

# LASA SUBMISSION ON COUNSEL ASSISTING'S FINAL SUBMISSION TO THE ROYAL COMMISSION

LASA generally supports the final submission from Counsel Assisting (CA). Our responses to individual recommendations are provided in the spreadsheet template. As our final statement of record to the Commission, section 1 provides an overarching reflection on the Royal Commission and the future of aged care. Section 2, briefly identifies the elements of the proposed reforms we see as most fundamental. Section 3 explains key structural issues where we have outstanding concerns. Where possible references to our responses in the spreadsheet template are provided in [square brackets].

## Section 1. Overall reflections

Making overall comment on the Royal Commission process without having seen the final report is somewhat premature, but we see hope in the direction being proposed.

It is important to start by again recognising and apologising for the cases of substandard care that the Commission has identified.

It is equally important to thank the staff and volunteers of the sector – their ongoing dedication to delivering the highest quality care has never been more evident during the recent outbreaks of COVID-19.

While individuals have sometimes fallen short, it is the system that has truly failed. All too often people have been placed in impossible positions with impossible choices. And most perniciously, over decades, this has come to be seen as just another fact of life.

The Royal Commission offers hope for a system that will deliver more – that will give every older Australian the level of care and support we would want for ourselves and our loved ones.

LASA as an organisation is absolutely committed to realising this vision.

## Section 2. Fundamental reforms supported by LASA

Fundamental elements of CA's proposed reforms strongly supported by LASA include:

- A human rights based approach to system design
- A broader ageing well plan and campaign
- A more independent institutional framework
- Access based on need (rather a planned number of places)
- More resources to deliver higher level of care (in residential care facilities and at home)
- A better trained, paid, supported and regulated workforce
- Clearer standards more closely aligned with evidence and practice
- Emphasis on quality indicators (including quality of life) and other data and evidence

- Independent measurement of the cost of delivering high quality care (to determine funding)
- Interim funding measures (to support the system while reform occurs)
- More rigorous arrangements to measure and address the needs of vulnerable groups
- An effort to set a clear timetable for reform

## Section 3. Issues and concerns

There are also some structural issues where we believe the approach recommended by CA needs to be strengthened or adjusted.

### 1. Manage the implications of more home care

LASA supports making more care at home available to older Australians. However, the expansion of care at home is a major structural change that raises important issues which need to be carefully managed.

- 1.1. Clarify expectations for caring for people with more complex needs at home, including the distinction between residential care and home care – offering residential care equivalent funding without addressing these issues will be highly risky *[see response to R89]*
- 1.2. Determine what payments count towards funding equivalence with residential care – this will be vital to ensuring the intent of support being location agnostic *[see response to R89]*
- 1.3. Take a staged approach to increasing home care levels – so that the system has time to adapt *[see response to R89]*
- 1.4. Consult closely with home care providers on a manageable schedule for clearing the queue *[see response to R9]*
- 1.5. Create a plan to support residential care to adapt to expansions in home care without risking supply or stability *[see response to R9]*

### 2. Clearly link funding and practice – no more ‘impossible decisions’

A key weakness in the current system is that there is no link between the cost of care older people need and the funding allocated to providers. CA recognises this issue, and suggests the proposed independent pricing authority set prices based on cost data and benchmarking. However, we fear providers will continue to be forced to make ‘impossible decisions’ unless there is a clear statement of principle articulating the need to link funding and practice.

- 2.1. A guiding principle for the independent pricing authority must be that funding is sufficient for a provider of average efficiency to simultaneously (a) deliver high quality support that meets community expectations (b) provide pay and conditions for staff that reflect the value and difficulty of their work and enable recruitment, training and retention (c) achieve financial sustainability. *[see responses to R5 and R85]*

### 3. Support practice improvement

We support the data based funding model articulated by Counsel Assisting. However, the weakness of this model is that it tends to be backwards looking. Major changes in practice that involve significant costs are only funded retrospectively once they have been reflected in a cost study. CA recognises the need to fund some changes – such as major increases in staffing and wages – prospectively based on estimated cost. However, major cost increases can also be created more indirectly through changes in the standards and other regulations. Importantly, change itself involves significant costs – with new practices requiring active investment to understand and embed. Finally, changes in practice cannot

occur overnight so there must be funding and programs to support voluntary compliance with any change before it is mandatory.

- 3.1. Significant changes in expected practice must be supported prospectively through practice improvement programs that resource (a) any required change management and training (b) the practice itself (c) voluntary compliance from early adopters *[see responses to R47, R85]*
- 3.2. The standard setting authority should work with the pricing authority to determine whether changes in practice require additional resourcing *[see responses to R24-R29 on standard setting]*
- 3.3. Services able to meet mandatory minimum staffing requirements ahead of the proposed deadlines should be funded to do so. This may require an interim case mix adjustment based on ACFI and/or early data from AN-ACC shadow assessments. *[see responses to R47, R85]*

#### 4. Fine tune minimum staffing requirements

LASA supports more staff in residential care. Minimum staffing rules can be made workable with case-mix adjustment. However, CA's proposal needs to be fine-tuned to support the best outcomes for residents.

