

IN THE FAIR WORK COMMISSION

FWC Matter No: AM2020/99

Application vary or revoke the Aged Care Award 2010

SUPPLEMENTARY WITNESS STATEMENT OF KATHLEEN EAGAR

I, Dr Kathleen Eagar, Professor of Health Services Research and Director, Australian Health Services Research Institute of University of Wollongong in the state of New South Wales, say as follows:

1. I have prepared a supplementary report dated 20 April 2022 which I prepared at the request of the Health Services Union for the purposes of this proceeding (**Supplementary Report**).
2. A copy of the Supplementary Report is annexed and marked "**KE-5**".
3. A copy of the letter of instruction issued to me by the Applicant's solicitors is annexed and marked "**KE-6**".
4. The opinions I have expressed in the Supplementary Report are based wholly or substantially on specialised knowledge arising from my training, study and experience.
5. I have made all the enquiries that I believe are desirable and appropriate and no matters of significance which I regard as relevant have, to the best of my knowledge and belief, been withheld from the Fair Work Commission.
6. I have been provided with a copy of the Federal Court of Australia Expert Evidence Practice Note dated 25 October 2016, and I have read and understood the Practice Note, agree to be bound by it and have complied with it in preparing the Report.



.....
Kathleen Eagar

Date: 21 April 2022

Professor Kathy Eagar
Director
Australian Health Services Research Institute
Faculty of Business
Level 1, Enterprise 1
Innovation Campus
University of Wollongong
20 April 2021


AM2020/99 - Work Value Case - Aged Care Award

Supplementary Report

1. This is a supplementary report provided at the request of Maurice Blackburn Lawyers (their reference ALG/5506404 (650)).
2. I have been asked to comment on the statement by Mr Paul Sadler in which he said (paragraph 29) that *“The 2019 standards require providers to ensure “the organisation has a workforce that is sufficient, and is skilled and qualified to provide safe, respectful and quality care and services.” As such, the Aged Care Quality Standards do not directly require particular actions be undertaken by care employees and nurses, but they do impact the way the work is performed”*.
3. I agree with this statement by Mr Sadler. The Aged Care Quality Standards set requirements on provider organisations, not individual employees. Mr Sadler is correct in stating that the Aged Care Quality Standards *“do not **directly** require **particular** actions be undertaken by care employees and nurses, but they do impact the way the work is performed”* (my emphasis added).
4. However, a provider organisation can only meet the standards if their employees (1) have the necessary skills and expertise and (2) actually deliver safe and respectful care. In this way the standards have indirect implications for employees, their required skill mix and the way that they work.
5. I have been asked to comment on statements by Mr Paul Sadler (paragraphs 36 to 52) in relation to the way that the aged care sector is funded.
6. I agree with these statements by Mr Sadler. The aged care sector relies on government funding for the bulk of its income and the amount of available funding impacts decisions on a daily basis.
7. I would add that the funding model for residential aged care is due to change in October 2022 with the introduction of the Australian National Aged Care Classification (AN-ACC) funding model. However, while the detail of the model will change, the aged care sector will continue to rely on government funding for the bulk of its income and funding will continue to impact decisions on a daily basis.

