of the aged care workforce is recognised across the sector. Aged care workers are traditionally low paid, despite increasing recognition that the work is labour intensive and that a well-qualified workforce is imperative to the delivery of quality aged care. As United Voice noted:

The effect of low pay in the aged care sector is well-documented in our work. The two key issues of low pay are high staff turn-over, and the difficulties that providers experience in recruiting and retaining staff. ...

United Voice members in aged care live the experience of poor pay and conditions every day. The labour market disadvantage they suffer has been well-documented. In addition, the reform process has consistently outlined the challenges the sector faces in attracting and retaining staff as the aged care sector rapidly expands.³

Providers also raised the issue of low wages in the sector. UnitingCare Australia noted that:

UnitingCare Australia has always argued for a better deal for aged care staff who are crucial to quality care and currently poorly paid but committed to caring for older people.⁴

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- 1 DoHA, *Living Longer. Living Better – Aged Care Reform Package*, April 2012, p. 17 of 44, <http://www.health.gov.au/internet/publications/publishing.nsf/Content/ageing-aged-care-reform-measures-toc> (accessed 13 May 2013).
 - 2 DoHA, *Living Longer. Living Better – Aged Care Reform Package*, April 2012, p. 15 of 44, <http://www.health.gov.au/internet/publications/publishing.nsf/Content/ageing-aged-care-reform-measures-toc> (accessed 13 May 2013).
 - 3 United Voice, *Submission 84*, p. 2.
 - 4 UnitingCare Australia, *Submission 59*, p. 13.

Workforce supplement

7.3 As part of the *Living Longer Living Better* reform package, Government has announced its intention to introduce a workforce supplement to address critical shortages in aged care workforce. The supplement would be used to increase wages of employees in aged care. The aim of the Aged Care Workforce Supplement is to:

improve the aged care sector's capacity to attract and retain a skilled and productive workforce; and

provide Australian Government funding to assist the sector in delivering fair and competitive wages in the short-term, while longer term options for meeting the challenges of the sector are considered by the Aged Care Financing Authority.⁵

7.4 The workforce supplement will be available to both residential and home based aged care providers who meet eligibility requirements. While providers are free to choose whether or not to apply for the additional funding, those wishing to access the supplement are required to meet a number of conditions to be considered eligible for the funding. In particular, supplement monies are required to be passed on in full to aged care workers in the form of higher wages. To ensure that all supplement monies are passed onto workers, providers are required either to have an enterprise agreement in place that meets the eligibility criteria, or, if the provider is a home care provider, a residential care provider with fewer than 50 operational places, or a provider of a specified program, they will need to certify that their working arrangements meet the eligibility criteria. These include:

- Writing to employees to signal the intention to apply for the supplement
- Taking part in the Aged Care Workforce Census and Survey
- Minimum wage requirements⁶
- Enhanced Training and education opportunities
- Improved career structures, and
- Improved career development and workforce planning.

5 DoHA, *Submission 92*, p. 18.

6 DoHA, *Aged Care Workforce Supplement Guidelines – Consultation Draft*, 9 May 2013, p. 6. Minimum requirement for wage increases:

(a) annual increases in wages (excluding the margin and the Workforce Supplement referred to in paragraphs (b) and (c) below) will be a minimum of 2.75 per cent per annum, or the Fair Work Commission annual minimum wage increase, whichever is higher;

(b) wages will exceed the relevant Award rates for all staff by at least the percentage margin shown in Table 1 below;

(c) subject to the Department's determination that the Aged Care Workforce Supplement is payable, the approved provider will further increase wages above the margin in paragraph (b) above by a minimum of 1 per cent each financial year that the supplement is payable to 2015-16 and by 0.5 per cent increase in 2016-17.

On-costs associated with implementing the supplement are to be borne by individual providers.⁷

7.5 Payments from the workforce supplement will be available to providers from 1 July 2013. The supplement would be paid through the Conditional Adjustment Payment mechanism or amendments to funding agreements, depending upon the type of provider accessing the supplement. The supplement will not be calculated as a proportion of a provider's wages bill, though it is to be used for the purpose of wage increases. According to the Aged Care Workforce Supplement Guidelines Consultation Draft version 2, released on 9 May 2013, the supplement will be calculated as a percentage of either the daily Aged Care Funding Instrument (ACFI) subsidy rate, the daily Resident Classification Scale (RCS) saved rate, the daily residential respite care rate or a default rate for new residents, depending on which applies to the provider. The rate does not include any supplements.⁸ The draft eligibility criteria require that a provider must undertake to, if they received the supplement, deliver wage increases above those in their certified agreement (or equivalent) by a minimum of 1 per cent each year to 2015–16 and 0.5 per cent in 2016–17. The supplement must only be used for the purposes of wage increases.⁹ The draft guidelines also state that:

On-costs are to be borne by providers or organisations, and cannot be offset against wage increases made using Aged Care Workforce Supplement funding. On-costs include superannuation...and provision for leave.¹⁰

7.6 The workforce supplement lies largely outside the scope of the bills, apart from one matter that is addressed later in this chapter. However, its regular discussion during the inquiry warranted some consideration by the committee.

