



Hon Anthony Carbines MP

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Associate to Hon. Justice Ross AO
Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

Dear Associate

AM2020/99, AM2021/63 and AM2021/65: Applications to vary the Aged Care Award 2010, Nurses Award 2010 and Social, Community, Home Care and Disability Services Industry Award 2010

We refer to our correspondence of 11 September 2021 and 4 March 2022 in relation to the above matters (**Proceedings**).

As foreshadowed in that correspondence, we confirm that the State of Victoria seeks to make a submission for consideration by the Commission in the Proceedings. The submission is made not as an employer, but as a significant funder of public sector residential aged care services. The State's intent in making the enclosed submission is to provide the Commission with information that it may wish to take into account in determination of the Proceedings, pursuant to s590 of the *Fair Work Act 2009* (Cth).

The State of Victoria is supportive of an appropriate increase to minimum wages in the aged care sector as contemplated by the Final Report of the Royal Commission into Aged Care Quality and Safety.

Once the Commission has had an opportunity to consider the enclosed submission, we would welcome an indication as to whether any appearance by the State would assist the Commission in its consideration of the Proceedings, so that appropriate arrangements for any such appearance can be made.

If any further information in relation to any aspect of the enclosed submission would assist the Commission, please contact Elise Tuffy, A/ Executive Director, Workplace Relations and Engagement on 0448 242 957 or via email at elise.tuffy@health.vic.gov.au.

Yours sincerely



Hon Anthony Carbines MP
Minister for Disability, Ageing and Carers
Minister for Child Protection and Family Services

11, 04, 22

Submission by the Victorian Government

Introduction

1. As the steward and manager of the Victorian health system, the Victorian Government plays a critical role in the delivery of high-quality health services that support the health needs of all Victorians, including older community members.
2. The Victorian Government is a significant funder of public sector residential aged care services (**PSRACS**) in Victoria. As a provider of residential aged care services (via its health services), the Victorian Government is committed to providing high quality care to older Victorians, including to those who require more specialised aged care services than are available in the private sector, for example, specialist mental health services.
3. This submission draws on the State's experiences delivering health care to older Victorians, as well as the role of the Victorian Government as a system steward of PSRACS and the provider of other aged care services. The intent of this submission is to provide context and information to the Commission that may assist it in its determination of the proceedings.

Delivery of aged care in Victoria

4. Like other Australian jurisdictions, Victoria has an ageing population. Victorians are living longer, and older Victorians are an increasing percentage of the State's total population. The number of Victorians aged over 65 is anticipated to represent more than 20 per cent of the population by 2066.¹ For many, these extra years of life are lived with complex health and disability needs.
5. The Victorian Government is the largest provider of PSRACS in Australia, operating 179 PSRACS facilities with 5,620 operational places, including four standalone incorporated entities. These services help to provide access to aged care services for many rural and regional communities and to older Victorians with more complex needs. Collectively, the State's PSRACS represent approximately 10 per cent of residential aged care in Victoria.²

¹ Australian Institute of Health and Welfare 2018. Australia's health 2018. Australia's health series no. 16. AUS 221. Canberra: AIHW, <https://www.aihw.gov.au/reports/australias-health/australias-health-2018/contents/table-of-contents>.

² Australian Institute of Health and Welfare, GEN Aged Care Data, Australia Service List <https://www.gen-agedcaredata.gov.au/Resources/Access-data/2021/October/Aged-care-service-list-30-June-2021>

