
Fair Work Commission: 4 yearly Review of modern awards

SUBMISSION

**4 YEARLY REVIEW OF MODERN AWARDS: (AM2018/26)
SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES
INDUSTRY AWARD 2010 - SUBSTANTIVE ISSUES**

FILED ON BEHALF OF:

- **AUSTRALIAN BUSINESS INDUSTRIAL**
- **THE NSW BUSINESS CHAMBER LTD**
- **AGED & COMMUNITY SERVICES AUSTRALIA**
- **LEADING AGE SERVICES AUSTRALIA**

19 NOVEMBER 2019

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1. BACKGROUND

- 1.1 This submission is made on behalf of Australian Business Industrial (**ABI**), the New South Wales Business Chamber Ltd (**NSWBC**), Aged & Community Services Australia (**ACSA**), and Leading Age Services Australia Limited (**LASA**) (collectively, “our clients”).
- 1.2 This submission is filed in accordance with the Directions of the Fair Work Commission (**Commission**) issued on 23 October 2019.
- 1.3 This submission is divided into the following sections:
- (a) Part A: Introduction and General Findings;
 - (b) Part B: Claims advanced by our clients; and
 - (c) Part C: Claims advanced by other parties.
- 1.4 We have also set out in an **attached** table the following information in respect of each proposed variation:
- (a) The variation sought and the reference to the relevant Draft Determination;
 - (b) The party seeking the variation;
 - (c) The evidentiary material relied on by our clients that are relevant to the proposed variation; and
 - (d) The submissions, and parts thereof, relied on by our clients that are relevant to the proposed variation.

2. INTRODUCTION AND GENERAL FINDINGS

2.1 The proposed variations being advanced by parties in these proceedings must be viewed against the backdrop of the significant regulatory and operational changes that have occurred in the disability services and home care sectors in recent years.

2.2 These reforms have been detailed in various submissions filed in these proceedings.

2.3 This industry setting is of course a relevant contextual consideration in the exercise of the Commission's function of ensuring that the Award, together with the NES, provides a fair and relevant minimum safety net of terms and conditions taking into account the factors set out in s134(1)(a)-(h) of the FW Act.

2.4 Before turning to each of the specific variations being sought in these proceedings, it is helpful to distil the relevant industrial context into some general factual propositions.

General findings to be made

2.5 The following general findings should be made by the Commission.

2.6 There have been significant regulatory changes in the disability services and home care sectors over recent years. These have included:

(a) the introduction of the National Disability Insurance Scheme which has been progressively implemented throughout Australia from July 2013;¹

(b) the introduction of reforms in the home care sector since around 2012.²

2.7 A key feature of those regulatory changes was the transition from traditional 'block funding' models to individualised funding arrangements underpinned by the principle of 'consumer-directed care'.³

2.8 The principle of 'consumer-directed care' involves providing individual consumers with choice and control over what services are provided to them, when and where those services are provided, how those services are provided, and by whom those services are provided.⁴

¹ *National Disability and Insurance Scheme Act 2013* (Cth); ABI submission of 5 April 2019 at [3.15]-[3.18]; See Ai Group submission of 8 April 2019, at [83]-[87].

² ABI submission of 5 April 2019 at [3.7]-[3.14]; See also the *Aged Care Legislation Amendment (Increasing Consumer Choice) Act 2016*.

³ Stanford Statement at [24] (Court Book p.1454); Coad Statement at [14].

⁴ See section 3(1)(e) *National Disability and Insurance Scheme Act 2013* (Cth); Matthewson Statement at [48]; Coad Statement at [16].

2.9 These reforms have fundamentally changed the operating environment in the following ways:

- (a) service providers now have less certainty in relation to revenue;⁵
- (b) service providers are experiencing greater volatility in demand for services⁶, as consumers have a greater ability to terminate their service arrangements⁷;
- (c) there has been an increase in the number of service providers in the market;⁸
- (d) service providers are exposed to greater competition for business;⁹
- (e) service providers have reduced levels of control in relation to the delivery of services, as individual consumers have more control over the manner in which services are provided to them;
- (f) there is a greater fragmentation of working patterns¹⁰, as the employer is now less able to organise the work in a manner that is most efficient to it;¹¹
- (g) greater choice and control for consumers has led to greater rostering challenges by reason of:
 - (i) an increase in cancellations by clients;¹²
 - (ii) an increase in requests for changes to services by consumers;¹³ and
 - (iii) an increase in requests for services to be delivered by particular support workers.¹⁴

2.10 It is also widely accepted that clients benefit from having continuity of care in the sense that care is provided by the same employee or group of employees.¹⁵

⁵ Wright Statement at [22] and [24]; Mason Statement at [37]; Stanford Statement at [8].

⁶ Stanford Statement at [8]: "Demand for specific services fluctuates constantly due to changes in the number of clients, their approved budgets, their specific choices of services, and other factors".

⁷ Harvey Statement at Attachment A: ConnectAbility's Service Agreement allows participants to cancel with four weeks' notice.

⁸ State of the Disability Sector Report at p.20. (Court Book p.3385).

⁹ Australian Disability Workforce Report at p 14. (Court Book p.3329); McDonald Statement at Court Book p. 2914.

¹⁰ Stanford Statement at [8]: "The individualised, market-based system which the NDIS uses to deliver services to participating clients is creating a profound fragmentation and instability in the nature of delivered services".

¹¹ Harvey Statement at [28].

¹² Ryan Statement at [41].

¹³ Mason Statement at [34].

¹⁴ Mason Statement at [42], Coad Statement at [26].

¹⁵ Transcript at PN470-474 and PN520-PN524, Transcript at PN1554-1561.

The NDIS

- 2.11 The implementation of the NDIS is overseen by the National Disability Insurance Authority (the **NDIA**) which is an independent statutory agency. As part of its market stewardship role, the NDIA imposes price controls on some supports by limiting the prices that registered providers can charge for those supports and by specifying the circumstances in which registered providers can charge participants for supports.¹⁶ These prices are contained in the NDIS PB Support Catalogue 2019-20.¹⁷
- 2.12 The prices and rules contained in the Price Guide are monitored by the NDIA's Pricing Reference Group.¹⁸ The prices are typically updated on an annual basis by way of an Annual Price Review.¹⁹ The Pricing Reference Group helps guide NDIS price regulation activities and decisions.²⁰
- 2.13 The NDIA uses an Efficient Cost Model to:
- (a) estimate the costs to disability service providers of employing disability support workers to deliver supports through the NDIS;²¹ and
 - (b) inform its pricing decisions in respect of the supports delivered by disability support workers on which it imposes price limits.²²
- 2.14 The Efficient Cost Model purports to estimate the costs of delivering a billable hour of support taking into account "all of the costs" associated with every billable hour.²³
- 2.15 In relation to labour costs, the Efficient Cost Model uses the SCHCDS Award as "the foundation" of its assumptions and methodology.²⁴
- 2.16 Notwithstanding the above, the Efficient Cost Model does not contain any specific provision for, or does not account for, a range of actual or contingent costs proscribed by the SCHCDS Award which are associated with delivering services. These missing cost items include²⁵:
- (a) overtime;

¹⁶ Court Book at p.4321.

¹⁷ Exhibit ABI12.

¹⁸ Court Book at p.2858.

¹⁹ Court Book at p.2859.

²⁰ Court Book at p.2859.

²¹ Court Book at p.494.

²² Court Book at p.493.

²³ Court Book at p.494.

²⁴ Court Book at p.494.

²⁵ Court Book at p.489.

- (b) redundancy pay;
- (c) paid compassionate leave;
- (d) paid community service leave (for jury service);
- (e) the supply of uniforms or payment of a uniform allowance;
- (f) all other allowances payable under the Award, including:
 - (i) the laundry allowance;
 - (ii) meal allowances;
 - (iii) the first aid allowance;
 - (iv) the motor vehicle kilometre reimbursement;
 - (v) the telephone allowance;
 - (vi) the heat allowance;
 - (vii) the on-call allowance;
 - (viii) the additional week's annual leave for shift workers; and
 - (ix) rest breaks during overtime.

2.17 Additionally, the Efficient Cost Model contains other assumptions that have the effect of further underestimating the true costs of service providers in delivering services under the NDIS. For example:

- (a) the Efficient Cost Model does not account for payroll tax;²⁶
- (b) the Efficient Cost Model does not account for over-Award payments under applicable enterprise agreements;²⁷
- (c) the Efficient Cost Model assumes that 80 percent of the disability support workforce is permanently employed (which witness Mark Farthing described this as “highly inaccurate”²⁸), which results in the model underestimating the costs incurred by service providers where their workforce consists of casual employees at a rate of greater than 20 percent of the overall frontline workforce;²⁹

²⁶ Court Book at p.496.

²⁷ Court Book at p.494.

²⁸ Transcript at PN897.

²⁹ Court Book at p.497; Transcript at PN894-900 (15 October 2019).

- (d) the Efficient Cost Model assumes 'utilisation rates' (paid time that is billable compared to overall paid time) of between 87.7% and 92%³⁰, which does not provide sufficient allowance for essential non-billable tasks such as administration, handover, training, team meetings, and other non-chargeable tasks³¹; and
- (e) the Efficient Cost Model assumes that a support worker is employed in a particular classification for each type of support delivery, but in reality the employee delivering the support may actually be at a higher pay-point.³²

2.18 The NDIA has been aggressive in its price regulation activities in trying to set the absolute minimal cost so as to control the cost to government of the NDIS as a whole.³³

2.19 The price regulation controls applied by the NDIA do not enable employers to recover the full employment costs incurred for the services provided to participants under the NDIS.³⁴

2.20 Employers in the disability services sector have been under significant financial strain since the introduction of the NDIS.³⁵ By way of example:

- (a) there were considerable transitional issues with the rollout of the NDIA due to the size, speed and complexity of the reform;³⁶
- (b) The cost of transitioning to the NDIS and interacting with new systems and processes added to providers' cost bases and affected their financial position;³⁷
- (c) The pricing model has had a negative effect on the sector;³⁸
- (d) As at February 2018, while some providers had profitable operating models, many were struggling;³⁹

³⁰ Court Book at p.498.

