



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE HATCHER, PRESIDENT  
VICE PRESIDENT ASBURY  
DEPUTY PRESIDENT O'NEILL  
PROFESSOR BAIRD AO  
DR RISSE**

**AM2020/99**

**s.158 - Application to vary or revoke a modern award**

**Application by Ellis & Castieau and Others  
(AM2020/99)**

**Sydney**

**10.00 AM, MONDAY, 4 DECEMBER 2023**

**Continued from 24/11/2023**

PN1

JUSTICE HATCHER: I'll take the appearances. Mr Gibian, Mr Saunders, you appear for the HSU.

PN2

MR M. GIBIAN: I do. Thank you, your Honour. I also appear with Ms Doust although she's not particularly present today.

PN3

JUSTICE HATCHER: All right. Thank you.

PN4

Mr McKenna and Mr Hartley, you appear for the ANMF.

PN5

MR J. McKENNA: May it please the Full Bench.

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JUSTICE HATCHER: Mr Ward and Ms Rafter, you appear for what's known as the Joint Employers.

PN7

MR N. WARD: Yes, your Honour.

PN8

JUSTICE HATCHER: Ms Harrison, you appear for the UWU.

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MS L. HARRISON: Yes, your Honour.

PN10

JUSTICE HATCHER: Mr Chin and Mr Fuller, you appear for the Commonwealth.

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MR D. CHIN: Yes, we do, your Honour.

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JUSTICE HATCHER: Yes. All right.

PN13

Mr Gibian?

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MR GIBIAN: Yes. May it please the Commission. As everyone knows, we're here to deal with the substantive hearing of what's been referred to as stage 3 of the proceedings, stage 1 involving the determination of what was ultimately dealt with as an interim decision providing for an increase specifically for direct care workers under the Aged Care Award and home care worker Nurses Award and the home care workers under the SCHADS award and stage 2 which dealt with the timing and implementation of the interim increase and various associated issues.

PN15

Just in introduction to this stage of the proceedings, obviously noting the knowledge of the Bench of the earlier stage, I thought it may be appropriate just to chart how we got to where we are because it is important in framing the issues that - as we apprehend it, at least, are now before the Full Bench.

PN16

As the Bench knows there were initially various applications before the Commission calling for a 25 per cent increase in the minimum rates for workers engaged in the aged care sector covering across three awards, the Aged Care Award, the Nurses Award and the SCHADS award.

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In the stage 1 decision, the Full Bench made extensive factual findings in relation to the work of both direct and indirect care workers and home care workers in the course of the major decision towards the end of last year.

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It concluded, particularly at paragraphs 2 - sorry, 899 and 931 that in respect of direct care workers covering both direct care workers in residential context and home care workers covered by the - currently covered by the SCHADS award that the evidence demonstrated that the existing minimum wages contained in the various awards did not properly compensate those workers for the value of the work performed.

PN19

JUSTICE HATCHER: Mr Gibian, as a newbie to the proceedings was there any clear definition of what a direct care worker is?

PN20

MR GIBIAN: Indeed. Yes, in short and your Honour may know that in the first - the substantive decision, a number of issues as to the scope or application of the interim increase were left for the resolution - well, for discussions between the parties and ultimately resolution in stage 2 of the proceedings.

PN21

In short, the answer to your Honour's question is it covered nurses, assistance in nursing under the Nurses Award, personal care workers under the Aged Care Award and home care workers covered by the SCHADS award.

PN22

In addition, as a consequence of the further discussions between the parties and resolution in stage 2, the interim increase also extended to the recreational activities officers engaged in recreational and lifestyle activities for residents in residential aged care, considered as part of the direct care workforce as well as, perhaps standing in a slightly different category, what ultimately came to be referred to as the most senior food services employee, a head chef or head cook as a result of the evidence that was heard in the first stage of the proceedings and turning the particular work value issues attaching to that category of food service (indistinct).

PN23

JUSTICE HATCHER: Just perhaps I should clarify my question, I'm particularly concerned with what constitutes a personal care worker for the purpose of the Aged Care Award.

PN24

MR GIBIAN: Yes. Those - both of them are categorised as undertaking personal care work in a residential aged care context. There is, as your Honour may know, an issue that has - between the parties in relation to the interaction between a personal care worker classification under the Aged Care Award and the assistance in nursing classification under the Nurses Award.

PN25

Your Honour may have seen that the accepted position of the parties and the accepted position of the Bench was that the work undertaken by persons referred to as either AINs in a residential aged care context or personal care workers in that context was the same, really without differentiation and it appears to have been dealt with on the ground as a matter of title rather than as a differentiation in terms of the work performed.

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JUSTICE HATCHER: All right.

PN27

MR GIBIAN: What that left out of the interim increase on the basis and I did want to emphasise this, on the basis that the Full Bench observed that the position was - whilst it was able to reach a clear state of satisfaction as to the conclusion that so far as direct care workers are concerned and the other classifications to which I've referred, were not properly compensated by current rates or pre-existing rates for the work that they've performed, the position was less clear with respect to support and administrative roles.

PN28

That left out essentially, general and administrative service employees in a residential aged care context and lower-level food service employees, if I can refer to it in that way, other than the most senior food service employee in a particular facility.

PN29

What I was going to come to and what we do emphasise in that respect is that as we apprehend the conclusions of the Full Bench in the first decision, it was not that there had not been demonstrated a basis for an increase for work value reasons for those classes of employees on the evidence as it was but that the position as the Full Bench explained, was not clear sufficient to give it satisfaction that an interim increase was appropriate pending the final determination of the - what was then categorised as stage 3 proceedings.

PN30

I think that covered some aspects of what I wish to say in terms of the background of the first stage 1 decision. Obviously as the Full Bench knows, the course that was taken because of the view that was formed in relation to the indirect care

workers and because of a series of other issues that had arisen in relation to classifications and issues of funding, the course the Full Bench determined to take was to provide for - to make an interim decision and ultimately to provide for an interim increase that took effect in July of this year.

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In relation to quantum, the Full Bench indicated particularly at paragraph 938 that it regarded the interim increase as falling what it said as comfortably below the level of an increase that it may determine on a final basis.

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That is, as we apprehend the Full Bench decision, a further increase in that (indistinct) the Full Bench was an unquantified amount, but was justified on the evidence existing at that time in relation to direct care workers in addition to the 15 per cent interim increase which it had determined was justified, at least as an interim - at least on an interim basis for work value reasons.

PN33

That is of significance as I'll come to momentarily in terms of what the Full Bench is dealing with now. The Full Bench has received some further evidence on our part directed at indirect care and also directed at direct care, particularly two issues which were identified by the Full Bench as not having been considered as part of the interim increase, namely, the impact of the COVID-19 pandemic and the evidence in relation to chronic understaffing issues encountered, I think in all aspects of the aged care industry, both residential care and home care.

PN34

There has been perhaps understandably, given the Full Bench's identification of those issues, a focus upon those two matters in the further evidence which has been filed in the proceedings, I think on both parties' side. It is, for our part, important to emphasise that it's not those matters which, on our basis certainly alone, are said to justify a further increase beyond the increase - the interim increase so far as direct care workers are concerned, or the increase that is sought so far as indirect care workers are concerned.

PN35

That is, the additional 10 per cent which is still sought by my client, is justified, in our submission, on the basis of all of the evidence which is heard in the first stage of the proceedings.

PN36

We do say that the impact of the pandemic on the skills and responsibilities of staff in the - particularly in this sector and the effect of the evidence in relation to understaffing on those employees can be relevant to work value reasons and is part of those matters that ought be considered in determining a final increase but as I say, the final increase that we say is justified is not directed specifically at those matters separate from the other evidence that was heard in the first stage of the proceedings.

PN37

The same observation ought be made with respect to the indirect care workers as well. Again, obviously the Full Bench has already dealt with a large volume of evidence in relation to those matters. It has been supplemented to some degree, both by witnesses my client will call and the respondent to by a number of witnesses called by the Joint Employers. Again, we rely upon that in supplement to the earlier evidence rather than substitution for it.

PN38

The issues that the Full Bench is now dealing with were separated into the wage adjustment issues and what were referred to as classification and allowance issues. So far as the wage adjustment issues, that is relatively straightforward and I think apparent from what I've said already, that is the issue is what further increase is appropriate on work value grounds for direct care workers and what increase should be awarded so far as indirect care workers are categorised as I've described them, in residential care.

PN39

So far as the second class of issues which, as I apprehend it, we're now in a sense dealing with together, (indistinct) sense and in terms of final submissions, we - it's perhaps necessary to say something. There were a range of issues that arose in the course of stage 1 of the proceedings in relation to the classification, the classifications both descriptors and structure in, primarily, the Aged Care Award by reason of the applications.

PN40

But it will be apparent to the Full Bench that the focus of the initial applications which were filed was an increase in minimum wages for workers in the aged care sector covered by the particular awards, subject to certain issues that have been raised, we saw the specialist personal care worker classification, for example, and some changes to the classification descriptors in the Aged Care Award.

PN41

What arose from stage 1 of the proceedings in addition to that, was that issues as to the adequacy or otherwise of the classification descriptors and structure, were apparent from the evidence. The Full Bench identified those and drew attention to them, particularly in what was referred to as background document 10, I think at the start of this year.

PN42

It emphasised, particularly within that document at paragraph 73, the evidence of Professor Charlesworth that the classification descriptors in the Aged Care Award particularly were rudimentary and compressed and did not recognise the skills and competencies required for the work performed.

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I think Associate Professor Smith and Dr Lyons made similar observation in their evidence - expert evidence called by the ANMF. The Bench also referred to - or the background document referred to the findings of the Royal Commission that the particularly personal care worker classifications were very flat with limited opportunity for career progression and indicated that the time was right to review and modernise the occupational and job structures.

PN44

In the draft determination that my client filed in September, we have endeavoured to take on that challenge by proposing alterations to the classification structure and descriptors in both the Aged Care Award and to - and proposed that the home care workers move from - involved in aged care move from the SCHADS award to the Aged Care Award.

PN45

The Bench will have seen that in consultation with Professor Charlesworth and Meagher, we developed the specification descriptors and wage structure which endeavoured to focus upon the nature of the work performed, describe the context of work environment in which it is undertaken and recognised the responsibilities and skills involved in that work including the invisible skills recognised in stage 1 of the proceedings.

PN46

In addition to that, we are proposing changes to the classification and wage structure which seek to hopefully on an appropriately principal basis to provide a structure which can cater for appropriate and meaningful differentiation in rates between the classifications in the award to provide an opportunity for meaningful career progression for - particularly for personal care workers.

PN47

JUSTICE HATCHER: I'm just wondering in terms of this stage in the proceeding, whether we need to stay findings and conclusions with respect to non-direct care workers before we can proceed to finalise the issue of the classification structure.

PN48

MR GIBIAN: I think the Bench would at least need to form that view at one time, I think whether it has to be sequential in that way but a view as to the whether particularly there ought be a distinct classification structure for personal care work as opposed to indirect care work is obviously bound up with what the wage should be and how the classification and descriptors ought work.

PN49

The Bench will know that our proposal is that the - consistently with the perhaps, pre-existing structure prior to the interim increase, at least, that there be a common classification structure for direct and indirect care work in residential care, albeit in a manner which identifies the distinct work and work environment and demands of those different types of roles but according to a common structure.

PN50

We accept that that would need to be done in a different way, albeit primarily structurally if the Full Bench would - ultimately forms a conclusion that a different level of increase or different level of minimum wage is appropriate for indirect care workers as opposed to direct care workers, just as a matter of structure, that would be necessary so far as wage rates are concerned and that may not be an immensely complex task but we accept that that would be necessary if that is the conclusion the Full Bench reaches.

PN51

The Full Bench will have seen that Professor Charlesworth and Meagher subsequently filed a report which has suggested further refinements to both the classification descriptions and a different approach to the determination of wage rates to that which is contained in my client's draft determination.

PN52

The approach we take to that is that my client's application is the draft determination is filed by the HSU but we accept that there is not one correct way to go about these things and accept that the approach proposed by Professor Charlesworth and Meagher is an alternative, appropriate approach which can lead to the outcomes which my client would wish to achieve, namely an appropriate classification structure which provides for career progression and meaningful reward for care workers and other employees in residential care and home care as they progress through the classifications and structure through the acquisition of skills and qualifications and experience.

PN53

In addition, with respect, we don't think that the other proposals so far as classifications and wage structures that have been proposed by the other parties quite endeavour to meet the challenge. There is an alternative proposal by both the ANMF and the Joint Employers that propose a different approach to classifications.

PN54

As we'll come to in due course, we don't think it quite - but either of those approaches quite seek to address the challenge that was identified in background document 10, namely the inadequacy or rudimentary nature of the classification descriptors and the closely compressed nature of the wage rates between the various classifications.

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JUSTICE HATCHER: Mr Gibian, as you know, modern awards in terms of the rates were perhaps inconsistently structured in relative terms by reference to the classification structure now found in the Manufacturing Award.

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MR GIBIAN: Yes.

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JUSTICE HATCHER: There was a finding in the first decision in this matter that that approach may have been to an undervaluation of what might variously be described as soft skills or caring skills or however you want to describe them, and that was, I think, an underlying reason for the interim adjustment that was determined. In terms of getting to final landing place for this award, how do we reconcile the outcome here with some rational system of cross-award relativities?

PN58

MR GIBIAN: Your Honour will have seen that the HSU application seeks to do it by - or draft determination seeks to do it by using what Professor Charlesworth



and Meagher have, in my mind at least, usefully referred to as anchor points by reference to the metals classifications structure.

PN59

There is some disagreement between us and the professors as to where certain classifications ought sit relatively but endeavouring to use that approach to set a wage rates between the - or relativities - internal relativities between the classifications that we are proposing which appropriately reflect corresponding levels of responsibility skills or qualifications in the metal trades structure.

PN60

Professor Charlesworth and Professor Meagher in their report propose a slightly different approach in the sense that they adjust some of the anchor points, as they refer to them, compared to the HSU proposal but propose using the uncompressed relativities in the Metal Trades Award.

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In our submission, either approach is open but that ultimately what the Full Bench is directed to by the Act is to endeavour to set minimum rates which properly reflect the value of the work engaged in at the various classification levels and we've endeavoured to put forward proposals which identify a principled approach to answer your Honour, the president's question, and are just - and in the void, as it were.

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But ultimately, in selecting or applying the approaches which have historically been adopted to inter-award relatively, ultimately what the Bench has to pay attention to and draw a conclusion in relation to is what level is (indistinct).

PN63

MR WARD: Sorry, your Honour. Can I interrupt, sorry? The clock's not working. Does that mean we're not being transcribed or are we safe or - - -

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THE ASSOCIATE: (Indistinct).

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MR WARD: All right. Sorry. My apologies.

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JUSTICE HATCHER: Yes.

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MR WARD: Mr McKenna and I became anxious, that's - - -

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MR GIBIAN: We wouldn't anything to be lost.

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MR WARD: Well, not yours, (indistinct).

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DEPUTY PRESIDENT O'NEILL: Or repeated.

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MR GIBIAN: Or even less, yes. As I say, ultimately, what the Full Bench has to direct its attention to is what is necessary to properly reflect what value and having regard to the other modern award objective and minimum wage objective considerations and the lesson that we drew from the stage 1 decision is that if structured approaches don't lead to a proper outcome then they have to be flexible enough to be adjusted to reflect the conclusions that the Bench ought draw on work value and modern award considerations.

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JUSTICE HATCHER: I guess it's not a question of incapacity to depart from the previous structured approach.

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MR GIBIAN: No.

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JUSTICE HATCHER: It's whether we can come up with a new structured approach.

PN75

MR GIBIAN: Yes, I understand. In addition to the general positions which are now put forward so far as classification structure and descriptors are concerned, there are - it's perhaps appropriate to identify at the outset that there are a number of particular issues in that respect which arise. One is my client's proposal that home care workers engaged in providing care to aged persons ought be covered by the Aged Care Award rather than the SCHADS award.

PN76

The question which I think I already identified as to whether there ought be a distinct classification structure for indirect and direct care work in the Aged Care Award, there's an issue as between, I think all of the unions and the Joint Employers as to whether specialist care work involving work in dementia units or providing palliative care or what we have referred to as the household model would be - sorry, and I should say in addition to that, care workers who have medication competencies or be reflected within the classification (indistinct) or by the payment of a discrete allowance.

PN77

The ANMF in its draft determinations have proposed variations to the Nurses Award relevant to my client's position to insert a new definition of an aged care nursing assistant, distinct from other nursing assistants under that award and to insert classification descriptors and rates in the Aged Care Award for what it proposes to be called an aged care nursing assistants which appear to us to entirely replicate the personal care classifications which are proposed to be in the Aged Care Award.

PN78

Those seem to be the sort of discrete issues, at least so far as my client is concerned, whether the ANMF has some other discrete issues which - or distinct issues perhaps, which are raised.

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JUSTICE HATCHER: Just going back to home care workers, so your application involves, does it, transposing conditions from the SCHADS award (indistinct) the home care workers to the Aged Care Award?

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MR GIBIAN: The approach that we have adopted is to have - with respect to a certain number and relatively restrictive number of conditions that there would be within the relevant clauses, distinct provision with respect to home care workers to reflect the existing conditions within the SCHADS award.

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JUSTICE HATCHER: I think we're going to hear some evidence that there are employees who do home care work which is a mixture of aged care work and other types of home care work and also some employees who do a mixture of the work. How does that fit in with your proposal?

PN82

MR GIBIAN: This is an issue that was raised earlier in the proceedings. To the extent that there is an issue as to award or classification coverage in respect of those workers, we don't think that that is a particularly novel issue. It arises wherever employees do a mixture of work. It is already an issue to the extent that that is the case under the SCHADS award because there is already different rates for aged care home care work as opposed to other home care work covered by Schedule E.

PN83

There is already, I think, other issues which aren't necessarily canvassed in these proceedings as to interaction between Schedule B and Schedule E of the SCHADS award in dealing with disability work. Ultimately, we don't think that that as an issue to the extent, I think we accept, it does happen sometimes, I'm not sure there's a lot of evidence about the extent of that, that that occurs, we think it is a new issue which is either exacerbated or made more complex by a movement that we propose for home care workers and to the Aged Care Award.

PN84

We would also say that the evidence also shows perhaps particularly in this class of proceedings, that there are in stage 1 but also in further evidence that's been put forward that there are residential home - aged care providers who are providing home care services to aged care workers including from the same locations.

PN85

So in a sense, the convenience or appropriateness of aged care being dealt with comprehensively, whether it be in a home or in a residential context within the Aged Care Award seems to be bolstered by that matter. That is, it's not only a one-way issue in that respect.

PN86

I think that that was what I proposed to say just by way of - I think we've only allocated an hour for introductions and some of the other representatives wanted to say some things, as I understand it, but that's what I propose to say by way of endeavouring to present - to chart what we understand the issues are.

PN87

There are a couple of things I wanted to raise just as a more mundane issues of process but I can do that now or when others have spoken.

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JUSTICE HATCHER: Perhaps we'll come back to that.

PN89

MR GIBIAN: May it please.

PN90

JUSTICE HATCHER: Mr McKenna, do you want to say anything in opening?

PN91

MR McKENNA: Thank you, your Honour. Like Mr Gibian, I just propose to spend a moment identifying how it is that the Full Bench has got to where it currently is and then also address the case that the ANMF will be presenting in this stage 3.

PN92

The stage 1 decisions were firmly identified implementing an increase of 15 per cent in the modern award minimum wages for direct care employees to be plainly justified by work value reasons and reserved three issues for this stage 3 of the proceedings. Those three issues were firstly the increase to minimum rates for other employees, namely administrative and support aged care employees.

PN93

Secondly, the total increase beyond the interim increase justified by work value in respect of direct aged - direct care workers in aged care and thirdly, a detailed consideration of the classification definitions and structures in the awards.

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Your Honour posed a question to my learned friend about the meaning of a direct aged care worker. Your Honour, the stage 1 decisions provided a definition in the following terms:

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*Employees in the aged care sector covered by the awards in caring roles, being nurse practitioners, registered nurses, enrolled nurses, AINs, PCWs and home care workers.*

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In respect of the first issue pertaining to indirect care workers, the ANMF supports the increased minimum wages for indirect care workers, but of course no evidence and makes no further submissions with respect to that issue.

PN97

In respect of the second issue, the additional increases, the additional increase minimum for direct care workers, the ANMF has filed draft determinations that seek a further increase of award minimum wages of 10 per cent for all personal care workers or personal care classifications under the Aged Care Award and all classifications of aged care nursing assistants or AINs, under the Nurses Award.

PN98

The ANMF also seeks a further increase for enrolled nurses, registered nurse and nurse practitioner classifications in aged care under the Nurses Award based upon an alignment of the registered nurse pay point 1, level 1 classification with the C1A classification under the metals framework and a retention of existing relativities within the Nurses Award. In respect - - -

PN99

JUSTICE HATCHER: Can I just - I just want to understand the logic of your client's position. So does that suggest that under the Nurses Award, nurses engage in aged care work from work that is 25 per cent greater in value than the work of nurses in any other context?

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MR McKENNA: Your Honour, it would be 35 per cent if the - - -

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JUSTICE HATCHER: Well, sorry, 35 per cent. Yes.

PN102

MR McKENNA: Yes. No. That is not our client's position. It is not the ANMFs position. The ANMF has made clear throughout that it does intend to bring a further application with respect to nurses outside the aged care sector.

PN103

The way that this matter has arisen and progressed has meant that the matter before the Commission at present is limited to aged care and the task, of course, for the Commission presently is to determine - properly determine the work value of those workers and focussing on those workers, the submission is that the current - prior to these proceedings, there was a very significant evaluation of our work.

PN104

That has been recognised. The interim increase has been imposed. Even with that interim increase there is still, in our submission, a very substantial amount of work to do for those classifications.

PN105

JUSTICE HATCHER: All right. So in determining the outcome for nurses, we should have one eye on the fact that there will be effectively a flow-on claim coming down the tracks.

PN106

MR McKENNA: As I think, your Honour, there will be a further claim and the outcome in this proceeding, no doubt, will be relevant to that claim but in this claim, the task of the Commission is to determine the - properly determine the work value for the aged care workers and in any subsequent claim, the outcome for this, as I say, will likely be relevant but obviously not determinative and the Commission in those proceedings will have to conduct a work value assessment of nurses in classifications outside aged care.

PN107

JUSTICE HATCHER: All right.

PN108

MR McKENNA: In terms of the further increase of award minimum for direct care workers, the task preserved for stage 3 has various components. There were various matters which the Commission did not take into account in granting the interim increase.

PN109

Those were the impact of COVID-19 pandemic and issues arising from understaffing, particularly regarding the extent to which those changes have become permanent and as my learned friend, Mr Gibian indicated, there is a residual question of the level of further increase justified by work value reasons where the interim increase identified in stage 1 did not exhaust the extent of the increase justified by work value reasons in respect of direct care workers.

PN110

As to COVID-19, the pandemic changed the nature of the work performed by direct care workers in aged care and the level of skill or responsibility involved in doing the work and the conditions under which the work is done. Some of those changes have now abated and so do not amount to work value reasons within the meaning of section 157(2)(a) but there is evidence of other areas involving a permanent change and one such area is infection prevention and control.

PN111

There's a body of evidence regarding the changes to aged care work arising from the COVID-19 pandemic that was tendered and tested in the stage 1 proceeding. That evidence as identified in the ANMFs submissions on wage adjustment issues filed 15 September at part A1.

PN112

In addition to that material, the ANMF in this stage also relies upon new evidence in relation to the permanency of infection prevention and control changes arising from COVID-19. To that end, the federation relies upon the report of Associate Professor Noleen Bennett, filed in stage 3. She's a senior IPC nurse currently employed with the Victorian Health Care Associated Infection Surveillance System Coordinating Centre and the National Centre for Antimicrobial Stewardship. She presents an expert report on the subject of IPC and aged care.