6. Compared to private aged care facilities, PSRACS have proportionally more residents experiencing socioeconomic disadvantage, or with complex health needs or who are younger people with a disability.
7. Over 88 per cent of PSRACS are located in rural and regional Victoria. In some regional townships and communities, the public sector is the sole provider of residential aged care and a major employer. These rural PSRACS provide local access to residential aged care in instances of local market failure.
8. In rural Victoria, PSRACS play a key role in providing aged care to older Victorians in their own community and are typically co-located with a health service delivering cost-effective, integrated and holistic health services to the community. In many instances, public sector residential aged care beds in small rural health services constitute the majority of bed-based services, therefore contributing to the overall critical mass needed to sustain cost effective delivery of a range of health services to these communities.
9. In metropolitan Melbourne, there are eight health services operating 21 PSRACS. These facilities often provide access to services for residents with complex clinical and support needs and who are experiencing socioeconomic disadvantage that would otherwise have difficulty accessing the care they need outside of the public sector.
10. Further, metropolitan PSRACS have a very different resident profile compared to non-government providers. In recent years, anecdotal reports from public sector providers have consistently indicated a trend towards increasing complexity of resident care needs and the refusal of non-government providers to accept certain types of residents. These reports were evidenced in the Resident Complexity in PSRACS: Data Analysis Report (**Complexity Report**).³
11. The Complexity Report analysis found that PSRACS take residents with the highest care and behavioural needs within metropolitan Melbourne. Approximately 48 per cent of residents in PSRACS were identified as having complex care needs, such as requiring tube feeding, complex wound care, disruptive behaviours (for example, from acquired brain injuries, dementia or prior trauma), and chronic mental illness (such as treatment resistant schizophrenia).
12. Victoria's PSRACS operate with legislated nurse to resident staffing ratios, which places a higher proportion of qualified nurses into direct care roles. The *Safe Patient Care (Nurse to*

³ Applied Aged Care Solutions, 'Resident Complexity in PSRACS: Data Analysis Report', 2018, <https://agedcare.royalcommission.gov.au/system/files/2020-06/VIH.0022.0001.0001.pdf>

Patient and Midwife to Patient Ratios) Act 2015 (Vic) (SPC Act) specifies nurse to resident staffing ratios in high care beds in PSRACS to support safe and high-quality care. The SPC Act also reflects increasing demand for services and growing complexity of patient care needs, such as higher rates of co-morbidities (for example, mental illness, disability and dementia).

13. Victoria reports the lowest levels of older people staying unnecessarily in an acute bed while waiting for an aged care bed in Australia. Unnecessary long stays in an acute setting can cause harm to older people including functional decline, falls, delirium and hospital acquired infections. Victoria is able to provide more appropriate care, in a more appropriate setting through its PSRACS.
14. The nurse-led workforce in public sector aged care plays an important role in looking after older people with more complex health co-morbidities and social care needs. Typically these residents may find it more difficult to find a placement in non-government aged care facilities after a hospital stay because of their high support needs.
15. A devolved governance approach underpins the delivery of health services in Victoria. Victorian health service boards are appointed by the Minister for Health and have well-defined responsibilities.
16. All Victorian health services agree to a Statement of Priorities, an annual accountability agreement between the service and the Minister for Health. The Victorian Government also provides health services with system-wide terms and conditions for funding, administrative and clinical policy through applicable policy and funding guidelines.
17. Victorian health services receive funding from the State Government to provide a range of bed-based and home-based services aimed at responding to the care needs of older Victorians and assisting them to maintain or regain independence. These services can be provided following a hospital admission (or re-admission) or in the community and often substitute for an unnecessary hospital admission.
18. Subacute services which primarily target older Victorians include:
 - (a) rehabilitation services;
 - (b) geriatric evaluation and management;
 - (c) palliative care services; and
 - (d) the Health Independence Program, which provides hospital substitution and diversion services by supporting people in the community, in ambulatory settings and in people's homes.