8. I have been asked to comment on whether statements by Mr Mark Sewell (paragraphs 70 to 83) are typical of non-for-profit providers in the aged care industry.
9. Mr Sewell is the Chief Executive of a medium sized not-for-profit organisation that has a strong reputation for delivering high quality person-centred care. Warrigal has a strong community ethos with a genuine 'not for profit' culture. Their Board members are volunteers and their executive do not receive performance bonuses. While the community ethos of Warrigal is not unique, the not-for-profit sector is diverse. Many boards are paid and some executives do receive performance bonuses.
10. I would regard Warrigal as a good quality not-for-profit organisation that is typical of small, community-based organisations.
11. Unlike, for example, religious charity-run aged care organisations, Warrigal exists solely to deliver aged care. It is not able to cross-subsidise aged care from another business line. Nor does it cross-subsidise other business lines from aged care.
12. A point of difference from some other not-for-profit homes is that Warrigal made a decision in recent years to operate at a significant deficit. It did so because it was not able to provide adequate care within the funding envelope it was receiving from the government. While Warrigal was not alone in making a decision to operate in deficit, not all providers adopted the same approach. Some providers have closed, others have reduced the standard of their care to fit the available funding envelope.
13. In my experience, different aged care providers made different decisions about whether to operate in deficit based on several factors including their financial capacity to absorb operating losses and their business ethos. While all not-for-profit organisations are literally 'not for profit', they vary in terms of their requirement to operate as a 'not for loss' business.

Signed:



Date:

20 April 2022

Witness:



Date:

20 April 2022

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19 April 2022

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Dear Professor Eagar

AM2020/99 - Work Value Case - Aged Care Award

1. We refer to the above proceeding and to your previous statement dated 29 March 2021 (**Previous Statement**).
2. We **enclose** copies of the following statements which have been filed on behalf of employer groups:
 - (a) statement of Paul Sadler, Chief Executive Officer of Aged and Community Services Australia dated 1 March 2022 (**Sadler Statement**); and
 - (b) statement of Mark Sewell, Chief Executive Office and Operations Manager at Warrigal dated 3 March 2022 (**Sewell Statement**).

(Statements)
3. Please review the Statements, having particular regard to the following paragraphs:
 - (a) 15 to 29 and 36 to 52 of the Sadler Statement; and
 - (b) 70 to 83 of the Sewell Statement.
4. We request that you prepare a Supplementary Report, in relation to the Application by providing your expert response on the following matters:
 - (a) whether you agree with paragraph 29 of the Sadler Statement. In particular, do you agree with the statement that "*the Aged Care Quality Standards do not directly require particular actions be undertaken by care employees and nurses, but they do impact the way the work is performed*"?

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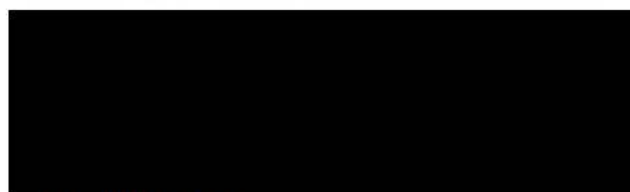
ALG/5506404/pparker/70824817.1/Default

- (b) if your answer to paragraph 4(a) is 'no', why do you disagree? How has the introduction of the 2019 standards changed the way work is performed by aged care workers, including personal care workers?
- (c) whether you agree with the description of how the aged care sector is funded, described in paragraphs 36 to 52 of the Sadler Statement. If not, what aspects of these paragraphs do you disagree with and why?
- (d) whether you agree that the funding arrangements referred to in paragraphs 70 to 83 Sewell Statement are typical of non-for-profit providers in the aged care industry. If not, how do the funding arrangements described in those paragraphs, differ from typical funding arrangements of non-for profit providers?
5. All reply evidence is due to be filed on **21 April 2022**. Accordingly, we ask that you provide us with your Supplementary Report by that date.
6. We reiterate that you are required to comply with the Expert Witness Code of Conduct and Rule 23.13 of the Federal Court Rules in preparing the Supplementary Report.

Yours faithfully



Alex Grayson
Principal Lawyer
MAURICE BLACKBURN LAWYERS
EMPLOYMENT & INDUSTRIAL LAW
(Enquiries: Ilijana Radonic - 02 8267 0948)



Penny Parker
Associate
MAURICE BLACKBURN LAWYERS
EMPLOYMENT & INDUSTRIAL LAW

Coronavirus Update

We are doing everything possible to ensure claims continue to progress and legal rights are not affected by the coronavirus pandemic. If any impact is identified we will advise clients as soon as possible.