³¹ Court Book at p. 3156-3157.

³² Court Book at p.494.

³³ *4 yearly review of modern awards – Casual employment and Part-time employment* [2017] FWCFB 3541 at [630].

³⁴ See Ai Group submission of 8 April 2019, at p.59-65. See also MacDonald at Court Book p.2914..

³⁵ Stanford Statement at [24].

³⁶ Productivity Commission Position Paper 'National Disability Insurance Scheme (NDIS) Costs' (Court Book p.1976).

³⁷ McKinsey & Company 'Independent Pricing Review: National Disability Insurance Agency' Final Report (Court Book p.1748); See also Court Book at p. 3848-51.

³⁸ Productivity Commission Study Paper 'National Disability Insurance Scheme (NDIS) Costs' (Court Book p.3759)

³⁹ McKinsey & Company 'Independent Pricing Review: National Disability Insurance Agency' Final Report (Court Book p.1729)

- (e) In 2018 providers reported concern that financial losses will lead to a market failure;⁴⁰ and
- (f) Providers held concerns in 2018 that they would not be able to continue providing services at the current prices.⁴¹

Home care sector

- 2.21 The home care sector is primarily funded by the Commonwealth Government. The Commonwealth Government controls the supply of services and packages, the levels of funding, the regulatory framework, the administrative infrastructure for payment of subsidies and consumer entry and navigation through the system.⁴²
- 2.22 There are three main categories of service or packages in the home care sector. They are as follows:

The Commonwealth Home Support Program (CHSP)

- (a) The CHSP commenced in 2015 and provides ongoing or short-term care and support services.⁴³ The CHSP provides funding to a considerably large number of aged persons, however there is no data retained in relation to the demand for the program.⁴⁴
- (b) The CHSP relies on grants for funding and, with the exception of recent additional funds being provided to existing providers to increase their services, at no time recently has there been an open round for funding, funding has not been available on an annual basis and there is no clarity as to when funding will be released.⁴⁵

Home Care Packages (HCPs)

- (c) HCPs were introduced in 2013 to replace a number of other programs. The introduction of HCPs also saw the introduction of consumer-directed care and individualised funding.⁴⁶
- (d) CDC has seen a shift in the way that care is provided to participants and the model encourages greater choice on the part of the consumer. Following further reform in 2017, HCPs are now directly allocated to the person requiring the support rather than

⁴⁰ Court Book at p.3395.

⁴¹ Court Book at p.3395: "Fifty-eight per cent of disability service providers agreed or agreed strongly that they were worried they wouldn't be able to provide NDIS services at their current prices".

⁴² Mathewson Statement at [39].

⁴³ Mathewson Statement at [36].

⁴⁴ Mathewson Statement at [41]: "In 2017-18, CHSP provided support to a total of 847,534 aged persons".

⁴⁵ Mathewson Statement at [43]-[44].

⁴⁶ Coad Statement at [14].

to providers and with their funding the participant then selects the provider they prefer.⁴⁷

Veteran Programs

(e) Veterans' Home Care (**VHC**) provide funding to certain eligible veterans who require assistance to continue to live independently. There is also a DVA Community Nursing Program to enhance the independence of veterans. While the programs hold similarities to the other home care programs, they are funded separately through Department of Veteran Affairs.⁴⁸

2.23 Providers in the home care sector are under financial strain following the rollout of CDC. While some providers have been operating under CDC since 2010 when it was first piloted, other providers have only been operating under this approach for approximately 12 months.⁴⁹

2.24 There has been a decline in the overall performance of home care providers, which is reported as being attributable to increased competition 'caused by the introduction of consumers being able to choose the provider from whom they receive their services'.⁵⁰

2.25 Reports show that while revenue has been increasing in the sector, the revenue levels of HCP providers are so low that they border on being unsustainable (taking into account the money providers are required to spend in relation to technology, staff recruitment, retention and growth).⁵¹

Nature of the industry generally

2.26 Many employers in the SCHCDS industry are not-for-profit organisations with a strong mission to support the community.⁵² Accordingly, many service providers in the SCHCDS industry are not primarily motivated by profitability and other commercial considerations.⁵³

⁴⁷ Mathewson Statement at [48]; Coad Statement at [25].

⁴⁸ Mathewson Statement at [56].

⁴⁹ Mathewson Statement at [61].

⁵⁰ Seventh report on the Funding and Financing of the Aged Care Industry 2019, p.1 (Court Book p.260).

⁵¹ StewartBrown – Aged Care Financial Performance Survey – Sector Report – December 2018 (Court Book p.572).

⁵² Wright Statement at [11]; Wang Statement at [13]-[15]; Ryan Statement at [16]; Harvey Statement at [9]; Shanahan Statement at [9].

⁵³ Ibid.

2.27 Equally, many employees working in the SCHCDS industry are motivated by factors other than purely economic benefit. For example:

- (a) Ms Stewart stated that she “loved working in home care”, “loved the clients” and “felt that I made a difference in the lives of my clients”;⁵⁴
- (b) Ms Sinclair stated that she changed careers from environmental engineering to home care as she “was looking for a career which was more fulfilling” and that “I like the idea of promoting person-centred care for older individuals in our community”;⁵⁵
- (c) Ms Waddell gave evidence that she “gain[s] satisfaction from knowing that I have made a difference to peoples’ lives...”;⁵⁶
- (d) Mr Encabo stated “I have strong emotional attachments to my work and the people I support. I have been an advocate for people with a disability since I was caring for my first wife. My connection to this sector is deeply personal”;⁵⁷ and
- (e) Mr Lobert stated “Initially what I liked about the work was the people and making a difference in peoples’ lives. Now I also like that you don’t have to take the work home with you, and that working one on one, you’re only responsible to the person you’re working with”.⁵⁸

⁵⁴ Further Stewart Statement at [17] (Court Book p.4711).

⁵⁵ Transcript at PN668.

⁵⁶ Waddell Statement at [4].

⁵⁷ Encabo Statement at [37].

⁵⁸ Lobert Statement at [3].

PART B: CLAIMS ADVANCED BY OUR CLIENTS

Our clients are pursuing the following two variations to the Award:

- (a) A variation to the existing client cancellation provision at clause 25.5(f) of the Award;
and
- (b) The introduction of a 'remote response work' clause.

These claims are addressed as follows.

3. VARIATION TO THE CLIENT CANCELLATION PROVISION

- 3.1 Our clients are pressing their proposed variation in relation to client cancellation. The terms of the variation sought are set out in an Amended Draft Determination filed on 15 October 2019.
- 3.2 Our clients rely on their written submissions of 2 July 2019 at paragraphs [5.1] - [5.20] which address the merit basis for this variation.
- 3.3 As a general proposition, the evidence adduced during the proceedings reinforces the fact that client cancellation events are a real issue for service providers in both the disability services and home care sectors.
- 3.4 We outline below the findings that are relevant to this claim which should be made by the Commission.

Findings to be made

- 3.5 Client cancellation events occur frequently in both the disability and home care sectors. By way of example:
 - (a) Mr Shanahan gave evidence that Coffs Coast Health & Community Care Pty Ltd experience client cancellations on a "regular basis";⁵⁹
 - (b) Mr Harvey gave evidence that ConnectAbility experiences client cancellation events on a "daily basis";⁶⁰
 - (c) Ms Ryan gave evidence that Community Care Options experiences client cancellations on "at least a daily basis";⁶¹

⁵⁹ Shanahan Statement at [20].

⁶⁰ Harvey Statement at [32].

⁶¹ Ryan Statement at [46].

(d) Ms Wang gave evidence that CASS Care Limited experiences client cancellations on a “regular basis”;⁶² and

(e) Mr Wright gave evidence that Hammond Care experiences client cancellations on a “frequent basis”.⁶³

3.6 In terms of the incidence of client cancellation events, the evidence was as follows:

(a) Ms Wang gave evidence that “approximately 40 visits are cancelled per week” at CASS and, in the month of May 2019, 3.83% of visits were cancelled (180 of 4,700 total scheduled visits);⁶⁴

(b) Mr Wright gave evidence that during May 2019 there were 2,708 cancellations out of 47,704 scheduled services which equates to 5.68% of services cancelled for the month;⁶⁵

(c) Ms Mason gave evidence that BaptistCare experiences “a high proportion of client cancellations on a very regular basis” and that in the month of May 2019 5,140 of 35,083 services were cancelled, which equates to 14.65% of scheduled services;⁶⁶ and

(d) Mr Harvey gave evidence that ConnectAbility experienced 1,134 cancellations during the financial year ending 30 June 2018.

3.7 Clients cancel scheduled services for a range of reasons including ill health or injury, an unscheduled medical appointment, hospitalisation, transfer into permanent residential care, death, family visits, complex behavioural issues, social appointments, the client refuses to have the replacement worker if their usual worker is absent that day, the client is not home at the time of the scheduled service, holidays, poor weather, and festival celebrations.⁶⁷

3.8 As to the timing of client cancellations, the balance of the evidence tends to suggest that most client cancellations occur in the 24 hours prior to the commencement of the scheduled service. For example:

(a) Mr Shanahan gave evidence that clients typically give notice of a cancellation on the day when a client goes into hospital, permanent care, or when they pass away;⁶⁸

⁶² Wang Statement at [35].