19. The Victorian Government also supports the delivery of a range of Commonwealth-funded aged care services, including:
- (a) the Transition Care Program (**TCP**). This is a jointly funded program across the Commonwealth and States and Territories. Victoria jointly funds TCP and is the approved provider. The program is a Commonwealth program under the *Aged Care Act 1997*, and older people need to be assessed and approved by the Aged Care Assessment Service while in hospital to be eligible. The program aims to provide short term care to optimise function and independence of older people after a hospital stay, reduces the number of days older people wait in hospital for a residential care place and minimise the risk of premature entry to residential care;
 - (b) the Aged Care Assessment Service (ACAS), to which the Victorian Government contributes funds and manages under agreements with the Commonwealth. ACAS undertake assessments for people who are seeking access to Commonwealth government funded aged care services under the *Aged Care Act 1997* (such as home care packages, residential aged care, residential respite etc); and
 - (c) PSRACS, to support the nurse to resident ratios and to address the Commonwealth funding gap associated with the Adjusted Subsidy Reduction (**ASR**). The ASR is applied by the Commonwealth to funding for specific public sector residential aged care beds, at the facilities identified in the Commonwealth's *Adjusted Subsidy Determination 2016*. It is a legacy arrangement that discounts Aged Care Funding Instrument subsidies on the basis that the State Government is responsible for funding infrastructure.

Funding arrangements

20. Like all residential aged care services, PSRACS are primarily funded and regulated by the Commonwealth and must comply with the Aged Care Quality and Safety Standards. They are also assessed and accredited by the National Aged Care Quality and Safety Commission.
21. While the Commonwealth Government remains the primary funder of residential aged care, Commonwealth direct care subsidies are insufficient to meet the higher costs associated with supporting more complex care needs, or maintaining services in smaller or more remote communities. Nurse to resident ratios are unique to Victorian public sector high care residential aged care services and mean that there are proportionally more nurses in the public sector compared to private sector providers. This clinical capacity means that public sector services are well equipped to support complex care needs, but it is associated with increased cost.
22. Commonwealth subsidies paid to residential aged care providers for resident care are based on assessed needs according to the Aged Care Funding Instrument (**ACFI**). The ACFI is a resource (funding) allocation tool and is not a measure of complexity.

23. The Victorian Government provides supplementary funding to ensure public sector residential aged care services can sustain their critical role within the service system. In particular, the Victorian Government supplements provide a contribution towards the additional cost associated with:
- (a) Victorian Government legislated nurse-to-resident ratios in high care public sector residential aged care services;
 - (b) provision of specialist clinical services in aged persons' mental health facilities for residents with challenging behaviours associated with their mental illness;
 - (c) additional specialist clinical support for beds designated for residents with specific complex physical conditions (for example, acquired brain injury and multiple sclerosis);
 - (d) assisting smaller high care services in rural and regional Victoria; and
 - (e) subsidy payments to offset the ASR or discount applied to Commonwealth Government payments to residential aged care places classified as State Government to ensure they receive similar funding levels allocated to the sector.⁴