Funding the workforce supplement

7.7 The government has announced its intention to provide up to \$1.2 billion over five years to better support the people who work in aged care. This funding will be made available to providers through the Addressing Workforce Pressures Initiative which consists of two parts: the workforce supplement, and an Aged Care Workforce Development Plan to be developed during 2013.¹¹

7 DoHA, *Aged Care Workforce Supplement Guidelines – Consultation Draft*, p. 7. On-costs include superannuation (including the Superannuation Guarantee Charge) and provision for leave.

8 Aged Care Workforce Supplement Guidelines Consultation Draft version 2, 9 May 2013, p. 26.

9 Aged Care Workforce Supplement Guidelines Consultation Draft version 2, 9 May 2013, p. 18.

10 Aged Care Workforce Supplement Guidelines Consultation Draft version 2, 9 May 2013, pp 7, 13.

11 DoHA, *Submission 92*, p. 42.

7.8 In announcing the full package of aged care reforms in 2012, the Prime Minister noted:

We are deliberately taking the opportunity today to make this announcement well in advance of the Federal Budget, because whilst this policy has some fiscal impacts, it's not a budget measure per se, there's some new funding here, but for the most part, the funding for the package comes from a combination of redirected funding and means testing.¹²

7.9 The new funding for the *Living Longer Living Better* package was approximately \$500 million. The majority of new funding is intended to be introduced in 2015-17.¹³ Changes to the ACFI, which came into effect on 1 July 2012 as a result of the aged care reform package, make up the largest proportion of redirected aged care funding, comprising \$1.6 billion of the total \$2.5 billion over five years.¹⁴ The department notes that:

These changes are designed to bring future growth in care subsidies back to historic growth rates of between 2% to 3% above indexation and to enable funds to be redirected to other elements of the package. These changes have been developed following extensive consultation with the sector since December 2011.¹⁵

7.10 In the budget announcement for the Addressing Workforce Pressures Initiative, the Government noted that:

The Aged Care Workforce Compact will be funded by redirecting funds currently provided through the Aged Care Funding Instrument so that the funding claimed by aged care providers better matches the level of care being offered.¹⁶

7.11 Some providers raised concerns regarding the nature of funding for the workforce supplement. These are discussed below.

Broad support for workforce funding reform

7.12 The committee notes that there has been broad support for wage increases across the aged care sector. There is also broad support for a specific measure directed

12 The Hon. Julia Gillard MP, Prime Minister of Australia, the Hon. Mark Butler MP, Minister for Mental Health and Ageing, 'More choice, easier access and better care for older Australians', Media release, 20 April 2012.

13 Aged and Community Services Australia, *Submission 67*, p. 7.

14 DoHA, *Aged Care Funding Instrument*, <http://www.health.gov.au/acfi> (accessed 14 May 2013); and, *Living Longer. Living Better – Aged Care Reform Package*, April 2012, p. 38 of 44, <http://www.health.gov.au/internet/publications/publishing.nsf/Content/ageing-aged-care-reform-measures-toc> (accessed 14 May 2013).

15 DoHA, *Aged Care Funding Instrument*, <http://www.health.gov.au/acfi> (accessed 14 May 2013).

16 Commonwealth of Australia, *Budget Paper No. 1 2012-13*, 8 May 2012, pp 1–27.

to wage increases. In February 2012 the National Aged Care Alliance (NACA) published its 'Blueprint for delivering positive aged care reform'.¹⁷ This Blueprint was a consensus document developed by peak provider, health services and union groups. The blueprint recommended that:

To ... prepare a foundation for expanding and developing the workforce there is a need for:

- a bridging supplement for payment of fair and competitive wages for nurses, allied health professionals, personal carers and support staff;
- the Government, unions and provider representative organisations to sign a Heads of Agreement which ensures the bridging supplement is paid to aged care providers for increased wages; and
- incorporation of the wage increases into a registered industrial agreement to enable the supplement to be paid to individual aged care providers and ensure it is used solely to pay fair and competitive wages.¹⁸

7.13 The Blueprint also noted that:

Wages are only one, albeit major, issue that needs to be addressed. Career structures, training (including in specialist areas such as dementia and palliative care), use of technology and flexible models of care to enhance service delivery efficiency and effectiveness must be considered as part of an overall aged care workforce strategy. To do this the Alliance recommends:

Establishing a Ministerial Aged Care Workforce Taskforce including provider, union and consumer representatives.¹⁹

7.14 The government set up a Strategic Workforce Advisory Group (SWAG) comprising representatives from providers and employees with the following terms of reference:

...to develop a Compact for Government endorsement to improve the capacity of the aged care sector to attract and retain staff through:

- Higher wages
- Improved career structures
- Enhancing training and education opportunities
- Improved career development and workforce planning
- Better work practices²⁰