⁶³ Wright Statement at [25].

⁶⁴ Wang Statement at [35].

⁶⁵ Wright Statement at [25]-[26].

⁶⁶ Mason Statement at [40]-[41].

⁶⁷ Shanahan Statement at [22]; Harvey Statement at [37]; Ryan Statement at [48]; Wang Statement at [37]; Wright Statement at [27]; Mason Statement at [42].

⁶⁸ Shanahan Statement at [24].

- (b) Mr Harvey gave evidence that 75% of cancellations occurring at ConnectAbility during the financial year ending 30 June 2018 were made within 24 hours or not provided at all;⁶⁹
- (c) Ms Ryan gave evidence that for the time period 1 April 2019 to 30 June 2019 Community Care Options had clients cancel their services on the same day on 205 separate occasions;⁷⁰
- (d) Ms Wang gave evidence that:
 - (i) In home ageing services, while more notice is typical, cancellations for unexpected reasons are usually less than 24 hours; and
 - (ii) In disability services most cancellation notice is overnight and less than 24 hours;⁷¹ and
- (e) Mr Wright gave evidence that for Hammond Care “the vast majority of client cancellations are within 0 to 6 hours of the scheduled commencement time of the service”.⁷²

3.9 The frequency of cancellation events causes significant rostering challenges for businesses. While employers endeavour to redeploy employees to other productive work where cancellation events occur, it is not always possible to do so for a range of reasons.⁷³

3.10 Funding schemes have different terms in respect of cancellations.⁷⁴

3.11 Employers are in some cases prohibited from charging cancellation fees. For example, where disability services are provided under the NDIS, service providers must comply with the cancellation rules in the NDIS Price Guide 2019-20.

3.12 Some service providers have adopted cancellation policies and practices whereby they do not always charge cancellation fees (or charge lower cancellation fees than permitted to) even though they are permitted to under the applicable regulatory system. For example, Mr Shanahan gave evidence that Coffs Coast Health & Community Care Pty Ltd has a policy

⁶⁹ Harvey Statement at [36].

⁷⁰ Ryan Statement at [47].

⁷¹ Wang Statement at [39]-[40].

⁷² Wright Statement at [29].

⁷³ Shanahan Statement at [23]; Harvey Statement at [39]-[43]; Wright Statement at [38].

⁷⁴ Shanahan Statement at [21]. We also intend to rely on an anticipated Joint Paper to be prepared by the parties outlining the relevant cancellation rules applicable to the different services in the home care sector, which has not yet been filed by the parties.

whereby they only charge clients for one hour of a cancelled service regardless of the scheduled duration of the service.⁷⁵

3.13 Employers encounter difficulties in finding alternative work for employees at the time of their rostered shift when a scheduled client service is cancelled by the client.⁷⁶

⁷⁵ Shanahan Statement at [27].

⁷⁶ Harvey Statement at [39]-[42]; Ryan Statement at [50].

4. REMOTE RESPONSE WORK

- 4.1 Our clients press their proposed variation in relation to the introduction of a remote response allowance. The terms of the variation sought are set out in an Amended Draft Determination filed on 15 October 2019.
- 4.2 Our clients rely on their written submissions of 2 July 2019 at paragraphs [6.1] - [6.14] which address the merit basis for this variation.
- 4.3 We also note that there are other competing proposals being advanced by union parties in relation to this issue. These claims are summarised at Part 10 of this submission below.
- 4.4 While limited evidence has been advanced by the parties in relation to these proposals, we outline as follows the findings that we invite the Commission to make.

Findings to be made

- 4.5 There is broad support from both employer and union parties for the introduction of a term in the Award dealing with 'remote response' work, or work performed by employees outside of their normal working hours and away from their working location.
- 4.6 Employees covered by the Award are requested or required, from time to time, to perform 'remote work' (i.e. work away from the workplace) at times outside of their rostered working hours.
- 4.7 Having arrangements in place for out of hours work is necessary, given the industry.⁷⁷
- 4.8 Employers have different practices in place for ensuring that employees are available to receive calls or otherwise respond to emergencies or other inquiries issues that may arise.⁷⁸
- 4.9 Many inquiries that are fielded by employees when on-call or otherwise when not performing work do not require more than a few minutes of time.⁷⁹
- 4.10 It is difficult for employers to monitor the time that employees spend performing remote response work.⁸⁰

⁷⁷ Statement of Deb Ryan at [78].

⁷⁸ Some employers have dedicated 'on call teams', while others utilise the general workforce who may be on-call from time to time.

⁷⁹ Anderson Statement at [23].

⁸⁰ Transcript at PN1005-PN1007.

PART C: CLAIMS ADVANCED BY OTHER PARTIES

5. HSU CLAIM FOR CHANGES TO MINIMUM ENGAGEMENT PROVISIONS

- 5.1 The HSU seek the introduction of uniform 3-hour minimum engagements for all classes of employee (full-time, part-time and casual).
- 5.2 Our clients are opposed to this variation.
- 5.3 Our clients addressed this proposal in detail in our reply submission of 12 July 2019 at Part 6. We rely on those submissions.
- 5.4 Our clients' position in relation to minimum engagements can be summarised as follows:
- (a) Our clients are opposed to any change to the existing minimum engagements for casual employees;
 - (b) Our clients are opposed to the proposed introduction of any minimum engagement for full-time employees; and
 - (c) Our clients are opposed to the introduction of a uniform 3 hour minimum for all part-time employees.
- 5.5 However, our clients are not opposed to the introduction of minimum engagements for part-time employees, provided that:
- (a) they are consistent with the existing minimum engagement periods for casual employees; and
 - (b) attendances for the purpose of staff meetings and training / professional development are subject to a minimum engagement of one hour.
- 5.6 We now turn to the findings that are relevant to this claim which should be made by the Commission.

Findings to be made

- 5.7 Short shifts are a very common feature of the SCHCDS industry. This is particularly so in the home care and disability services sectors.⁸¹
- 5.8 It is very common for consumers in the home care and disability services sectors to request services of a short duration. By way of example:

⁸¹ HSU submission of 15 February 2019 at [29]; Stanford Statement at [11]; Elrick Statement at [19]; Thames Statement at [12]; Shanahan Statement at [35]; Ryan Statement at [64]; Wang Statement at [56]; Wright Statement at [41]; Mason Statement at [63].

- (a) Mr Shanahan, Mr Wright and Ms Mason gave evidence that services of less than one hour are common⁸², with Mr Shanahan giving evidence that approximately 80% of all client visits are less than one hour;⁸³
- (b) Mr Shanahan and Mr Wright both gave evidence that there is client demand for 30-minute services;⁸⁴
- (c) Ms Ryan gave evidence that some services are for 15 minutes duration.⁸⁵

5.9 The incidence of short shifts is reflective of the nature of the industry, and the personal care services, domestic care services, and lifestyle services that are provided. These services include (but are not limited to):⁸⁶

- (a) Medication prompting;
- (b) Personal care services (assistance with showering and getting dressed);
- (c) Meal preparation;
- (d) Assistance improving skills (e.g. meal planning, teaching cooking skills, support in responsibility for personal hygiene);
- (e) Domestic assistance (e.g. making beds, vacuuming and mopping floors, cleaning the toilet and bathroom, laundry, shopping for groceries);
- (f) Transportation and assistance with mobility;
- (g) Development of social skills and cognitive and emotional support;
- (h) Community engagement; and
- (i) Respite care.

5.10 Due to the high incidence of short duration client services, it is very common for employees to be engaged to provide a series of short-duration services to different clients throughout a single shift.⁸⁷

⁸² Shanahan Statement at [34]-[35]; Wright Statement at [39]; Mason Statement at [63].

⁸³ Shanahan Statement at [35].

⁸⁴ Shanahan Statement at [34], Wright Statement at 40

⁸⁵ Ryan Statement at [61].

⁸⁶ See Encabo Statement at [13] and [15]; Thames Statement at [5]; Waddell Statement at [4]; Rathbone Statement at [10] and [12]; Wilcock Statement at [9].

⁸⁷ Shanahan Statement at [38]; Harvey Statement at [57]; Ryan Statement at [64]-[66]; Wright Statement at [41]; Mason Statement at [59].

- 5.11 Employers often bundle a series of short-duration client services together to create a shift for employees.⁸⁸ Employers also attempt to ‘build’ a shift for workers by combining numerous client services so that the shift is attractive to employees.⁸⁹ This rostering practice is easier in metropolitan areas where there is a high volume of customers located within close proximity to each other, however it can be challenging to ‘build’ a shift of work in regional and rural areas.⁹⁰
- 5.12 Client preferences and principles of continuity of care can also impact the shift lengths that are provided to employees.⁹¹
- 5.13 As to overall shift length, employers regularly engage employees to work shifts of a duration of less than three hours.⁹² By way of example, the evidence demonstrated that:
- (a) It is common for employees to work two hours shifts;⁹³
 - (b) It can be difficult to provide employees with shifts longer than two hours;⁹⁴ and
 - (c) Employers may struggle to meet client demand over peak periods if required to provide shifts of three hours.⁹⁵
- 5.14 The imposition of a three-hour minimum engagement for all categories of workers:
- (a) will impose a significant financial strain of employers;⁹⁶
 - (b) may adversely affect customer service levels or prevent service providers from providing particular services;⁹⁷
 - (c) will significantly impact on staff rostering workloads and reduce flexibility.⁹⁸
- 5.15 The imposition of a three-hour minimum engagement for all categories of workers will also adversely impact consumers and adversely impact the ability of the various schemes to deliver on the principles of consumer-directed care.