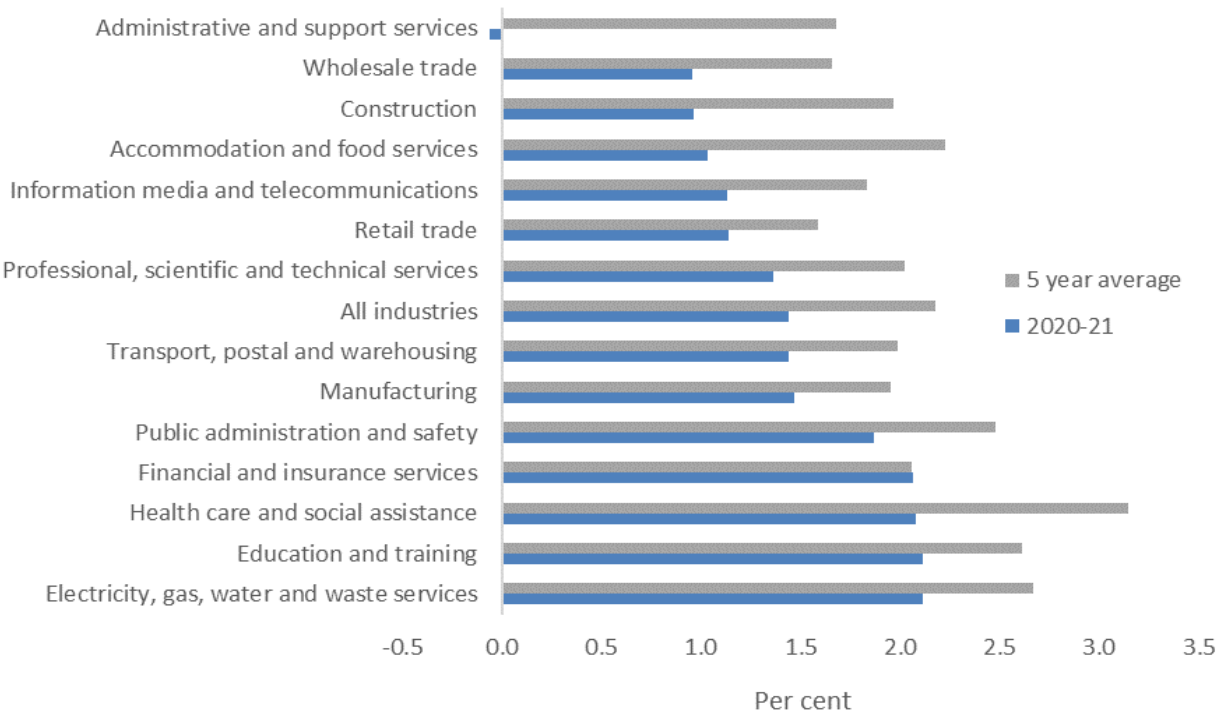
Impact of COVID-19 on residential aged care and Victorian economic conditions and outlook

24. The COVID-19 pandemic has presented ongoing challenges to economies around the world, and Victoria has been no exception.
25. As highlighted through the tragic impact of COVID-19 on the aged care sector, the casualisation and reliance on agency staffing in residential aged care is a significant challenge.
26. As the initial variant of COVID-19 was contained and domestic restrictions were progressively eased through the December quarter 2020, the Victorian economy rebounded strongly and by the June quarter 2021 Victorian state final demand was already above pre-pandemic levels.
27. While necessary restrictions associated with the Delta variant of COVID-19 led to a decline in economic activity in the September quarter 2021, economic activity and employment remained stronger than during restrictions in 2020, with over 100,000 more people employed in October 2021 compared with September 2020. This highlights the importance of support provided by the Victorian Government, and the resilience and flexibility of Victorian businesses and consumers, as the economy has increasingly adapted to conditions created by the pandemic.

⁴ Australian Department of Health, 'Adjusted Subsidy Determination 2016', <https://www.health.gov.au/resources/publications/adjusted-subsidy-determination-2016>

28. As restrictions eased in late 2021, employment rose strongly to be above pre-pandemic levels, the unemployment rate fell to a near record low and workforce participation reached a record high. In January, the Omicron variant caused some disruption to employment, although the unemployment rate reached a record low, and leading indicators of employment remain very strong.
29. The economy's resilience and flexibility, high vaccination rates, robust household and business balance sheets and strong labour demand will continue to support the Victorian economy, which remains well placed to recover strongly as it has following earlier COVID-19 outbreaks.
30. Strength in the labour market, and some industry specific constraints on labour supply, are likely to lead to higher wages growth and inflation, following a period of very low wage growth and inflation amid the COVID-19 pandemic. While rising from these recent very low rates, both wage growth and inflation, though, are expected to remain moderate.
31. In 2020-21, Victorian annual wage growth averaged 1.4 per cent, compared to 2.4 per cent in the prior year. In 2020-21, 14 of the 15 industries for which there are data available recorded growth lower than their five-year average (**Figure**), largely reflecting the impact of the COVID-19 pandemic on the labour market.
32. More recently, Victorian wages growth has improved in aggregate. Wages grew by 2.3 per cent over the year to the December quarter 2021, with the pickup relative to 2020-21 partly reflecting the unwinding of previous private-sector wage freezes, along with a relatively tight labour market.