PN113

There's a further statement from Katherine Chrisfield, she's an occupational health and safety unit team manager at the ANMF. Her evidence outlines permanency of

changes to IPC. There's further evidence from Ms Purdy and statements from Ms Boucher, Ms Devete and Ms Brookes that also address COVID-19 infection prevention control and the permanency of those changes.

PN114

With respect to understaffing, the stage 1 decision at paragraph 216 recognised that the evidence before us paints a picture of chronic understaffing across the aged care sector which has contributed to increase in workloads and work intensity.

PN115

The question posed by the Full Bench in stage 1 which now falls to be determined in this stage, is whether the work intensification due to understaffing is a permanent feature of the work in question or a trend to (indistinct) abate when staffing levels increase. Here again, the ANMF relies upon the evidence that was filed and tested in stage 1 in the findings of the Full Bench in stage 1. Some of that material's identified at part B1 of the wage adjustment issues filed 15 September.

PN116

And ANMF now also relies upon additional evidence filed in this stage including the statements of Ms Boucher and Ms Brookes who give evidence of their practical experience working in aged care facilities. Also relied upon is a statement of Mr Robert Bonner who is the chair of HumanAbility Limited, a jobs and skills council founded by the Commonwealth Government.

PN117

He's a former employee of the ANMF and he was responsible for commissioning a mixed (indistinct) survey to form part of the national aged care staffing and skills mix project in 2016. In short, his evidence will be that the additional care introduced by reform such as the 24/7 registered nurse requirement minimum care minutes although welcomed, will be absorbed by the provision of the care that was previously missed.

PN118

With respect to the further increase otherwise justified by work value reasons, each of those matters, understaffing and changes arising from COVID are significant but notwithstanding those, even leaving those issues to a side, the evidence before the Commission supports the further increases sought by the ANMF with respect to work value.

PN119

As Mr Gibian has indicated in granting an interim increase the Commission proceeded on the basis it had to be satisfied the quantum of the increase sat comfortably below the level of the increase that may be determined on a final basis and the Commission made it clear through the stage 1 decision that 15 per cent interim increase did not exhaust the extent of the increase justified by work value reasons.

PN120

The stage 1 decision determined ultimately the interim increase was plainly justified by work value reasons and so accordingly, now falls to be determined the additional increase that is justified. The ANMF case is that the additional increase is justified by work value reasons, is a further 10 per cent increase to award minimum for personal care workers, personal care worker classifications under the Aged Care Award and for classifications of aged care nursing assistants or AINs under the Nurses Award.

PN121

And with respect to enrolled nurse, registered nurse and nurse practitioner classifications, as I indicated, what is sought is an alignment of the C1A classification to the registered nurse, let alone pay point 1 and retention of existing relativities for other nurse classifications.

PN122

By the stage 1 decision the Full Bench carefully considered the basis for recognising increase work value of direct care workers. That included the acceptance of 16 broad factual contentions which were found to enjoy a sound evidentiary basis.

PN123

I won't take the Full Bench to each of those but they did include that the workload of nurses and personal care workers in aged care had increased as had the intensity and complexity of the work that the acuity of residents and clients in aged care had increased, the increase in the number and complexity of medications, the proportion of residents with dementia and associated conditions, changes in skill mix and so on and so forth.

PN124

The evidence in the stage 1 proceeding is also summarised and collated by the report by Deputy President O'Neill. Deputy President O'Neill's report (indistinct) dated 20 June. That report provides those written examples of witness evidence and common issues and themes.

PN125

In addition to those matters, the Full Bench had regard to expert evidence including that of Associate Professor Junor and her application of the Spotlight tool, a job and skill analysis tool designed as an aid to identifying, naming and classifying visible skills used in undertaking service work processes and not directly observable.

PN126

The Commission has accepted associate professor's evidence that the skill and responsibility that required in the RN, EN and AIN classifications was under-recognised in applicable award rates of pay. Her evidence regarding the application of the Spotlight tool was accepted as cogent, probative and relevant to the Commission's assessment of whether modern award minimum wages were justified by work value reasons.

PN127



That evidence will continue to be significant in addressing the historical undervaluation of the work performed in aged care and identifying the further increase of award minimum justified by work value reasons. That is particularly so in line with the Commission's stage 1 finding that the approach taken to the assessment of work value by Australian industrial tribunals and constraints in historical wage fixing principles that bring barriers to the proper assessment of work value in female dominated industries and occupations.

PN128

With respect to classification allowance issues, the ANMF seeks amendments to the classification definitions and structures in the awards in accordance with the draft determinations filed 15 September. In broad terms, the ANMF seeks an alignment of the PCW classifications under the Aged Care Award and AIN classifications for aged care workers under the Nurses Award.

PN129

The alignment of those classifications is consistent with the evidence before the Commission in stage 1 which it drew no distinction in the work value of an AIN under the Nurses Award, providing aged care and a PCW under the Aged Care Award.

PN130

JUSTICE HATCHER: In those circumstances, what's the rationale for keeping them as separate classifications?

PN131

MR McKENNA: The evidence also indicated that people - well, firstly identified as AINs and PCWs, there is a historical division between the two. The work of an AIN is closely related and the evidence was quite clear about the relationship between the work of an AIN and a registered nurse and the role of a registered nurse directing care teams and providing supervision and direction.

PN132

It's the - the ANMFs case is it is appropriate to retain the AIN classification within aged care in the Nurses Award. It provides a pathway for career progression for an assistant in nursing through those classifications to become an EN, to become an RN and so on and so forth.

PN133

JUSTICE HATCHER: But doesn't it follow that an employee could just - they wanted to avoid that career progression and any obligations attached to it could just label someone as a personal care worker because it doesn't seem to me to be desirable that award coverage of a certain category of worker could simply be determined by the employer depending upon the way they choose to label the employee.

PN134

MR McKENNA: There has since the establishment of the Modern Medicines Award and aged care - well, there has been overlap and it's accepted again in this proposal, we'd continue that overlap but it would remove the inconsistencies between the two such that if to take your Honour's point, an employer were to try

and designate someone as an AIN under the Aged Care Award as opposed to the Nurses Award, it would not alter their minimum entitlement to award rates and, in my submission, in our submission, that's the appropriate course.

PN135

JUSTICE HATCHER: Are there different conditions?

PN136

MR McKENNA: There are some different conditions, yes, your Honour, as between the Nurses Award and the Aged Care Award, but there would be a alignment on the Federation's proposal in minimum rates of pay.

PN137

JUSTICE HATCHER: All right.

PN138

MR McKENNA: The ANMFs proposed revised aligned classification descriptors for aged care nursing assistants and personal care workers builds upon classification descriptors that are currently contained in the Aged Care Award for personal care workers. The proposed changes have been developed, the changes proposed by the ANMF have been developed by a process overseen by - and by the federal secretary of the ANMF.

PN139

Ms Butler's witness statement of 1 November addresses that process. It involved her consulting with a range of stakeholders and ANMF employees including the academics called by the ANMF to give evidence in the proceeding at stage 1 and in the professional offices, ANMF industrial offices and registered nurse working in the aged care sector in senior managerial roles.

PN140

Ms Butler will be giving evidence before the Commission on Thursday. In addition to the evidence of Ms Butler, the ANMF also rely on the witness statement of Julianne Bryce, senior federal professional officer of the ANMF, her evidence going to the education accreditation standards applicable to registered nurses, enrolled nurses and nurse practitioners.

PN141

As I indicated earlier, the evidence before the Commission in the proceedings also recognised the key role of care plans in identifying the care that's to be provided in the role of nursing teams working together to deliver that care. The registered nurse plays a central role in supervising, delegating and directing the delivery of that care.

PN142

The ANMF proposes variations of classification definitions for personal care workers under the Aged Care Award and aged care nursing assistants under the Nurses Award to accurately reflect those roles, the way in which the work is carried out and the regulatory framework in which that work is done.

PN143

In short, the ANMF have sought to balance theoretical inputs with practical requirements to identify classification structure that provides a clear based classification structure. It clearly states the skills, qualifications and experience required at each level such that it's easy to use and understand by employers and employees at workplace level and provides a clear means to transition from one level to another.

PN144

Particular aspects of those structures are addressed in the ANMF submissions. Mr Gibian has addressed a number of them. I won't go to them now in opening. They are matters that will be developed through the evidence and subject of comprehensive submissions in closing. Please the Full Bench.

PN145

JUSTICE HATCHER: Ms Harrison, do you want to say anything in opening?

PN146

MS HARRISON: Thank you, your Honour. Your Honour, I might just very, very quickly outline the United Workers Union's position in relation to the matters. I won't seek to repeat the submissions of my friends in relation to the current status of the proceedings.

PN147

There's obviously three matters that are currently before the Commission. The first is in relation to the classification structures that exist within the Aged Care Award, the Nurses Award and to the extent that it deals with the matters in the SCHADS award or if it indeed comes into the Aged Care Award.

PN148

The United Workers Union's position in relation to the classification structure is to support the position as put forward by the HSU although noting that in relation to the Aged Care Award we do identify that in relation to garden and maintenance workers, the classification structure probably doesn't quite cover the duties at levels 1 and 2 of that classification structure.

PN149

In relation to the - and then in relation to the classification structure that's put forward by the nurses, we support the proposition that regardless of whether or not the assistance in the same classification is maintained in the Nurses Award or indeed is brought into the Aged Care Award, we support the proposition that the classification structure be identical to ensure that there is indeed no financial incentive to classify a worker that essentially does the same duties, whether they be a personal care worker or indeed an assistant in nursing.

PN150

In relation to the second issue which is in relation to the - what, if any, further increase should be afforded to direct care workers, we support the HSUs submissions in relation to that which is indeed the ask of a further - of the increase of a total of 25 per cent in addition to whatever arises as a result of the classification structure.

PN151

In relation to the final matter which is the wage increase that should - what, if any wage increase should be afforded to indirect care workers, the United Workers Union supports the HSUs position as well in relation to the proposition that indirect care workers be afforded the same wage increase that has been afforded to direct care workers and whatever may arise from that.

PN152

In that respect, we have obviously filed a number of witness statements or a number of further witness statements, I should say, in support of the work that's performed by indirect care workers and the nature of the - what we say should be afforded a work value increase in that respect. Your Honour, if the Commission pleases.

PN153

JUSTICE HATCHER: Thank you.

PN154

Mr Ward?

PN155

MR WARD: Thank you, your Honour. I'll try to be brief. I might just comment on what we see stage 3 being. I'd like to then just make some comments about the context of stage 3 from an employer perspective and our approach in the proceedings in stage 3.

PN156

We effectively see four primary issues in stage 3. The first one is whether or not direct care workers receive more than the 15 per cent and while it's not exclusive, our understanding of the primary consideration there is the question of COVID and its impact and the question of whether or not understaffing has become a permanent feature of the sector which itself therefore gives rise to work value considerations and we'll call that bucket 1.

PN157

Bucket 2 is whether or not those persons in stage 1 who did not get an increase should get an increase and that would include those persons performing maintenance work, gardening work, laundry work, cleaning, administration and clerical work, food or kitchen assistants and then those persons involved in cooking below what stage 1 described as the - I think the phrase was the head chef. That's bucket 2.

PN158

The third bucket is how the work should be classified and as has emerged through the case, there is now questionable coverage which is the fourth bucket. I don't think that's at odds with what any of my friends have said, that's how we see the case.

PN159

JUSTICE HATCHER: Just to be clear, in the first bucket as you've called it, the question of whether there should be further increases is not necessarily

coextensive with the question of whether any permanent changes have arisen because of COVID-19 or understaffing.

PN160

MR WARD: No, your Honour.

PN161

JUSTICE HATCHER: That is even without COVID and understaffing we might find that the correct valuation based on the findings already made justifying further increase.

PN162

MR WARD: Yes. My understanding of the decision and when it was approached is how the Full Bench wrote a decision with some anxiety when you're talking to the Bench, but my understanding of the decision is that that door is open although I think the stage 1 decision primarily focussed the spotlight on the question of COVID and the notion of whether or not understaffing was a permanent feature. But yes, I would accept, your Honour, that that door is open. Yes.

PN163

I have to say that the Joint Employers approached stage 3 soberly, prudently and cautiously and we do that because of the context that the employers find themselves in, in both residential aged care and home care but perhaps with an emphasis on residential aged care. It's going to become clear from the evidence in the case that something in the order of 66 per cent of residential home care facilities are now operating at a loss.

PN164

It's going to become clear in the evidence in this case that occupancy rates have trended down while demand remains high and we can expect it to continue to remain high with the aging of the Australian population. The reduction in occupancy rates is in large measure, a reflection of staff shortages.

PN165

The claims made by the unions are material. The further wage claim for direct care employees including nurses, is estimated by our expert to be in the order of \$2 billion per annum. The claim for indirect care workers, the gardeners, the laundry and so forth, is estimated by our expert to be in the order of three-quarters of a billion dollars per annum. These are not insubstantial sums.

PN166

None of this considers increases such as the 2023 Annual Wage Case and none of this considers what may be the outcome of the 2024 Annual Wage Case. I don't say those things to be off-putting, I just say those things to ensure that we have an appreciation of the context of the financial implications.

PN167

The industry is undoubtedly currently experiencing staff shortages. We don't hide from that. One of the challenges that is confronting the industry as the StewartBrown evidence will show, is the increased need to supplement labour through labour hire agencies which comes at a commercial premium.

PN168

The industry simply cannot sustain any future wage increases that are not fully funded if and when they apply. That is not a matter of consideration for work value but it is wholly a matter of consideration should further work value increases be awarded in relation to how and when they might be awarded.

PN169

The availability of sufficient labour in Australia and attraction of labour to the sector is a complex issue and we must acknowledge that it's not an issue that simply rests solely on wages. The Commonwealth has implemented many measures to try and manage the workforce gap confronting the industry and it's set many of those matters out in its submission in relation to the wages issue.

PN170

At page 3125 of the court book the Commonwealth characterise what is described as the workforce gap in the industry and they inform the Commission that that gap remains, something in the order of a little under 20,000 employees being short, although they also inform the Commission that the gap has trended down recently and has in fact been reduced by some 35 per cent. The fact of the matter is, though, that the many Commonwealth initiatives, and there are many, will take time to carry through to assist the industry.

PN171

The Commonwealth, pleasingly, has committed to funding the decision the Commission makes, but my clients are conscious, as the Commonwealth submit in its reply submissions, that they need to do that through the broader fiscal lens within which they consider the Australian economy.

PN172

Anecdotally, the stage 1 increases have assisted the industry. I don't say that to undermine the strength of it, it's just that the increases had been in operation for such a modest time it's difficult to really suggest any material data available, but anecdotally, both from my client's witnesses' perspective and from some of the unions, there is anecdotal evidence that they're assisting.

PN173

It should come as no surprise that the industry would welcome any opportunity to increase fully funded wages as a matter of general policy. In fact, if you ask any employer in the industry, 'Would you support increases in fully-funded wages?' they're going to say yes. I suspect they'll ask our witnesses that question, and I've got no doubt they'll say yes.

PN174

It's also increasingly apparent to our clients that the opportunity to receive additional government funding for wages rests in this case rather than the possibility of direct funding or funding through another means such as supported bargaining, which the childcare industry is pursuing.

PN175

Having said that, which is the context within which we stand in stage 3, we respectfully acknowledge that this is a work value case, and everything we have

just said has to be put through the prism of that work value case and we've endeavoured to reflect on the unions' arguments in stage 3 and present what we believe is a balanced and objective position in relation to those arguments to assist the Commission where we can.

PN176

We also acknowledge that we are dealing with indirect care workers, which naturally, as your Honour the Presiding Member has indicated, might give rise to considerations of other awards. That is an appropriate consideration for the Commission to have, and given that one of the matters to have regard to in the modern awards objective is a stable modern awards system, it clearly is a consideration. I suspect, in closing, we will say a lot more about that.

PN177

JUSTICE HATCHER: So just to be clear, what is your position about non-direct care workers?

PN178

MR WARD: Your Honour, my client is not advancing any view as to an amount of increase, nor is my client advancing a view as to a work value justification. My client, as a matter of policy, welcomes any funded wage increase and has endeavoured to characterise the evidence that's been put on in a way that assists the Commission as best as possible in its deliberation.

PN179

I appreciate that as his Honour Justice Ross, I think, said in stage 1, that that might not be the most helpful submission, but that is the submission my client instructs me to put. There is a - - -

PN180

JUSTICE HATCHER: It's just because I'm looking at paragraph 94 of Mr Mamarelis' statement. Is that consistent with your position?

PN181

MR WARD: My answer to that is that all our witnesses desperately would like to increase their wages. I'm not sure our witnesses necessarily understand the technical minutiae of work value. I'm not sure there's any value in that, but as I have said, every employer in this industry would welcome increased funded wages. If the government stood up tomorrow and said it was going to directly fund a 40 per cent wage increase for wages in the industry, I can assure you my clients would clamour to get that money from the government.

PN182

JUSTICE HATCHER: I don't think any employer anywhere would take a different position, would they?

PN183

MR WARD: Well, I would be surprised. I would be surprised. I mean, one is occasionally surprised, but I would be surprised. I should say, there is one perhaps slightly distinct part of that, and it goes to this. It's always nice to find a piece of accord with Mr McKenna. My clients did advocate from the very



beginning of this case, based on the C10 framework and based on the teachers decision that the registered nurse has not been properly – their rate of pay has not been properly fixed from the day the modern award was created.

PN184

It's very clear that the proper C10 alignment for that rate is C1. We extensively explained in our submissions in stage 1 how we came to that conclusion by comparison of the ratio in the teachers decision by comparison to the registered nurse. We stood by that proposition from the first day of the case and it's notable that the ANMF, while not accepting that proposition to begin with, now accept it. I think they get there in a different way, possibly, I don't know, but I think we've at least come to the same position.

PN185

For the joint employers the issues in stage 3 as they concern theme or fact are more ones of degree or characterisation rather than outright opposition to those themes or fact. There are, however, two areas where we appear to be at odds in the truest of senses. One is the architecture wording and effect of the classification structure and the other one is the attempt to change award coverage for home care workers.

PN186

The HSU propose to create a classification structure which respectfully is novel. It's a structure that appears, on our reading, which we'll test tomorrow with the professors, is predicated on a subjective evaluation of the residents' condition, not the actual work of the skills, qualifications applied or the work performed, and we'll obviously develop that in cross-examination tomorrow and in our closing submissions. That is a particularly dangerous approach, as we'll explain.

PN187

We should also say that we propose to separate a single structure for care workers, direct care workers, and we propose a separate structure for indirect care workers. That seems to make entirely good sense. It allows for the creation of a structure that's far more readable and usable and also gives one an opportunity to align the work activity of gardeners and laundry and the like, consistently with how similar structures for laundry, gardening and the like are set out in other awards.

PN188

The other thing where we are at odds with the structure, and again, we'll develop this as well as the next two weeks develop, this structure – and I don't say this facetiously – cleverly devised. It operates to drive classification creep by artificially lifting many of the employees up the structure by reference to the resident rather than the work, and we'll deal with that in some detail as the case develops.

PN189

JUSTICE HATCHER: So that suggests its implementation would have a cost which would be higher than the nominal wage increase we would award.

PN190



MR WARD: And, your Honour, I was just about to say that I doubt that's a cost the Commonwealth have possibly considered to date. I have to say that we sort of came across that a little late in preparation. We'll do our best to bring it out as best as we can, certainly starting tomorrow, but that is one of the features of it. There's also the - - -

PN191

JUSTICE HATCHER: So I suppose the danger with any new classification structure is it may have costs which are not immediately apparent when the decision is made, that is, they may emerge over time.

PN192

MR WARD: That is true, your Honour, but you could also write a structure which is designed to create that environment and you can design a structure which is more likely to create that environment than not. The one we've proposed is at the other end of the scale. It's attempting not to do that.

PN193

We then obviously have to indicate that we're very much at issue on the attempt to change award coverage. Care workers have been included in the SCHADS award since 2010. It was seen then to be the appropriate award for home care. That award has been found to meet the modern awards objective in the 2012 review and again in the 2014 review, and as we will indicate through these proceedings, it is the appropriate home of home care.

PN194

As his Honour the Presiding Member has already questioned this morning, it is true to say that there are some residential aged care providers who provide home care, but there is also a home care sector in itself, and as the evidence from stage 1 demonstrated - I think perhaps it's too high a bar to say uniformly, but in large measure home care providers undertake age care and work with persons with disability.

PN195

The idea of lifting people and a sector out of an award which is designed for it, which this Commission has accepted on several occasions in substantive reviews is appropriate, and lumping them into an aged care award is inappropriate and raises serious considerations pursuant to section 163 of the Fair Work Act.

PN196

JUSTICE HATCHER: Although the alternate course of the status quo whereby home care workers get 15 per cent higher with respect to aged care only, on one view creates an anomaly in that award which, again, on one view, might beg for further rectification.

PN197

MR WARD: Your Honour, I'd say two things about that. I think this arose in stage 1, I think when her Honour the Vice President might have been heading the Bench. I can't hide from this. That's already a real practical problem. I think moving them to another award makes it probably an even - it's going to be an even greater problem. So moving part of them to another award is going to be an

even greater problem, but it clearly is a practical problem now. We've got clients who have had to change the operation of their business to try and fit that. I can't hide from that. That's a practical problem.

PN198

There's a submission on from the ASU in these proceedings; it's in the court book, which talks about an application to be expected from the ASU in regard to home care. I don't immediately recall what it said, but I think it was a submission that said there's an application to deal with that in some way. This is a small microcosm of that question of the interrelationship of all the awards and what one does, but that's a problem already, and if one picks up a part of that sector and moves it into the aged care award, it does nothing other than exacerbate the problem. If the Commission pleases, that's how we approach stage 3 of the case.

PN199

JUSTICE HATCHER: Mr Chin, do you want to make a submission at this stage?

PN200

MR CHIN: No, your Honour. We don't propose to make any opening remarks. Unless your Honour and members of the expert panel have any questions we can assist with at this stage, we're content to speak to our submissions in closing.

PN201

JUSTICE HATCHER: Can we proceed on the basis of what Mr Ward said about the Commonwealth's willingness to fund further increases arising from these proceedings is correct?

PN202

MR CHIN: That is correct. The commitment, as the Commonwealth has put consistently, is to fund any wage increases determined by the Commission, justified by work value increases as determined by the Commission. We have, as we've set out in our written submission, a qualification in respect of an opportunity to address the Commission on implementation and potential phasing in in light of a preliminary or final view as to quantum.

PN203

JUSTICE HATCHER: Yes.

PN204

MR CHIN: Our position is also, as we have said, given that the commitment to fund the proceedings was made in the context of the applications as they originally were, in their original form, we would oppose the granting of increases in excess of the original quantum sought, at least at this stage and in these proceedings, and that's something we would intend to address your Honours about.

PN205

JUSTICE HATCHER: All right. Thank you. Administrative matters. First of all, my chambers circulated late last week a draft numbering of our witness statements as exhibits in circumstances where the witnesses aren't required for

cross-examination. Is there any reason why those statements should not be marked as indicated?

PN206

MR GIBIAN: Not for our part, your Honour.

PN207

MR WARD: Your Honour, we don't object to that. We'll make some submissions as to weight for some of them in our closing.

PN208

JUSTICE HATCHER: All right. I should indicate that, and we'll forward this to the parties, we will also renumber the exhibits in stage 2 consistent with the numbering scheme, and they will fit in with this numbering. So those witness statements can be taken as marked as exhibits in accordance with the draft exhibits document. Mr Gibian?