⁸⁸ Shanahan Statement at [36]; Wright Statement at [41]; Mason Statement at [71]; Harvey Statement at [57]-[58]; Ryan Statement at [65]

⁸⁹ Transcript at PN3050

⁹⁰ Mason Statement at [57]-[58].

⁹¹ Wright Statement at [38]; Mason Statement at [55].

⁹² Wang Statement at [56], Mason Statement at [61].

⁹³ Shanahan Statement at [38], Ryan Statement at [67].

⁹⁴ Shanahan Statement at [39]; Wright Statement at [41]; Mason Statement at [61].

⁹⁵ Shanahan Statement at [38].

⁹⁶ Shanahan Statement at [40]; Ryan Statement at [71]; Wang Statement at [63]; Mason Statement at [65]

⁹⁷ Harvey Statement at [60].

⁹⁸ Ryan Statement at [72]; Wright Statement at [42].

6. CLAIMS TO VARY THE BROKEN SHIFTS PROVISION

6.1 There are various claims on foot in respect of clause 25.6 of the Award.

The HSU proposal

6.2 The HSU proposal involves varying the existing clause in the following respects:

- (a) limiting the clause to part-time and casual employees, thereby preventing full-time employees from being permitted to work broken shifts;
- (b) imposing a limit of one break per broken shift;
- (c) requiring that broken shifts only be worked where there is mutual agreement between the employer and individual employee;
- (d) requiring that each portion of a broken shift be subject to the proposed 3-hour minimum engagement;
- (e) travel time between broken shifts be treated as time worked and be paid at the appropriate rate; and
- (f) the shift allowance be determined by either the starting time or the finishing time of the broken shift, whichever is the greater.

The United Voice proposal

6.3 The United Voice seek a different variation to clause 25.6, which involves two main components:

- (a) the imposition of a limit of two portions to a broken shift (or one break, as proposed by the HSU); and
- (b) a variation to the way in which the existing loading is determined.

The ASU proposal

6.4 The ASU seek the introduction of a 15 percent loading to be paid when employees work a broken shift. The loading is expressed to be payable not in respect of each hour worked during a broken shift, but in respect of the entire duration of the broken shift from commencement of the first portion of work to the cessation of the final portion of work (inclusive of breaks).

6.5 Further, the loading is proposed to be payable in addition to the existing requirement that penalty rates and shift allowances in accordance with clause 29 be payable, with shift allowances being determined by the finishing time of the broken shift.

Our clients' position in relation to the proposals

6.6 Our clients are opposed to each of the union claims in relation to the broken shifts provision, save for the following two exceptions:

- (a) our clients do not oppose the introduction of a requirement that broken shifts only be worked where there is mutual agreement between the employer and individual employee; and
- (b) our clients do not oppose that the existing payment under clause 25.6(b) be varied such that the applicable shift allowances be determined by either the starting time or the finishing time of the broken shift, whichever is the greater.

6.7 Our clients addressed the various union proposals in relation to broken shifts in detail in our reply submission of 12 July 2019 at Part 7. We rely on those submissions.

6.8 We now turn to the findings that are relevant to this claim which should be made by the Commission.⁹⁹

Findings to be made

6.9 Broken shifts are an essential feature of the home care and disability services sectors.

6.10 There is a very high incidence of broken shifts in the home care and disability services sectors.¹⁰⁰

6.11 There are clear peaks in demand for services at different times throughout the day. For example, in the home care sector, there are two clear peak times for the delivery of services: during the morning, and then in the evening.¹⁰¹ There is also a less pronounced third peak time at around lunch time.¹⁰²

6.12 It is very common for consumers in the home care and disability services sectors to request services of a short duration.¹⁰³

6.13 Most broken shifts involve two portions of work and one break.¹⁰⁴ However, occasionally it is necessary for broken shifts to involve more than one break.¹⁰⁵

⁹⁹ Findings in relation to the 'travel time' aspect of the HSU proposal are addressed at Part 14 of this submission.

¹⁰⁰ Sheehy Statement at [7]; Friend Statement at [49]; Eddington at [23]; Wang Statement at [65]-[67], Wright Statement at [44], Mason Statement at [67].

¹⁰¹ Shanahan Statement at [37]; Ryan Statement at [67].

¹⁰² Waddell Statement at [23]; Ryan Statement at [70].

¹⁰³ Wang Statement at [67]; Mason at [67]; Wright Statement at [44].

¹⁰⁴ Wright Statement at [45].

¹⁰⁵ Wright Statement at [45], Mason Statement at [72].

- 6.14 Consumers in rural and remote areas require services more than once per day for short periods of time.¹⁰⁶
- 6.15 Where broken shifts are worked, there is significant variation in the duration of the break period. Some broken shifts involve a break period of less than one hour, while other broken shifts involve a break period of 6-8 hours.
- 6.16 Employers engage in a range of practices in relation to remunerating employees when working a broken shift. By way of example:
- (a) Some employers provide a broken shift allowance;¹⁰⁷ and
 - (b) Other employers only have employees work a broken shift by agreement.¹⁰⁸
- 6.17 The introduction of a 15% 'broken shift loading' will impose an additional cost on businesses. Such an allowance is not accounted for in the existing funding arrangements, including under the NDIS.¹⁰⁹

¹⁰⁶ Mason Statement at [57]-[59] and [72].

¹⁰⁷ Wright Statement at [46].

¹⁰⁸ Mason Statement at [69].

¹⁰⁹ See Court Book at p.489.

7. HSU CLAIM RELATING TO OVERTIME FOR PART-TIME AND CASUAL EMPLOYEES

7.1 The HSU propose that the Award be varied so that:

- (a) part-time employees would be entitled to overtime when working in excess of their rostered hours; and
- (b) both part-time and casual employees will be entitled to overtime when working in excess of 8 hours per day.

7.2 Our clients addressed this proposal in detail in our reply submission of 12 July 2019 at Part 8. We rely on those submissions.

7.3 By way of summary, our clients are opposed to the proposed introduction of additional overtime entitlements for part-time employees when working agreed additional hours or when working more than 8 hours in a day.

7.4 However, our clients are not opposed to a variation that would provide a mechanism for reviewing and adjusting a part-time employee's hours of work where they are regularly working more than their guaranteed minimum number of hours.¹¹⁰

7.5 We now turn to the findings that are relevant to this claim which should be made by the Commission.

Findings to be made

7.6 Many employees work additional hours in excess of their contracted hours.¹¹¹

7.7 Employers regularly offer part-time employees work in excess of their contracted hours.¹¹² By way of example:

- (a) Mr Shanahan gave evidence that Coffs Coast Health & Community Care Pty Ltd offered 902 additional hours to their part-time employees during the month of May 2019;¹¹³
- (b) Mr Harvey gave evidence that "all part time community support workers and residential support workers" are engaged to work above contract hours stated in employment contracts;¹¹⁴

¹¹⁰ See ABI Reply Submission of 12 July 2019 at [8.26] - [8.29].

¹¹¹ Friend Statement at [20]; Wilcock Statement at [4]; Thames Statement at [9]; Quinn Statement at [15] (Court Book p.2989); Encabo Statement at [21]; Rathbone Statement at [21]-[22].

¹¹² Shanahan Statement at [29]; Ryan Statement at [56]; Wang Statement at [45]-[48]; Wright Statement at [35]; Mason Statement at [52].

¹¹³ Shanahan Statement at [30].

¹¹⁴ Harvey Statement at [50].

- (c) Ms Ryan gave evidence that in the past year, part-time employees “have worked 95,000 hours above their contracted hours”¹¹⁵;
- (d) Ms Wang gave evidence that in the four weeks between 5 June 2019 and 2 July 2019 a total of 1,863 hours were offered to part-time employees in home ageing services in excess of their contracted hours;¹¹⁶
- (e) Mr Wright gave evidence that Hammond Care, in the month of May 2019, provided in excess of 14,000 additional hours above contract hours;¹¹⁷ and
- (f) Ms Mason gave evidence that BaptistCare is regularly required to offer part-time employees work in excess of their contracted hour in order to “effectively meet client needs”.¹¹⁸

7.8 There is fluctuation in the number of hours available to employees on a weekly basis due to a range of reasons including fluctuating client demands, lack of guarantee of services (e.g. clients’ ability to change providers and cease their services), client preferences, etc. This makes it difficult for employers to predict how many hours of work are available/required each week.¹¹⁹

7.9 Many employees would like to receive more hours of work.¹²⁰

7.10 For services delivered under the NDIS, the cost modelling which was used to devise the price caps imposed by the NDIA does not account for overtime rates of pay.¹²¹

7.11 The imposition of overtime rates to be payable where part-time employees work additional hours will impose a significant additional cost on employers. By way of example:

- (a) Mr Shanahan gave evidence that if Coffs Coast Health & Community Care Pty Ltd was required to pay part-time employees overtime rates for hours worked in addition to their contracted hours, that would have equated to a cost increase of \$17,400 for the month of May 2019;¹²²

¹¹⁵ Ryan Statement at [56].

¹¹⁶ Wang Statement at [46].

¹¹⁷ Wright Statement at [35.]

¹¹⁸ Mason Statement at [52].

¹¹⁹ Wang Statement at [45]; Mason Statement at [52]; Ryan Statement at [55]; Harvey Statement at [50]; Shanahan Statement at [29].