Figure 1: Average annual wages growth by industry, Victoria (per cent)⁵



- 33. The Victorian *202122 Budget Update* stated Victorian wages growth is expected to be 2.25 per cent in 202122 and 2.50 per cent in 202223 (in year average terms). As the economy continues to recover and the unemployment rate remains low, wages growth is forecast to continue to increase moderately over the remainder of the forecast period, reaching 3 per cent in 2024-25.
- 34. Higher wage growth, some disruption to global supply chains, higher oil prices, and labour shortages in some industries will all likely put some upward pressure on inflation.
- 35. Inflation was a low 1.4 per cent in 2020-21 (in year average terms). More recently, inflation has risen, reflecting higher prices for fuel, some food items, and costs for new dwelling purchases. In December 2021, the Melbourne consumer price index rose by 1.1 per cent in the quarter and by 2.5 per cent over the year.
- 36. Inflation in the 2021-22 Budget Update is forecast to be 2 per cent in 2021-22, easing to 1.75 per cent in 2022-23 as some recent drivers of higher inflation – notably fuel and new dwelling purchases – are expected to be temporary. In later years, inflation is forecast to rise as wage growth picks up, but remain well within the Reserve Bank of Australia’s inflation target band.

⁵ Source: ABS

These forecasts pre-date the Russia–Ukraine conflict and associated large rise in global oil prices, which the Reserve Bank of Australia has noted has created additional uncertainty about the inflation outlook.

37. The above analysis suggests that workers are likely to experience stronger inflation pressures affecting real income as well as moderate wage growth. These challenges have the potential to be amplified for workforces such as aged care that have been historically undervalued.

Support for appropriate increase to aged care sector wages

38. The Victorian Government broadly supports all recommendations made by the Final Report of the Royal Commission into Aged Care Quality and Safety (**Royal Commission**) and notes the importance of the Commonwealth, as the primary funder and regulator of aged care in Australia, to adequately fund appropriate wage increases to support the attraction and retention of a skilled aged care workforce. In particular:
- (a) recommendation 84 of the Final Report, which recommended that employee organisations collaborate with the Commonwealth Government and employers to apply to vary wage rates to the *Aged Care Award 2010* (**Aged Care Award**), the *Social, Community, Home Care and Disability Services Industry Award 2010* (**SCHADS Award**) and the *Nurses Award 2010* (**Nurses Award**) to reflect the work value of aged care employees and seek to ensure equal remuneration for equal or comparable value for men and women; and
 - (b) recommendation 85, which recommended that, in setting prices for aged care, the pricing authority take into account the need to deliver high quality and safe care, and the need to attract sufficient staff with the appropriate skills to the sector, noting that the relative remuneration levels are an important driver of employment choice.
39. The Victorian Government is therefore supportive of an appropriate increase (or series of increases) to minimum award wages in the aged care sector as contemplated by the Final Report of the Royal Commission, appropriately funded by the Commonwealth.

Gender equity

40. The Victorian Government is strongly supportive of gender pay equity in the workplace and addressing the gender pay gap so that work in female dominated sectors is properly and fairly valued. This also involves addressing the wages gap that exists between aged care workers and workers performing equivalent functions in different sectors or locations.
41. The aged care workforce comprises a range of occupations including nursing, medicine, allied health, care workers and support staff, with nursing being the largest regulated occupational group in the sector. This includes:

