

Aged Care Royal Commission

Presented by Jason Symons, Partner, HWL Ebsworth Lawyers

Medico Legal Society of NSW – Scientific Meeting

18 November 2020

Aged Care Royal Commission

- Royal Commission established by the **Letters Patent** on 6 December 2018
- **Honourable Tony Pagone QC** (Chair) (replacing the **Honourable Richard Tracey AM RFD QC**) and **Ms Lynelle Briggs AO** appointed as Royal Commissioners
- **Terms of Reference** outlined the matters the Royal Commissioners were required and authorised to inquire into

Commissioner Tracey

- “The Royal Commission is a **once-in-a-lifetime opportunity** to come together as a nation to consider how we can create a better system of care for elderly Australians that better aligns with the expectations of the Australian people”
- “The **hallmark of a civilised society** ... is how it treats its most vulnerable people”

[Preliminary Hearing, 18 January 2019]

Aged Care Royal Commission

- **10,000+** public submissions
- community forums attended by **2,416** people
- **13** roundtable discussions with industry representatives
- **34** aged care services attended by the Commissioners
- **99** days of public hearings in capital cities and regional centres
- **641** witnesses, including **113** direct experience witnesses
- **Interim Report** released on 31 October 2019
- **Special COVID-19 Report** released on 1 October 2020
- **8** background papers and **12** consultation papers published

Final Recommendations

Submissions by Counsel Assisting

- Delivered by Counsel Assisting at the Final Hearing on **22-23 October 2020**
- **124 recommendations**
- Outline a “**blueprint**” for a new aged care system

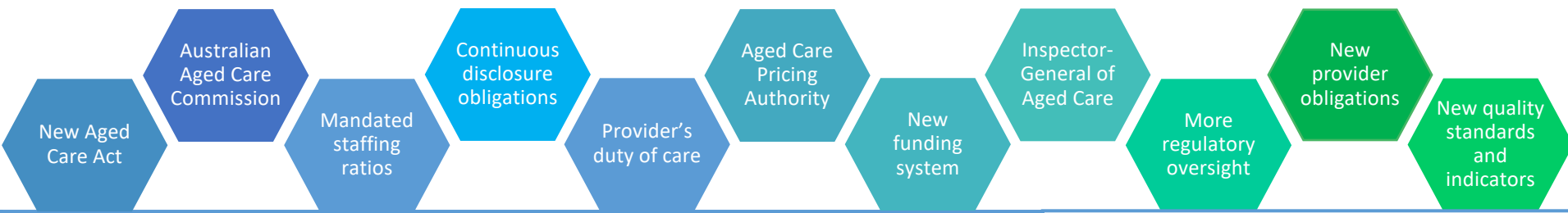
Counsel Assisting

- “... the **most in-depth and thorough examination** of Australia’s aged care system that has ever been undertaken”
- “The new aged care system in the home and community that is described and imagined in these submissions represents a **fundamental and generational change** in direction from the approach embodied in the existing legislation”

[Counsel Assisting’s Final Submissions, 22 October 2020]