¹²⁰ Thames Statement at [9]; Stewart Statement at [11]; Transcript at PN597.

¹²¹ Court Book at p.489.

¹²² Shanahan Statement at [31]-[32].

- (b) Mr Harvey gave evidence that if ConnectAbility was required to pay part-time employees overtime rates for hours worked in addition to their contracted hours, it would be forced to reduce part-time employment opportunities and increase casual employees;¹²³
- (c) Ms Ryan gave evidence that if Community Care Options was required to pay part-time employees overtime rates for hours worked in addition to their contracted hours it would be unsustainable for the business, primarily because those costs could not be passed onto the consumer;¹²⁴ and
- (d) Ms Mason gave evidence that if BaptistCare was required to pay part-time employees overtime rates for hours worked in addition to their contracted hours it would have a “significant economic impact on the business”.¹²⁵

7.12 The imposition of overtime rates to be payable where part-time employees work additional hours will also:

- (a) operate as a deterrent to employers offering such additional hours;¹²⁶ and
- (b) likely act as a counter-measure against the desire of many employees to receive more hours of work;¹²⁷ and
- (c) likely result in employers employing fewer part-time employees (in favour of either full-time employees or casual employees).¹²⁸

7.13 There is limited evidence before the Commission relevant to the proposed introduction of overtime rates for work in excess of 8 hours (instead of the current 10-hour trigger).

7.14 There is limited evidence of employees in the SCHCDS industry working more than 8 hours per day.¹²⁹

7.15 The totality of witness evidence relevant to the proposed introduction of overtime rates for work in excess of 8 hours appears to be:

- (a) evidence from Mr Quinn about an example of working a 9.75 hour shift;¹³⁰ and

¹²³ Harvey Statement at [51].

¹²⁴ Ryan Statement at [58].

¹²⁵ Mason Statement at [54].

¹²⁶ Wang Statement at [49].

¹²⁷ Want Statement at [49]; Mason Statement at [53].

¹²⁸ See Shanahan Statement at [32]; Harvey Statement at [51]; Wright Statement at [37].

¹²⁹ There is very little evidence amongst the lay evidence of employee witnesses of instances where employees have worked in excess of 8 hours in a day.

¹³⁰ Quinn Statement at [30] (Court Book p.3055).

- (b) evidence from Mr Lobert to the effect that “It can be difficult working one on one with someone with a disability for 7 hours or more”.¹³¹

¹³¹ Lobert Statement at [21].

8. CLAIMS RELATING TO THE TELEPHONE ALLOWANCE

- 8.1 Two separate claims have been advanced by the HSU and United Voice in respect of clause 20.6 of the Award.
- 8.2 The HSU propose to extend the operation of the provision so that it applies where an employee is required to use a mobile phone rather than a landline telephone, and where the employee is required to use the phone for “any work related purpose” rather than only where employees are required to be “on-call”.
- 8.3 Further, the HSU propose that where the clause applies, employees be entitled to either:
- (a) the provision of a mobile phone that is fit for purpose and reimbursement of the cost of “any subsequent charges”; or
 - (b) be refunded for the “cost of purchase” and “subsequent usage charges” on production of receipts.
- 8.4 The United Voice advanced a similar claim to the HSU claim.
- 8.5 Our clients are opposed to these variations. Our clients addressed these proposals in detail in our reply submission of 12 July 2019 at Part 9. We rely on those submissions.
- 8.6 We now turn to the findings that are relevant to this claim which should be made by the Commission.

Findings to be made

- 8.7 Rates of mobile phone and smart phone ownership in Australia are very high. Recent data suggests that:
- (a) approximately 83 per cent, or 15.97 million Australian adults, own a smart phone,¹³² and
 - (b) approximately 96 per cent, or 18.57 million Australian adults, own a mobile phone.¹³³
- 8.8 Given the very high rates of mobile phone ownership in Australia, it would be highly unusual for someone working in the SCHCDS industry to not already own a mobile phone.¹³⁴

¹³² ABI Reply Submission of 12 July 2019 at [9.13], referring to Australian Communications and Media Authority, Communications Report 2017-2018, p. 33. (30 November 2018).

¹³³ Ibid.

¹³⁴ See *4 yearly review of modern awards – Award stage – Group 4 – Aged Care Award 2010 – Substantive claims* [2019] FWCFB 5078 at [51]. There is no reason to believe that there would be any material difference between mobile phone ownership rates of employees in the aged care sector and employees in the SCHCDS industry.

8.9 The evidence adduced during the proceedings was mixed as to whether employees are required to use their personal mobile phones during work. For example:

- (a) Mr Elrick stated that “Generally speaking, most workers will only use their personal phone for the purposes of being contacted for shifts, and not during work”,¹³⁵ [emphasis added]
- (b) However, Ms Wilcock, Ms Waddell and Mr Lobert all stated that they are required to use either the company-issued mobile phone (in the case of Ms Wilcock and Ms Waddell) or their personal mobile phone (in the case of Mr Lobert) in the course of their duties.¹³⁶

8.10 The evidence adduced during the proceedings was also mixed as to whether or not employers provide employees with mobile phones. For example:

- (a) Mr Sheehy gave evidence that “many of the aged care employers are now providing phones to employees”,¹³⁷
- (b) that proposition was supported by Ms Wilcock, Ms Waddell and Ms Thames, all of whom stated that their employer provides them with a phone (which Ms Wilcock described as being “common these days”);¹³⁸
- (c) there was also evidence of employers providing employees with a ‘tablet computer’ and not a mobile phone;¹³⁹
- (d) however, Mr Lobert stated that none of his three employers provide their employees with a mobile phone. Ms Sinclair and Ms Stewart are also not provided with a mobile phone by her employer;¹⁴⁰ and
- (e) Mr Elrick gave evidence of a “growing trend” of employers in the industry requiring employees to use their personal mobile phones.¹⁴¹

8.11 Employees use their personal mobile phones for both personal purposes and for work purposes, and it is unclear what proportion is used for personal purposes and what proportion is used for work.¹⁴²

¹³⁵ Elrick Statement at [30].

¹³⁶ Wilcock Statement at [19]; Waddell Statement at [31]; Lobert Statement at [20].

¹³⁷ Sheehy Statement at [13].

¹³⁸ Wilcock Statement at [19]; Waddell Statement at [31]; Thames Statement at [22].

¹³⁹ See Fleming Statement at [25].

¹⁴⁰ Lobert Statement at [18]; Sinclair Statement at [16]; Stewart Statement at [21].

¹⁴¹ Elrick Statement at [31].

¹⁴² Transcript at PN440-PN452; Transcript at PN534-PN540.

8.12 There was limited evidence in relation to the extent of usage by employees of mobile phones for work purposes. The totality of evidence before the Commission in relation to the extent of mobile phone usage by employees is as follows:

- (a) Mr Fleming gave evidence that he uses his phone for work related reasons “regularly” and stated that he “would make approximately 10 calls per week on the mobile”;¹⁴³
- (b) Ms Sinclair gave evidence that she would “normally make two to eight calls each working week”;¹⁴⁴ and
- (c) Ms Stewart gave evidence that she normally makes two to three calls per working day.¹⁴⁵

8.13 In light of the above, it cannot be concluded that employees’ usage of personal mobile phones while working is substantial.

8.14 It is open to conclude that the proportion of work-related usage of personal mobile phones by employees is modest.

8.15 Lastly, employees’ costs in respect of their mobile phone ownership and/or usage appears to vary considerably. By way of example:

- (a) Mr Fleming’s mobile phone bill is approximately \$65 per month;¹⁴⁶ while
- (b) Ms Stewart’s mobile phone bill is approximately \$170 per month.¹⁴⁷

¹⁴³ Fleming Statement at [29].

¹⁴⁴ Sinclair Statement at [15].

¹⁴⁵ Stewart Statement at [20].

¹⁴⁶ Fleming Statement at [27].

¹⁴⁷ Stewart Statement at [21].

9. CLAIMS RELATING TO CLOTHING AND UNIFORMS

9.1 There are two claims relating to clothing and uniforms.

9.2 The HSU propose the introduction of a new “damaged clothing allowance” which would require employers to compensate employees for any damage to, or soiling of, any clothing or other personal effects (excluding hosiery) which are damaged in the course of the employee’s employment (to the amount of the “reasonable replacement value”).

9.3 The United Voice propose a variation whereby employers would be required to provide employees with enough uniforms to allow them to launder their work uniforms no more than once per week.

9.4 Our clients are opposed to these variations. Our clients addressed these proposals in our reply submission of 12 July 2019 at Part 10. We rely on those submissions.

9.5 We now turn to the findings that are relevant to this claim which should be made by the Commission.

Findings to be made

9.6 There is limited evidence before the Commission in respect of this proposed variation.

9.7 The evidence suggests that it is common for support workers in the disability services sector to not wear uniforms when undertaking work.¹⁴⁸ The benefits of such an approach include that it helps to break down barriers between support workers and clients and avoids unwanted attention when in public.¹⁴⁹

9.8 The evidence is somewhat mixed in relation to practices in the home care sector. For example:

(a) Mr Elrick states that “Uniforms are common in the home care services which undertake a cleaning heavy practice”;¹⁵⁰ and

(b) The witnesses employed by Wesley Mission are provided with uniforms;¹⁵¹
whereas

(c) Mr Sheehy states that some employers in the home care industry do not provide any uniforms;¹⁵² and

¹⁴⁸ Elrick Statement at [38]

¹⁴⁹ Ibid.

¹⁵⁰ Elrick Statement at [39].

¹⁵¹ Sinclair Statement at [18].