- (a) a direct care workforce, where a nurse, personal care worker, allied health or other worker/profession physically interacts with a resident to provide care. This includes the commonly referred to 'personal care' workforce such as personal care assistants; and
 - (b) an indirect care or support workforce which refers to activities or treatments that are performed on behalf of the resident, such as referrals.
42. The direct care workforce is one of the largest and fastest growing sectors in Victoria. It has specific characteristics and needs. For example, the personal care workforce is largely female,⁶ with a substantial gender pay gap, and includes a significant proportion of new migrants. The personal care workforce is a low-paid sector, with a high level of casualisation. Specialised care sector digital 'platforms' have also been emerging and drawing more workers into the sector who are also typically engaged in casual forms of work and subject to the insecurity that this can bring.
43. The Victorian Government's Wages Policy and the Enterprise Bargaining Framework (**Wages Policy**) allows for Victorian public sector employers to bargain higher cost outcomes linked to a key operational reform or the 'Public Sector priorities' including the promotion of gender equity.⁷ Outcomes linked, for example, to:
- (a) specific measures to address gender inequity (for example, additional parental leave and payment of superannuation during periods of parental leave); or
 - (b) targeted wage increases to a specific and identifiable cohort of workforce who have historically been underpaid because of gender (for example, through reclassification of a particular feminised role).
44. Whilst the Wages Policy only applies to Victorian public sector employers, the applications before the Commission have the potential to support all employers towards addressing the gender pay gap by appropriately increasing minimum wages in these fields.

Sustainable resourcing

45. Sustainable resourcing of the aged care system is needed to support a skilled workforce to provide high-quality care for older Australians. Strengthening the workforce, both through strategies to attract and retain staff and by addressing regulatory gaps, is a critical action to help drive a sustainable and professional aged care sector.

⁶ Australian Government, '2020 Aged Care Workforce Census Report', <https://www.health.gov.au/sites/default/files/documents/2021/10/2020-aged-care-workforce-census.pdf>.

⁷ Victorian Government, 'Wages Policy and the Enterprise Bargaining Framework', <https://www.vic.gov.au/wages-policy-and-enterprise-bargaining-framework>.

46. In addition, the implementation by the Commonwealth of other Royal Commission recommendations can be anticipated to increase expectations on the personal care workforce. These include a national registration scheme (recommendation 77); mandatory minimum qualifications for personal care workers (recommendation 78); dementia and palliative care training (recommendation 80), and ongoing professional development requirements (recommendation 81).
47. The Committee for Economic Development in Australia (CEDA) 2021 report found that Australia's aged care workforce shortage will reach 400,000 by 2050, noting that the sector is already facing difficulties in attracting and retaining workers.⁸ The residential aged care sector also faces competition for workers within other aged care programs, such as home based care and assessment services, as well as from other sectors, including the disability sector, particularly with the roll-out of the National Disability Insurance Scheme.

Work value

48. The Victorian Government submits that an appropriate increase to minimum wages in the aged care sector is justified by work value reasons and is necessary to achieve the modern awards objective to provide a safety net of fair and relevant minimum wages for the sector. Beyond the inherent value of the work performed in the aged care sector, more recent changes to the nature of that work have caused the work value to increase, including the level of complexity, the skill, responsibility and judgement involved in performing the work, and the conditions under which the work is performed.

Industrial and other observations

49. The Final Report of the Royal Commission acknowledged that an effective increase in wages across the aged care sector could not be confined to an increase to minimum wages under the Aged Care Award, being an award that only applies to the residential aged care sector and not, for example, home aged care workers. Recommendation 84 specifically contemplated applications to increase minimum wages under the Aged Care Award, the Nurses Award and the SCHADS Award (**Relevant Awards**).
50. While the proceedings necessarily have an aged care focus, the practical impact will be felt across other sectors, including a potential for the outcome of the proceedings to impact classification and role relativities within occupations and across sectors other than aged care.