- 4.1. Allow minimum staffing to be adjusted provided it can be shown to the regulator that residents are still better off overall (this may involve adjusting for floorplan as well as casemix when determining minimum staffing requirements or recognising the benefits of investments in new models of care, monitoring technology or smart call bell systems) *[see responses to R47.6 and R47.7]*
- 4.2. Ensure lifestyle staff and allied health staff (if not funded separately through R18) can be counted towards the benchmark *[see responses to R47.2 and R47.4]*
- 4.3. Consider how the cost of the proposed staffing will be determined given it would be much cheaper under phase 2 to have more nurses and less overall care hours *[see response to 47.4]*

#### 5. Ensure needs are assessed appropriately

Accurate, consistent, timely and transparent assessment is the foundation of the aged care system and more attention must be given to how the performance of this critical function is managed and monitored.

- 5.1. Individuals and providers should be able to challenge an assessment, including presenting evidence not considered in the standard assessment tool. *[see response to R12]*
- 5.2. Assessors consistently delivering above or below average ratings should be monitored along with interrater reliability, client and provider satisfaction, and timeliness – with regular publication of performance against targets. *[see response to R12]*

#### 6. Support consistent co-contributions

We are concerned that CA's proposals on co-contributions would have the effect of reducing overall private contributions to the cost of aged care. There is no doubt that more tax or levy based funding, will be needed but user contributions should be sought where this is fair. Aged care services of all types reflect the additional costs of impairment and individual co-contributions should be based on their ability to meet these costs privately rather than the type of support they need. Those with greater means can afford to pay more regardless of the type of service. Those with lower costs can afford to pay

a higher percentage of the total cost themselves, though this needs to be balanced against discouraging access to low level preventative services. For accommodation, whether the house an individual owns is being used by a protected person also needs to be accounted for.

- 6.1. There should be a consistent approach to co-contributions across all types of support based on the total cost for the person, their means, and accounting for the potential of perverse incentives *[see responses to R94 to R99]*

## 7. Support price flexibility in residential care

We understand the desire to protect older Australians by having prices set by the price regulator. However, price controls also stop people from choosing to pay more for different or higher quality services – as they can in all other areas, including healthcare – and create bizarre situations where a person can purchase additional hours of care from a third party but not their approved provider. It is also inconsistent to restrict price flexibility for some services on the basis of lack of competition while allowing price flexibility for accommodation which is inextricably bundled with those services. Price controls encourage a focus on improving financial performance through cost reduction rather than developing better services that people will pay more for.

- 7.1. Prices for all residential care services should be subject to a pricing regime similar to accommodation, where there is flexibility in prices up to a threshold with low means individuals supported by government *[see responses to R94 to R99]*

## 8. Support choice in how to pay for accommodation

CA contemplates the removal of Refundable Accommodation Deposit (RADs) as a long-term goal. We oppose this. While bonds do raise some difficulties they remain the preferred payment option for many older Australians. They also remain essential to the financing of the sector. One of the solvable problems is the requirement for a standard conversion between bonds and daily payments, when the reality is that the value of a bond to a provider depends on their circumstances. Providers should be able to reflect the relative value they place in different payment options rather than having a standard conversion.

- 8.1. Providers should have more flexibility to choose how they structure their payment options by changing the relative value of daily payments and bonds depending on their circumstances *[see response to addition matter 'capital financing']*

## 9. Support faster adoption of robust quality indicators

It is good that CA has recommended the collection and publication of quality indicators. However, the short-term indicators proposed have serious short-comings and the timeline for long-term development of quality indicators is insufficiently ambitious. There are much better indicators that could be available much more quickly and would provide a more accurate reflection of quality to assist older Australians, measure system performance and inform practice. The Registry of Older South Australians (ROSA) has indicated that an initial set of risk adjusted, benchmarked performance indicators for residential care could be available in 6 months if the data is released by Government. There is also increasing use of quality of life measurement in care planning through tools like the Adult Social Care Outcomes Toolkit (ASCOT) and this could be endorsed for broader adoption.

- 9.1. Direct governments to release data to the Registry of Older South Australians (ROSA) to create up to date, risk adjusted quality indicators.
- 9.2. Endorse the adoption of ASCOT as part of care planning to measure social care related quality life to inform care and – after appropriate risk adjustment – measure performance.

## 10. Support leaders to deliver change

LASA has made a joint submission with Hall and Wilcox and HWL Ebsworth on some of the regulatory changes proposed by CA. Accordingly we do not comment specifically on those matters here. However, we make the overall comment that the care of older Australians depends on the leadership and culture of organisations. It is impossible to regulate for strong leadership. The system needs to create the incentives to develop and empower leaders (and everyday staff) rather than focusing them on what the regulator is going to tell them to do next.

- 10.1. Ensure the publication of interpretations of the standards by the regulator to allow services to provide input on best practice, comply voluntarily and ensure consistent and fair application of the rules
- 10.2. Review the processes of the regulator to ensure adequate checks on the exercise of powers, including rights of review and appropriate thresholds for action.

## 11. Plan for remediation, transition and transformation

It is important to emphasise the level of fatigue and financial pressure that exists within the sector, from leaders through to front line staff, particularly in residential care. CA has proposed an enormously ambitious agenda – and that is necessary, but we also need to provide a stable base upon which we can build, lift up the sector and its staff, start building the workforce and culture that we want for the future, and start regaining the trust and confidence of the community.

Financial stability and workforce support will be the key limiting factors in realising the Commission's reform agenda. Investment to relieve financial pressure on providers and build up the workforce should be priorities – ideally it should already be happening.

- 11.1. Ensure adequate funding is provided immediately to relieve financial distress and remedy the 'impossible position' for residential care operators
- 11.2. Take into account the need for immediate investment in workforce as part of the Commission's timetable for implementation.
- 11.3. Ensure the plan takes into account remediation, transition and transformation phases