¹⁵² Sheehy Statement at [14].

(d) the witnesses employed by Hammond Care are not provided with uniforms.¹⁵³

9.9 The evidence as to the frequency with which employees' clothing or uniforms become damaged is limited and vague. For example:

(a) Mr Elrick makes a generic assertion, unsupported by any specific evidence, that clients will "often damage clothing to the point they need replacing";¹⁵⁴

(b) Mr Elrick also outlines a couple of ways in which an employee's clothing may get damaged. However, these appear to be more in the vein of hypothetical scenarios or hearsay rather than testimony of real events that actually occurred;¹⁵⁵

(c) Ms Wilcock gave evidence that she is required to use cleaning products which can "ruin our clothes", however she then states that Hammond Care "does provide us with protective clothing and gloves";¹⁵⁶ and

(d) Ms Waddell gave evidence that her clothes "get damaged and worn out very quickly"¹⁵⁷, however she does not provide any specific examples of that occurring, information about what items of clothing have been damaged, when the last time this occurred, etc.

9.10 The above evidence is limited to two employees working for the same single employer.

9.11 Although limited, the evidence suggests that employers provide various forms of personal protective equipment for use by employees such as "protective clothing", "gloves", "single use aprons" and "goggles".¹⁵⁸

9.12 The evidence as to the number of uniforms provided by employers is also limited. For example:

(a) Mr Sheehy states that "Other employers will provide only one t-shirt a year", however the identity of these employers is not disclosed, and no further detail is provided;¹⁵⁹ and

(b) Ms Sinclair gave evidence that she was initially provided with only two shirts upon commencement of employment, however was then given an additional shirt and then

¹⁵³ Waddell Statement at [33].

¹⁵⁴ Elrick Statement at [41].

¹⁵⁵ Elrick Statement at [42].

¹⁵⁶ Wilcock Statement at [13].

¹⁵⁷ Waddell Statement at [33].

¹⁵⁸ Wilcock Statement at [13]; Waddell Statement at [34].

¹⁵⁹ Sheehy Statement at [15].

a further three additional shirts after requesting additional uniforms from her employer (such that she then had a total of six shirts).

- 9.13 There is no evidence that would support a finding that the current terms of the Award are not operating satisfactorily.
- 9.14 Finally, there is no evidence of any disputes having been initiated in relation to the provision or non-provision of uniforms.

10. UNION CLAIMS REGARDING REMOTE RESPONSE WORK

10.1 There are three separate proposed variations relating to 'remote response' work:

- (a) our clients' proposal;
- (b) a proposal by the HSU; and
- (c) a proposal by the ASU.

10.2 Our clients' proposal is addressed at Part 4 above.

10.3 We deal with the union claims as follows.

The HSU claim

10.4 The HSU seek a variation to clause 28.4 to introduce a regime for compensation where employees are required to perform work remotely outside of working hours, without having to physically be recalled to work.

10.5 Under the HSU proposal, the employee would be entitled to a minimum of one hour's pay at overtime rates "for each time recalled".

The ASU claim

10.6 The ASU seek a variation to clause 28.4 to introduce a regime whereby:

- (a) employees who are not required to be on call but are requested to perform work while away from the workplace are paid at the appropriate overtime rate for a minimum of two hours work, with time worked beyond two hours rounded to the nearest 15 minutes; and
- (b) employees who are required to be on call and requested to perform work away from the workplace while on call will be paid at the appropriate overtime rate for a minimum of one hours' work, with time worked beyond one hour rounded to the nearest 15 minutes.

Our clients' position

10.7 Our clients are opposed to both the HSU and ASU claims, and have advanced a separate proposal to introduce a remote response duties compensation regime.

Observations in relation to the evidence and Factual findings

10.8 Given that the competing proposals relate to the same subject matter, we have addressed the evidence and factual findings relevant to this claim in Part 4 above.

11. HSU CLAIM RELATING TO CLIENT CANCELLATION

- 11.1 The HSU seek a variation to the client cancellation provision at clause 25.5(f) to increase the amount of notice required to be given by employers to employees in the home care stream of a cancellation of, or change to, a rostered home care service in order to avoid the obligation to pay the employee for the cancelled shift.
- 11.2 Under the HSU proposal, where an employer fails to provide the employee with 48 hours' notice of a cancelled shift, the employer would be required to pay the employee for their minimum specified hours on that day.
- 11.3 Our clients are opposed to the HSU's proposed variation.
- 11.4 Our clients have proposed a separate variation to the client cancellation clause, which is addressed at Part 3 above.
- 11.5 Given that the competing proposals relate to the same subject matter, we have addressed the evidence and factual findings relevant to this claim in Part 3 above.

12. HSU CLAIM RELATING TO THE SLEEPOVER CLAUSE

12.1 The HSU seek to vary clause 25.7(c) of the Award to vary the items required to be provided by employers to employees when performing a sleepover.

12.2 Our clients are opposed to this variation. Our clients addressed this proposal in our reply submission of 12 July 2019 at Part 13. We rely on those submissions.

12.3 We now turn to the evidence that is relevant to this claim.

Observations regarding the evidence

12.4 There is very little evidence before the Commission that would provide an evidentiary basis for granting this variation.

12.5 Only two employee witnesses gave evidence that they work sleepovers.¹⁶⁰ Further, that evidence is quite general in nature. Neither of those two witnesses gave any specific evidence about the facilities provided to them when working sleepover shifts. Notably, nor did they raise any concern about the adequacy of those facilities.

12.6 The only exception to this is Mr Elrick, who is a union official. Mr Elrick's evidence includes:

(a) a generalised assertion that "the sleepover arrangements in many workplaces aren't conducive to a good sleep";¹⁶¹ and

(b) a reference to a previous experience whereby he undertook sleepovers at a site where the bed was located in the office.¹⁶²

12.7 However, it is not clear which employer that experience related to, or when it was said to have occurred, or whether he complained or otherwise raised concerns with his employer at the time, and/or how the situation was resolved (if he did raise it).

12.8 We now turn to the findings which should be made by the Commission.

Findings to be made

12.9 There is insufficient evidence to conclude that the current clause 25.7(c) is not operating satisfactorily.

12.10 Further, when one considers the specific items that the HSU seek to have expressly included in clause 25.7(c):

¹⁶⁰ See Encabo Statement at [27]; Steiner at [14].

¹⁶¹ Elrick Statement at [27].

¹⁶² Elrick Statement at [27].

- (a) There is no evidence before the Commission of employers not providing employees with a 'separate' room to sleep in when undertaking a sleepover;
- (b) There is no evidence before the Commission of employers not providing employees with a 'clean linen';
- (c) There is no evidence about whether it is customary for employers to provide employees with a 'securely lockable room';
- (d) There is no evidence about whether it is customary for employers to provide employees with a room 'with a peephole or similar in the door';
- (e) There is no evidence about whether it is customary for employers to provide employees with a 'lamp'; and
- (f) There is no evidence of any disputes having occurred in relation to the provision or non-provision of any of the abovementioned facilities or items.

13. UNITED VOICE CLAIM RELATING TO ROSTERS

13.1 The United Voice seek a variation to clause 25.5(d)(i) to provide that full-time and part-time employees will be entitled to the payment of overtime for roster changes where seven days' notice is not provided.

13.2 Our clients are opposed to this proposal.

13.3 Our clients addressed this proposal in our reply submission of 12 July 2019 at Part 14. We rely on those submissions.

Observations in relation to the evidence

13.4 There is a significant tension in the Award in relation to rostering and part-time employment.

13.5 Current issues relating to rostering were first ventilated in the Casual and Part-Time Employment common issues matter (AM2014/196 and 2014/197). In those proceedings, our clients sought a variation to remove some of the prescriptive requirements for the rostering of part-time employees.¹⁶³

13.6 One of the arguments advanced in support of that variation was that the requirements of clause 10.3(c) were not 'relevant' to the nature of part-time employment in the sector, given that there was significant fluctuation and variability in the working hours of many part-time employees.

13.7 The unions opposed that variation, and adduced evidence from employees who predominantly worked in group homes and were receiving regular and predictable working hours.

13.8 It is somewhat ironic that in these proceedings the unions have now adduced evidence from an entirely different category of employees. Rather than employees who work in group homes, the unions have focused their evidence on employees who undertake home care work or disability support work in the community, and whose hours are far less predictable.

13.9 It is also ironic that the HSU have advanced evidence in these proceedings from one of its officials that clause 10.3(c) of the Award is "rarely observed".¹⁶⁴

13.10 The union defended the retention of the clause during the Casual and Part-Time Employment common issues matter, despite arguments advanced by employer groups that it was not an

¹⁶³ A variation was sought to clause 10.3(c) of the Award.

¹⁶⁴ Friend Statement at [11].

appropriate or relevant provision, however in these proceedings they proclaim that it is ineffective and must be bolstered by additional protections.