17 National Aged Care Alliance, *Blueprint for Aged Care Reform*, February 2012, p. 1.

18 National Aged Care Alliance, *Blueprint for Aged Care Reform*, February 2012, p. 7.

19 National Aged Care Alliance, *Blueprint for Aged Care Reform*, February 2012, p. 7.

7.15 The final report of the SWAG noted that there was in principle agreement by providers and employee groups on all areas of a workforce compact apart from the mechanism for realising higher wages (enterprise agreements) and the quantum of wage increases.²¹ However, because these were two key elements of workforce reform, unions and provider groups could not agree to the compact.²² Despite the failure of these parties to reach agreement over the compact, the workforce supplement retains the majority of features that were agreed to during negotiations. United Voice noted that:

After six months of negotiation for a Compact, key employer groups removed their support for the final outcome. This was evidenced by a letter sent from employer groups to government in January 2013...

Despite this letter, the evidence stands that there was strong support for the vast majority of the elements of the Supplement late into the negotiation process. This is evidenced by the nature of the final terms and conditions. Many of the key terms and conditions reflect status quo terms and conditions in the sector. During the negotiations, these terms and conditions were nominated and agreed by key employer representatives. ...there was strong support from the clear majority of employers for a large proportion of the terms and conditions enclosed in the Compact, now known as the Supplement.²³

7.16 The committee was presented with a range of view about the supplement itself. Concerns raised by various provider groups over aspects of the supplement are outlined below.

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- 20 Ms Anne Gooley, Fair Work Commissioner, *Final Report of the Strategic Workforce Advisory Group*, 19 October 2012, p. 1 of 10,
[http://www.livinglongerlivingbetter.gov.au/internet/living/publishing.nsf/Content/758F9F05D1812E2CCA257AFB0014F049/\\$File/Commissioner-Gooley-Final-Report-Workforce-Compact.pdf](http://www.livinglongerlivingbetter.gov.au/internet/living/publishing.nsf/Content/758F9F05D1812E2CCA257AFB0014F049/$File/Commissioner-Gooley-Final-Report-Workforce-Compact.pdf) (accessed 15 May 2013).
 - 21 Ms Anne Gooley, Fair Work Commissioner, *Final Report of the Strategic Workforce Advisory Group*, 19 October 2012, pp 4–6 of 10,
[http://www.livinglongerlivingbetter.gov.au/internet/living/publishing.nsf/Content/758F9F05D1812E2CCA257AFB0014F049/\\$File/Commissioner-Gooley-Final-Report-Workforce-Compact.pdf](http://www.livinglongerlivingbetter.gov.au/internet/living/publishing.nsf/Content/758F9F05D1812E2CCA257AFB0014F049/$File/Commissioner-Gooley-Final-Report-Workforce-Compact.pdf) (accessed 15 May 2013).
 - 22 Ms Anne Gooley, Fair Work Commissioner, *Final Report of the Strategic Workforce Advisory Group*, 19 October 2012, p. 2 of 10,
[http://www.livinglongerlivingbetter.gov.au/internet/living/publishing.nsf/Content/758F9F05D1812E2CCA257AFB0014F049/\\$File/Commissioner-Gooley-Final-Report-Workforce-Compact.pdf](http://www.livinglongerlivingbetter.gov.au/internet/living/publishing.nsf/Content/758F9F05D1812E2CCA257AFB0014F049/$File/Commissioner-Gooley-Final-Report-Workforce-Compact.pdf) (accessed 15 May 2013).
 - 23 United Voice, answer to question on notice, 2 May 2013 (received 13 May 2013).

Concerns over funding of the workforce supplement

Concerns about redirection of funding from ACFI monies

7.17 A number of organisations expressed disappointment that the workforce compact was to be funded through redirected aged care funding, and not 'new money'. In particular, some residential aged care providers considered that the redirection of ACFI funds to other areas of aged care, including the workforce supplement, could cause financial hardship, particularly for some smaller and rural or regional providers. Catholic Health Australia claimed that:

The Workforce Supplement in residential care will be created by quarantining a percentage of the forward estimates for residential care subsidies. These estimates are based on a reduction in growth rates to be achieved by changes to the Aged Care Funding Instrument (ACFI) which applied from 1 July 2012 ie reducing the per capita annual growth in care subsidy per resident to 2.7% real per annum. The Workforce Supplement is inclusive of the reduced forward estimates for residential care subsidies.²⁴

7.18 The Western Australian branch of Aged & Community Services Australia argued that:

To take away funds from ACFI, which essentially belong to our residents, and then transfer them to workers, is wrong in principle. And it is particularly wrong in an environment where a consumer direction will be the future. Also it is futile, because robbing Peter to pay Paul does not generate more money in the system, sustainably, to pay higher wages.²⁵

7.19 Southern Cross Care (Victoria) were concerned that:

This real reduction in ACFI care subsidy will have a direct impact on our ability to maintain service levels to residents.²⁶

7.20 The committee notes that the government has been up-front in announcing that the aged care reforms, including the workforce supplement, are to be funded for the most part from redirected aged care funds and income testing. Reducing the growth of the ACFI has contributed to the pool of aged care funds to be redirected into the aged care reform package. While changes to the growth of the ACFI may have financial implications for some residential care providers, this seems to be a separate issue to the affordability of implementing higher wages through the workforce supplement. Concerns over the affordability of the supplement for aged care providers are dealt with in the following sections.