PN209

MR GIBIAN: Yes, thank you, your Honour. Could I just raise two matters, just for clarity, arising from what the other parties have said. The first was Mr Ward made an observation in relation to what his client understood was the focus of attention with respect to what further increase ought to apply so far as direct care workers are concerned beyond 15 per cent, I think accepting that the door was open to a further increase on the basis of the existing considerations taken into account in stage 1 of the proceedings, but construing the decision as primarily focusing attention in that respect on COVID and understaffing.

PN210

Without wishing to enter into a squabble about the interpretation of the earlier decision, we don't agree with that view. We read the decision as drawing attention to those two matters because the Commission wish to obtain further submissions in relation to the relevance of those matters to a work value consideration rather than directing primary attention at those matters.

PN211

The second issue that I just wanted to refer to by way of clarity is the AIN issue, if I can refer to it in that way. My client has made clear throughout the proceedings that whilst it is the case that there are persons undertaking personal care work in a residential aged care context who are referred to as AINs, on the basis of the evidence that was heard in stage 1 of the proceedings and the conclusions that the Full Bench reached, those persons do not, properly understood, fit within the existing definition of a nursing assistant under the nurses sward because of the reference in that definition to 'direct control and supervision' and 'working solely to provide assistance to a registered nurse or an enrolled nurse'.

PN212

The draft determination now put forward by the ANMF seeks to implicitly accept that position, we would say, and insert new definition of aged care nursing assistant which withdraws those elements and seeks to encompass, it appears to us, and replicate as a whole the personal care worker classification from the aged care award, and with respect, we don't think it is sensible to have exactly the same

work done in exactly the same context by workers who fit within two classifications, it does seem to us, based entirely upon title.

PN213

It does also raise a number of issues as to how questions of overlapping award coverage in accordance with the modern award provision would actually be dealt with in that circumstance if the accepted position of the parties and the conclusion of the Full Bench was that the work is in fact the same, the environment it's performed is the same, but we can expand upon that issue in due course.

PN214

The only procedural matters that I think I need to raise at this point was firstly by way of correction to the schedule for today, one of the witnesses, Ms Collins, who's scheduled after lunch, can in fact appear in person rather than by Teams, which was the indication in the trial hearing plan.

PN215

The second issue was that Professor Charlesworth and Professor Meagher are due to give evidence tomorrow afternoon. We had communicated with the other parties, but our view was that it is appropriate for them to give that evidence concurrently, subject to anything the Bench may have to say about that. They prepared a joint report and it is a joint report, and that would be the most useful way in which their evidence could be heard.

PN216

JUSTICE HATCHER: So will they be in a single location?

PN217

MR GIBIAN: Yes. We've changed what was originally scheduled. They can both be in person here.

PN218

JUSTICE HATCHER: Is our witness box big enough?

PN219

MR GIBIAN: There is an issue as to physical layout of the room - - -

PN220

JUSTICE HATCHER: Yes, all right.

PN221

MR GIBIAN: - - - and how we might deal with that, but perhaps we can discuss with your Honour's staff how we might do that. We did think it did not seem ideal for either of them to be separate on video, or one here and one on video. That would seem to be perhaps a less than ideal way in which to hear the evidence. As I say, I'm not sure physically within the lay of the courtroom we're going to deal with that, but I'm sure there will be a way.

PN222

JUSTICE HATCHER: Yes, all right. Is it proposed we now take a 15-minute break and then start the evidence?

PN223

MR GIBIAN: If that's convenient to the Commission.

PN224

JUSTICE HATCHER: All right. We'll adjourn on that basis. So we'll resume at 11.45.

**SHORT ADJOURNMENT**

**[11.28 AM]**

**RESUMED**

**[11.48 AM]**

PN225

JUSTICE HATCHER: Mr Gibian?

PN226

MR GIBIAN: Yes, the first witness on the schedule is Mr Friend.

PN227

JUSTICE HATCHER: Can Mr Friend come forward, please?

PN228

THE ASSOCIATE: Mr Friend, can you please state your full name and address?

PN229

MR FRIEND: Yes. My name is Christopher Louis Friend. I live at (address supplied).

**<CHRISTOPHER FRIEND, AFFIRMED**

**[11.48 AM]**

**EXAMINATION-IN-CHIEF BY MR GIBIAN**

**[11.48 AM]**

PN230

JUSTICE HATCHER: Please be seated. Mr Gibian?

PN231

MR GIBIAN: Yes, thank you. Mr Friend, you're the divisional secretary, aged care and disability, for the Health Services Union?---Yes, that's correct.

PN232

And you've given a work address, I think, which is level 2, 109 Pitt Street, Sydney in the state of New South Wales?---Yes. That's correct, yes.

PN233

You had earlier made witness statements in this proceeding, I think, an amended statement dated 2 March 2022 and a statement entitled 'Supplementary statement' of 29 October 2021, which were admitted in the first stage of the proceedings?---Yes, that's correct.

\*\*\* CHRISTOPHER FRIEND

XN MR GIBIAN

PN234

And there's been a further witness statement filed dated 22 September 2023. Do you have a copy of that one with you?---Yes, I do.

PN235

Have you had an opportunity to review that witness statement?---Yes, I have.

PN236

Is it true and correct to the best of your knowledge and recollection?---Yes, it is.

PN237

For the benefit of the Bench, I believe it's document 25, or tab 25, in the digital hearing book.

PN238

JUSTICE HATCHER: Page 284.

PN239

MR GIBIAN: Page 284, yes. I tender that statement, thank you, your Honour.

PN240

JUSTICE HATCHER: The witness statement of Christopher Friend with annexures CF1 to CF3 dated 22 September 2023 will be marked HSU 94.

**EXHIBIT #HSU94 WITNESS STATEMENT OF CHRISTOPHER FRIEND WITH ANNEXURES CF1 to CF3 DATED 22/09/2023**

PN241

MR GIBIAN: May it please. That's the evidence-in-chief.

PN242

JUSTICE HATCHER: Mr Ward?

**CROSS-EXAMINATION BY MR WARD**

**[11.50 AM]**

PN243

MR WARD: Thank you, your Honour. I'm not sure if I need to reintroduce myself but for an abundance of caution we might. It's nice to see you again. Obviously my name is Nigel Ward. I act for the employer interests. It's nice to see you. I just want to make sure I understand your past role and your current role?---Sure.

PN244

Because it takes me into a line of questioning, but if I can just take you to your statement, paragraphs 9 and 10. My understanding is that your past role, you were effectively responsible for enterprise bargaining for the union in New South Wales?---Yes, that's correct. New South Wales, the ACT and, only towards the end, a very limited extent within Queensland.

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN245

In Queensland. And I think you say in your statement that that involved strategy as well as action, involvement in negotiations and the like?---That's right. I was the sort of front line person who was interacting with the employers and leading negotiations from the union.

PN246

And in the new role, my understanding is you're effectively the person running the aged care part of the union in New South Wales. Is that a reasonable way of describing it?---Yes. I'm the manager of the team.

PN247

Does that involve you still having involvement in bargaining in aged care, or is that a separate proposition?---There's a separate person who undertakes the day-to-day duties of actually doing the bargaining, but I oversee the strategy that's involved in that, and to some extent I get involved where there's more complex matters that might require a little bit of assistance by a more senior official.

PN248

That might involve – if it's a bigger employer that's got more members, or - - -?---That would be correct. Or something that might be going to the Commission in the form of a dispute.

PN249

So if a matter goes to the Commission in the form of a dispute it comes across your desk?---Generally, yes.

PN250

Generally. When wouldn't it?---If it was something very minor that the employee felt was within their remit and their capability of doing themselves.

PN251

Can you just bear with me?---Sure.

PN252

I want to show you a document which – sorry, I withdraw that. In your earlier evidence you gave evidence that the union has 235 enterprise agreements across New South Wales and the ACT. Is that still a reasonable number?---It's a little bit smaller than that now, given there's been some consolidation in the sector. So some of the employers that we had enterprise agreements with at that time have been bought out by others and there's been transfers of business, so some of those enterprise agreements don't exist. I'd say there's probably in the order of about 200-odd enterprise agreements now.

PN253

But I think from what you've just said, the coverage of enterprise agreements hasn't gone down?---Correct.

PN254

It's just that it's consolidation?---That's correct.

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN255

I want to show you a document, if I can, and I want to see if I understand what it is?---Sure.

PN256

I understand it to be a template agreement you've used in the past in the aged care residential and home care sector. This document is, interestingly, entitled 'Insert the chosen name. NSW, NMA and HSU New South Wales enterprise agreement 27 - 2020.' I think we have a copy for you?---I've just been handed one, yes.

PN257

You have. Okay. Am I right in saying that this was the HSU's template enterprise agreement?---That's not how I would categorise it, as - - -

PN258

How would you categorise it?---It's a template enterprise agreement that the peak body at the time, which was known as ACSA; Rise now – amalgamated, as you're no doubt aware, with the - there–were two peak bodies – let me just take a step back. There were two peak bodies in the aged care sector up until approximately 12 months ago, or a little bit longer, perhaps. They were ACSA – I can't remember what the acronym stands for.

PN259

And LASA?---And LASA.

PN260

Yes?---ACSA was, broadly speaking, the peak body that represented the not for profit sector.

PN261

Right?---This was a template enterprise agreement that was created by that peak body, obviously in consultation with us, but I just wouldn't categorise it as our document, in the sense that it's everything that we would wish to see in an enterprise agreement.

PN262

No, my apologies. I wasn't trying to suggest that. Is there a more recent version of this sort of document?---No, there's not. There's a version currently under negotiation.

PN263

If the Bench bears with me, I'm getting somewhere. Can I just show you an enterprise agreement that was very recently made involving Arcare Pty Ltd. Are you aware of that agreement?---I am.

PN264

You are. Is that reflective of the types of agreements you're making at the moment in the aged care sector?---In what sense?

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN265



In terms of the conditions that are in it?---Yes, I think that's probably fair to say. I must say, I didn't have a large degree of direct input with this particular negotiation. I was really brought in at the end to make sure that it met the requirements for approval. So I'm probably not as across this enterprise agreement as say the HammondCare Enterprise Agreement which was approved by the Commission approximately a week ago, but broadly speaking, I think – I imagine that it is fairly consistent with other enterprise agreements in the sector.

PN266

It's what you might describe as reasonably typical?---Look, I'd be hesitant to say that at the moment, because I don't recall dealing with it directly.

PN267

That's fine. Trust me for not getting the HammondCare one. Can I take you then back – sorry, I should ask those documents to be marked.

PN268

JUSTICE HATCHER: Yes. The first document, which I'll just call a template enterprise agreement, will be marked JE10, and the second document, which is the Arcare, A-r-c-a-r-e, Pty Ltd Enterprise Agreement, will be marked JE11.

**EXHIBIT #JE10 TEMPLATE ENTERPRISE AGREEMENT**

**EXHIBIT #JE11 ARCARE PTY LTD ENTERPRISE AGREEMENT**

PN269

MR WARD: Thank you, your Honour.

PN270

MR GIBIAN: I might say, I'm not presently sure what the relevance of it is, but - - -

PN271

MR WARD: That's okay.

PN272

MR GIBIAN: - - - Mr Ward said he's coming to it, so - - -

PN273

MR WARD: He is. Can I take you to the JE10 document, the first one?---Yes.

PN274

Can I ask you to go to clause 36?---Sorry, do you have a page number for that one?

PN275

My apologies. On my version it's page 46 of 96?---Thank you. Yes. The workload management course, yes.

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN276

I'm happy to let you take a chance to read this to refresh your memory, but my understanding of this clause is it's a provision that sets up a requirement for the employer, in consultation with employees, to review workloads. It sets up the criteria within which workloads are to be assessed, that's in 36.3, and then it provides for an opportunity, if there's a dispute about workloads, to go through the disputes procedure. In this particular version my understanding is it provides for conciliation and consent arbitration. I'm happy to show you other versions of your agreements that have conciliation and arbitration, but is that the broad scheme of this clause as you understand it?---Yes. It's not – yes, I understand the question. Sorry, it's not quite how I would categorise it. The main thrust of this clause was to, at least as I understand its original design – and I should note, the 2017 of this template enterprise agreement was negotiated by my predecessor, so I didn't have a direct hand in drafting this particular clause, but it - - -

PN277

I'm not saying it's your work?---I understand, but it is similar to other clauses that we have in other agreements. The main provision of this, from our point of view, is that it establishes a requirement for the employer to put workload management on the agenda of team meetings. I don't, on the face of the clause here, you know, see that it delivers much more than that, other than giving an avenue for people to raise workload issues which will then be dealt with by the employer, having regard to the various items that are listed in clause 36.3.

PN278

Is this a common clause you try and achieve in bargaining?---We try to achieve a better clause than this.

PN279

A better clause?---Yes.

PN280

But you normally try to achieve a clause of this type in bargaining?---Workplace management is certainly a top priority issue, along with wages, for our members. They would be the top two issues in the sector.

PN281

And would a clause of this type be in most of your agreements?---A clause of this type I believe would be. Yes, I think that's fair to say.

PN282

You would agree with me, wouldn't you, that if there is a dispute about the workload, it provides that it can go via the disputes procedure?---That's correct, but it obviously put a limit on the ability for that to be arbitrated by the Commission.

PN283

In this version, yes, certainly?---In this particular version, yes.

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN284

Do you accept there's other versions which have conciliation and arbitration?---There are, yes.

PN285

Yes?---I think this is the more common version. It's in my experience something that employers have pushed back quite heavily on, you know, allowing the Commission to get involved in matters of workplace management.

PN286

In arbitration?---Yes, to arbitrate to make a final decision on workload.

PN287

You said earlier on that unless it's a very small dispute, you're across all disputes in the union?---Within my division of the union. We have a very large union.

PN288

Within the aged care team?---I would hope so, yes. I believe - - -

PN289

How many workload disputes do you currently have before the Fair Work Commission?---None.

PN290

None?---Correct.

PN291

How many this year?---None this year.

PN292

None this year?---That's correct.

PN293

Do you have any recollection if you had any last year?---No, we have not.

PN294

Were any workload disputes under those clauses brought to your personal attention?---The issue of workload management certainly has been brought to my attention on many occasions. The decision to pursue disputes under this clause has not been something that people have brought to me and suggested that we should do.

PN295

Thank you. Sorry, bear with me.

PN296

JUSTICE HATCHER: So just to be clear, Mr Ward, your questions were directed specifically at clause 36.4, that is, matters before the Commission.

PN297

MR WARD: Yes, your Honour.

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN298

JUSTICE HATCHER: Not necessarily at 36.3 and 36.2.

PN299

MR WARD: No. It might well be that issues have been raised within a particular site. I don't concede that. It was whether or not they'd been elevated to the point of the Commission, yes.

PN300

JUSTICE HATCHER: Yes.

PN301

MR WARD: Can I just go to the second document I gave you, this Arcare one?---Yes.

PN302

And again, I'm happy to show you other versions of this if we need to. Can I ask you to turn to – you've got to love that. It's numbered but it's not. Could I ask you to turn to page 6 of appendix 1 which sets out the allowances?---Page 6 of appendix 1.

PN303

JUSTICE HATCHER: What page is that?

PN304

MR WARD: It's appendix 1 and it's identified as page 6 of appendix 1 rather than, unfortunately, being part of the general pagination of the document?---This is 'With meal allowance where no meal is provided' at the top.

PN305

Yes, that's correct?---Sorry, could I be a pain and trouble someone for a water as well? Sorry. Thank you.

PN306

Can I approach - - -?---Thank you.

PN307

I don't think his Honour's got it. Thank you, your Honour. Mr Friend, you'll see halfway down that page there's a reference to a medication allowance. Can you just explain – well, first of all can I ask is that a normal claim made by the HSU?---It is a normal claim. The dollar figure here I would say is a little bit lower than what we achieve in many enterprise agreements when a medication allowance is included, but it's – it's a little bit lower than others, I would say.

PN308

Okay, but if I can use the word, it's a standard claim you make?---It's a standard claim to make for that. Yes, that's correct.

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN309

Then can I ask this. Can you explain what your understanding is of how that's applied?---Yes. My understanding of how it's applied is that employees who are deemed competent by the employer to assist and support residents with the administration of medication are paid a per hour premium when undertaking those duties.

PN310

Just so I understand, so if I was doing those duties for three hours in my shift I would get that payment for the three hours?---That's correct. My understanding, and in the discussions I've had with employers, is that ordinarily it's done on a per shift basis, just for ease of rostering.

PN311

I see. And you say that that amount is a little low to what you normally receive?---Yes. By memory, over \$1 would be sort of the more common amount. I'm just thinking of recently approved agreements. I think Warrigal, which has – was recently approved, or earlier this year. I think their payment was about \$1.30 or \$1.40. Some enterprise agreements have it in a different format, where it will be a percentage. I think the St Vincent's Care Services enterprise agreement, it's approximately two per cent, by memory. We're negotiating with them currently, so that's why it's in my mind. So there are different organisations that do it different ways. Some do it via policy as well, not via enterprise agreement.

PN312

But it's a standard claim of the union. Correct?---Yes.

PN313

Would you say it's a reasonably common feature of your agreements?---I think it is nowadays. I think some of our older agreements didn't have it, but certainly newer agreements, employers recognise that it's an additional skill that people perform and that there's, you know, incentive for – there's benefits for the employer in offering a small premium for those people who are undertaking that and to attract the people they need to do that.

PN314

And as I understand your evidence, as you understand how it's applied, it's applied on an hourly basis for people who are competent to do it, but there might be a practice that people are actually paid for the shift?---Yes. It's very uncommon, I think, for people to do it for one hour or something like that.

PN315

I see?---People are ordinarily designated as working a medication shift, and that's sort of the terminology that's used in the sector. You'll hear care workers saying, 'I'm doing a meds shift for' – probably for a whole roster cycle, and so that will be the feature of their work for that particular roster cycle.

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN316

So therefore on the part-time worker working four hours, that might be a four-hour shift versus if I'm working full-time, that might be a full-time shift?---Correct.

PN317

I think your evidence is that it's normally around \$1 an hour, although you've got some higher outcomes than that?---Yes. I would say it's above \$1.

PN318

Right?---I guess that it's in a - - -

PN319

This one isn't, though?---That one's not, no, that's right, but if you're asking me to give a generalisation, as I said initially, that's a little bit low. Around the \$1.50 mark I think is where it laid.

PN320

Do you recall any agreements that have got \$1.50 in them? I couldn't find one, that's all?---Sure. Off the top of my head, I think – let me – the Estia enterprise agreement had – I think that was over \$1. I don't know if you've got that at hand.

PN321

I do?---Yes. Great. The St Vincent's Care enterprise agreement was a two per cent premium, so that would obviously vary dependent on people's rate of pay.

PN322

By the Estia agreement are you talking about the Estia Health New South Wales Enterprise Agreement 2019?---I believe so, yes.

PN323

Yes. Can I just show you that?---Yes, please.

PN324

I'll turn to the page where the allowance is so you can see the amount?---Thank you.

PN325

I don't know if I need to hand copies of this up. Do you agree with me there, I think it's \$1.09?---Yes. It's \$1.08 in that enterprise agreement, yes.

PN326

Yes, okay. Not \$1.50?---No, it's not \$1.50. I can't remember exactly – sorry, I'm awkwardly sliding over on a chair. My apologies.

PN327

I think the Bench will be fine?---Obviously we could do an analysis of all of the enterprise agreements and get a – you know, there could be a scientific way we could do this. Off the top of my head, the ballpark of \$1.50 is what I recall, but perhaps I'm focusing on the higher ones.

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN328

In terms of negotiating enterprise agreement classification structures, I take it you take that quite seriously?---Yes, we do.

PN329

You'd accept therefore that when you agree to a classification structure in an enterprise agreement it reflects the work that's being performed?---No. I would agree that – I would say that it represents the employer's view, because it's the employer that obviously puts out the enterprise agreement to a vote. We don't necessarily always agree with the classification structure that an employer proposes in their enterprise agreement.

PN330

Do you ever agree?---Yes, there are times we agree.

PN331

Okay?---Or there are times we agree with part of it, not all. It's not – you know, we're talking about a fairly complex system that has people from entry level workers through to highly qualified workers across a range of different tranches of the aged care service. So there might be elements of it that we agree with and elements that we don't.

PN332

You accept that it's the employer's obligation under an agreement or under the modern award to properly classify somebody?---Yes. I mean, I believe that's a fair statement, yes.

PN333

Yes. It wasn't a trick question?---No, no. I mean, obviously we may disagree. These things are not entirely - - -

PN334

You might disagree with how they're classified, yes?---That's correct.

PN335

But it's their obligation to do it?---Yes, that's correct.

PN336

Can I come to COVID, if I can. I might start with CF1. If you go to that?---Sure.

PN337

I appreciate that you're not the author of CF1, but you've put it forward and commented on it?---That's right.

PN338

As I read this - tell me if I've got this right or wrong. CF1 is reported cases of COVID to the government. Is that a reasonable way of describing it?---Yes. It's – well, it's – in terms of how the data is gathered. Is that your question?

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN339

Yes?---My understanding of it is that it is – there's an obligation on aged care providers to report outbreaks of COVID-19 within their cohort of residents and within the employees they employ, and that this is a reflection of that.

PN340

If you look at the column that says 'Active'?---Yes.

PN341

And you look at 'Residential aged care facilities affected', under 'Active' is 90?---Yes.

PN342

Do I take that to mean that there are 90 facilities where there is a COVID-19 case that's been reported?---That's my understanding, yes.

PN343

Okay. And where it says 'residents cases active' it says 400. Do I take it to mean that, at this point in time, there's 400 people in residential aged care with a reported COVID-19 case?---That's my understanding, yes.

PN344

Now, I'm going to put something to you, and if it's unfair, you let me know?---I will.

PN345

But given that you're highly knowledgeable in the industry, you're probably fine. And I can do this in one of two ways. But (indistinct) this way. The Nurses Federation put on evidence in these proceedings, from their federal secretary, in stage 1 evidence that was accepted, I think it's consistent with what we've found this year, but ball-park will be good enough for what I want to ask you. It said that in 2020 there were 2,722 aged care services. The current government number is very, very similar - and I'm happy to show this to the parties – it's 2,671. Does that sound about right to you. Are you happy to accept - - -?---In terms of the number of services that exists?

PN346

Yes. Are you happy to accept it?---Yes, that sounds correct.

PN347

Okay. In 2020 the nurses' secretary's evidence was that there were 217,145 aged care places. Her evidence was that only 183,989 were permanent residential care. My understanding, from the Australian Government – and I'm happy to show you this again – is that there are 219,965 places. Again, do you accept that those seem to be reasonable numbers?---Yes. I have – I mean, I have nothing to base that on but I have no reason to doubt that either.

PN348

Do you want me to show you the Australian - - -?---I accept that it's from the government, yes.

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD



PN349

Accept. Okay. So if I want to work out – and I'm not going to ask you to do the maths, I'll do the maths later - - -?---Excellent. That's beneficial for us all.

PN350

Yes. Probably a good idea. If I'm trying to work out what percentage of aged care facilities are affected by COVID by now, currently, live - - -?---Yes.

PN351

I would divide the 90 in your CF1?---Yes.

PN352

By the 2,722?---I mean, that would be a way of working out, yes.

PN353

Yes, okay. And again, if I want to find out the active number of people with COVID, in residential aged care now, I'd divide the 400 bed by the 217,219 (indistinct) the ANMF's 183,000, yes?---The maths seems to stack up, yes.

PN354

The (indistinct).

PN355

JUSTICE HATCHER: Sorry, but when you talked about – asked the question about the number of aged care services – is that the same as a facility, as (indistinct) - - -

PN356

MR WARD: Well, that's why I put to the witness, because that's my understanding, it is.