- 13.11 The reality is that clause 10.3(c) of the Award is not operating effectively. This is due to the fact that there is significant variability in the working hours of many part-time employees, and so employers simply cannot comply with the provision.
- 13.12 The part-time provisions of the Award must be addressed to ensure they provide an appropriate balance between the interests of employees in having have sufficient certainty around working patterns, and the interests of employers in being able to continue to utilise part-time employment as a viable form of employment under the current operating environment.
- 13.13 Introducing a requirement to pay overtime to permanent employees where their rosters are changed with less than 7 days' notice is simply going to increase the rate of casual employment in the industry as employers look to adopt the most cost-effective labour mix.
- 13.14 Against this contextual background, we outline the findings that are relevant to this claim which should be made by the Commission.¹⁶⁵

Findings to be made

- 13.15 There appears to be general agreement between the parties about the rostering challenges facing service providers in the disability services and home care sectors as a consequence of the introduction of consumer-directed care.
- 13.16 Since the introduction of consumer-directed care, there has been an increase in working hours variability.¹⁶⁶
- 13.17 A very common (if not the most common) item that is sought by employers in enterprise bargaining is a departure from the requirements of clause 10.3(c) of the Award.¹⁶⁷
- 13.18 It is common for employees' rosters to change regularly. It is also common for roster changes to occur with less than 7 days' notice.¹⁶⁸

¹⁶⁵ Findings in relation to the 'travel time' aspect of the HSU proposal is addressed at Part 14 of this submission.

¹⁶⁶ Ryan Statement at [41] and [62]; Friend Statement at [36]; Wilcock Statement at [21]; Thames Statement at [11]; Quinn Statement at [16] and [36];

¹⁶⁷ See Friend Statement at [13]. He states that of the 190 enterprise agreements that the HSU is covered by which apply to home care employees, "none of the agreements contain specific provisions that guarantee a particular pattern of shifts, in the manner provided in clause 10.3(c) of the Award".

¹⁶⁸ Supplementary Quinn Statement at [31]; Stewart Statement at [10]-[11]; Fleming Statement at [15]; Sinclair Statement at [22]-[25].

- 13.19 Changes to employees' rosters are made for operational reasons and generally in order to meet the needs of the vulnerable customers to which the organisation is providing care services.
- 13.20 There is considerable complexity associated with rostering frontline support work staff. Rostering staff and matching staff with clients requires a consideration of a number of factors including client preferences, continuity of care, employee gender, client location, travel time, staff skills, personality issues, car size, etc.¹⁶⁹

¹⁶⁹ Ryan Statement at [39].

14. TRAVEL TIME CLAIM CLAIMS

14.1 There are multiple union claims in respect of travel time.

The United Voice Travel Time Claim

14.2 United Voice seek the introduction of a new clause entitling employees who are required to work at different locations to be paid for the “reasonable time of travel” between locations of clients, and for such time to be “treated as time worked”.

The HSU travel time claim

14.3 The HSU seek a similar variation, save that their proposal is confined to broken shifts and seeks to entitle employees to be paid for the reasonable time of travel from the location of their last client before the break to their first client after the break. Such time is also proposed to be “treated as time worked”.

The HSU Travel Allowance Claim

14.4 Separately, the HSU seek an additional variation to entitle disability support workers and home care workers to a travel allowance/ reimbursement of \$0.78 per kilometre in respect of all travel:

- (a) from their place of residence to the location of any client appointment;
- (b) to their place of residence from the location of any client appointment; and
- (c) between the locations of any client appointments on the basis of the most direct available route.

Our clients’ position

14.5 We addressed these claims in our reply submission of 13 September 2019.

14.6 In short, our clients do not have any objection to the notion that employees should receive reasonable compensation for time spent travelling in the course of their duties. However, our clients do not consider that the union claims are an appropriate variation for the reasons outlined in our written submissions of 13 September 2019.

14.7 Our clients have proposed an alternative variation¹⁷⁰ for the Commission’s consideration which rectifies any issue with the existing broken shifts provision, but which does not suffer from the problems with the union proposals.

¹⁷⁰ See Part 9 of our Reply Submission of 13 September 2019.

14.8 We now turn to the evidence and the findings that can be made in respect of same.

Findings to be made

14.9 Home care workers and many disability services support workers are required to travel to various locations to provide services to clients.

14.10 Time spent by employees travelling will naturally vary depending on which clients they support on any given day, and where they reside from time to time.

14.11 In the context of broken shifts, in many cases the duration of the break between portions of work does not correspond to the time taken to travel between the respective working locations.

14.12 In breaks between work during a broken shift, employees often do not travel directly from client locations, and often undertake non-work-related activities.¹⁷¹

14.13 There are a range of factors that will affect how long it takes an employee to travel from one location to another on any given day (for example, traffic conditions).¹⁷²

14.14 Some service providers adopt a range of practices to remunerate employees in respect of time spent travelling. For example:

(a) Ms Stewart gave evidence that Excelcare paid her normal hourly rate for time spent travelling “between appointments” which was also counted as time worked. However, the employer was said to use Google maps to “get an estimate” for how long the travel should take and this was how our pay was calculated”;¹⁷³

(b) Mr Shanahan gave evidence that Coffs Coast Health & Community Care Pty Ltd pays employees their “normal rate of pay” when travelling between clients, although it was not specified how that payment was calculated or determined;¹⁷⁴

(c) Mr Shanahan also gave evidence that in “extraordinary circumstances”, the business also pays an additional allowance where employees are required to travel significant distances to provide supports to clients (the example given was where an employee based in Coffs Harbour is required to attend at client at Dorrigo);¹⁷⁵

¹⁷¹ Transcript at PN468, Transcript at PN1569-1572.

¹⁷² Transcript at PN459-PN460, Transcript at PN1573-PN1574

¹⁷³ Supplementary Stewart Statement at [5]. See also Supplementary Fleming Statement at [5].

¹⁷⁴ Transcript at PN2887.

¹⁷⁵ Transcript at PN2890.

- (d) Hammond Care pay an allowance where broken shifts are worked, which is described as “recognizing and compensating employees for possible travel time and kilometres that may be incurred”;¹⁷⁶
- (e) Hammond Care also have a regime in respect of “Travel in Extraordinary Circumstances”;¹⁷⁷
- (f) CASS Care Limited pay an allowance in accordance with clause 6.1.1(c) of the *CASS Care Limited Enterprise Agreement (Other Than Children’s Services) (NSW) 2018-2021*.¹⁷⁸

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¹⁷⁶ See clause 13.4.5 and Annexure 1 of the *HammondCare Residential Care and HammondCare at Home Enterprise Agreement 2018*.

¹⁷⁷ See clause 23.2 of the *HammondCare Residential Care and HammondCare at Home Enterprise Agreement 2018*.

¹⁷⁸ Transcript at PN3505-3517, PN3557-3558 and PN3629-3647.

ABI, NSWBC, ACSA and LASA – Table of Claims, Evidentiary Material and Relevant Submissions

Variation sought	Party seeking variation	Evidentiary material relied on by our clients	Written Submissions relied on by our clients
<p>Client Cancellation (as set out in an Amended Draft Determination filed on 15 October 2019)</p>	<p>ABI, NSWBC, ACSA, LASA</p>	<p>Court Book</p> <ol style="list-style-type: none"> 1. Witness Statement of Graham Shanahan (p. 155) 2. Witness Statement of Scott Harvey (p. 162) 3. Witness Statement of Deb Ryan (p. 190) 4. Witness Statement of Joyce Wang (p. 200) 5. Witness Statement of Darren Mathewson (p. 211) 6. Witness Statement of Jeffrey Wright (p. 470) 7. Witness Statement of Wendy Mason (p. 477) 8. NDIA Efficient Cost Model for Disability Support Workers (p.489) 9. NDIA Efficient Cost Model (p. 501) 10. StewartBrown – Aged and Financial Performance Survey – Sector Report – Financial Year 2018 (p. 503) 11. StewartBrown – Aged and Financial Performance Survey – Sector Report – December 2018 (p. 541) 	<p>Written submission filed 2 July 2019 at [5.1] to [5.20]</p>
<p>Remote Response (as set out in an Amended Draft Determination filed on 15 October 2019)</p>	<p>ABI, NSWBC, ACSA, LASA</p>	<p>Court Book</p> <ol style="list-style-type: none"> 1. Witness Statement of Scott Harvey (p. 162) 2. Witness Statement of Deb Ryan (p. 190) 3. Witness Statement of Darren Mathewson (p. 211) 4. NDIA Efficient Cost Model for Disability Support Workers (p.489) 5. NDIA Efficient Cost Model (p. 501) <p>Transcript</p> <ol style="list-style-type: none"> 1. PN1005-PN1007 	<p>Written submission filed 2 July 2019 at [6.1] to [6.14]</p>

ABI, NSWBC, ACSA and LASA – Table of Claims, Evidentiary Material and Relevant Submissions

Variation sought	Party seeking variation	Evidentiary material relied on by our clients	Written Submissions relied on by our clients
<p>Client Cancellation (Union) (as set out in an Amended Draft Determination filed on 15 February 2019)</p>	<p>HSU</p>	<p>Court Book</p> <ol style="list-style-type: none"> 1. Witness Statement of Graham Shanahan (p. 155) 2. Witness Statement of Scott Harvey (p. 162) 3. Witness Statement of Deb Ryan (p. 190) 4. Witness Statement of Joyce Wang (p. 200) 5. Witness Statement of Darren Mathewson (p. 211) 6. Witness Statement of Jeffrey Wright (p. 470) 7. Witness Statement of Wendy Mason (p. 477) 8. NDIA Efficient Cost Model for Disability Support Workers (p.489) 9. NDIA Efficient Cost Model (p. 501) 10. StewartBrown – Aged and Financial Performance Survey – Sector Report – Financial Year 2018 (p. 503) 11. StewartBrown – Aged and Financial Performance Survey – Sector Report – December 2018 (p. 541) 	<p>Written submission in reply filed 12 July 2019 at [12.1]-[12.7]</p>
<p>Remote Response (Union) (as set out in a Draft Determination filed on 23 September 2019)</p>	<p>ASU</p>	<p>Court Book</p> <ol style="list-style-type: none"> 1. Witness Statement of Scott Harvey (p. 162) 2. Witness Statement of Deb Ryan (p. 190) 3. Witness Statement of Darren Mathewson (p. 211) 4. NDIA Efficient Cost Model for Disability Support Workers (p.489) 5. NDIA Efficient Cost Model (p. 501) 	<p>Closing Submissions filed 19 November 2019</p>