24 Catholic Health Australia, *Submission 55*, p. 7, and Attachment A, 'The ACFI Compact Money Trail'.

25 Mr Raymond Glickman, Aged and Community Services Association, Western Australia, *Committee Hansard*, 29 April 2013, p. 35.

26 Southern Cross Care (Victoria), *Submission 39*, p. 2.

Concerns that the compact is not 'fully funded'

7.21 On-costs arising from wage increases under the workforce supplement are to be borne by employers accessing the additional funding. The department notes that these can be covered through resulting productivity gains arising from wage increases and improved conditions, and in decreased staff turnover.²⁷ Providers, however, were concerned that, combined with the potential loss in revenue due to the reduction of ACFI monies, the imposition of on-costs would result in an added burden that would particularly cause difficulties for smaller providers to meet the criteria of the supplement. A number of providers wanted the supplement to be 'fully funded', and to cover on-costs associated with wage increases. Aged and Community Services Australia (WA), argued that:

(The workforce supplement) should be rejected because the proposition is not fully funded. So, in addition to recycling existing funds, so we have no more money, it does not cover on-costs. That includes numerous expensive expenditure items that will be part of the overall deal. Our calculations suggest that the cost will outweigh the income by two to one. That seems extraordinary, but it is true once you add up all the elements. We have an example from the bush, where to gain \$17,000 will cost \$30,000.²⁸

7.22 Narrogin Cottage Homes also asserted that they are not considering signing up for the supplement as they believe they will be unable to afford the on costs associated with the higher wages afforded by the supplement:

I am very happy to let the committee know right now that we will be one of those who will not be signing up for the workforce supplement. We cannot afford it ... in my particular case, if you look at our on costs, I think you will find that it is 3.25 for one. I am running at a loss now. I am hoping we will balance the books next year. I cannot afford anything else.²⁹

7.23 Hall and Prior Aged Care Organisation had initially considered that signing up to the supplement would be cost neutral to their organisation:

Our high-level analysis of the Workforce Compact has indicated that it will be cost neutral to us in both WA and New South Wales after taking into consideration all employee entitlements and oncosts. This assumes the workforce supplement continues beyond the 2016-17 financial year. It will be cost neutral to us as we have a very high level of resident acuity and already pay wages well above the margin for the relevant award rates... in

27 DoHA, *Submission 92*, p. 44.

28 Mr Raymond Glickman, Aged and Community Services Association, Western Australia, *Committee Hansard*, 29 April 2013, p. 35.

29 Mrs Julie Annette Christensen, Chief Executive Officer, Narrogin Cottage Homes, *Committee Hansard*, 29 April 2013, p. 42.

summary, we thus support the Workforce Compact and we feel it will invigorate the aged-care workforce.³⁰

7.24 Shortly before the committee was to table its report, Hall and Prior representative Graeme Prior wrote to the committee stating:

At the time of my appearance before the Senate Committee I indicated that our initial modelling was that the Workforce Supplement would be cost neutral to our organisation. However, based on the information in the consultation paper, this is no longer the case. It appears that if we were to sign up to the Workforce Supplement it would cost our organisation \$2.1 million over the next four years (in addition to the annual financial increases passed on to employees).

7.25 In answers to questions on notice, United Voice argued that a large proportion of on-costs that providers associate with the supplement will already have been accounted for under existing plans for wage increases either under an enterprise agreement, or under the current award for aged care workers:

...aged care providers, on average, are providing wages at a margin over the award of 3.99%. United Voice assumes that most, if not all, providers are competent and execute their fiduciary duties well, and thus would plan to provide salary increases for their staff along with the attendant on-costs forming part of their calculations.

Average Weekly Ordinary Time Earnings over the last 5 years and recent Fair Work Commission minimum wage adjustments have been running between 3% and 4.5%. We therefore assume that the majority of aged care providers (through their internal budget planning processes) are well equipped to contend with the salary increases' (and associated on-costs') component of the Supplement – that is, the requirement to provide a minimum of 2.75% per year or the Fair Work Commission minimum wage adjustment, whichever is higher.³¹

7.26 United Voice also considered that on-costs can be borne by employers through increases in productivity and decreased turnover:

In terms of the wages' on-costs associated with the Supplement funding, there are productivity gains to be made through reduced staff turnover and decreases in the costs of utilising agency staff by providers. In terms of personal and community care and support staff, United Voice estimates, given the assumptions made above, that the effect of the Supplement proportion of salary on-costs to be approximately 0.25% - 0.3%. These figures do not take into consideration efficiencies gained from reduced turnover or a reduction in the use of agency staff.

30 Mr Graeme Prior, Chief Executive Officer, Hall and Prior Aged Care Organisation, *Committee Hansard*, 29 April 2013, p. 1.