PN357

JUSTICE HATCHER: So if you look at the cumulative total of 2840, I mean, the total number of facilities, I suggest (indistinct) may change over time, but does that effectively mean that every single aged care facility has had COVID cases?

PN358

MR WARD: Where is Your Honour looking?

PN359

JUSTICE HATCHER: I'm looking at the cumulative totals from residential aged care facilities affected.

PN360

MR WARD: Well, I was going to come to that because I don't – my problem is I don't know what the data point is for cumulative. I don't know whether - - -

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN361

JUSTICE HATCHER: Well, I'm reading this as being from the start of the pandemic.

PN362

MR WARD: That was my assumption. Since 2019, that was correct, yes. Now, if that's correct, that must follow – that must follow. But in terms of getting the numbers now, you'd agree that that's how one would work it out?---That – that sounds correct. Maths is not my strong suite, but that sounds like a reasonable way of doing it.

PN363

I see. So His Honour put to you, so the current number of facilities with an active COVID case is 0.03 per cent of the places?---Well, at the time this was published. There's now 299 COVID cases as of last week.

PN364

Well, I'm just going off your evidence?---Yes. But at the time of this, yes. I mean, I – I trust your maths. I – I – if that's the number that comes out of the formula, then, yes.

PN365

And the percentage of residents with COVID as of CF1 is 0.0018 per cent. Again, you trust my maths?---I trust your maths. But - yes.

PN366

Okay. And can I take you to your statement?---Sure.

PN367

If I can find it. It's here. Can I take you to paragraph 20?---Sure.

PN368

*Organisers often ask me how we can assist members who are suffering with the chronic understaffing of their workplace. Organisers regularly describe situations to me where union members are being asked to work additional hours beyond their minimum contract or to work overtime.*

PN369

I'm just going to pause there. I assume, in relation to that – no, I withdraw that. In relation to the second part of the sentence, 'asked to work additional hours beyond their minimum contract', you accept that that can only be done with the consent of the employee?---I accept that that's how the agreements are structured. That it requires their consent.

PN370

Of the employee?---Yes. I would argue that in many cases employees often feel corralled or pushed into accepting those. I don't know if there is a - as thorough understanding as I would like there to be, of employees, that it must be by consent. But I accept that that is the way the Awards and the Enterprise Agreements are structured.

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN371

Okay. But if the matter was brought to your union, you wouldn't allow one of your members to be corralled, would you?---We would encourage them to not be corralled, that's correct.

PN372

Yes. Good. And then you say, 'or to work overtime'?---Correct.

PN373

So how much average overtime, in your experience, are people working a week now? Ten, 15 hours? What are they working?---I mean, it's very hard for me to say. I would say, all employees have worked overtime – all part-time employees have worked some degree of overtime in the last couple of years, particularly since the pandemic. Ordinarily, people – particularly at the moment, given the acute nature of the staff shortages – I would say most employees are working above their contracted hours. There'd be very few, I think, that are just working their contracted hours.

PN374

A couple of hours a week?---In many cases, up to a full-time load. Which ordinarily, given many part-timers are – I'd say the average contract per week would be about 20 hours – so I'd say that they'd be working 10 to 20 hours, on average, above their minimum contract.

PN375

And would that be overtime or would that because they've agreed to work additional hours and change their contract?---More often than not it would be additional hours, not overtime.

PN376

Right?---I think there's two reasons for that. The employer obviously prefers to offer people ordinary hours rather than overtime. And often our members are happy to accept that. So - and we don't stand in the way of people trying to pick up additional hours. That's a useful thing for everyone. So I think that's generally the first way in which additional hours are administered. But obviously, if people have been working so many hours that they trigger the overtime provisions, then overtime would be paid.

PN377

Okay. And you accept, of course, that an employee can only be asked to work reasonable overtime?---I accept that that's the law.

PN378

Yes. You haven't brought any disputes to the Commission where people have been asked to work unreasonable overtime?---Let me think for a moment. Not in the last couple of months. We have had issues of – where people have been asked to work over – I think prior to my taking on of this role, we did have some disputes about the nature of overtime. Particularly - - -

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN379

A couple of years ago?---Yes. Particularly during the – the height of the pandemic.

PN380

During the height of the pandemic?---Yes.

PN381

Did those come to the Commission or did you resolve those satisfactorily yourself?---I can't recall, I'm afraid.

PN382

You can't recall. Sure.

PN383

JUSTICE HATCHER: Mr Ward, what's the provision of the Aged Care Award which requires additional part-time hours to be by consent?

PN384

MR WARD: Can I take that on notice, Your Honour.

PN385

JUSTICE HATCHER: Yes.

PN386

MR WARD: It was my understanding that it was. But if I'm wrong on that, I'll correct myself?---You're correct. It's in the part-time engagement clause of the – in the engagement provisions of the part-time (indistinct) - - -

PN387

Yes. I thought it was but I'll double check (indistinct). And can I then come to paragraph 24?---Yes.

PN388

Your survey?---Yes.

PN389

I just want to ask a couple of questions about your survey?---Sure.

PN390

First of all, how many members did you actually survey in all?---The survey would have been sent out to approximately 14,000 members.

PN391

Fourteen thousand. And when you sent out the survey, was it electronic?---Yes. It was email.

PN392

And was there a kind of preamble or introduction to it?---I can't recall. It was in the body text of the email that went out.

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN393

Does the union still hold a copy of the questions and what was sent out?---That's a very good question. We've changed providers of how – of how we distribute these things. So I'm not 100 per cent sure if that is available. But if it's – if it's available, then we would. But I'm not trying to hide it.

PN394

But if it's available, I call for it?---Sure.

PN395

JUSTICE HATCHER: All right. Well, Mr Gibian, you can get instructions about that and report when appropriate.

PN396

MR GIBIAN: Yes. So that's the questions?

PN397

MR WARD: The actual survey that was sent to members. I'm not asking for the returns.

PN398

MR GIBIAN: (Indistinct) the template questions.

PN399

MR WARD: Yes, thank you. Well, not just the questions but there was an introduction and anything else that went with it.

PN400

MR GIBIAN: Sure.

PN401

MR WARD: And CF2 to your statement?---Yes.

PN402

Do I take this that that's not simply a – I'll withdraw that. This is an editorialised document that you sent out to members, based on somebody reading the survey responses. Is that a reasonable way to describe it?---I would describe it as a summary of the survey responses. But I accept that there might be – I mean, looking at it, it doesn't appear to be particularly editorialised.

PN403

Well, let me ask this question. Let's take the leading question number 2, 'How important is it to secure the full 25 per cent pay rise?'?---Sure.

PN404

Did you have, like, five categories they could choose from that said, 'not very important, very important'?---Correct.

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN405

Yes. And you don't publish any of that in this document?---No, that's right. We've clearly published the most predominant answer.

PN406

You've made a decision to publish the answer that you want to share with your members?---Yes. And I would argue the reason for that was because the other information was less relevant.

PN407

Yes?---But – but, yes, we're happy to obviously publish – I'm happy to show you the results in full if they're available.

PN408

I made a call for that too. I'll call for that. Now, in paragraph 28 – I won't be much longer, Mr Friend, so. You say:

PN409

*In the past six months, HSU's been contacted by multiple aged care employees as part of the conversation about the major workplace change. A common feature of this change has been the removal of short shifts from the roster and the replacement then with full shifts.*

PN410

Do I take it that this is replacing a part-time job with full-time job?---No, that's not correct. It's replacing part-time hours – sorry, it's replacing short - generally four-hour shifts – with eight-hour shifts that were generally done by the same person. So in many cases, that was a part-time employee just working additional hours. Or the employer seeking to take the spread of hours that they had and where an employee may work five days with four-hour shifts per day, consolidating that into two or three days of full shifts.

PN411

Yes. Okay. And I think you've already said that that might suit an employee in some circumstances?---Correct, yes.

PN412

And have any of those discussions failed to reach an amicable outcome with the union?---There's been some that required quite a degree of our involvement. But generally speaking I'd say we've reached amicable outcomes on all of those through, you know, thorough negotiation and consultation. Yes.

PN413

Yes. And such that you didn't need to come to the Commission?---That's correct. I mean, in many cases there's also not strong avenues for us to go to the Commission. I mean, if the employer – or if the employee is contracted for 20 hours, there are a number of mechanisms that the employer can use to restructure those hours.

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN414

(Indistinct)?---So in many cases these just fell within the ordinary restructuring of – of shifts, where consultation obviously has to occur. But there's not necessarily a mechanism for us to say, 'no we do not want that to occur'.

PN415

I see. So in many cases the employer had a right to do this and they were simply consulting with you about the exercise of that right?---That's right.

PN416

Okay. Can I then just finish off, if I can, take you to CF3?---Sure.

PN417

I think you say, in your statement – paragraph 31, you say:

PN418

*On 5 May 2023 the Federal Government announced a new tripartite approach to best work for shortages in aged care through the creation of the new aged care industry labour agreement.*

PN419

And am I right that CF3, is it a press release? It's not the agreement itself, is that - - -?---Yes, sorry, it's not the agreement itself. And I apologise if I characterise it that way. It's the front page of the website that the Federal Government set up for the – as far as I recall – for the – sorry, I think it's – sorry, I correct myself – it's a fact sheet but it looks very similar to the front page of the website. But this is a fact sheet that was created by the Department of Home Affairs and circulated to employers and unions, describing the nature of the aged care industry labour agreement. And this is a fact sheet that we provide to all employers who approach us to undertake an agreement.

PN420

And if I do this badly, just tell me, but am I right in saying that this is a particular form of agreement to fast track bringing labour in from overseas for the aged care sector?---Yes, that's one of the features of it.

PN421

Okay. Are there any other that are really important? I just don't want to mischaracterise it, that's all?---Yes. No, no. The other really important feature is that people on this visa type are able to access permanent residency after two years of working in the sector. So we've been approached by many employers who simply wanted to use this as a retention piece for their current staff members. So they may have people here who are already – who are under different visa arrangements now. For example, a student visa or a partner visa, which has quite a long period of time to wait until they become a permanent resident. And so they're now seeking to access the aged care industry labour agreement to effectively convert those people onto this type of visa, in order to retain that employee with the employer. Because the employee has the benefit of accessing permanent residency in Australia after two years of service under this new agreement.

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN422

Can I just make sure I understand that. So I could be from Fiji, studying in Australia, working for an aged care facility on a particular visa?---Yes.

PN423

And I would then switch to this so I can get residency quicker?---Yes. That's one of the motivations – I don't want to put words in the government's mouth – but that was certainly part of their intention. Was to assist employers to retain staff.

PN424

Okay. Otherwise, am I right in saying that it's to try and locate people from overseas and bring them to the country?---That's the other key feature of it.

PN425

And I take it that your union supports this because there's a need to bring people from overseas?---Yes. I mean, we support it for multiple reasons. But I think, obviously, anything we can do to assist the staffing shortages, we're keen to do. I think it's also, you know, a really positive outcome for people who are working in the industry to have recognition that they're providing, you know, a really important service to Australia and that we reward them with permanent residency at the end of that.

PN426

Okay. And I think your evidence at paragraph 36 says you've spoken to some 60 employers so far about entering into a memorandum of understanding, which, as I understand it, it's a pre-condition to enter into that with you. Not you personally, but the HSU?---That's correct. That's correct, yes.

PN427

Yes. That's correct. And you say you've done – am I right in saying you've done – paragraph 36 says you've done 12 of those MOUs already?---Yes. I think now we'd be up to approximately 20. I've probably had discussions with about 80 to 90 employers in the sector. And we've completed memorandums of understanding – or memorandas of understanding – with approximately 20-odd employers, I'd say.

PN428

I take it you're optimistic that these will help the industry?---Yes. I think anything that we can do to get additional employees in the industry will be a good thing. There are other key features as part of the MOU, which I probably don't need to go into, but I think are also beneficial, in terms of employees having access to the Fair Work ombudsman and the union, to come and give them information about their rights, working in Australia. So I think that's something that's really beneficial for the sector as well.

PN429

Okay. And just lastly, can I just take you to CF3, just to make sure I understand (indistinct)?---Sure.

\*\*\* CHRISTOPHER FRIEND

XXN MR WARD

PN430



Right down the bottom of the first page it says:

PN431

*Visa requirements for application. Paid an annual salary of at least \$A51,222.*

PN432

Now, I've just done some quick maths. That's \$25.80 an hour. But my understanding is that you actually have to receive the \$51,000, is that correct?---I couldn't tell you, to be honest, with a degree of certainty. Yes.

PN433

You don't know. Okay?---I believe that's the case but getting into the details and the mechanics of the operation of the visas is not my speciality.

PN434

That's all right. So it would be unfair to ask you what the Australian market salary rate is as well?---I can't – I don't know (indistinct) - - -

PN435

No, that's fine. I won't ask. I don't want to ask you unfair questions.

PN436

JUSTICE HATCHER: So where it's underlined is that a hyperlink or is that just - - -

PN437

MR WARD: Well, Your Honour, I would say this now, if I can – Mr Gibian will correct me later on. The Australian market salary rate is an actual technical term. And if one goes to the government website one can find what it is. It, effectively, requires the employer to pay the equivalent of what you will pay an Australian worker. And then there's a reference to enterprise agreements, awards. I think there's a reference to talking to trade unions and employer associations. I think it's underlined because it's a technical term. And I imagine in this document originally it was a link to that. No further questions. Thank you, Mr Friend?---Thank you.

PN438

JUSTICE HATCHER: Any re-examination?

PN439

MR GIBIAN: We can check that if there's an issue about that. Whether it's a hyperlink.

**RE-EXAMINATION BY MR GIBIAN**

**[12.31 PM]**

\*\*\* CHRISTOPHER FRIEND

RXN MR GIBIAN

PN440

There were just a couple of matters, Mr Friend. You were asked some questions at the outset of the cross-examination in relation to the question of whether the union had brought disputes in relation to workload issues under a clause either the same as or similar to or the same nature as clause 36 of the – what was referred to

as the template agreement. In the course of those answers, you said that the issue of workload management had been brought to your attention regularly. I just wanted to ask you how that would generally come about? And what types of workload management issues you are commonly informed of?--Ordinarily people will – organisers will come and speak to me about issues that they are dealing with, with members, where the members are being asked to vary their working patterns in order to either increase their hours in their contract or to work different days of the week, and increase the number of days that they work in order to meet the care time requirements that have come into place as of this year. Ordinarily when it gets to my level it's because there's been a disagreement with the employer about how that will – how that will sort of roll out, I suppose.

PN441

Sure. You were then asked some questions, by reference to the Arcare enterprise agreement, which was marked as exhibit JE11, and particularly the reference to the medication allowance, on page 6 of appendix 1 to that agreement. In the course of those answers you indicated that your understanding was, generally, as a matter of practice, that allowance or one of that type would be paid for the whole shift of a particular worker. And I think you said that what was commonly reported is that a common form of terminology was that the worker had a 'med shift'. I just wanted to ask if you could explain, at least your understanding of that concept. In particular, whether what you referred to as a 'med shift' was one where medication distribution or involvement in medication administration was the only duty or just a part of the duty during that shift?---It varies from provider to provider. I would say more commonly it is the primary focus of the shift. It might not be the sole focus but in some cases, it is the sole focus. They will just simply go around with the medication trolley throughout the course of their shift. But I would say in most cases it's the primary focus. They may do some other things but they are quite busy. Given the number of residents in a facility that require medications. And the nature of having to assist the resident to take those medications, it's a time – it takes quite a deal of time to do that. So they'll generally be just assigned to do that one task.

PN442

I understand. You were then asked some questions about circumstances in which particularly part-time employees perform additional hours over and above their contracted hours and separately, over time. I don't want to test your recollection in this respect, but there was a debate with Mr Ward – or Mr Ward suggested to you and I think you agreed – that additional hours for a part-time employee would be worked with agreement, leaving aside what you said about corralling and obligation that individual employees may feel, I just wanted to understand: Was your reference to the Award, in that respect, intended to be a reference to what is clause 10.3(c), which indicates, so far as part-time employees are concerned, that any agreed variation to hours of work will be in writing, is that?---That's correct.

PN443

I think those were the matters I wanted to clarify.

\*\*\* CHRISTOPHER FRIEND

RXN MR GIBIAN

PN444

JUSTICE HATCHER: Thank you for your evidence, Mr Friend, you're excused. Which means you can leave the witness box?---Thank you.

<THE WITNESS WITHDREW

[12.36 PM]

PN445

JUSTICE HATCHER: So we're getting Ms Guevara?

PN446

MR GIBIAN: I understand, so Mr Saunders is taking this witness.

PN447

DEPUTY PRESIDENT O'NEILL: Mr Saunders.

PN448

MR SAUNDERS: I understand she's in the waiting room. Before Ms Guevara is admitted, I (audio malfunction). That was a different technical problem than the one we had this morning.

PN449

DEPUTY PRESIDENT O'NEILL: All right. Can we swear in the witness, please.

<ALISON KITTY GUEVARA, AFFIRMED

[12.36 PM]

EXAMINATION-IN-CHIEF BY MR SAUNDERS

[12.36 PM]

PN450

MR SAUNDERS: Ms Guevara, it's Leo Saunders here from the HSU. Are you able to see and hear me?---Yes, I can, yes.

PN451

Okay. Could you state your full name for the record, please?---Alison Kitty Guevara.

PN452

And your address?---(Address supplied).

PN453

And what's your occupation?---I'm a care support worker in the kitchen in Warrigal Nursing Home.

PN454

You prepared a witness statement in these proceedings. Do you have a copy of that available?---Yes, I've got that here with me.

PN455

And you've read that recently?---Yes. I read it this morning.

\*\*\* ALISON KITTY GUEVARA

XN MR SAUNDERS

PN456

Is everything in that statement correct?---Yes, it is.

PN457

I tender the statement.

PN458

JUSTICE HATCHER: Right. The witness statement of Alison Guevara dated 21 September 2023 will be marked HSU 95.

**EXHIBIT #HSU95 WITNESS STATEMENT OF ALISON GUEVARA  
DATED 21/09/2023**

PN459

MR SAUNDERS: Yes. Ms Guevara, you should also have available a copy of the enterprise agreement that applies at Warrigal. Have you got that?---Yes. I'm just trying to get that back up because I accidentally (indistinct) instead of (indistinct). But I'm just getting it up now.

PN460

Okay?---I'm just - - -

PN461

JUSTICE HATCHER: So, Ms Guevara, can you try to keep your camera in a stable position. We're getting a bit nauseous?---Sorry. I'll just put it down, hang on, I was holding it. Sorry.

PN462

Yes, that's much better. Thank you.

PN463

MR SAUNDERS: Thank you. All right. And just before I hand over, can I just confirm, you're alone in the room?---Yes.

PN464

Okay. Mr Ward from the Joint Employers is now going to ask you some questions.

PN465

JUSTICE HATCHER: I think Ms Rafter is going to (indistinct) on this witness.

PN466

MR SAUNDERS: I'm terribly sorry. Ms Rafter from the Joint Employers is going to ask you some questions?---Sure.

**CROSS-EXAMINATION BY MS RAFTER**

**[12.36 PM]**

PN467

MS RAFTER: Hi, Ms Guevara, can you hear me?---I can, yes.

\*\*\* ALISON KITTY GUEVARA

XXN MS RAFTER

PN468

My name's Alana Rafter and I'm appearing on behalf of the Joint Employers today. I'm just going to be asking you some questions in relation to your statement. They're primarily going to be some clarification, some extra detail here and there. I don't expect to take too much of your time today?---Okay.

PN469

So your primary role at Warrigal, would you describe it as kitchen hand as well as care service employee?---Yes. I – I would. Because I do have a lot of interaction with them as well. I'm not just in the kitchen.

PN470

Yes. Excellent. And you're aware your employment's covered by an enterprise agreement?---Yes.

PN471

And that's the classification when you're working in the kitchen as, I'll say 'kitchen hand' for now, would be care service employee level 1?---That's correct, yes.

PN472

But you also perform cooking duties if both chefs are absent and you describe that as the chef shift?---Yes.

PN473

And that classification level, under the enterprise agreement is care service employee level 3?---That's correct, yes.

PN474

Thank you. And at 64 of your statement, you state that you report to the head chef. If the head chef is absent, say when you're doing the chef shift, as you say; who do you report to on those days?---I would probably have to start with the RN that's on shift.

PN475

The RN?---Yes.

PN476

And would the other kitchen aids working on that day also report to the RN if the head - - -?---They would come to me first.

PN477

They would come to you first?---If I was, yes, if I was the chef that day, they would come to me.

PN478

Thank you. That's very helpful. Now, I'd like to ask you some questions about your training?---Yes.

\*\*\* ALISON KITTY GUEVARA

XXN MS RAFTER

PN479

At paragraph 68 – and you're welcome to turn to paragraph 68, I'll give you a moment?---Yes.

PN480

At that paragraph - - -?---I've got that.

PN481

You've got it. Excellent?---Yes.

PN482

You state that:

PN483

*The chefs have trained me to perform chef tasks and duties to be able to cover their shifts.*

PN484

?---Yes.

PN485

And would that training have included say, using the Robot Coupe food processor?---That's correct, yes.

PN486

And I understand that's an industrial food processor?---Yes, it is.

PN487

So I'd even go as far as to say it's a dangerous piece of equipment that not an ordinary – the kitchen hands don't normally use – only those specifically trained can use that?---Absolutely, yes. There's a lot of sharp implements.

PN488

Yes. And so you got trained to use that specific piece of equipment. What other training – I'll withdraw that – I'll rephrase that. Did the training that the chefs provided you for chef's tasks and duties primarily concern how to use certain equipment and cooking techniques?---Yes. As well as, like, how to do quantities and stuff like that as well. You know, we're cooking for a large amount of people, so I wouldn't know – just thrown in on how much to - - -

PN489

All right. So what I understand you're saying is they showed you how to choose the correct amount, if you're cooking a certain (indistinct) for say, 20 residents are going to have this?---Yes.

PN490

Excellent. Thank you for that?---That's correct, yes.

PN491

And would you agree that training they provided you helped you be prepared to do that shift?---Yes, absolutely, yes.

\*\*\* ALISON KITTY GUEVARA

XXN MS RAFTER

PN492

Thank you. Now at 14 of your statement you refer to - - -?---(Indistinct reply)

PN493

You refer to a series of mandatory training modules that you complete each year?---Yes.

PN494

For the online modules, do these typically take between 30 minutes to an hour to complete?---Yes, about that. About an hour.

PN495

And do they consist of a short video, maybe some graphics about the particular subject matter?---Yes. There's some videos as well, yes.

PN496

And is it completed with a multiple-choice quiz?---Yes.

PN497

And I take it that if you happened to muddle some of the questions to the quiz up, would you get a second chance to do the quiz?---Yes. It does give you a second chance.

PN498

And you've passed all your mandatory training to date?---Yes, I have, yes.

PN499

Excellent. Now at 51 of your statement?---Yes.

PN500

Yes. You state you need to be aware of the different chemicals and their interaction. Is that subject matter covered in some of your mandatory training?---It is covered in some of them. But not – not the online one. It's more when we do, like, the food safety handling.

PN501

Okay. So they provide you face-to-face food safety handling?---Yes.

PN502

And is that – who leads that training, I should say?---We get – there's – there's an independent person that comes in, but I couldn't give you their name, I'm sorry.

PN503

That's perfectly fine. And is that training annual, monthly – the food safety training?---It's annual.

PN504

And is it one-on-one or the entire kitchen team would be attending that?---It's the – it's the entire team, yes.

\*\*\* ALISON KITTY GUEVARA

XXN MS RAFTER

PN505

Thank you. And is there any assessment for that, or is it simply watch and learn?---It – they do have a thing at the end, which is usually like a one-page quiz.