ABI, NSWBC, ACSA and LASA – Table of Claims, Evidentiary Material and Relevant Submissions

Variation sought	Party seeking variation	Evidentiary material relied on by our clients	Written Submissions relied on by our clients
<p>Overtime for Part-Time and Casual Employees (as set out in an Amended Draft Determination filed on 15 February 2019)</p>	<p>HSU</p>	<p>Court Book</p> <ol style="list-style-type: none"> 1. Witness Statement of Graham Shanahan (p. 155) 2. Witness Statement of Scott Harvey (p. 162) 3. Witness Statement of Deb Ryan (p. 190) 4. Witness Statement of Joyce Wang (p. 200) 5. Witness Statement of Darren Mathewson (p. 211) 6. Witness Statement of Jeffrey Wright (p. 470) 7. Witness Statement of Wendy Mason (p. 477) 8. NDIA Efficient Cost Model for Disability Support Workers (p.489) 9. NDIA Efficient Cost Model (p. 501) 10. StewartBrown – Aged and Financial Performance Survey – Sector Report – Financial Year 2018 (p. 503) 11. StewartBrown – Aged and Financial Performance Survey – Sector Report – December 2018 (p. 541) 	<p>Written submissions in reply filed 12 July 2019 at [8.1] – [8.29]</p>

ABI, NSWBC, ACSA and LASA – Table of Claims, Evidentiary Material and Relevant Submissions

Variation sought	Party seeking variation	Evidentiary material relied on by our clients	Written Submissions relied on by our clients
<p>Minimum Engagement (as set out in an Amended Draft Determination filed on 15 February 2019)</p>	<p>HSU</p>	<p>Court Book</p> <ol style="list-style-type: none"> 1. Statement of Graham Shanahan (p. 155) 2. Witness Statement of Scott Harvey (p. 162) 3. Witness Statement of Deb Ryan (p. 190) 4. Witness Statement of Joyce Wang (p. 200) 5. Witness Statement of Darren Mathewson (p. 211) 6. Witness Statement of Jeffrey Wright (p. 470) 7. Witness Statement of Wendy Mason (p. 477) 8. NDIA Efficient Cost Model for Disability Support Workers (p.489) 9. NDIA Efficient Cost Model (p. 501) 10. StewartBrown – Aged and Financial Performance Survey – Sector Report – Financial Year 2018 (p. 503) 11. StewartBrown – Aged and Financial Performance Survey – Sector Report – December 2018 	<p>Written submission in reply filed 12 July 2019 at [6.1] – [6.54].</p>
<p>Recall to Work (as set out in an Amended Draft Determination filed on 15 February 2019)</p>	<p>HSU</p>	<p>Court Book</p> <ol style="list-style-type: none"> 1. Witness Statement of Scott Harvey (p. 162) 2. Witness Statement of Deb Ryan (p. 190) 3. NDIA Efficient Cost Model for Disability Support Workers (p.489) 4. NDIA Efficient Cost Model (p. 501) 5. StewartBrown – Aged and Financial Performance Survey – Sector Report – Financial Year 2018 (p. 503) 6. StewartBrown – Aged and Financial Performance Survey – Sector Report – December 2018 (p. 541) 	<p>Written submission in reply filed 12 July 2019 at [11.1] – [11.10]</p>
<p>Broken Shift Claims (as set out in an Amended Draft Determination filed on 15 February 2019, an</p>	<p>HSU, ASU, UWU</p>	<p>Court Book</p> <ol style="list-style-type: none"> 1. Witness Statement of Joyce Wang (p. 200) 2. Witness Statement of Darren Mathewson (p. 211) 3. Witness Statement of Jeffrey Wright (p. 470) 	<p>Written submission in reply filed 12 July 2019 at [7.1] – [7.38]</p>

ABI, NSWBC, ACSA and LASA – Table of Claims, Evidentiary Material and Relevant Submissions

Variation sought	Party seeking variation	Evidentiary material relied on by our clients	Written Submissions relied on by our clients
Amended Draft Determination filed 3 October 2019 and a Draft Determination filed 7 November 2018)		<ol style="list-style-type: none"> 4. Witness Statement of Wendy Mason (p. 477) 5. NDIA Efficient Cost Model for Disability Support Workers (p.489) 6. NDIA Efficient Cost Model (p. 501) 7. StewartBrown – Aged and Financial Performance Survey – Sector Report – Financial Year 2018 (p. 503) 8. StewartBrown – Aged and Financial Performance Survey – Sector Report – December 2018 (p. 541) 	
Travel Time Claims (as set out in an Amended Draft Determination filed on 15 February 2019 and an Amended Draft Determination filed 3 October 2019)	HSU and UWU	<p>Court Book</p> <ol style="list-style-type: none"> 1. Witness Statement of Darren Mathewson (p. 211) 2. NDIA Efficient Cost Model for Disability Support Workers (p.489) 3. NDIA Efficient Cost Model (p. 501) 4. StewartBrown – Aged and Financial Performance Survey – Sector Report – Financial Year 2018 (p. 503) 5. StewartBrown – Aged and Financial Performance Survey – Sector Report – December 2018 (p. 541) <p>Transcript</p> <ol style="list-style-type: none"> 1. PN459-PN460 2. PN468 3. PN1569-PN1572 4. PN1573-PN1574 5. PN2855 	Written submission in reply filed 13 September 2019 at [4.1] – [10.6]
Sleepovers (as set out in an Amended Draft Determination filed on 15 February 2019)	HSU	<p>Court Book</p> <ol style="list-style-type: none"> 1. Witness Statement of Darren Mathewson (p. 211) 2. NDIA Efficient Cost Model for Disability Support Workers (p.489) 3. NDIA Efficient Cost Model (p. 501) 4. StewartBrown – Aged and Financial Performance Survey – Sector Report – Financial Year 2018 (p. 503) 	Written submission in reply filed 12 July 2019 at [13.1] – [13.12]

ABI, NSWBC, ACSA and LASA – Table of Claims, Evidentiary Material and Relevant Submissions

Variation sought	Party seeking variation	Evidentiary material relied on by our clients	Written Submissions relied on by our clients
		5. StewartBrown – Aged and Financial Performance Survey – Sector Report – December 2018 (p. 541)	
Provision of Uniforms (as set out in an Amended Draft Determination filed 3 October 2019)	UWU	Court Book <ol style="list-style-type: none"> 1. Witness Statement of Darren Mathewson (p. 211) 2. NDIA Efficient Cost Model for Disability Support Workers (p.489) 3. NDIA Efficient Cost Model (p. 501) 4. StewartBrown – Aged and Financial Performance Survey – Sector Report – Financial Year 2018 (p. 503) 5. StewartBrown – Aged and Financial Performance Survey – Sector Report – December 2018 (p. 541) 	Written submission in reply filed 12 July 2019 at [10.9] – [10.13]
Damaged Clothing Allowance Claim (as set out in an Amended Draft Determination filed on 15 February 2019)	HSU	Court Book <ol style="list-style-type: none"> 1. Witness Statement of Darren Mathewson (p. 211) 2. NDIA Efficient Cost Model for Disability Support Workers (p.489) 3. NDIA Efficient Cost Model (p. 501) 4. StewartBrown – Aged and Financial Performance Survey – Sector Report – Financial Year 2018 (p. 503) 5. StewartBrown – Aged and Financial Performance Survey – Sector Report – December 2018 (p. 541) 	Written submission in reply filed 12 July 2019 at [10.1] – [10.8]
Telephone Allowance (as set out in an Amended Draft Determination filed 3 October 2019 and an Amended Draft Determination filed on 15 February 2019)	UWU and HSU	Court Book <ol style="list-style-type: none"> 1. Witness Statement of Darren Mathewson (p. 211) 2. Witness Statement of Jeffrey Wright (p. 470) 3. Witness Statement of Wendy Mason (p. 477) 4. NDIA Efficient Cost Model for Disability Support Workers (p.489) 5. NDIA Efficient Cost Model (p. 501) 6. StewartBrown – Aged and Financial Performance Survey – Sector Report – Financial Year 2018 (p. 503) 	Written submission in reply filed 12 July 2019 at [9.1] – [9.37]

ABI, NSWBC, ACSA and LASA – Table of Claims, Evidentiary Material and Relevant Submissions

Variation sought	Party seeking variation	Evidentiary material relied on by our clients	Written Submissions relied on by our clients
		<p>7. StewartBrown – Aged and Financial Performance Survey – Sector Report – December 2018 (p. 541)</p> <p>Transcript</p> <p>1. PN440-PN452</p> <p>2. PN534-PN540</p>	
<p>Notice of Roster Changes (as set out in an Amended Draft Determination filed 3 October 2019)</p>	<p>UWU</p>	<p>Court Book</p> <p>1. Witness Statement of Darren Mathewson (p. 211)</p> <p>2. NDIA Efficient Cost Model for Disability Support Workers (p.489)</p> <p>3. NDIA Efficient Cost Model (p. 501)</p> <p>4. StewartBrown – Aged and Financial Performance Survey – Sector Report – Financial Year 2018 (p. 503)</p> <p>5. StewartBrown – Aged and Financial Performance Survey – Sector Report – December 2018 (p. 541)</p>	<p>Written submission in reply filed 12 July 2019 at [14.1] – [14.13]</p>