31 United Voice, answer to question on notice, 2 May 2013 (received 13 May 2013), p. 7.

With the average provider having a net profit margin of approximately 8%, United Voice believes that the on-costs for the Supplement funding component can be met by aged care providers. The assertion made in relation to providers putting in \$3 for every \$1 of funding from the Workforce Supplement does not make sense in light of the calculations performed above.³²

7.27 A number of providers told the committee that they could not be sure of the effects of the supplement until they had seen more detail about its requirements. The committee notes that comprehensive draft guidelines were released for consultation with the sector after the conclusion of hearings for this inquiry.³³

7.28 There appeared to be some confusion about the on-costs associated with accessing the workforce supplement. Based on the evidence available, it appears that in referring to 'on costs', some providers were including wage increases required to be made in order to qualify for the supplement. These are not 'on costs', but the consequences of the policy intention on which the rules governing eligibility for the supplement are based: namely, to increase wages in the sector.

Committee view

7.29 The committee notes that consultation around the Workforce Supplement Draft Guidelines is ongoing.³⁴ The committee agrees on the importance of increasing wages in the sector. There was mixed evidence about the costs to providers of securing the supplement.

7.30 The committee acknowledges the issues around the workplace supplement and the link to increased wages, and notes the need for continuing discussion around the implementation in the workplace, and the full payment of entitlements.

Recommendation 11

7.31 The committee recommends that the government examine whether it may be appropriate to revise the Supplement Guidelines to permit in some circumstances the use of the workforce supplement in meeting employee entitlements.

Intervention in industrial agreements

7.32 As discussed above, to access the supplement, providers must have an enterprise agreement, or working arrangements in place that meet the conditions of the

32 United Voice, answer to question on notice, 2 May 2013 (received 13 May 2013), p. 7.

33 These guidelines are available at:
[http://www.livinglongerlivingbetter.gov.au/internet/living/publishing.nsf/Content/270C98226F770308CA257B5D000770AB/\\$File/Workforce%20Supplement%20Guidelines_Version2.pdf](http://www.livinglongerlivingbetter.gov.au/internet/living/publishing.nsf/Content/270C98226F770308CA257B5D000770AB/$File/Workforce%20Supplement%20Guidelines_Version2.pdf).

34 DoHA, Attachment 6, answer to written question on notice, (received 14 May 2013), p. 2.

supplement. This is to ensure that funding from the workforce supplement is passed on in full as higher wages for aged care workers. The Department noted that:

The mechanism which was identified in the NACA blueprint was to use an industrial agreement as a mechanism to ensure that that payment flowed through.³⁵

7.33 Some providers objected to this choice of mechanism, claiming that it went against a principle of government not intervening into industrial agreements. Catholic Health Australia argued that:

...behind this there is also a much bigger policy issue: is there a role for governments in setting wage rates? Current policy is that wage levels should be negotiated by parties at the local level, using a legislated industrial framework and taking into account local operating circumstances. We think that compromising this policy principle is also a factor affecting our members' attitude to the supplement. If a government wishes to increase wages, it should do so by proposing increases in the various aged-care awards and funding the increases it seeks.³⁶

7.34 Some providers were also concerned that prescribing enterprise agreements as a condition to receiving the workforce supplement would have negative consequences for local arrangements and the flexibility that local arrangements can provide. ACSA argued that:

The funding arrangements as proposed place wage determination mechanisms in a national industrial framework to the exclusion of allowing the continuation of negotiations in the 'local' context. This compromises individual negotiation within workplaces, informed by local circumstances.³⁷

7.35 Some homecare providers also expressed concern over a potential loss of flexibility when using enterprise agreements prescribed under the supplement guidelines. KinCare were concerned that:

There is more cost to an organisation in the home care sector around loss of flexibility than there is around increase age (sic) rates for the most part. When you start to talk about negotiating enterprise agreements, the more flexibility that you can build into them... the easier they are to manage. Where we find that a lot of costs are built into the system is around things like minimum starts and the way that mileage, or travel time, might be included and the way that breaks have to be applied to work, and so on. It can add quite a significant percentage to the total cost of the workforce.

35 Ms Rosemary Huxtable, Deputy Secretary, DoHA, *Committee Hansard*, 2 May 2013, p. 66.

36 Mr Nicholas Mersiades, Director, Aged Care, Catholic Health Australia, *Committee Hansard*, 2 May 2013, pp 39–40.

37 Aged and Community Services Australia, *Submission 67*, p. 17.

...Our analysis at the moment would indicate that the amount of money that is being provided as part of the Workforce Compact is not compensating for the increased cost across the workforce. Of course, there is the added consideration of needing to negotiate with a third party, which will have a third party's agenda, rather than working with a workforce that has an agenda which is related to the organisation.³⁸

7.36 As shown above, however, some providers recognised the opportunities for flexibility inherent in enterprise agreements as opposed to the modern award process. KinCare also noted that:

As the award stands at the moment, we have lost some flexibility as part of the modern award process. We have been supportive of the award modernisation process because we believe that in the long term it makes sense for us to have a national structure. But it has been a fairly expensive process for a lot of organisations to work through as they have transitioned from the old state based awards, which were built around the industry, to a much more standard template, which has been applied across industries without necessarily understanding the unique nature of what happens in the community care sector.