PN506

Okay. Excellent. Thank you very much for that. And you also refer to, at 14(d) of your statement, that you have face-to-face training with a nutritionist?---Yes.

PN507

Is that, again, by someone – a third party's – or is the nutritionist a third party brought out or are they employed by Warrigal?---Yes, no, that's a third party as well.

PN508

Excellent. And that's, again, face-to-face with the kitchen team?---Different - yes.

PN509

And how long does that typically take?---Takes about an hour.

PN510

And is there a test at the end of that as well? Or is it just a briefing?---No, it's just a – like a chat, just to make sure we all understand.

PN511

Could you give me an example of something the nutritionist might tell you during that session?---She would usually talk about textures. Like, different consistencies, like, thickens and purees and stuff like that.

PN512

Excellent. And is she just simply telling you what a puree is or is she showing you how to make the puree?---Yes, she'll show us and she'll, like, get a syringe and show us that it's got – it's got to be able to pass through a syringe. And then that's the right level, and she'll demonstrate that as well.

PN513

And that's a task you would perform as both kitchen hand and chef?---Correct.

PN514

Thank you. Now I'd like to turn to some questions now about your duties and the work you perform. So my first; I'll ask a clarification point. At paragraph 27, you described service at Warrigal like a bistro?---Yes.

PN515

Now, is that because the residents have a menu and they can choose their orders? Or what do you mean by 'like a bistro'?---We have a menu board that we put out every day and it's in the dining room for them to be able to read. But we also go around and ask them. And then when we give them their meals, I stand at a servery and I collect and – and serve it to each resident.

\*\*\* ALISON KITTY GUEVARA

XXN MS RAFTER

PN516

Thank you very much. Now a key duty that you refer to throughout your statement is when you're preparing or serving residents, it has to be in accordance with their dietary requirements. In the kitchen, do you have access to an extract of the care plan that sets out the dietary requirements?---Yes. We have a folder, and



each resident has their own page and that gives us what their dietary requirements are, in terms of textures as well as allergies and dislikes and likes.

PN517

Excellent. So it covers dietary requirements, preferences, everything in one dietary profile in a folder?---Yes.

PN518

There's like a tab for each resident?---Yes.

PN519

Excellent. And at 16 you state you need to remember the residents' food preferences. Would it be fair to say that working 60-odd hours in the kitchen, over the course of a fortnight, you'd be able to commit a lot of – commit some of those to memory?---Yes. Definitely for myself personally, yes.

PN520

So you wouldn't need to go back and forth to check the dietary requirements every time. You'd build up a familiarity?---Yes, correct. Like, if they've been there for – for a few months, I'm pretty much remembering what they – what they need.

PN521

Thank you. And that familiarity, that would assist you in your capacity, I take it, when you're taking orders or providing meals, to present alternatives to the residents if they, say, didn't like what was available?---Yes – yes, definitely.

PN522

But if you were ever unsure if something fell within those dietary requirements, would you check with the RN?---Yes, definitely. Because a lot of them – as – as their needs change, so does their requirements. So we do get updated versions. But we do have to check as well.

PN523

And at 28 you refer to your capacity to assist with dietary requirements. I take it that that assistance – I'll withdraw that, sorry. If a resident was adamant that they wanted to do something contrary to their dietary requirements, would you bring this to the clinical care manager?---Yes. Definitely, yes. We do have residents that are on puree and they want a solid.

PN524

And is that – sorry, I cut you off. Continue?---No, that's okay. I was just going to say that we tried – I would try to talk to them personally about it. But if they're adamant, I would have to go higher up.

\*\*\* ALISON KITTY GUEVARA

XXN MS RAFTER

PN525

And is there a process at Warrigal, that you're familiar with, called 'dignity of risk'?---Yes.

PN526

And is what we were just – your last answer, where you refer it to the clinical care manager, is that to start the 'dignity of risk' process?---Yes – yes.

PN527

And if a resident's dietary requirements were to drastically change, for example, they can now only have thickened water, how is that communicated to the kitchen? How do you find out about that?---the RN will make an updated version of their requirements and they will give – give to us to put in the folder.

PN528

So they will contact the kitchen directly, they'll provide you with a note?---Yes. Well, they'll – they'll – they'll come and tell us. But I believe they've got to write up a whole new dietary list.

PN529

Okay. So they'll come to the kitchen, they'll tell you directly that resident A can now only have thickened water, and then at some stage, as soon as possible, would update the resident dietary requirements in that folder in the kitchen?---Yes. They would tell us immediately, so that the next meal can be covered. But usually by the end of the day we've got the actual hard copy.

PN530

Thank you. And at 27 - and I'll let you go to 27 of your statement?---Yes.

PN531

You state, as part of your role you:

PN532

*Need to make sure the chef prepares the food correctly, in accordance with the residents' requirements and needs.*

PN533

?---Yes.

PN534

Now, at the risk of stating the obvious, you're not suggesting the chef does not have any knowledge of the dietary requirements of the residents?---No, no, no. It's more – it's not, like, if I'm out – because I'm – I'm the one that's always out in the dining room, and someone will go, 'Well, I don't like fish anymore', you know. And so I'll go back and tell her this person has stated that.

PN535

Excellent. Thank you. So you're saying that you make sure you're aware of the dietary requirements and you're well placed to double check?---Yes.

\*\*\* ALISON KITTY GUEVARA

XXN MS RAFTER

PN536

Is it fair to say that the practice at Warrigal is that when a kitchen hand is going to provide a meal or a drink to a resident, they need to know that it's consistent with that resident's dietary requirements?---Yes, absolutely, yes. We're the ones out

delivering it to them, so we've got to make sure we know exactly what they can and can't have.

PN537

And at 65 of your statement?---Yes.

PN538

You state you work autonomously in the performance of your duties?---Yes.

PN539

Is that because, at Warrigal, you know the meal timetable, you know the tasks – service tasks and preparation tasks that need to be done?---Yes. I'd say, for me personally, I work off a – my own timeline, like, a timeline that I try to say, okay, this is what I'm doing now, and I try to keep to that timeline.

PN540

And when you say your own timeline, that is still with regard to the mealtimes that are established. So the time the resident - - -Yes, yes, sorry, I shouldn't have said it like that. I should have just said, like, I like to have good time management for myself.

PN541

And at 58 of your statement?---Yes.

PN542

You refer to buddy shifts that the new staff complete. And you, as an experienced staff member at Warrigal, are assigned new staff members and you're their buddy on occasion?---Yes.

PN543

Who assigns you to be the buddy?---The – the manager who'll talk to the – the chef, and the chef will then assign me to that.

PN544

And again, is that, when you say the manager, so that's the facility manager at Warrigal?---Yes, yes.

PN545

Thank you. And at 57, you state that one of the first things you do when a new staff member commences, and you're their buddy, you write out a list of preferences – the residents' preferences, I should say?---Yes.

\*\*\* ALISON KITTY GUEVARA

XXN MS RAFTER

PN546

Are you doing this as a means to be just more efficient that day, to – I'll rephrase – to provide the new person with a cheat sheet so they don't have to keep going back to the folder in the kitchen?---Yes. I do it – I do that almost off my own back. I just do that to give them – so they've got something they can look at as well. You know, they're new, they don't know anyone. I just do that as a courtesy.

PN547

And I take it you would also show them where the folder is, and so they know the formal processes there?---Yes.

PN548

Thank you, Your Honour.

PN549

JUSTICE HATCHER: Any re-examination, Mr Saunders?

PN550

MR SAUNDERS: No, Your Honour.

PN551

JUSTICE HATCHER: All right. Thanks for your evidence, Ms Guevara. You're excused and may leave. Which means you can simply disconnect?---Okay. Thank you.

**<THE WITNESS WITHDREW**

**[12.54 PM]**

PN552

Thank you. So, Ms Watson, do you want to proceed with her now or have a break and have an early resumption?

PN553

MR GIBIAN: I think probably a break would be more sensible.

PN554

JUSTICE HATCHER: So if we resume at say, 1.45?

PN555

MR GIBIAN: Thank you.

PN556

MR CHIN: Your Honour, and members of the expert panel, may I be excused. I'm told that I'm surplus to requirements for the balance of this week. But I have to return for submissions the following week. Mr Fuller will continue to appear for the Commonwealth in my absence.

PN557

JUSTICE HATCHER: Yes, all right. Thank you. You're excused. All right, we'll adjourn now, and we'll resume at 1.45.

**LUNCHEON ADJOURNMENT**

**[12.54 PM]**

**RESUMED**

**[1.48 PM]**

\*\*\* ALISON KITTY GUEVARA

XXN MS RAFTER

PN558

JUSTICE HATCHER: So the next witness is Catherine Watson; is that right?

PN559

MR WARD: Yes, Your Honour. I understand she's in the waiting room for the Teams link.

PN560

JUSTICE HATCHER: All right. Let's get her in and swear her in, please.

**<CATHERINE MAY WATSON, AFFIRMED [1.48 PM]**

**EXAMINATION-IN-CHIEF BY MR GIBIAN [1.48 PM]**

PN561

MR GIBIAN: Thank you, Ms Watson. My name's Mark Gibian, and I'm appearing for the HSU in these proceedings. Can you see and hear me adequately?---Yes, I can. I did. You're gone. Yes. Now I can. Yes.

PN562

I can wave, if that helps, but - - -?---No. That's fine. Thank you.

PN563

I'll be among a number of people on the Bar table. Can I just ask you to repeat your full name for the record?---Catherine May Watson.

PN564

And your address?---(Address supplied).

PN565

And you presently worked at the Holbrook Village Hostel in a position that, I understand, is referred to as an administration coordinator?---Yes. That's correct.

PN566

I understand you've been there for 17 years or so, although the - I think the identity of the employer has changed over time?---Yes. That's correct.

PN567

Yes. Now, you've made a witness statement for the purposes of these proceedings. Do you have a copy of that with you?---I do.

PN568

I think it runs to - we get to 107 paragraphs, and it's dated 21 September 2023?---That's correct.

PN569

Have you had an opportunity to read through that statement recently?---Yes, I have.

\*\*\* CATHERINE MAY WATSON

XN MR GIBIAN

PN570

And is it true and correct to the best of your knowledge and recollection?---Yes, it is.

PN571

Thank you. I tender Ms Watson's statement, if that's convenient.

**EXHIBIT #HSU96 WITNESS STATEMENT OF CATHERINE  
WATSON WITH ANNEXURES CW01 TO 04 DATED 21/09/2023**

PN572

Thank you, your Honour. Ms Watson, Mr Ward who is two - three places to my left is now going to ask you some questions?---No worries. Thank you.

**CROSS-EXAMINATION BY MR WARD**

**[1.50 PM]**

PN573

MR WARD: Ms Watson, if I can just introduce myself, I appear in these proceedings for the employer. So I put you on notice of that. Can you see and hear me okay?---Yes, I can.

PN574

If you don't understand anything I ask you, just please ask me to repeat it, okay?---Yes, I will.

PN575

Now, I have a sneaking suspicion you might be the most qualified witness we've met in this case so far. Can I just make sure I understand all your qualifications? You've got a Certificate III and a Certificate IV in aged care work?---Yes.

PN576

And I take it that that allows you to perform the functions of a personal care worker?---Yes.

PN577

And does that include administering medications and things of that nature?---It does if I've done recent training. I haven't completed that training at the moment.

PN578

Okay. So historically, you could have done, but at the moment, you're not competent to do that?---That's correct.

PN579

Right?---That's correct.

PN580

But you could get signed off to do that in the future?---I could, yes.

\*\*\* CATHERINE MAY WATSON

XXN MR WARD

PN581

Yes. Okay. And I understand you've got a Certificate IV in lifestyle and leisure, and I take it that makes you competent to perform the role of what we have called in these proceedings the recreational activity officer?---That's correct. Yes.

PN582

Yes. And am I right you also hold a First Aid certificate?---I do.

PN583

And how's that used in your service? How do you use the First Aid certificate?---I haven't been required to use it actively in my job.

PN584

Okay. But is it - it's a requirement to hold one?---Yes. They would prefer us to hold one. Yes.

PN585

Okay. So you just said you haven't been required to use it. I take it that's because if there an incident with a resident. You'll call a care worker or a registered nurse?---I would, um, or it's - if there was an incident with a visitor or a relative visiting, in those circumstances, then I would be required to use it, but I am not currently - like, I haven't used it recently.

PN586

Okay. All right. And just to round things off, I think you said you had a Certificate II in Public Safety?---Yes.

PN587

Is that relevant to your job at all or - - -?---Not at the moment, no.

PN588

No. Okay. All right. Okay. Am I right - I think at paragraph 32 of your statement, you say you're regularly required to fill in for more than one role. I take it that's because you are capable of working as a care worker as well as working in an administration role?---Yes. So I would help out if there was a shortage on the floor or a shortage in the kitchen or, you know, those sort of things. I would help out, yes.

PN589

And just come to the kitchen, if we could. I think your statement says you've got experience cooking and working in the kitchen as well?---Yes. I've filled in there. I've done bits and pieces in the kitchen. I've done bits and pieces as far as, like, maintenance when there's been no maintenance man around. So yes, I've done a bit of everything.

PN590

A bit of everything. And certainly qualified as a care worker as part of that?---Yes.

\*\*\* CATHERINE MAY WATSON

XXN MR WARD

PN591

Yes. Now, can I take you to - do you have your statement in front of you? You do?---I do, yes.

PN592

Can I just go to paragraph 9. You say in paragraph 9 this, 'Due to an identified need for office support in the Holbrook facility in 2018, UPA created the admission coordinator role'. That's the role you're in now?---Yes.

PN593

Yes. And - - -?---It has varied over the time, but that's the same particular role that I've been playing. Yes.

PN594

So is that - is what you're telling me that the title's the same, but what you do has changed?---Yes, it has.

PN595

Okay. And if I can just jump here to paragraph 95 because this might be what you're trying to tell me, in paragraph 95, you say, 'In addition, the amount of regulation has also increased like crazy particularly in the last five to 10 years and even more so since the Royal Commission'. I won't read on. You go on to talk about doing payroll and rostering. Do I take it that your job was created in 2018 because there was an increase in administration in the centre?---It was the increase due to - we - years ago, we used to have a administration or an office person, and when they left, that was - it was never replaced, and then the care manager team leader, they were exceptionally busy. They didn't have anybody to take people to appointments or anything like that. I had to come off the floor as a activity officer to take residents to appointments and that sort of thing. So it was taking time away from that job. So it was - we had a meeting between our managers, and it was decided that they would create the administration - sorry, the administration coordinator role. So I took on that job, and they employed another activity officer.

PN596

I see. Can I just take you to paragraph 10 very quickly. You say at various times, as I understand it, you fill in for the team leader, and you fill in for the care facility manager. Is that correct?---I have over the 17 years, yes. Also since, like, 2018 onwards, that has been more of a requirement than previous to that.

PN597

And this isn't a trick question. Is that like a weekly thing, or is that like a monthly thing or - - -?---I couldn't tell you. It's been from time to time, whenever there's been a problem, we've had care managers intermittently between that period of time between 2018 and 21. We had - we went through quite a few care managers.

PN598

Okay?---And many of them didn't stay very long.

\*\*\* CATHERINE MAY WATSON

XXN MR WARD

PN599

Right?---So they came, and they left, then somebody had to fill that role until we found somebody else.

PN600

And you - I take it you agreed to fill that role to help out?---I did.



PN601

Yes. Okay. And ordinarily, do you report to the care facility manager, or do you report to a team leader?---I report directly to the team leader, if they're on the floor, or they're on duty. If they can't answer my question or they - I don't fulfil what they wanted to, then I would report to the care manager, but it just depends on what it is - the task that they're setting there.

PN602

Can you give me an - - -?---So if it came directly from the care manager, I'll report back to the care manager.

PN603

I see. So depending on who asked you to do something, that's who you go back to?---Yes.

PN604

Okay. Can I just ask you to go to paragraph 24?---Yes.

PN605

And you say that you were working 65 hours per fortnight. Is that split between the weeks in any particular way? Is it - - -?---No. It's directly Monday to Friday 9 until 4.

PN606

Okay. So it's each Monday to Friday 9 until 4 over the two weeks. Okay?---Yes. Six and a half hours a day.

PN607

I understand. And you then say that your hours do not vary unless you do certain things. I just want to see if I can just clarify there. You say your hours don't vary in paragraph 25 unless you undertake training. How would that vary your hours?---So we may be required to attend training at 3.30, for instance, and that training may not finish until 4.35. So I would be over hours and according to that.

PN608

Okay. And do you get paid overtime for that, or do you - have you agreed to - - - ?---I would.

\*\*\* CATHERINE MAY WATSON

XXN MR WARD

PN609

You get paid overtime. Okay. Yes. You also say that you sometimes requested by the care facility manager extra tasks. What sort of tasks would they be?---Okay. So I've also said there that if it's like an outbreak situation, quite often the hours would be longer in those situations because there's more to do administration wise. We've got to, you know, contact residents, we've got to complete certain tasks. So in that situation, we would be required to work longer. There have been on occasion which I also mentioned in the statement - I don't know which paragraph it is - that I would take a resident to an appointment and not get back to the facility until after hours, so past 4 pm. So in those situations, I would be required to work longer.

PN610

I see?---Or if it was a weekend and there was some particular thing on that required me to be there.

PN611

Okay. And when you say on the weekend, is that you working as a care worker or in your administration role?---I would be administration or, on occasions, I have fulfilled the CA or cooking position.

PN612

I see. Okay?---Assistant or cooking on a weekend.

PN613

And, again, if you worked extra hours, you would get paid overtime?---I would.

PN614

Yes?---As long as it was accrued by the care manager.

PN615

Well, I'm sure you - I'm sure after 17 years, you can do that. And am I right in saying that on each of those occasions, you've been comfortable working those hours?---Yes.

PN616

Yes. Can I take you to your position description which is CW-04. It's attached to your statement?---Yes. I have it in front of me.

PN617

Thank you. And - - -?---Yes.

PN618

You're ahead of me. So I don't. Hang on. I'll catch up. And can I just - this is - as I read this, this was - it says down the very bottom in very small type, it says, 'Reviewed on 12/07/21', so am I right in saying this is an updated version?---No. It has not been updated since then. So things have varied slightly. This was done during a period where we had a care manager resign, and this was done just before we resigned. So it has changed slightly because after that, we got a different care manager, and things changed. So they do change. Most of it's basically - something I don't do that's listed in this position description currently is the conducting of the residents meetings and compiling the activity calendar and newsletters.

PN619

So just bear with me. So we broke up there a little bit on the screen?---Sorry.

\*\*\* CATHERINE MAY WATSON

XXN MR WARD

PN620

Is what you just told me that you no longer compile the activity calendar?---Yes. That's correct.

PN621

And you no longer compile and distribute the monthly newsletter. Is that what I heard?---Yes. I distribute the regional newsletter through - via email, but I don't compile our own newsletter. We don't actually do a facility newsletter anymore. It's a - more a regional newsletter which gets sent out to me and then I distribute it.

PN622

That's fine. And just something I just literally don't understand and you might help me, that the second-last dot point, it says, 'Diversional therapy assessments and care plan evaluations'. I take it that - am I right in saying this, you coordinate those to be done. You're not doing those yourself?---No. I used to do them for the activity officer.

PN623

I see, when you were the activity officer?---It was new to the role. Yes. But most of that now currently falls on her, not me.

PN624

Okay. And in terms of the actual care plan for the resident, is that done by the registered nurse?---Mostly, yes.

PN625

Yes?---Apart from the parts that need to be done by the clinical nurse specialist or the physiotherapist or the activity officer. So - but the majority of it is done by the registered nurse.

PN626

Thank you. That's very helpful. And just for completeness, is there anything in your job that's not on this position description? Have they missed anything off?---That I do?

PN627

Yes?---Yes. They've missed a lot off. But basically this is what my job is with the exception of those things that I just previously mentioned in regards to the activity officer.

PN628

So it's not - your statement describes the finer details of what you do, but in terms of the broad sweep of your job, this describes the broad sweep?---Yes.

PN629

Yes. Okay.

\*\*\* CATHERINE MAY WATSON

XXN MR WARD

PN630

JUSTICE HATCHER: I just want to ask a couple of questions, Mr Ward. Ms Watson, on the job description where it refers to care plan evaluations, so what - that's your responsibility, is it?---Not currently, no.

PN631

No?---So when - at the time when this was compiled in 21, it was. So part of those evaluations would have been for me to go back in and review the care plan for the activities and see if that was still relevant and changed what needed to be changed, but currently I do not do that. It's the role of the activity officer.

PN632

All right. And on the following page, it refers to selection criteria. It says 'recent experience in a customer service position'. What's a customer service position?---I would describe that as being, like, face to face relations to people, like - - -

PN633

So a direct care worker or personal care worker?---No. I would say that is more in relation to frontline, like, reception duty.

PN634

I see. Yes?---Yes.

PN635

All right. Thank you.

PN636

MR WARD: So I just want to clarify something from those questions. I think you gave an answer earlier. In terms of the care plan evaluations, I hear what you say you don't do them anymore. When you used to do them, you did depart from the recreational activity officer, did you?---Yes. Not - not other clinical areas. It was just the activity role. Yes.

PN637

Yes. Thank you. That's - I just wanted to make sure I had properly understood that. Can I just take you to paragraph 27?---Yes.

PN638

You say in paragraph 27 you have a 21-bed facility divided into three houses of seven rooms in each cottage. Help me out. What's the physical layout? Are they actually separate houses or - - -?---So yes. There's three separate houses. They are all joined under one main roof through corridors, and in the middle of those three houses is our - what we call our activity room.

PN639

I see. And so those separate houses are wings or parts of the bigger building, are they?---Yes. You could say that, yes. Three different wings. Yes.

\*\*\* CATHERINE MAY WATSON

XXN MR WARD

PN640

Okay. That's fine. And at paragraph 55, you say that all staff are flexible and wear a lot of hats. In your view, is that a reflection of the small size country nature of the operation?---Yes, fairly much. Like, the - in regional areas, it's hard to find any staff, care staff, registered nurses, even cleaning and catering staff at the moment since everything's gone back, there's a high demand for catering and cleaning outside of aged care as well. So it's very hard to recruit any staff from

anywhere. So a lot of people have started off in one role like I did as a cleaner and then just got qualifications in other areas and been able to use them over the years. So we have one other particular person that works for us, and she does care job mostly. She does a - cook in the kitchen. She also cleans. So yes. There's quite a few of us that have multiple qualifications or if they're - we're not qualified, we do multiple roles within that facility. So some of the roles don't require qualifications like our cook. Like we do training in those areas, but they're not qualified to be a chef or so forth. So - - -

PN641

So which other roles don't require qualifications in your service?---As far as I'm aware, our maintenance officer doesn't require any particular, like, construction certificate or anything like that. Obviously, if he was to do electrical work or something like that, he would need to be qualified. He has, like, qualifications in working with heights and those sort of things. However, I don't think he has any formal qualifications.

PN642

Okay. So it's in the nature of your operation that people hold multiple roles based on qualification or experience?---Yes.

PN643

Can I take you very quickly to paragraph 38. I just want to understand what happened. Paragraph 38 - - -?---Yes.

PN644

You talk about continuing to wear N95 masks, and then you say that on 15 September 2023, these rules had been relaxed. Was there anything particular that happened on 15 September or was that just a change in management attitude or - - -?---I think it was a change in public health policy in combination with, like, UPA policy, but I could not tell you for sure why they changed those rules, and I still don't know if it's relevant because I have been off work since 20 September with an operation and long service leave. So I haven't been back since I made this statement, virtually.