Analysis of Counsel Assisting's final submissions – key recommendations

Key features of the new system



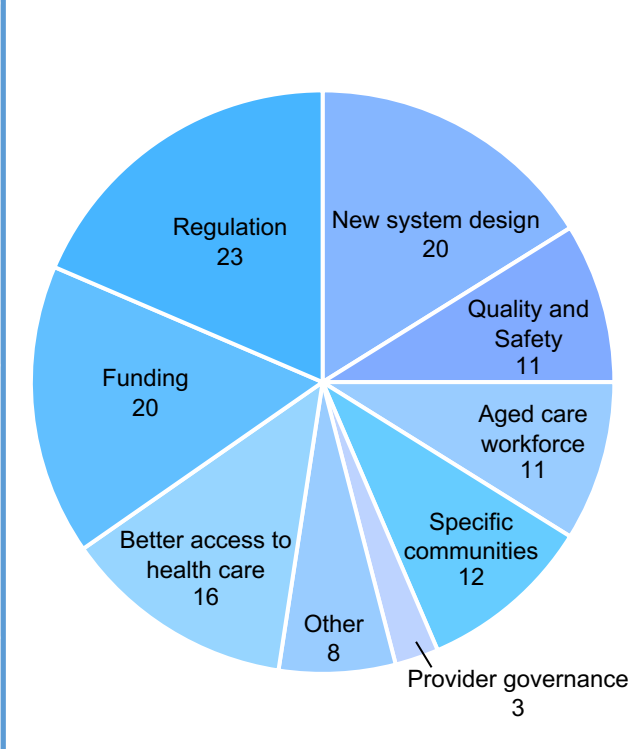
Key recommendations

<p>Principles and design of new aged care system</p> <ul style="list-style-type: none"> New Aged Care Act (1) Australian Aged Care Commission (1, 3, 100, 106) Aged Care Advisory Council (4) Australian Aged Care Pricing Authority (1, 5, 85) Inspector-General of Aged Care (1, 6) Implementation unit (123) 	<p>Aged care program design</p> <ul style="list-style-type: none"> New aged care program (8) Care finders support navigation of aged care (10) Single comprehensive assessment process (12) Residential care to include allied health care (18) Planning based on need and not rationed (20)
<p>Regulation, oversight and governance</p> <ul style="list-style-type: none"> Improved provider governance standards (52, 53) Establish prudential standards (101) Liquidity / capital adequacy requirements (102, 103) Increased reporting requirements (104, 105, 118) More enforcement powers for regulator (111, 112) Improved complaints management (114, 115) Provider performance made public (116, 117) Provider approval requirements (120, 121) 	<p>Aged care workforce and carers</p> <ul style="list-style-type: none"> Develop workforce strategies and framework (39) Aged Care Workforce Council (40) Improved wages for aged care workers (41, 42) Dementia and palliative care training (44) Min. staff time and required reporting (47, 91) Min. qualifications for personal care workers (48) Increased funding for teaching aged care (49) Support for informal carers and volunteers (50, 51)
<p>Quality and safety</p> <ul style="list-style-type: none"> Embed high quality aged care into system (21) Duty to provide high quality, safe care (22, 109, 110) Commission on Safety and Quality in Health and Aged Care to set aged care standards (23) Amendments to Quality Standards (24, 25, 26) Expand and improve quality indicators and use them for ongoing improvement (30, 31) Regulation of restraints (29, 71) Improve design of accommodation (57, 58) 	<p>Better access to health care</p> <ul style="list-style-type: none"> New primary care model (62) No young people in residential care by 2025 (59) Access to Multidisciplinary Outreach Services (64) MBS changes for better access to medical / allied health services (67) Adopt digital technology and My Health Record (74) <p>Funding</p> <ul style="list-style-type: none"> Amendments to indexation (80, 81) Increase in funding (82, 83, 84, 88, 89, 97)

Overview

- 124 recommendations** delivered by Counsel Assisting at the Final Hearing in October 2020
- To be considered by the Royal Commissioners ahead of the final report due **26 February 2021**

Breakdown of recommendations by topic



Timeline of implementation of key recommendations

<p>June / July 2021</p>	<ul style="list-style-type: none"> • Administrative body established to implement recommendations until Australian Aged Care Commission takes over (123) • National Cabinet Reform Committee on Ageing and Older Australians established. Start work on integrated long-term support and care for older people strategy (2) • Inspector-General of Aged Care established as part of interim administrative arrangements to oversee implementation of recommendations (6, 123, 85) • <i>Quality of Care Principles 2014</i> (Cth) amended to limit use of restrictive practices (29) • Aged Care Workforce Council given more resources (40)
<p>November 2021 / January 2022</p>	<ul style="list-style-type: none"> • Approved providers responsible for care management (14) • Providers' star ratings published on My Aged Care. Similar providers benchmarked against each other and quality indicators made public (31, 117) • Minimum staff time standard for residential aged care (47) • Australian Commission on Safety and Quality in Health and Aged Care referred priority issues for first review of the Aged Care Quality Standards (25) • Residential care funded through casemix-adjusted funding model (88) • Aged Care Research Council established (55) • Interim Workforce Strategy and Planning Framework developed (39) • Australian Health Practitioner Regulation Agency establishes a National Board for registering personal care workers (48)
<p>June / July 2022</p>	<ul style="list-style-type: none"> • MBS amended: <ul style="list-style-type: none"> ▪ in the short-term to improve access to primary and allied health care services (67) ▪ to fund specialist services via telehealth. Approved providers required to assist people to access telehealth (69) ▪ so only a psychiatrist / geriatrician can initially prescribe antipsychotics (71) • Aged Care Advisory Council established (4) • <i>Aged Care Act 1997</i> amended to give effect to the characteristics of high-quality care (21) • Aged Care Quality and Safety Commission given additional powers for investigations and inquiries (112) • National Health Reform Agreement and <i>Quality of Care Principles 2014</i> (Cth) amended to clarify the roles and responsibilities of approved providers to provide health and allied care (75) • <i>Aged Care Act 1997</i> (Cth) and <i>Freedom of Information Act 1982</i> (Cth) amended to improve provider governance and transparency (52) • Aged Care Workforce Planning Division established in Department of Health (39)
<p>December 2022</p>	<ul style="list-style-type: none"> • Australian Commission on Safety and Quality in Health and Aged Care completes urgent review of the Aged Care Quality Standards (24)
<p>June / July 2023</p>	<ul style="list-style-type: none"> • New Aged Care Act comes into force (1) • Australian Aged Care Commission takes on role of system administrator, approves service providers, functions as the prudential regulator (with enforcement powers), workplace planning / development and management of complaints (3, 10, 12, 33, 56). Residential aged care providers subject to continuous disclosure requirements, regular financial reporting, liquidity and capital adequacy requirements (100, 101, 102, 103, 104, 105, 106) • Australian Aged Care Pricing Authority established (5) • Providers have statutory duty to provide high quality and safe care (22) • Residential care quality indicators expanded and quality indicators for care at home are developed (30)
<p>January 2024</p>	<ul style="list-style-type: none"> • New primary care model to accredit general practices as aged care general practices (62)
<p>June / July 2024</p>	<ul style="list-style-type: none"> • New aged care program operational. There is a universal entitlement to aged care based on assessed need (8, 17, 32, 37, 38) • Minimum staff time standard for residential aged care increased (47) • Maximum funding for a person receiving care at home is equivalent to maximum funding available in residential aged care (89) • People living with a disability and receiving aged care services receive daily living supports and outcomes equivalent to those in the NDIS (60) • Australian Commission on Safety and Quality in Health and Aged Care completes comprehensive review of the Aged Care Quality Standards (26)

Final Report

Royal Commissioners

- Due by **26 February 2021**
- Possibly a **compromise and not as radical** as Counsel Assisting's final recommendations
- **Initial support** by the Federal Government is likely
- Subject to the **usual political process**

Questions?

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