Senator FURNER: Surely that may lead to an incentive for you to wish to consider enterprise bargaining, to come up with greater flexibility, if you have issues around that in the modern award?

Mr Howie: We are certainly considering that.³⁹

7.37 Union groups were adamant that the supplement and its requirement for enterprise agreements preserved and enhanced flexibility for aged care employers and workers. United Voice noted that:

The requirements to receive the Supplement are not prescriptive in terms of mandated outcomes, or prescribed content and wording for enterprise agreements or equivalent. Instead, the Supplement provides a framework through enterprise bargaining - and it is up to the local workplace level discussions between employers and employees to determine in what form the requirements will be met in their workplace.

Evidenced by the uptake of workplace enterprise agreements in the aged care sector, the flexibility of these bargains indicates a preference for this method of industrial regulation over the industry award... Employer evidence to the Aged Care Low Paid Bargaining hearings indicate "bargaining under the act [Fair Work Act] is actually flourishing..." The Compact's requirements are such that there remains workplace flexibility as to how the workplace will best meet these commitments. This ensures that the enterprise agreements or equivalents are specific to the local circumstances and are flexible to meet the needs of the workplace.⁴⁰

38 Mr Jason Howie, Chief Executive Officer, KinCare, *Committee Hansard*, 30 April 2013, 25.

39 Mr Jason Howie, Chief Executive Officer, KinCare, *Committee Hansard*, 30 April 2013, 25.

40 United Voice, answer to question on notice, 2 May 2013 (received 13 May 2013), p. 5.

7.38 Union groups and the Department also pointed out that the use of enterprise agreements as the mechanism for delivering increased wages is based on the NACA Blueprint, which was supported by all major organisations across the sector. In developing its Blueprint for Aged Care Reform, NACA also published a number of papers to provide additional advice to government on features of the *Living Longer Living Better* reforms. In its paper on the aged care workforce, NACA noted that there:

needs to be a transparent, accountable and enforceable mechanism to deliver fair and competitive wages through the Government funded bridging supplement.

Use of existing industrial processes, such as certified/enterprise agreements, are the most appropriate mechanism to ensure that fair and competitive wages are established and maintained.

...

While other options were identified the Alliance believes the mechanism it proposes is the most effective way to deliver fair and competitive wages because it:

- is consistent with the existing system of enterprise bargaining in which unions and providers are already engaged;
- clearly ties increased funding to increased wages and will hold providers accountable for the flow on to workers; and
- provides certainty for providers that funding will be made available.⁴¹

7.39 The committee considers that providers were given an opportunity to raise in principle objections to tying workforce funding to industrial agreements during the development of the NACA Blueprint.⁴² Given both the prevalence of enterprise agreements across the sector, and the provision for smaller residential providers and home care providers to satisfy the requirements of the supplement by ensuring employments arrangements meet the minimum requirements, the committee does not consider the workforce supplement to be an unreasonable interference by government into industrial relations between employers and employees. The committee rejects the suggestion by ACSA that the policy would 'place wage determination mechanisms in a national industrial framework to the exclusion of allowing the continuation of negotiations in the 'local' context'. To the contrary, the policy explicitly supports bargaining at the enterprise level. At the other extreme were suggestions that if the government wished to improve wages it should do so through award increases that it should then fund. Apart from being unrealistic, this would go directly counter to most providers' preference to maintain enterprise bargaining, and also be inconsistent with one of the main policy intentions behind the reforms (supported by all major stakeholders), which is to ensure the financial sustainability of the sector.

41 National Aged Care Alliance, *Aged Care Reform Series – Workforce*, February 2012, pp 4–5.

42 See generally, comments on consultation in Chapter 2 of this report.

Claims regarding union recruitment

7.40 During the inquiry, an article was published by *The Australian* newspaper which claimed that:

...unions have been recruiting on the back of government-funded pay-rise offers in childcare and aged care, telling workers to expect pay rises of up to \$10,571 a year under the government schemes as long as they follow a three-step plan that starts with joining a union'.⁴³

7.41 Departmental representatives were asked about the newspaper article and the idea that a pay rise might be linked to union membership:

Ms Huxtable: ...I believe that there might be a link being drawn between eligibility for the supplement and union membership which I do not believe is there, and I do not believe it is in the material that we have produced.