PN645

Okay. But it's your evidence that the requirement to wear a mask stopped on that day?---Yes, but I did also say that it's constantly being reviewed, and I understand that, at the moment, they're still wearing masks. I - but I don't know. They - it changes as soon as there's an outbreak or there's, you know, further - in the community if there's prevalent COVID in our community, then they're more of - inclined to say go back to wearing N95s.

\*\*\* CATHERINE MAY WATSON

XXN MR WARD

PN646

Do you know at the moment whether or not they are around?---I do not know at the moment.

PN647

Okay. So it - can I just take you to paragraph 49? You talk there about ordering stocks and the like. If you go to the bottom of the paragraph on the page, it says the food orders are done through Woolworths online, Superior Food, Border Markets for fruit, vegetable, Bega for dairy. Then over the page on 50, you say, 'I'm responsible for spending within a budget month-to-month. Anything that's above budget must be approved by the facility manager or team leader'. Can I just - first of all, in terms of food orders, how do you - who tells you what to order?---The kitchen manager or the catering manager.

PN648

Okay. And so they'll come to you and say, 'We need - here's my list'?---So - yes.

PN649

And so when you say you order, am I to assume that you're the person that goes online and places the order?---That's correct.

PN650

Okay. And I take it from your evidence that there are certain places you're allowed to buy certain things from?---That's correct.

PN651

Yes. And you have a set budget to spend and anything over that budget, you go to your manager?---Yes.

PN652

Okay. And do you also do the same for clinical supplies?---Yes.

PN653

And, again, who comes to you and says, 'We need more of these'?---Our registered nurses.

PN654

Okay?---Or the care staff depending on what it is that they want ordered.

PN655

So if it was an incontinent pad, it might be the care staff. If it was syringes, it might be the registered nurse?---That's correct.

PN656

Okay. And, again, is there a set of supplies you're required to use?---There is a set of suppliers that we're required to use, and if we needed to get something that wasn't available from those suppliers, then I would seek approval from the care manager as to where she wanted me to buy those.

\*\*\* CATHERINE MAY WATSON

XXN MR WARD

PN657

Okay. And again, you take the list of what they want. You would go online and place the orders, and those orders would have to be within budget?---That's correct.

PN658

Yes. Just a few more, and I thank you very much, but just if I could take you to paragraph 68, I was a little confused by it. 68 says - -?---Sorry. Was that 68 or 58? Sorry.

PN659

68. My apologies. 68. 68 says this, 'As mentioned, our facility care manager is only onsite two days a week. So for most of the week, the team leader is the person in charge in the facility. If the facility manager or I am - are off, I am in charge'. Does that mean you're in charge of clinical matters?---No. They - the care staff would come to me and say, 'Look, so and so's experiencing this'. I would say then to advise them to contact - if we have no RN on site, we go through our registered nurse in Lavington who has access to all our residents so they know exactly what medications and everything - they can see everything. So they - the care staff would then ring the registered nurse, or they would ring the ambulance if they deemed it necessary or so on and so forth. So I would not advise clinically. No. I'm not - that's out of my scope.

PN660

And do they come to you first because you've got a Certificate III and Certificate IV, or is it just you're the person they're told to come to?---I'm just the person they've been coming to for 17 years basically.

PN661

When I doubt, come and ask you?---Yes.

PN662

Yes. I've got you. Okay. Then in - if I can just take you to 94, paragraph 94, and you discuss here the question of somebody palliating, and in the end of the paragraph 94, you say something like this, 'On the other hand, if a loved one is palliating and takes a turn which might warrant a trip to hospital but the family does not want their loved one transported to hospital as are concerned it would be uncomfortable for them and would rather we continue to provide care and manage the situation internally, we respect the family's wishes in these cases'. I just wanted to understand what 'we respect' means. I assume the registered nurse is making those decisions?---The registered nurse, the GP. Our facility manager's also a registered nurse. So in those situations or the clinical nurse specialist, they would be liaising with the family members and discussing that with them as to whether they wanted them transported to hospital or whether they wanted them - us to continue caring for them to end of life at the hostel, but there are various occasions where we may not be able to manage their end of life care needs and - but that, again, would be discussed between the GP, the registered nurse, clinical nurse or facility manager. I don't make those decisions. I'm just making an observation here in this statement that the facility respects the family wishes in these situations.

\*\*\* CATHERINE MAY WATSON

XXN MR WARD

PN663

Okay. Thank you very much for your evidence. Thank you. Just wait because Mr Gibian might want to ask you some questions.

PN664

JUSTICE HATCHER: Any re-examination, Mr Gibian?

PN665

MR GIBIAN: Yes. Just a small number of matters.

**RE-EXAMINATION BY MR GIBIAN**

**[2.17 PM]**

PN666

MR GIBIAN: At the outset of your cross-examination, Ms Watson, you were asked some questions about having a First Aid certificate and the occasions which you had utilised that qualification. I just wanted to ask you is that a requirement of all staff at the centre?---Yes, it is. It's preferred that - for us to have that, and UPA encourage it and pay for it if we need it.

PN667

I understand. You were then asked a question by reference to paragraph 9 of your statement, namely, as to whether you'd been in the administration role - in the administration coordinator role, I should say, since 2018, and I think your answer was that, yes, you had been, but it had changed over time. Was there any - were there particular matters that you had in mind that had changed over that time in terms of the compositional nature of the role?---I think I mentioned throughout the statement that I have recently in the last few years taken on more of the rostering and that sort of things, that I didn't do at that beginning of 2018, but as time went on, I've taken on that role as part of - as well as, like, a lot of the training role. And again, that has recently changed as well, and we went to Ausmed training. A lot of it's done online now. So at the moment, I only coordinate the training for fire and emergency evacuation as well as manual handling. Like, those people come and do that in person from time to time at the facility. So I would coordinate that. Having said that, it's also available through Ausmed training online. So if they can't attend in person, then they would do the online training.

\*\*\* CATHERINE MAY WATSON

RXN MR GIBIAN

PN668

All right. You were then asked some questions by reference to the position description which is CW4, and without overcomplicating, again, I just want to make sure I'd understood correctly. You were asked a number of questions both by Mr Ward and by His Honour the president about the reference to diversionary therapy assessments and care plan evaluations towards the bottom of the first page of the position descriptions, and I think you said that that - those roles as referred to in the position description are, I believe, primarily the responsibility of the recreational activities officer now. I just wanted to understand, do you have any role now in relation to those documents, or is it entirely someone else's responsibility?---No. I still coordinate the volunteers and organise their, like, police checks. Well, I don't do them, but they get sent through to our regional office for those to be processed like your police check and so forth, get sent into regional to do that. So I coordinate that, and I don't actually physically do the police checks myself.



PN669

I understand. You were then asked some questions by reference to paragraph 27 of your statement about the physical layout of the facility and the three cottages, as I understand it - as I understood the evidence connected by covered walkways. I just want to understand is it your understanding that that is an example - that each of the cottages is run according to what I understand is generally referred to as the household model where the care - personal care workers also undertake duties in relation to cleaning and kitchen work to some degree at least?---To some degree, yes. So they would be required to do from time to time some - put some washing on or mop a floor or that sort of thing, and sort of meals, and those sort of things. So they would do those tasks as part of their day-to-day roles.

PN670

And I'm right in - am I right in understanding, then, that each cottage is intended to be set up to replicate a home environment to the extent that that is possible?---Yes. That's correct. They have a little kitchenette area and a dining - like dining tables and a lounge room as well as the seven ensuite rooms.

PN671

Finally, you were asked some questions by reference to paragraph 68 of your witness statement particularly the observation you make there that if - that in circumstances in which facility manager, team leader or RN are off that you are in charge, and particularly if clinical issues or the type arose in that circumstance. Do you recall being asked about that?---Yes, I do.

PN672

And as I understand it, you said that you would, in that circumstance, seek assistance from, I think, a registered nurse at another facility or a GP or call an ambulance as may be required in the particular circumstance?---Yes. That's correct.

PN673

I just - as I understood your evidence, that is a - something that would happen in the event that a care worker came to you for assistance as to how to manage a circumstance that had arisen?---Yes. Or if we have a call bell system. So we know if it's an emergency call, and if that happens, then it's all hands on deck. Everybody goes up to see if anybody needs assistance. So in that instance, it might be the care staff that says, 'Can you please call an ambulance?', and I would come down and prepare the documents for the ambulance and that sort of thing.

\*\*\* CATHERINE MAY WATSON

RXN MR GIBIAN

PN674

All right. Maybe you partly went into the - already. What I wanted to ask you is if you could describe how you together with care staff would generally make a decision about what would be done, that is, whether to seek assistance from the registered nurse at another location or call a GP or call an ambulance, how that process would work in that event?---I guess it would be the care staff who would make the initial call, like, obviously, if it was an emergency and, like, life-

threatening emergency, they would just call the ambulance straightaway or ask me to call the ambulance or another worker to call the ambulance. If it's something that's not life threatening and requires further clinical analysis or observations, then they would contact the registered nurse or (indistinct) nurse. They'd contact the registered nurse at another facility.

PN675

All right. Perhaps just one more question. What I was really trying to get at is whether you have involvement in or how a decision would be made as to whether it was - the circumstance was considered to be sufficiently serious to call an ambulance or it could be dealt with by contacting another - the RN or a GP?---Yes. So I guess it basically comes down to common sense.

PN676

I understand?---When you can see whether or not it's an absolute emergency, then I would advise if that was the - if it was me, I would advise them, you know, to call an ambulance if I could see that it was an absolute emergency, but having said that, they've probably already made that decision.

PN677

I understand. Thank you, Ms Watson?---No worries.

PN678

JUSTICE HATCHER: All right. Thank you very much, Ms Watson. You're excused which means you can disconnect from the call?---Thank you.

**<THE WITNESS WITHDREW** [2.24 PM]

PN679

JUSTICE HATCHER: All right. Mr Gibian, is it Ms Collins?

PN680

MR GIBIAN: The next is - yes, Ms Collins who's here in person.

**<FLEUR LEHELLE COLLINS, SWORN** [2.25 PM]

**EXAMINATION-IN-CHIEF BY MR GIBIAN** [2.25 PM]

PN681

JUSTICE HATCHER: Mr Gibian.

PN682

MR GIBIAN: Thank you, Ms Collins. Could I just ask you to repeat your full name for the record?---Fleur Lechelle Collins.

PN683

And provide your address?---(Address supplied).

\*\*\* FLEUR LEHELLE COLLINS

XN MR GIBIAN

PN684

And you're currently employed as head of the environmental department at Estia Health in Taree?---Yes.

PN685

Now, you've made a witness statement for the purpose of these proceedings. Have you got a copy of that with you?---Yes, I do.

PN686

I think, if you wait while I scroll through, it runs to some 43 paragraphs and is dated 22 September 2023. Have you had an opportunity to read through that statement correctly?---Yes, yes.

PN687

And is it true and correct to the best of your knowledge and recollection?---Yes. I - yes, it is.

PN688

The witness statement of Fleur Collins dated 22 September 2023 will be marked Exhibit HSU97.

**EXHIBIT #HSU97 WITNESS STATEMENT OF FLEUR COLLINS  
DATED 22/09/2023**

PN689

Yes. Thank you, Ms Collins. Mr Ward is appearing for the joint employers and will now ask you some questions.

**CROSS-EXAMINATION BY MR WARD**

**[2.26 PM]**

PN690

MR WARD: Ms Collins, good afternoon. As Mr Gibian said, my name's Nigel Ward. I appear in the proceedings for the employers in the proceeding?---Right.

PN691

If you need a water or anything, just ask?---Yes. I might take a sip, if that's all right.

PN692

Just make sure that's fresh, though?---Yes, it is. Yes.

PN693

Good. Okay. Do you have your statement in front of you?---Yes. Yes, I do.

PN694

I'm just - I'm going to ask you a relatively small number of questions. I'm going to walk you through your statement - - -?---Okay.

PN695

- - - and it might be the quickest way to do it. Can I just start off with paragraph 5D. If you could just go to that?---Yes.

\*\*\* FLEUR LEHELLE COLLINS

XXN MR WARD

PN696

You say you've got three care staff who, 'While they work elsewhere, they can be called upon to help me to fill in gaps as well'. What do you mean by fill in gaps?---So if the casual staff are not available or I don't have permanent part-time staff available to cover a roster, then I may ask management if I can call upon these staff to come in and help cover.

PN697

And would that be then coming in and working overtime or something like that? How would that work?---We don't interfere with their role, but it may be in a week's time or something like that, but the roster can't be covered. So they'd be given notice, and then they'd come in and do that shift.

PN698

So they'd pick up an extra shift?---Yes, they would. Yes.

PN699

I see. Excellent. And you say in paragraph 7 that you worked 40 hours per fortnight, and just for my benefit, is that a standard week, or is - - -?---No, it isn't. I - a while back now, I've taken the Mondays off. So I've worked Tuesday to Friday.

PN700

Right. And is - - -?---So that's a fortnight. The 40 hours is a fortnight.

PN701

Okay. And you said now you've taken the Mondays off. Is - - -?---Yes.

PN702

So that's changed, has it?---No, no, no. That's the 40 hours. So I work Tuesday to Friday.

PN703

All right. I've got you?---Yes.

PN704

So Tuesday to Friday each week?---Yes.

PN705

The same hours?---Yes.

PN706

Okay?---Yes, I do.

PN707

Okay. And do you work much overtime or do you just work - - -?---I do a lot of overtime.

\*\*\* FLEUR LEHELLE COLLINS

XXN MR WARD

PN708

How much overtime would you do?---Average, probably every day I may stay back an hour to two hours.

PN709

All right. And I take it you agree to that overtime?---Yes, I do.

PN710

Okay. You say in paragraph 8, you had previous management experience. Just explain to me where did you have the management experience?---Where was that one? Sorry.

PN711

You say, 'I had previously work experience with managing staff'.

PN712

JUSTICE HATCHER: Paragraph 8.

PN713

MR WARD: Paragraph 8?---Okay. So that's not in the aged care situation. My ex-husband and I had a bottle shop, so liquor store. So - - -

PN714

So you ran your own business?---Yes, yes.

PN715

Okay?---And I also had a florist as well at some stage.

PN716

Can I then take you to paragraph 18(e), one with the heading, 'Liaise with the facility maintenance and contractors'. Can I just deal with (e)(i) first. It says, 'I liaise with the facility maintenance team on a daily basis. Any time an issue is raised, for example, something that needs to be fixed in a resident's room or ensuite, I ensure that it is actioned by relaying the concerns to facility maintenance'. Can I just make sure - see if I've got it - so I - so your team - your cleaning team might come to you and say, 'David's room's got a picture that's fallen off the wall'?---That's right.

PN717

And I take it you would then log that into a system somewhere - - -?---Yes. We have a - - -

PN718

- - - so the maintenance team will do it?---We do.

PN719

What sort of system is it?---So it's a maintenance request schedule. So we can write that in there. And then maintenance at some stage will come around and look at those requests.

\*\*\* FLEUR LEHELLE COLLINS

XXN MR WARD

PN720

Yes?---I work quite closely with the maintenance. So if they do come to me, we'll write that definitely because that's the procedure to write it up into the maintenance request.

PN721

So they could come to you and say 'put it in'?---Yes.

PN722

Or you could - - -?---Yes. I can - - -

PN723

You could put it in?---Either. Either or.

PN724

Okay?---Doesn't matter. They know where it is, but if they're not comfortable in writing it or not quite sure, they'll come to me, and we can write that maintenance request up together, if it's another cleaner.

PN725

Yes?---And if it's something that I think needs to be handled straightaway, I will get in contact with maintenance and say, 'Hey, look, I think there's a concern here'. Yes. And then I let - verbally let that - - -

PN726

So you'll literally ring the maintenance manager - - -?---Yes, I do.

PN727

- - - and say, 'We need to deal with this today'?---Yes, we do. Yes.

PN728

Okay?---Because it might take - you know, it might be the afternoon that he comes around to the maintenance request.

PN729

And the maintenance team itself, that sits separate to you?---Yes, it does.

PN730

And does the maintenance manager?---Just one person.

PN731

Just one person?---Yes.

PN732

Okay?---Just a maintenance officer.

PN733

Right, maintenance officer. And then if you just go to the next - you say, 'I also liaise with contractors for carpet cleaning and cleaning of outside windows on a three to six-monthly basis'. Is that - you have a designated contractor who does that work?---Yes.

\*\*\* FLEUR LEHELLE COLLINS

XXN MR WARD

PN734

And it's your job to make sure that they're turning up and doing it?---Yes. So I will say to the maintenance - so every three months, our carpet needs to be cleaned throughout the facility.

PN735

Yes?---If I know that's coming up, I'll make sure maintenance is aware of that. I can - and he'll say yes or no. We may have to talk to management about that. And then I will make the phone call and book in a time, place - time - well, we know where the place is, but a time for the contractor to come along and do that.

PN736

So let me see if I understand what you just told me. So every three months, it's a regular occurrence - - -?---For the carpet cleaning, yes.

PN737

- - - of carpet cleaning, but you will talk to the maintenance person about whether or not it's Thursday or Wednesday or something like that?---Yes. That's right. Yes.

PN738

Okay. And I take it the contractor is somebody who's already been contracted to you to do that?---Yes, yes.

PN739

So you would be booking them to come in on the Wednesday?---That's right.

PN740

Okay. And in terms of the cleaning of outside windows, is that a similar thing?---That's right. That's every six months. And so more so that I will say to the maintenance, 'Look, it's coming up to six months. I really think we need to, you know, get onto the cleaner'. He may contact his boss in the head office, and they'll discuss it as well because they put in a new quote each time they do that.

PN741

I see. So - - -?---So yes. So we'll have to wait for that quote to come back.

PN742

There's a regular contract so that they have to quote each job?---They have to put in a quote. That's right.

PN743

Okay. And I take it - does that get - does the quote get approved by you or somebody else?---No. It's - that's a way - way above me.

PN744

Way above you. Okay?---So I'm sort of the triad to say, 'Hey, this is what's, you know - this is about time we need to his to happen'. Yes.

\*\*\* FLEUR LEHELLE COLLINS

XXN MR WARD

PN745

Yes. If I can just go down the page in (f), you say, 'I attend monthly resident meetings during which residents may raise any concerns, e.g., if they are concerned that their rooms is not being cleaned regularly. Can you just help me out. Who else attends those meetings from the company?---So you'd have - we have management as in our executive director or our care director. We have maintenance officer. We have someone from the lifestyle coordinator and myself.

PN746

Okay. And how many residents would normally attend a meeting?---Depends what's on the agenda.

PN747

Okay?---A good - I'd say a good 30 to 40.

PN748

Right. And what might be a spicy topic for the agenda?---A lost property.

PN749

Lost property. Okay. And would I be right in saying that the people who attend - the residents who attend that tend to be more capable, their - - -?---Yes, yes. Yes, they are.

PN750

Right. They are. Okay. So they're actually capable of understanding the issue and, you know, 'Is my room being cleaned enough?' Those sorts of things?---Yes. We do get the odd one that's a little bit confused.

PN751

Right?---That may think that their room never gets cleaned, but it does, and so they may raise a concern, but they're just confused.

PN752

Okay. And would personal care workers attend that meeting as well?---No, normally the director of care.

PN753

The director of care's actually there?---Yes.

PN754

Okay. All right. And then the next paragraph, you say in (g)(i), if a resident leaves the facility - please don't say this is a silly question. How often do residents leave?---Look, we may get one or two per year.

PN755

Right. Okay. So it's not that - - -?---They may go somewhere else for family reasons.

PN756

Family reasons. It's not that many?---No, it isn't.



PN757

No. Okay?---It's more when they pass away.

PN758

Yes. I was - out of delicacy, I was leaving that one alone. If I could ask you to turn the page and go to (j) - - -?---Can I just go back to that?

PN759

Of course you can. Yes. Please do?---So you were saying that the resident leaves a facility. I meant as in leaves to go to another facility or to go to care elsewhere.

PN760

That was my understanding?---Yes.

PN761

Yes?---Okay.

PN762

Not just leaves for the day?---So that's one or two. But as in residents passing, there's a lot more. Is that what you mean?

PN763

Yes. I would have understood that the number who pass away is a lot larger than - - -?---Yes. That's right.

PN764

Yes?---Yes.

PN765

Yes. I think we've already had a lot of evidence in this case about it?---Okay.

PN766

Can I then take you to the next page. You say in (j), 'work closely alongside the infectious prevention officer during any outbreak', outbreak being COVID-19?---Yes or could be flu - influenza or gastroenteritis.

PN767

So any one of those types of outbreaks, this person would be the - sort of the go-to point for that?---Yes. That's right.

PN768

Okay. And is the infectious prevention officer a new role?---It did come about - as I am aware, it came about when we were in the pandemic. Yes.

PN769

Okay. And can you just - what sort of person holds that role in your facility?---An EN. There's two ENs that have that role.

PN770

Right?---One does go to two different sites, but we have one onsite all the time.

\*\*\* FLEUR LEHELLE COLLINS

XXN MR WARD

PN771

And if there is an outbreak of, say, influenza, is that person playing a coordinating role in terms of the response?---Yes, they are. Yes.

PN772

Down in (k) you say, 'I perform inventory checks every two to three months and make an assessment regarding stock levels. If we require further stock, I place any orders with reception', and am I right in saying this is about, as you say, their linen stocks?---Yes. The linen stock. Yes.

PN773

Yes. And is it that you - there's a kind of rule which says you've got to hold a certain amount of towels and a certain amount of sheets, or how does that work?---We used to do that, but now it's - you basically know the stock that you have basically because what goes out, and you've got some left - yes. It's hard to describe the setting, but no. I don't do a inventory count or anything like that, but we do - no. We do have some instore, extra. So - but linen wears out. So yes. You sort of know what's being overturned type thing and what's worn out and what hasn't. So yes.

PN774

And does somebody come to you and say, 'We need more towels', or how does it - - -?---Yes, definitely. The laundry attendants all the time are saying, you know, like, 'Fleur, you know, this might need - can you have a look at this? Do we need more?', or something like that. Yes.

PN775

So it's coming from the person actually working doing the laundry who's letting you know that - - -?---Altogether, yes.

PN776

- - - maybe these things - - -?---I might go in and just - because I do work in the laundry.

PN777

Right?---So I do get a feel for that and on a - you know, mental note, 'I've really got to get onto that. I need some more towels'.

PN778

So as well as managing the team, you also will perform the various jobs for the team at various times?---Yes, I do.

PN779

Can I ask you to go to paragraph 19. 'In this role daily, I am required to follow the - and clean to a real-time digital schedule run sheet that is prepared prior to the shift'. Now, I'm assuming that this is a digital system that uses a tablet or something like that?---That's right. iPad. Yes.

\*\*\* FLEUR LEHELLE COLLINS

XXN MR WARD

PN780

Okay. And I think from your evidence, it sounds like it's quite new?---It is.

PN781

How new is it?---We've had it for a couple of years now.

PN782

Okay. You don't sound like you're a fan of it?---No, not at all.

PN783

You're not. Okay. And so the - can I just understand what it does. I take it it's mean to try and tell you now to allocate your team to do things like cleaning; is that right?---So each cleaner gets - has an iPad.

PN784

Their own iPad?---And they have their - yes. And they have their schedule on it. So it's just a basic schedule that we follow. You can scroll up and down and change - like you've still got to follow that schedule, and basically you start and finish. So the real time is - if management want to look up and see how the cleaning's going for the day, they'll be able to tell how many rooms have been cleaned, who's cleaning and where.

PN785

Okay. And do you have some discretion to change that if needed?---I have to go through a company called Interclean. So I would have to talk to the management to change that schedule. I can't do it at - on my - what do you call it - like, my level type thing on my iPad.

PN786

Right?---So then I would have to talk to Interclean. There's a lady by the name of Stacey there. So I talk to her and say, 'Look, this schedule's not working for us at present. Can we change a few things around?' And then I nominate what goes on that schedule and what doesn't.