⁸ Committee for Economic Development in Australia, 'Duty of care: Meeting the aged care workforce challenge', <https://www.ceda.com.au/ResearchAndPolicies/Research/Health-Ageing/Duty-of-care-Meeting-the-aged-care-workforce-chall>

51. One such example is the application in relation to the Nurses Award, which proposes to introduce a separate schedule for aged care nurses to whom increased wages would apply. In addition, it foreshadows a future application to apply the increases sought in the Proceedings to the whole of the Nurses Award prior to the expiration of the proposed schedule. While this further application is not presently before the Commission, it illustrates an anticipated impact of the outcome of these Proceedings beyond the aged care sector.
52. While the same intent is not expressed in the application in relation to the SCHADS Award, a similar approach may also be anticipated for classifications in other sectors under that award.
53. There is also considerable mobility of staff between employers in different sectors. In 2020, PSRACS in Victoria were surveyed about workforce mobility as part of Victoria's COVID preparedness. These surveys found that of the 179 PSRACS, 82 per cent had staff working across other services, including across sites within their auspicing health service. 116 of these PSRACS also shared staff with other external employers including other aged care services, disability services and industries not related to health, aged care or disability. The surveys found that the financial needs of staff was a main driver for working across a number of sites.
54. Circumstances may arise where ancillary workers, such as cooks or cleaners, similarly work across aged care and other settings such as palliative care. Differentiated pay rates in these circumstances is something that will likely need to be carefully considered and managed.

Financial implications

55. Aged care workers employed by public health services in PSRACS are covered by the same enterprise bargaining framework that applies to all public health services and are presently covered by the same enterprise agreements that cover public hospitals and their employees. In particular, these are:
 - (a) the *Nurses and Midwives (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2020-2024 (Nurses and Midwives Agreement)*;
 - (b) the *Victorian Public Health Sector (Health and Allied Services, Managers and Administrative Workers) Single Interest Enterprise Agreement 2016-2020 (HASMA Agreement)*; and
 - (c) the *Victorian Public Mental Health Services Enterprise Agreement 2016-2020 (Mental Health Agreement)*.
56. Under these enterprise agreements (and proposed replacement enterprise agreements that are currently the subject of negotiations in bargaining), Victorian public sector aged care workers are (and will continue to be) entitled to wages in excess of the minimum rate of pay currently prescribed by the Relevant Awards. In many (but not all) cases, the relevant

enterprise agreement minimum rates are more than 25 per cent above the minimum rates under the Relevant Awards.

57. Should the Commission determine that an increase to minimum wages under the Relevant Awards for the aged care sector is appropriate, the Victorian Government would welcome the opportunity to provide further submissions as to quantum, or how any proposed increases might be implemented (for example, in a phased manner), should that be of assistance to the Commission.

Closing comments

58. A strong and sustainable aged care system is needed to ensure older Victorians receive care in the most appropriate setting and assist patient flow out of hospitals. Victoria, unlike other jurisdictions, maintains a significant role in the provision of PSRACS, with PSRACS a core component of Victoria's system focus on supporting integrated geriatric care pathways, along with a strong sub-acute system and non-acute diversion.
59. The Victorian Government has considered the consensus statement of Aged & Community Services Australia, Aged Care Industry Association, Aged Care Reform Network, Australian Nursing and Midwifery Federation, Carers Australia, Council on the Ageing, Federation of Ethnic Communities' Councils of Australia, Health Services Union, Leading Age Services Australia, National Seniors Australia, Older Persons Advocacy Network and United Workers Union dated 17 December 2021 (**Consensus Statement**).
60. The Victorian Government strongly supports the observation of the Consensus Statement that a decision of the Commission to appropriately increase minimum wages in the aged care sector must be matched by increased funding from the Commonwealth Government, as the primary funder and regulator of aged care services in Australia, and must be linked to transparency and accountability measures as to how funding is used. Sufficiently increased investment from the Commonwealth Government is critical to supporting the aged care system that older Australians deserve.
61. If any further submissions would assist the Commission, the Victorian Government would be pleased to provide these.

11 April 2022