Senator FIERRAVANTI-WELLS: You have to join and you have to have an EBA—

Ms Huxtable: Sorry, Senator, but I think they are two somewhat separate things...For facilities of a certain size an EBA would need to be in place which covers the terms of the supplement. But an EBA can cover the extent of a workforce. You do not have to be a member of a union. That is my understanding.⁴⁴

7.42 Union representatives were also asked about these claims. They rejected the statements in the article, both in respect of the magnitude of possible pay rises and the claim that unions had suggested securing a pay rise was contingent on joining. Union officials stated that they began bargaining processes by seeking to recruit members, but made no suggestion that a pay rise was contingent on membership:

The Australian seeks to attack United Voice on the basis that it is starting the enterprise bargaining process by asking workers to join the union. I find it hard to understand this criticism. Our credibility and capacity depends on the number of members we have. In bargaining and representation, we take our instruction from members - no-one else. Our resources come from the membership dues of members - no-one else. How then is it expected that we would launch an enterprise bargaining process? Convene meetings of non-members? Ask cleaners, security guards and health care workers to pay to have bargaining done for a group of non-members in aged care? Pretend to the employers that we can speak authoritatively about the concerns of their employees when we represent no-one? The idea is ridiculous. Rule 1 of any collective bargaining process is to first establish a collective. That is all we are doing. To then be attacked as opportunistic or in some way

43 Sid Maher, 'Butler hits aged-care "stuff-up"', *The Australian*, 26 April 2013, p. 1.

44 *Committee Hansard*, 2 May 2013, pp 65–66.

corrupt when we ask workers to join and be represented at the bargaining table simply betrays the animus of our critics.⁴⁵

7.43 The Nurses Federation representative stated:

We have been bargaining in the aged-care industry for 20 years. As we pointed out in our submission, most nurses in the aged-care sector are covered by agreements. We do not discriminate between members and non-members in that process. The fact is, Senator, that most nurses in aged care are already in the union and always have been.⁴⁶

7.44 On the quantum of possible pay increases, witnesses indicated that the figure in the newspaper report was not relevant to aged care, with correspondence from United Voice indicating how the misapprehension may have arisen: 'the article in the *Australian* mistakenly links the \$10,571 package in the Early Childhood Education and Care Sector with the Aged Care settlement'.⁴⁷

Inclusion in the list of primary supplements

7.45 The workforce supplement is included in the list of primary supplements for residential providers and homecare providers in new sections 44(5) and 48(3) of the Act. Residential aged care providers have expressed concern that the inclusion of the workforce supplement in this list of primary supplements could lead to their clients contributing to the payment for the supplement. ECH, Resthaven and Eldercare claimed that:

The effect of this is that the workforce supplement will be taken into account in applying the new means test to the calculation of means tested care fees in residential care and the income tested fee for home care. As a result, if a care recipient's care subsidy reduction exceeds the sum of the basic subsidy and all primary supplements applying to that care recipient, they will be fully subsidising the workforce supplement.

...it now appears that a proportion of care recipients will be subsidising the government's workforce supplement (along with all other primary supplements potentially), on top of the cut to ACFI funding.⁴⁸

7.46 During a committee hearing in Perth, ECH explained these concerns further:

If a person is of wealthier means, the means test could result in them paying for their care or having their care subsidy reduced by an amount that includes all of the primary supplements. Again, we are talking about wealthier people but, nevertheless, they would contribute to the cost of the workforce supplement by virtue of the fact that it is a primary supplement.

45 United Voice, answer to question on notice, 2 May 2013 (received 13 May 2013), pp 10–11.

46 Mr Nick Blake, Australian Nursing Federation, *Committee Hansard*, 2 May 2013, p. 10.

47 United Voice, answer to question on notice, 2 May 2013 (received 13 May 2013), p. 11.

48 ECH, Resthaven and Eldercare, *Submission 41*, p. 2.

We had not understood that that would be the case; we had understood the government's position was that the workforce supplement would be fully funded from the \$1.2 billion that is being redirected from the Aged Care Funding Instrument subsidy to providers. Although it may not be a huge amount of money, we were a bit surprised that some residents could actually end up contributing to the cost of the supplement as well.⁴⁹

7.47 The other supplements included in the list of primary supplements in the Bill are the respite supplement, the oxygen supplement, the enteral feeding supplement, the dementia supplement, and the veterans' supplement. Unlike the workforce supplement, each of these primary supplements relates directly to an individual's care requirements. The workforce supplement is not targeted to individual care recipients, but addresses the broader systemic issue of aged care workforce capacity. The above providers recommended that the workforce supplement be removed from the list of primary supplements in the Act and transferred to a list of 'other supplements', which are not included in the calculation of the care subsidy reduction.⁵⁰

7.48 It appears clear that classifying the workforce supplement as a primary supplement will lead to certain residential care recipients, who are subject to means testing, paying increased fees. At this stage, however, it is difficult to determine the financial impact on fees payable by individuals. The detail as to when the supplement will apply and how it is to be worked out will be contained in the new 'Subsidy Principles' and legislative instruments to be made by the Minister. As the new Subsidy Principles and legislative instruments are not available at this time, it is currently difficult to predict the financial impact of including the workforce supplement in the list of Primary Supplements.