PN787

Right. So if I - just see if I understand it. There's an external company called Interclean - - -?---Yes.

PN788

- - - who sets up the - what's on the tablet?---That's right.

PN789

And I take it management above you have worked with Interclean to do that?---Right. And then I've had to go along and - - -

PN790

Say, 'It's not working for me'?---No. That's right and change the schedules around.

PN791

Okay. So you don't get involved in how they set that up in the first place?---No, not initially. No, no. I wish I had have, but no.

\*\*\* FLEUR LEHELLE COLLINS

XXN MR WARD

PN792

They might learn their lesson. In paragraph 21, you talk about - you talk about it several times. You talk about high touch points. I'm not trying to say this in a rude way, my understanding about high touch points is areas in the facility that are more likely than not to be touched by more people. So this would be door handles, light switches and things like that. Is that - - -?---No. They're high touch. They're not - what - so - hang on. What - we're at 21.

PN793

Yes?---Yes, yes. High touch - yes.

PN794

Yes. So they - so things like light switches and door handles. I just - you're not suggesting that you didn't clean those before. You cleaned those before?---Before  
- - -

PN795

COVID?---Before COVID. I would say less. Yes. I don't think we got around to all the light switches and door handles and things like that. They were more like table services, bedside table services, things like that. Yes.

PN796

So before COVID, they might have been cleaned as part of a general cleaning process?---Right.

PN797

And since COVID, there's actually a focus on making sure you do those on a regular basis?---Every day.

PN798

Every day. And I take it that that tablet system you've got includes making sure that that's in there?---It sure does. Yes.

PN799

Okay. Can I take you to 22. You say in addition to these typical daily tasks, monthly tasks and responsibilities to the role that include the defrosting fridges and carpet cleaning, I take it the - is the carpet cleaning something different to what the contractor does?---Yes. So we do have a carpet cleaner onsite for spills or - mainly for spills. So - or if - so in between the three-monthly period, you might see where the main corridor gets a little bit grubby or outside the kitchen gets a little bit grubby on the carpet. Around the kitchenettes also get a bit grubby type thing. So that's where we would focus on those types of areas to keep the home looking nice.

PN800

And again, you're - one of the cleaning team would do that?---Yes.

\*\*\* FLEUR LEHELLE COLLINS

XXN MR WARD

PN801

Okay. If I can take you to paragraph 32, you list there - I didn't count them. That's - I apologise for that. You list there a large number of mandatory

training courses you have to do. Am I right in saying you do these each year?---No. Some of them we don't do every year, but who's - like, the things like bullying, discrimination, harassment we do, the challenging behaviours, workplace hazard and incident reporting, manual handling, fire. That's every year. Yes.

PN802

Okay. So some every year, maybe, what some every two years?---Yes. I'd say that.

PN803

Something like that. Okay?---Something like that.

PN804

And are these mostly online things, or are they face to face?---They are. The fire is face to face, and manual handling is face to face. The rest is online.

PN805

I take it - is this, what, half an hour, an hour per program, or - - -?---Yes. Some require - like, the infection prevention, that's quite an involved module. So it could take up to, yes, 20/30 minutes.

PN806

Right?---There's - like, the hand hygiene might take you five to 10 minutes.

PN807

Okay. And do they all involve a little test afterwards with the - - -?---Yes, of course.

PN808

Okay?---And you've got to get either 90 per cent or 100 per cent to pass.

PN809

And if you fail the first time, you get the - - -?---You've got to go and do it again.

PN810

You've got to go back - okay?---And they mix the questions up and - - -

PN811

Terrible. And just for my knowledge, I don't see anything here on dementia. Is it - is that - - -?---So the behaviours, possibly.

PN812

That's the behaviours one. That's - - -?---Yes. Challenging behaviours.

PN813

So that would include giving you some understanding of working with people with dementia, that one would?---Yes.

\*\*\* FLEUR LEHELLE COLLINS

XXN MR WARD

PN814

Okay. And is that an annual one or a two year - - -?---That's quite regular, that one.

PN815

Okay. What does - - -?---I think there's two parts to that one, actually.

PN816

And when you say 'quite regular', is that - - -?---That may come up twice a year. I think I've done it twice this year.

PN817

Okay. And by saying 'it comes up', different modules come up or - - -?---No, the same module, but they might just mix it up a little bit.

PN818

Okay?---Yes. It's basically the same.

PN819

That's a real focus for training, is it?---What's - - -

PN820

If you're doing it twice a year, that's quite a focus for the - - -?---Yes, yes.

PN821

Okay. And I think in 33, you say that these are essential and help you do your job?---They are.

PN822

Yes. If I can ask you to go to paragraph 34. You talk here about mandatory wearing of masks, but somewhere at the back of your statement, I think you said that that no longer is required?---No, unless we have a - another outbreak of COVID or gastroenteritis or influenza.

PN823

Okay. So in your case, if there's an outbreak of, say, the flu, your internal procedures require mask wearing?---Yes. Yes, they do.

PN824

So it's not just COVID?---No, no. It's any outbreak, yes, for masks.

PN825

Yes. And just - if you had a flue outbreak before COVID, would you have had to wear a mask?---No.

PN826

So this is a new thing since COVID?---Yes.

\*\*\* FLEUR LEHELLE COLLINS

XXN MR WARD

PN827

Okay. So I just want to make sure I understand this. If there's an outbreak of things like gastroenteritis, flu or COVID, you'll likely be required to wear masks at work?---Yes.

PN828

Okay. And is - do you understand that to be kind of learning from the COVID period?---Definitely, yes, yes.

PN829

But other than that, if there isn't an outbreak, you're not wearing masks anymore?---No. It's only just recently come about that we don't have to.

PN830

That's okay?---We've had a long, drawn out - you know, wearing them.

PN831

And you then say in 34(b) to add microfibre clothes. Use them at home. They're very good. Is that a relatively new invention?---It's the same with the iPads. They come out about a couple of years ago. Yes.

PN832

Okay. So this was just improving - - -?---It is.

PN833

Trying to improve the way you do your job?---That's right.

PN834

Okay. And in 34(b)(vi), you say, 'The chemicals used on the cloths have a strong hospital-grade disinfectant and often give me bad headaches'. Do I take it you reported that as a safety incident in the - - -?---We all have. A lot of people have reported that, but that was the chemical that we had to use. So - - -

PN835

Right. So nothing's happened?---No.

PN836

I'll let you take that up with your union later. Can I just get you to go to - sorry, 34(e), you talk about infection control in 34(e), and it - again, is this evidence in (e) when you say the 'infectious outbreak', is that an infectious outbreak which might be influenza, could be any infectious outbreak?---That's right.

PN837

Okay. And in (f), below (f)(i), where you talk about the digital cleaning schedule, I take it that's the new system they've introduced on the tablet?---That's - yes.

PN838

Yes. Okay. Thank you. Just stay there. Mr Gibian is probably going to ask you some more questions?---Okay.

**RE-EXAMINATION BY MR GIBIAN**

**[2.51 PM]**

\*\*\* FLEUR LEHELLE COLLINS

RXN MR GIBIAN

PN839

MR GIBIAN: Firstly, at the start of the cross-examination, you were asked about your hours of work, and I think you said you worked one to two hours overtime per day?---Yes.

PN840

Why is that necessary, or what's the cause of that?---Okay. So I get called away from my cleaning schedule quite a fair bit because I am head of the department. So I may be called to reception. I may have to go to a meeting - either management or residents' meeting. I may have to go into the laundry for some reason, and so it takes me away from my own cleaning schedule. So, therefore, when I get back to my cleaning schedule, I - yes. So it takes a fair bit.

PN841

All right. And that's something that happens pretty much day-in day-out?---Yes, daily.

PN842

You were then - you were asked some question about, I think, the digital cleaning schedules which I think is, perhaps, elaborated upon at 34(f), but I'm right in understanding that that through the use of the iPad's device, it - the schedule contains a list of discrete cleaning tasks that are then required to be checked off by the worker as they do them on the digital device?---Yes, that's correct.

PN843

I understand. Finally, when you were asked about the training, you were asked about the challenging behaviours training which I think you said included elements in relation to residents with dementia. I think you said that that training has two parts. What are the two parts of that training?---I can't remember, to be honest, but I do know there's two parts. So there's short little videos, and you answer quizzes to them, and then - yes, but there is two parts to - that's just - yes. I'm sorry.

PN844

Thank you, Ms Collins.

PN845

JUSTICE HATCHER: Thank you for your evidence, Ms Collins. You're excused, and you're free to go?---All right. Thank you.

**<THE WITNESS WITHDREW**

**[2.53 PM]**

PN846

JUSTICE HATCHER: All right. Ms Moll is next, Mr Gibian?

PN847

MR GIBIAN: She's also here in person.

**<CARINA MOLL, SWORN**

**[2.53 PM]**

\*\*\* FLEUR LEHELLE COLLINS

RXN MR GIBIAN



**EXAMINATION-IN-CHIEF BY MR GIBIAN**

**[2.54 PM]**

PN848

JUSTICE HATCHER: Mr Gibian.

PN849

MR GIBIAN: Thank you. Ms Moll, can you just repeat your name for the record?---My name's Carina Moll.

PN850

And your address?---Yes. I live in (address supplied).

PN851

And you work in environmental services at St Vincent's Care in Haberfield?---That's correct.

PN852

And you do laundry and cleaning work?---That's correct.

PN853

You have a - made a witness statement for the purposes of these proceedings. You have a copy of that with you?---Yes, I do.

PN854

I think it's got 66 paragraphs and is dated 21 September 2023?---That's correct.

PN855

Have you had an opportunity to read through that statement?---Yes, I have.

PN856

And is it true and correct to the best of your knowledge and recollection?---To the best of my knowledge, yes.

PN857

I tender Ms Moll's statement.

**EXHIBIT #HSU98 WITNESS STATEMENT OF CARINA MOLL  
DATED 20/09/2023**

PN858

Thank you, Ms Moll. Ms Rafter, I think, who is here for the employers will ask you some questions.

PN859

JUSTICE HATCHER: Ms Rafter.

**CROSS-EXAMINATION BY MS RAFTER**

**[2.55 PM]**

PN860

MS RAFTER: Hi, Ms Moll?---Hello.

\*\*\* CARINA MOLL

XXN MS RAFTER

PN861

My name's Alana Rafter. I'm appearing on behalf of the employer interest today, just so you know?---Yes.

PN862

Now, what I'm going to do is ask you some questions of clarification primarily about what you've said in your statement?---Right.

PN863

I shouldn't be taking too much of your time today?---Okay. No worries.

PN864

So I'll start with your role?---Yes.

PN865

So in your statement, you describe your work as environmental services?---That's correct.

PN866

And from your statement, I gather that's cleaning and laundry work?---That's correct.

PN867

Is there any other work that falls - I'll withdraw that. Are there other roles besides the laundry and cleaning that fall within environmental services?---Where I work, it's - that's about it. It's - - -

PN868

That's it?---Yes.

PN869

So maintenance would be in another team?---I beg your pardon. Maintenance as well.

PN870

Maintenance is in there, too?---Yes, yes, yes.

PN871

Thank you. And you've worked 20 years at St Vincent's now?---Almost 20 years.

PN872

Almost 20?---This is my 19th year.

PN873

Anniversary's coming up?---Yes. That's correct.

\*\*\* CARINA MOLL

XXN MS RAFTER

PN874

And have you consistently worked in environmental services the whole time?---No. I have had a 12-year stint in catering when it was formerly called St

Joan of Arc in Haberfield. And then once it's been transferred to St Vincent's I've worked as a cleaner and as a laundress.

PN875

Okay. So you've had about eight years in your current role give or take?---Give or take. Yes.

PN876

And you're familiar - having worked eight years there, I take it you're familiar with the different laundry and cleaning processes and practices at St Vincent's?---Yes.

PN877

And you're aware your employment's covered by an enterprise agreement?---Yes.

PN878

And for the environmental services team which includes laundry, maintenance and cleaning, who is the supervisor for your team?---There's currently what we call a team leader, and that's Abraham Vounakisi.

PN879

So the team leader is who you would report to on a day-to-day basis?---Yes.

PN880

And the maintenance employees and the other cleaning employees?---With the maintenance, yes. We - I do speak to the maintenance if there are issues that I need to talk to him about, i.e., if there's a problem in the laundry regarding the machines and so on.

PN881

And you're currently the only person employed in laundry at the moment at St Vincent's?---Yes. I'm the main employee in the laundry.

PN882

Thank you. And I note you have a - I'll withdraw that. How many team members are there in the environmental service team?---So there is myself and Abraham and Jerry who's in maintenance.

PN883

And is there - in your statement, you refer to another environmental services team member that works in cleaning?---Yes. There are - they're contract.

PN884

Okay?---Yes, yes.

PN885

So the - in your statement where you refer to a second environmental services team member that's cleaning the other rooms, you're referring to a contractor cleaner?---That's correct. Yes.

\*\*\* CARINA MOLL

XXN MS RAFTER

PN886

Thank you. That's - thank you for that clarification?---Yes, yes.

PN887

Now, I note in your - I'll just ask a couple more questions about that to make sure I understand it perfectly clear?---Sure.

PN888

In your statement, you refer to two sets of cleaners. So a contract cleaner that works Monday, Tuesday and weekends. Is that a second contract cleaner you're referring to?---Because I only do the cleaning Wednesdays and Fridays, they employ the contract cleaner that does the Monday and Tuesday, Thursday and the weekend. Abraham is also a cleaner, but he also does rooms and then the main areas.

PN889

Okay?---Yes.

PN890

So that's your - so when you say Abraham, that's the team leader?---Yes.

PN891

So the team leader's also on the floor?---Yes. That's correct.

PN892

Thank you for that. So just to clarify, too, so when you - I'll turn to your Wednesday/Friday shift. So that's when you do your laundry shift, then the cleaning shift?---Yes.

PN893

On that day, is - we have Wednesday - withdraw that. We have the contract cleaner that'd doing the other rooms that day, or would it be Abraham?---Abraham does rooms around the facility, and then I have my own assigned rooms on Wednesdays and Fridays, and basically on a Wednesday, it's seven rooms, and Friday, it's seven rooms as well.

PN894

And who assigns you those seven rooms to clean?---There is - we have another supervisor, but she comes to the facility every now and then. She was the one that did the assignment - the room assignments.

PN895

So are you aware of their title? Are they the facility manager for St Vincent's, or you just know it's above the team leader?---I think she's the head of the housekeeping.

PN896

Head of - - -?---Environmental services, I would say.

\*\*\* CARINA MOLL

XXN MS RAFTER

PN897

Okay. Maybe the head of department or something along those lines?---Yes. Something along those lines. That's correct.

PN898

Thank you. And how many rooms are there at St Vincent's, I should clarify?---Fifty.

PN899

There's 50?---Yes.

PN900

Thank you. And now I'm still staying with the Wednesday, Friday shifts where you do laundry and cleaning?---Yes.

PN901

I note in your statement at 29, you state that you only ever managed to do 2.5 hours of your cleaning shift?---Yes.

PN902

And would that be a regular occurrence?---It normally occurs during wintertime and springtime when the weather is cold because that's when the laundry really piles up. So I tend to stay back in the laundry to finish the work, and, therefore, by the time I get out, there's that much time left for me to do the rooms that are necessary to be cleaned. What happens is - I'm just pretty lucky that, you know, the team leader actually gives me a hand. So he does help me with the seven rooms, and then what he does, he assigns me to do either - collect the rubbish around the facility then leaves me a few rooms to do, or then gets me to do the glove run and also the stocks, replenishing stocks.

PN903

Thank you. And this, of course - so you're doing more - you do some of your laundry work in your rostered cleaning shift almost, yes?---Yes. It kind of overlaps. Yes.

PN904

Have you talked about this with either your team leader or the head of department?---I have spoken to the care - sorry, I have spoken to the care services manager a few times, and on two staff meetings - on two occasions, I have mentioned it on the staff meeting that, you know, it's a struggle to finish the laundry because we do get a lot of laundry bags. We have staggered days in the laundry. It's only Mondays, Wednesdays, Fridays and Saturdays for - Saturday is four hours. So as you can imagine, by the time you come back to work, that laundry is going to be piling up.

PN905

And is your - is the care services manager aware - did you ask them if you can - I'll withdraw that. Is the care services manager aware of this process where you'll do more of your - some of your laundry shift during the cleaning hours?---I have mentioned it. In fact, I have mentioned it on the staff meeting as well.

\*\*\* CARINA MOLL

XXN MS RAFTER

PN906

Are they happy for you to do this?---There wasn't any comment about it because I did explain to them that the work - that the rooms get cleaned, but we are - the team leader actually helps me so that we are able to finish all the work basically on that day?---Okay. So your team leader's fully aware of this situation as well.

PN907

Yes. And so has your team leader said, 'Just keep me aware of where you're up to when this happens', so they can maybe say you - they've changed up your cleaning duties a little bit?---Absolutely. I always do a handover. Yes. I always tell him.

PN908

And is this handover at the start of your shift or at the end of your cleaning shift?---Like, sometimes in the middle of the night that I'm doing the laundry because I know if I'm going to be delayed, I have to inform him.

PN909

Okay. Thank you?---Yes.

PN910

So you always keep your team leader aware - - -?---Yes.

PN911

- - - if you're going to be doing extra - some extra laundry duties where you're rostered to do a cleaning?---Definitely. Yes.

PN912

Thank you very much for clarifying that?---No worries.

PN913

Now, I'd like to ask you some questions about infection prevention and COVID-19. So at 47 in your statement, you explain the protocols that apply when a resident has COVID?---Yes.

PN914

And you say this includes donning and doffing full PPE?---Yes.

PN915

I take it that's the gown, the gloves and the mask?---That's correct, yes.

PN916

And at 45, you also talk about how in the laundry, you'll wash those clothes that are infected separately?---Yes.

PN917

Do you don the full PPE for that task in the laundry room?---Yes, when I am segregating the clothes prior to putting them in the machine.

\*\*\* CARINA MOLL

XXN MS RAFTER

PN918

And just for clarification, when it's just - when it's not COVID, but it might be linen that's just maybe soiled, will you wear any form of PPE for sorting that linen as well?---I'm always wearing gloves.

PN919

Always wearing gloves?---Yes, yes.

PN920

But when you're handling linen that may be infected with COVID, you wear the gown and mask as well?---Yes, just as a precautionary measure.

PN921

In general, it would just be gloves?---Yes, yes.

PN922

Thank you?---And also - I'm sorry. Let me just correct that because at the moment, we're supposed to be wearing masks. So yes.

PN923

Is that because - is there an outbreak at the moment at St Vincent's?---Previously, there was. So we're back on wearing masks just as a precautionary measure.

PN924

And that changes - in the past year, has that changed from time to time?---Yes, it does. It changes from time to time.

PN925

JUSTICE HATCHER: Just to be clear, you don't anticipate the current requirement to wear a mask will be permanent?---I don't anticipate it to be permanent, yes.

PN926

Is there some event which triggers you being directed to not wear masks again after this?---When there is a directive coming from St Vincent's themselves, yes.

PN927

But you don't know how they come about to make that decision?---No, sir.

PN928

All right. Thank you.

PN929

MS RAFTER: I take it that you do an online training module in relation to donning and doffing?---Yes.

PN930

Is that just - I withdraw that. How long does that module typically take?---I'd say 25/30 minutes - - -

\*\*\* CARINA MOLL

XXN MS RAFTER

PN931

And - sorry, I was about to cut you off?---Yes, but also we are also asked to, you know, liaise with the registered nurse that's on duty and, yes.

PN932

By that, you are saying you have online training, but you also get some face to face training from the RN?---Yes.

PN933

So they'll make sure you're doing it correctly consistent with your training?---That's correct, yes.

PN934

In the training module, do you get a bit - I take it there's a video showing you the proper order to do the donning and the doffing?---Yes.

PN935

And there's a little quiz at the end?---I'm sorry, I can't remember about the quiz. I think - I think there is.

PN936

That's perfectly fine?---I'm sorry, with so many modules now and then, so - - -

PN937

I will now take you back to your statement. At 47 - so we're now talking about your cleaning duties if a resident is infected?---Mm-hm.

PN938

You refer to additional cleaning. Is that talking about the surface cleaning of high touch points?---That's correct, yes.

PN939

Like the door knobs, the light switches?---Yes. The railings, yes.

PN940

The railings. Thank you. And where you refer to additional handwashing and sanitising, is there a set procedure you have to follow when there's an outbreak or is it just be more vigilant?---There is a set procedure when you are donning and doffing, but also at the same token, of course, we have to be more vigilant, so we do a lot of sanitising and handwashing.

PN941

I take it there's hand sanitise stations throughout the facility?---Yes, yes.

PN942

At 13, going back, you talk about that you're required to do a rapid antigen test every 72 hours?---That's correct.

PN943

And the result must be recorded in a folder at St Vincent's?---Yes.

\*\*\* CARINA MOLL

XXN MS RAFTER



PN944

And registered every time?---Yes.

PN945

What do you mean by registered?---So we have an iPad and we check in. So I check the temperature and then it checks - you know, we have to log in the COVID test on the iPad as well. So, at the moment, because we had the - we had an outbreak recently, we are doing it on a daily basis, but, previous to that, it was 72 hours at the time the statement was taken.

PN946

Similar to how the mask arrangements can change subject to an outbreak, you might get a direction that RAT tests have to be every day?---Yes.

PN947

And that's what's currently operating?---That's correct, yes.

PN948

At 57, you state that you help as much as you can when it comes to the residents?---Yes.

PN949

I take it that help is always within the scope of your skills and capabilities?---That's correct, yes.

PN950

I might put some scenarios to you?---Mm-hm.

PN951

For example, if a resident looked like they wanted to have a chat with you whilst you were delivering clothes or cleaning their room, you would of course engage in a conversation with them?---Absolutely, yes.

PN952

If a resident, whilst you were walking through the facility or even delivering clothes, wanted to give you their preference for how their trousers were ironed - they might want a particular pleat - that's something that you would endeavour to meet?---Yes, definitely.

PN953

If a resident was walking through the facility and may look a bit confused or needed assistance finding their room, that is assistance you will of course provided?---Definitely, yes, yes.

PN954

If a resident was found to have - I will withdraw that and rephrase. If you saw a resident that had had a fall in the facility, you would of course contact the RN, click the call bell to get help, but you would go to that resident and stay with them until that help arrived?---Yes, I actually do that spot on.

\*\*\*

CARINA MOLL

XXN MS RAFTER

PN955

But you wouldn't be moving the resident?---No, no.

PN956

You wait for the RN and just stay with the resident?---That's correct, because we don't know if they have any fractures.

PN957

Thank you. No further questions, your Honour.

PN958

JUSTICE HATCHER: Do you have any re-examination?

**RE-EXAMINATION BY MR GIBIAN**

**[3.09 PM]**

PN959

Ms Moll, I think just two matters. In relation to the cleaning, you mentioned that a contract cleaner was engaged in addition to yourself, I think, on the other days of the week?---That's correct, yes.

PN960

Is that done through a contract cleaning company such that you get different people at different times or is it generally the same worker?---At the moment, we're getting the same person, but there are times that, you know, it's a different person.

PN961

Sure?---Yes.

PN962

I think just the second thing was - I think the President also asked you some questions about this - you're currently wearing masks because of a recent outbreak of COVID?---That's correct, yes.

PN963

How long ago was that?---I'd say - sorry, about two weeks ago, because I went - I went on annual leave and when I came back, we were still on lockdown.

PN964

All right?---So I'd say maybe about two/three weeks ago.

PN965

You expect that the at least general wearing a mask will be removed at some point in time, but you don't know when that's likely to be?---That's correct, yes.