Committee view

7.49 The committee considers that the workforce supplement should be retained as an important element of the *Living Longer Living Better* aged care reforms. There is a pressing need to ensure that an adequate and capable aged care workforce exists to meet the present and future requirements of an ageing population. The committee also accepts that reform in the aged care system must be sustainable. In this regard, the committee therefore does not consider that the workforce supplement is less viable because it is being funded from monies that were previously directed to other areas of aged care. While some residential care providers may experience a decrease in revenue from changes to the ACFI, the committee considers this to be a separate issue to the viability or affordability of the workforce supplement.

7.50 The committee has considered arguments raised around costs that might be incurred by providers seeking to access the supplement. While accepting that there are

49 Mr David Kemp, Chief Executive's Adviser, ECH Inc, *Committee Hansard*, 29 April 2013, pp. 47–48.

50 ECH, Resthaven and Eldercare, *Submission 41*, p. 3.

costs involved in negotiating enterprise agreements, there are also benefits, and in fact negotiating to secure efficiency gains is one of the main purposes of bargaining. The committee does not consider the choice of these as the main mechanism for delivering supplement monies to be either an inappropriate intervention into industrial arrangements, or an undue burden on providers. The extent of the aged care workforce covered by enterprise agreements is considerable, and the NACA recommendation discussed above demonstrates that, until recently, the mechanism had support from providers. The committee also considers that there are adequate concessions made for non-residential and smaller residential providers, who are able to certify that they meet the requirements of the supplement by other means.

7.51 The committee recognises that some providers may choose not to access the supplement, and it is conceivable that these will be smaller, less profitable organisations that may already face financial difficulties across their operation. However the committee has also received evidence that the majority (up to two thirds) of the aged care workforce is covered by enterprise agreements, and that the majority of these agreements more than meet the requirements in the compact. According to United Voice, most of the compact/supplement requirements actually reflect current practice, due to the consensus nature of the consultation process involving NACA and SWAG. The committee also heard evidence that a considerable number of providers already pay wages that are well above award rates. These providers will also find it easier to meet the requirements of the supplement.

7.52 It is also important to note that the supplement is an initial, interim, measure to address workforce pressures in aged care. The recommendation from the NACA Blueprint was to put in place a bridging supplement to immediately begin to address wage concerns, and then work towards longer term reform options. This is the structure that has been followed in the Addressing Workforce Pressures Initiative, which first introduces the workforce supplement, and then provides for the Aged Care Workforce Development Plan to be developed during 2013, to address longer term, systemic issues. The supplement is a bridging measure to begin to attract and retain aged care workers before engaging in 'longer-term work that must be done on a wages structure that will allow a quality workforce to grow'.⁵¹ During the SWAG process it was noted that:

While some participants expressed a preference for some targeting of the compact monies, the unions and providers agreed that the monies should flow to all employees equally as it would be difficult to develop an

51 The Hon. Julia Gillard MP, Prime Minister of Australia, the Hon. Mark Butler MP, Minister for Mental Health and Ageing, 'More choice, easier access and better care for older Australians', Media release, 20 April 2012.

enterprise agreement which was supported by all employees at the workplace if some groups were disadvantaged vis a vis other groups.⁵²

7.53 The committee expects the Addressing Workforce Pressures Initiative to specifically address workforce shortages for individual smaller, regional, rural and remote providers through the Aged Care Workforce Development Plan. In the meantime, regional, rural and remote providers are able to access specific funding through the viability supplement.

7.54 Finally, the committee notes the argument made for removing the workforce supplement from the list of primary supplements, and placing it in the list of 'other supplements' which do not count towards a reduction in the ACFI care subsidy. While the workforce supplement appears different in nature to the other proposed primary supplements in new section 44-5 of the Act, the committee accepts that care recipients who can afford to, should contribute to wage increases for the workers who care for them. This accords with the general emphasis on revised income testing throughout the *Living Longer Living Better* reform package. The use of income testing is designed to ensure that the aged care system 'recognises a simple reality that those who can support themselves, and contribute a bit more should, and that we must look after the needs of those who can't'.⁵³ This will be the principal effect of including the workforce supplement in the bill, and as such should be supported.

Recommendation 12

7.55 The committee recommends that references to the workforce supplement be retained as they appear in the proposed legislation.

52 Ms Anne Gooley, Fair Work Commissioner, *Final Report of the Strategic Workforce Advisory Group*, 19 October 2012, p. 3 of 10, [http://www.livinglongerlivingbetter.gov.au/internet/living/publishing.nsf/Content/758F9F05D1812E2CCA257AFB0014F049/\\$File/Commissioner-Gooley-Final-Report-Workforce-Compact.pdf](http://www.livinglongerlivingbetter.gov.au/internet/living/publishing.nsf/Content/758F9F05D1812E2CCA257AFB0014F049/$File/Commissioner-Gooley-Final-Report-Workforce-Compact.pdf) (accessed 15 May 2013).

53 The Hon. Julia Gillard MP, Prime Minister of Australia, the Hon. Mark Butler MP, Minister for Mental Health and Ageing, 'More choice, easier access and better care for older Australians', Media release, 20 April 2012.