PN966

Thank you.

\*\*\* CARINA MOLL

RXN MR GIBIAN

PN967

JUSTICE HATCHER: Thank you very much, Ms Moll, you are excused and free to go?---Thank you very much.

**<THE WITNESS WITHDREW**

**[3.10 PM]**

PN968

JUSTICE HATCHER: So Ms Giaquinto is next?

PN969

MR GIBIAN: Yes, I think on Teams. Mr Saunders will take this witness.

PN970

JUSTICE HATCHER: Yes, all right.

PN971

MR SAUNDERS: Yes, I'm told she is in the waiting room.

PN972

THE ASSOCIATE: Ms Giaquinto, before you give your evidence today, I am going to ask you whether you agree with an affirmation and, at the end, if you agree, please says 'I do'.

PN973

MS GIAQUINTO: Okay.

**<MICHELLE MARGARET GIAQUINTO, AFFIRMED**

**[3.11 PM]**

**EXAMINATION-IN-CHIEF BY MR SAUNDERS**

**[3.11 PM]**

PN974

JUSTICE HATCHER: Mr Saunders.

PN975

MR SAUNDERS: Thank you.

PN976

Ms Giaquinto, can you see me? This is Leo Saunders from the HSU?---Yes, I can see you.

PN977

Terrific. Could you state your full name for the record, please?---My name is Michelle Margaret Giaquinto.

PN978

And your address?---(Address supplied.)

PN979

What is your occupation?---I'm a catering assistant at the Peninsula Village, Umina.

\*\*\* MICHELLE MARGARET GIAQUINTO

XN MR SAUNDERS

PN980

You have prepared a witness statement in these proceedings. Do you have a copy of that with you?---I do.

PN981

You have had the chance to read it recently?---Yes, just reading it now. Yes, I've read it.

PN982

Is everything in that statement correct?---Yes, it is.

PN983

I tender the statement.

PN984

JUSTICE HATCHER: The witness statement of Michelle Giaquinto dated 21 September 2023 will be marked exhibit HSU99.

**EXHIBIT #HSU99 WITNESS STATEMENT OF MICHELLE GIAQUINTO DATED 21/09/2023**

PN985

MR SAUNDERS: Thank you. Are you alone in the room?---I am alone, yes.

PN986

Ms Rafter from the Joint Employers is going to ask you some questions now, thank you.

PN987

JUSTICE HATCHER: Ms Rafter.

**CROSS-EXAMINATION BY MS RAFTER**

**[3.12 PM]**

PN988

Hi, Ms Giaquinto. My name's Alana Rafter, I'm appearing on behalf of the employer interests today. What I'm going to be doing is just asking you some questions in relation to your statement, primarily getting some clarification and asking for a few details here and there. I am going to start with your role. So you work as a catering assistant at Peninsula Village. You have worked 13 years, just about, at Peninsula?---Yes.

PN989

Have you always worked on the kitchen team?---I started working in the dining room and doing the service of food to residents in their rooms, and then also working afternoon in charge in the satellite kitchen, and now I do the kitchen work Monday, Tuesday, Wednesday and I still do afternoon in charge on Thursdays and Fridays in a different kitchen, different building, a smaller kitchen, and my hours are 10 to 6 on those days.

\*\*\* MICHELLE MARGARET GIAQUINTO

XXN MS RAFTER

PN990

Thank you. You are aware your employment is covered by an enterprise agreement?---Yes, it is. Out of date at the moment, but, yes.

PN991

I would like to take you to paragraph 10 of your statement?---Of my statement? Yes.

PN992

There you describe your classification as care services employee, level 7, year 4?---Correct.

PN993

I wanted to know where you got the level 7, year 4 from?---That's from the pay office. That's how they've classified my level. I can't really tell you why I'm a level 7 and why I'm a year 4. Maybe four years since I've worked in the kitchen, which is paid at a higher rate. I couldn't really say - - -

PN994

So you're not aware if it necessarily corresponds to a rating level in your enterprise agreement?---No, I do get more than the other employees because I have a few other feathers under my cap. I do infection prevention and control, which is an extra dollar an hour, and because I do afternoon in charge, I'm on a higher rate because I sort of supervise that afternoon. There's no manager around. So that would be my level.

PN995

Thank you for that. I was just trying to clarify where that level 7, year 4 came from, but that's very helpful what you said with the payroll, so thank you for that. At 18 of your statement, you refer to the head chef and the supervisor?---Yes.

PN996

I just wanted to clarify, is the supervisor a different person to the head chef there?---Correct. We have a head chef and a supervisor who starts a little bit later and is generally on the floor working in the kitchen, but she would be responsible for rosters and anything that - any mishaps, or just ordering as well. She does a lot of the ordering.

PN997

Is there - - -?---Otherwise - - -

PN998

Apologies. It sounds like, from what you're saying, the supervisor is a team leader role?---Yes, correct.

PN999

Thank you. I would now like to ask you some questions about your qualifications and training. I note you have a Certificate III in Hospitality?---Yes, I do.

\*\*\* MICHELLE MARGARET GIAQUINTO

XXN MS RAFTER

PN1000

Around what year did you get that qualification?---It was in 2015. I can tell you now because I've got my resume open. That would be Hospitality in 2011.

PN1001

Thank you for that?---In 2011 I did that.

PN1002

Thank you. At 13, you also refer to completing some units of an Aged Care Certificate II?---Yes, that was after.

PN1003

Were you required by your employer to do those units?---Number 13, the aged care multiskilling was strongly recommended. We were told if we didn't do the multiskilling, which is the Aged Care Certificate - it's a Statement of Attainment - we would be limited in the shifts that they would give us.

PN1004

So the multiskilling, I take it that's one of the units that is part of the Aged Care Certificate II?---It is.

PN1005

Did you do any other units?---No, I've done two. It leads to a Statement of Attainment. I've got it here in my resume if I can just get it up. I can tell you exactly what I did. There's six units in the course that I did. Do you want me to read them all out?

PN1006

Yes?---Provide individual support; provide support to people living with dementia; meet personal support needs; work effectively with others; follow safe work practices for direct client care, and communicate at work in health or community services. So that was part of the certificate, so it just leads to a Statement of Attainment.

PN1007

Thank you for that. And that was some time after 2011?---Yes, that was 2017.

PN1008

2017. Thank you for that. At 13, you also refer to a mandatory online dementia training course you did that was nine weeks long?---Yes, that was an online course.

PN1009

Was it a one-off course?---Yes, a one-off. I think it was about eight hours a week and you could do it at your own pace over the nine weeks, so - - -

PN1010

And did those eight - - -?--- - - - just to give - sorry.

\*\*\* MICHELLE MARGARET GIAQUINTO

XXN MS RAFTER

PN1011

You can complete your answer?---Just to give us a general idea on how dementia works and with people that we work with, so we can feel comfortable with the care we give.

PN1012

Were those eight hours consisting of seminars, or what were those eight hours comprising?---Just mostly online learning with, yes, listening to a lecturer or watching videos, answering questions and then doing an assessment at the end of the week.

PN1013

You are also required to undertake annual training in the form of a series of online modules such as elder abuse you refer to in your statement?---Yes. We do every year the mandatory training. It covers quite a lot of aspects. Dementia awareness is one; infection prevention and control; food safety. What else is there? Manual handling; wearing PPE, donning and doffing, things like that. We also do customer service, missing persons, diversity in aged care. We learn about the IDDSI system, which is a system they use to classify minced/moist foods and fluids for people that have dysphagia. It covers quite a bit actually, yes.

PN1014

Thank you for that. With the manual handling training, do you also do a face to face version of that training?---We always used to. In the last few years, we haven't been doing that because of COVID. They haven't put us back to face to face learning, although I believe it is coming back.

PN1015

Does the manual handling you cover concern only safe lifting or does it also concern dealing with residents?---It concerns keeping yourself safe and your residents safe. So if you had to lift, how to lift them correctly, lift your people, but, yes, generally also for yourself so you don't hurt your back.

PN1016

At 41, you state that you are required to regularly demonstrate an understanding of the requirements for caring for elderly and vulnerable residents. I take it you demonstrate that understanding by completing the assessments that accompany those training modules?---Yes. Which number was it?

PN1017

Forty-one?---Yes, the code of conduct and industry standards. Yes, we must know how to care for everyone safely, with respect, offer services that are free from any violence or abuse; if we see something that's wrong, how to bring it up, how to address it. We have a lot of residents who have difficulty eating or cutting up food, so the service we offer, we have to be able to provide it in a way where they will get nutrition from their food, so it's not as easy as just giving someone their roast dinner, we have to know our residents to know if that person needs it chopped up finely, may need a pureed meal, or they need their food cut up because they don't - they can't use their hands.

\*\*\* MICHELLE MARGARET GIAQUINTO

XXN MS RAFTER

PN1018

So if I can - - ?---So I think that - - -

PN1019

If I can put some of this back to you. When you say you have to regularly demonstrate an understanding, you say you do that by doing your job, so you learn about IDDSI and so that way, if you need to puree a resident's meal, you know how to do that?---Exactly, yes, we do, yes.

PN1020

At 40 of your statement, you mention that all staff are trained to use spill kits?---We are. Everyone knows how to use them.

PN1021

How is that training provided?---That's provided in mandatory training and also what we call toolbox talks when people will come around with the kit and just do a little brief, 'Here you go, this is your spill kit, this is how you use it. We're going to keep it here in this position. If you need it, that's where you find it and you know what to do with it.'

PN1022

So everyone is briefed in what the spill kit is, where it's located and how to use it?---Correct.

PN1023

You say you have had to use it on multiple occasions. Could you put an approximate number for say the past year?---I've used it three times this year to clean up urine and once there was faeces on the wall and on the chair, so I've used the spray and the wipes from that kit, put on my full PPE.

PN1024

I should just clarify the kit. The kit consists of wipes, spray, disinfectant?---Yes, a gown, gloves, disinfectant and the special bag to put anything in to signal to the laundry that this is nauseous linen, or whatever it is, clothing, or just, yes, stuff like that, not so nice, yes.

PN1025

I'm now going to turn to more of your duties. At paragraph 20 of your statement, you confirm there is a six-week rotating menu that outlines what is prepared?---Correct.

PN1026

Is it correct you can access that via the Simple app?---We can, and also by a diary folder in the main kitchen.

PN1027

Okay, so there's a soft copy form and access via the iPad, but there's also a physical copy?---Correct.

\*\*\* MICHELLE MARGARET GIAQUINTO

XXN MS RAFTER

PN1028



Is that the same for dietary requirements and preferences? Is there a soft copy on Simple and then a physical copy as well?---Yes.

PN1029

Thank you. At 34 of your statement, you state that the Simple app will set out instructions on the requirements for each food's preparation. I would like you to assume that you are preparing for lunch service and I will ask you some questions to clarify how the Simple app works, and this is coming from someone who does not use the Simple app?---Okay.

PN1030

In the kitchen, will it typically be you and the chef?---Me, the chef and the supervisor in the main kitchen on Monday, Tuesday, Wednesday. On Thursday and Friday, when I work in the satellite kitchen in a different building, it's just myself.

PN1031

I will focus these on the main kitchen then to simplify it more?---Okay.

PN1032

What instructions for food preparation might you expect to see on the Simple app?---The Simple app has the food of the day, which I've inputted in the morning. So I'm choosing the food, I'm putting it into breakfast, lunch or tea, and then when I'm cooking the food and temping the food, let's say the porridge comes out at breakfast, I will temp that porridge, make sure it's over 75 degrees, input that into the Simple app and then send the food to the dining room and tell the Simple app I've served it to that particular dining room.

PN1033

It's the same for lunch, for the components of the lunch, the meat, the vegetables, the gravy, and then the evening staff would do the same for dinner. There's also cold food prep, so sandwiches and salads that are prepared on the day. The person will put a time in that they start preparing the sandwiches and you've got a two-hour window to have those sandwiches prepared and put into a fridge for the lunch service or the dinner service.

PN1034

MS RAFTER: Thank you for that. So what I understand is you will get information from the Simple app about each of the different meal services, but you will also be entering data throughout the day, so the temperature checks that you will do, they will also be recorded on the Simple app itself?---Yes.

PN1035

At the very beginning of your answer, you say you input the food?---Yes.

\*\*\* MICHELLE MARGARET GIAQUINTO

XXN MS RAFTER

PN1036

Could you just clarify for me what you mean by that?---The six-week rotating menu is in there on the app. For example, today I knew we were having a roast dinner with gravy, mashed potato and roast - potato bake actually - so I will select the items that we're going to cook for today. It's actually a reheat because we

cook these things - what day is it today - we cook these things on Friday, they were blast chilled, so that's another system, that's another thing we should talk about.

PN1037

So let's go back to Friday. I cooked the roast - the chef cooked the roast chicken on Friday, he does a cook/chill and puts the temperature he cooked the chicken at, blast chills it and then we have two slots where we have to put the time - the temperature in after two hours and the temperature in after four hours. So it has to be under 20 degrees in two hours and under 5 degrees in four hours. So either he - depending whoever's cooking these things, I'll do vegetables, I'll do gravy, I'll do porridge, I'm doing that system and then, on the day - Monday we're having the roast - so then I'm selecting it and I'm selecting that it's a reheat and then that will be in there for when we've reheated it for lunch time.

PN1038

So I select everything for the day in the morning, so it's all there, breakfast, lunch and tea, and then when it comes to lunch time, we've cooked it, we've temped it, selecting the temperature that the chicken's reheated to, and then that will be served to the particular dining room.

PN1039

MS RAFTER: And when you - - -?---Does that make sense?

PN1040

I am going to ask a point of clarification. At the start, you said today was a roast dinner, there is potato bake and that - is that selected by the chef or is that what you're up to in the rotating menu?---It's what we're up to in the rotating menu, so we already know.

PN1041

I think you are about to pre-empt my question. So you know what needs to be prepared for all those other meals because it's on a rotating menu, so it's the same one you get to each rotation?---Yes, so we're using - we know the rotating menu and we also have - apart from the Simple app, we have a schedule which is just for the chef and the cook to look at and know on the day we're cooking - like on Friday, we're cooking the roast chicken, the potato bake, the gravy, so that we're looking at that as well as the Simple app. So that's a schedule that's just a paper form, it's not on the Simple app, it's separate, and then we sign off that we've cooked it.

PN1042

This question may sound very obvious to someone working in it, but forgive me. I note at 14, you state you cook everything except the main meals?---Correct.

\*\*\* MICHELLE MARGARET GIAQUINTO

XXN MS RAFTER

PN1043

How do you know what the chef needs to cook and what you need to cook?---On the schedule that I mentioned just before, there are two sections, the chef's and the

kitchen hand, the cook. So I would know by that, but also, yes, he would do the meat dishes pretty much.

PN1044

Thank you very much. That has helped me, a non-Simple app user, so thank you. Now, at 28 of your statement, you also state - I'll wait for you to go to it. At 28, you also state that an RN might communicate a change to dietary requirements to the kitchen. Do they typically call the kitchen or would they come to the kitchen directly?---Either or either. They could do both.

PN1045

And they would tell the first person they see? It could be you, the supervisor or the head chef?---Yes.

PN1046

How do you ensure that everyone in the kitchen gets that message?---We have a communications diary where that would be written in by hand, so everyone would know if there's a new resident, because they haven't got time to put it into the Simple app, or also just lets people know, be aware that someone might have a guest coming to have lunch with them. That's communicated. That would never go in the Simple app.

PN1047

That goes in the communication diary?---Yes.

PN1048

Who is responsible for ensuring that, say, the changed dietary requirements get inputted into the Simple app?---That would be done by our manager or a care service employee, like a nurse, a nursing staff person.

PN1049

Thank you. At 23 of your statement, you refer to the importance of storing food in accordance with the food safety guidelines?---Correct.

PN1050

I take it you are familiar with the food safety guidelines due to training you receive on the job?---Yes, it's - we follow the HACCP system - hazard analysis critical control points - so every time food moves or is prepared, you have to document or make sure it's kept at the right temperature or you're preparing it on the correct coloured board, you're not using something that's dirty, or you're storing it in the correct place in the fridge, separating raw foods from cooked foods, milks from meats, and things like that.

PN1051

Do you get monthly or annual refreshers in food safety protocol?---No, that's an annual thing involved in our mandatory training.

\*\*\* MICHELLE MARGARET GIAQUINTO

XXN MS RAFTER

PN1052

Thank you. Referring back to the updates and entries that can be put into the communication diary, so these may come throughout the day at any time, does

this mean that you must always check the communication diary at the start of your shift?---Definitely, yes, always. And then you also may look back, if you haven't worked for a few days, and just read up on what's happened so you can be aware of new residents, or maybe a machine's broken or something's happened, and so you have to be aware you can't just go and switch that machine on without reading that diary first.

PN1053

So you need both of them to be prepared?---Yes.

PN1054

At 30 of your statement - and I'll let you go to it - you state:

PN1055

*We are all trained that if a resident calls for help, this is everyone's responsibility.*

PN1056

?---Yes. You can't - - -

PN1057

Is it fair to say that you will always provide assistance within the level of your skill and capabilities?---Definitely. You can't just leave someone yelling. If you're walking past, you go in and check on them and make sure they're okay, see what they need. If you can assist them, you do. It's just common sense, common care.

PN1058

If a resident says they wanted an additional snack, it's outside of the main meal service, provided it was within their dietary requirements and subject to it being available, you would provide it to them?---Yes, we do, we have a lot of little snacks that we have ready to go.

PN1059

If you saw a resident in the facility that had a fall, I take it that you would immediately signal for help from an RN, but you would, of course, go to that resident and stay with that resident until help arrived?---Yes, that's the protocol: you stay with them until help arrives, the RN. You are not allowed to assist them up. That's the policy. They have to be assessed, but, yes, you'd definitely stay with them, get them a blanket, calm them, hold their hand, put maybe a pillow or a blanket under their head, or keep them warm, just reassure them. It happens quite often.

PN1060

At 36, you refer to that you may even need to manage residents requiring aid to the toilet?---Yes.

\*\*\* MICHELLE MARGARET GIAQUINTO

XXN MS RAFTER

PN1061

I note that earlier you said you did, as part of your Aged Care Certificate II, individual personal support and you also did safe practices in regard to dealing

with residents. Did that training help prepare you for that task?---Yes, it does, but you - you know, it's just common sense as well. If someone needs your help, you just go and help them. It's not hard really to assist the walking - the people that can walk and need help just to go to the toilet, they're usually just confused, so it's just a bit of assistance to show them where to go.

PN1062

Just for clarification to see if I understand what you're saying, you might be assisting them on their way to the toilet, but you're not necessarily helping them on and off the toilet, if I can - with it being delicate?---I have done. I have helped them on and off the toilet as well because a lot of the times, you find they may be in the dining room and you aren't with care staff, nursing staff, so if they need to go to the toilet, there's a toilet in the dining room and I'd help them, and many of the girls do that during the service, help the resident to the toilet.

PN1063

Would you accept that that form of personal care falls outside of the scope of a catering assistant?---Yes, outside of the catering assistant, but we're all care service employees under the general - the same umbrella really, so we're working with people, so you can't just say, 'Well, you know, you have to just wait because nobody's here.' You just go and do the job. I think it's part of the job. If you're working in aged care, you are doing these things as part of the job. It's not - - -

PN1064

I note you - - -?---Sorry, it's not to do with food, but, yes, you're helping the person.

PN1065

I note earlier you said your manual handling training - the mandatory manual handling training you do also covers safely handling, dealing with residents, et cetera. Is your employer aware that you also will step in and perform this task from time to time?---Yes.

PN1066

And they provide the training so you can do it?---Yes.

PN1067

No further questions.

PN1068

VICE PRESIDENT ASBURY: Ms Giaquinto, can I just understand this satellite kitchen that you talk about. At paragraph 6 of your witness statement, you say that you do morning shifts in the main kitchen Mondays, Tuesdays and Wednesdays and then day shifts in the satellite kitchen, and it looks like you needed to put the days you do that in. Could you just fill me in there?---Yes. I work in another building in the satellite kitchen on Thursdays and Fridays and the hours are 10 to 6. It serves 80 residents who are in different locations.

\*\*\* MICHELLE MARGARET GIAQUINTO

XXN MS RAFTER

PN1069

Can you just explain, is that satellite kitchen open every day or is it only on certain days?---No, it's open every day.

PN1070

So on days when you're not working in it, there's someone else working in it?---Correct.

PN1071

Your evidence is, on those shifts, you are actually the only person there serving the food and, as well, you are assisting the residents to eat the food?---On the shift 10 to 6, I'm in the main satellite kitchen preparing - let's say my day starts at 10.

PN1072

Yes?---I prepare dessert for lunch, I prepare cold food for lunch and, at the same time, I am reheating or cooking the main lunch. Then the lunch will be sent out to five different locations. One of them is in front of this main little satellite kitchen and the four other locations, two of them are dementia wards and then one's upstairs that has another group of people, and we have other workers who set up those areas and will serve the food, other catering workers who will serve the food in those areas, and then the one closest to my little kitchen, I will serve the lunch to them.

PN1073

Okay. So people taking the food to those other areas from the satellite kitchen are catering staff and they are helping the residents to eat the food in the areas they take it to?---Yes, they will take it to those areas and they will know their residents via the Simple app, or generally they do know their residents very well, so they'll know who is a pureed food, who is a minced-moist food, the fluid restrictions for each resident, their dietary requirements, allergens. What else? Who is a tray service. So that's all to be set up prior to the food arriving. They have little blenders in these other kitchenettes, so they can blend up food if it's something that the residents can't swallow or chew.

PN1074

When someone is a tray service, does that mean the food has to be taken to them in their room, or are they in the dining room?---Tray service means that goes to their rooms. For whatever reason - the resident doesn't feel well that day, some residents don't come to the dining rooms at all, so they will always be on the tray, the permanent trays we call them.

PN1075

Thank you. Thank you for clarifying that. Anything arising from my question?

PN1076

MS RAFTER: No, thank you.

PN1077

JUSTICE HATCHER: Mr Saunders?

\*\*\* MICHELLE MARGARET GIAQUINTO

XXN MS RAFTER

PN1078

MR SAUNDERS: There's no re-examination, thank you.

PN1079

JUSTICE HATCHER: All right. Thank you for your evidence, Ms Giaquinto, you are excused and you're free to go, which means you can disconnect?---Okay, thank you.

<THE WITNESS WITHDREW

[3.42 PM]

PN1080

JUSTICE HATCHER: All right, is that all the matters to be dealt with today?

PN1081

MR GIBIAN: Yes, I think so. Your Honour, I was just going to mention one matter about tomorrow. Looking at the schedule, it may be, being optimistic at least, that the period in the morning might be shorter than the full one after lunch. I don't think that Professor Charlesworth can start before lunch, but if it can be accommodated by the Commission and things go as optimistically as I have suggested, it may be that an early lunch break and starting back again before 2 pm could be achievable and might be advisable to ensure that the professors can be dealt with in the afternoon.

PN1082

JUSTICE HATCHER: All right. Our preliminary scoping work suggests that we can fit two people behind the witness box. It's just a case of whether there's enough room for their materials. Will they have hard copies of their statements?

PN1083

MR GIBIAN: I imagine so, yes.

PN1084

JUSTICE HATCHER: I think if they are just hard copies, that should work. We might have to move the screen out of the witness box to accommodate that.

PN1085

MR GIBIAN: We are most grateful.

PN1086

JUSTICE HATCHER: All right, if there's nothing further, we will now adjourn and resume at 10 o'clock in the morning.

**ADJOURNED UNTIL TUESDAY, 05 DECEMBER 2023**

**[3.43 PM]**

\*\*\* MICHELLE MARGARET GIAQUINTO

XXN MS RAFTER

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