

**IN THE FAIR WORK COMMISSION**

**FWC Matter No: AM2020/99**

**Application vary or revoke the Aged Care Award 2010**

**WITNESS STATEMENT OF SARA CATHERINE MARY CHARLESWORTH**

I, Dr Sara Catherine Mary Charlesworth, Professor, of [REDACTED]  
[REDACTED], say as follows:

1. I have prepared a report dated 31 March 2021 which I prepared at the request of the Applicants for the purposes of this proceedings (**Report**).
2. A copy of the Report is annexed and marked "**SC-1**".
3. A copy of the letter of instruction issued to me by the Applicant's solicitors is annexed and marked "**SC-2**".
4. A further email from the Applicant's solicitors dated 18 March 2021 is annexed and marked "**SC-3**".
5. A copy of my Curriculum Vitae is annexed and marked "**SC-4**".
6. The opinions I have expressed in the Report are based wholly or substantially on specialised knowledge arising from my training, study and experience.
7. I have made all the enquiries that I believe are desirable and appropriate and no matters of significance which I regard as relevant have, to the best of my knowledge and belief, been withheld from the Fair Work Commission.
8. I have been provided with a copy of the Federal Court of Australia Expert Evidence Practice Note dated 25 October 2016, and I have read and understood the Practice Note, agree to be bound by it and have complied with it in preparing the Report.

[REDACTED]  
.....  
Sara Charlesworth

Date: 31 March 2021

**Report of Sara Charlesworth:  
Health Services Union of NSW - Regarding work value for aged care members**

**Background and relevant experience**

1. My name is Sara Charlesworth. I am Professor of Gender, Work & Regulation in the School of Management at RMIT University in Melbourne and an RMIT Distinguished Professor. I am also the Director of the Centre of People, Organisation & Work (CPOW) in RMIT's College of Business & Law.
2. I hold a PhD in Legal Studies (La Trobe 2002), a Graduate Diploma of Government Law (Melbourne 1994), a BA(Hons) in Political Science (Melbourne 1976) and a Diploma of Social Work (Melbourne 1976).

**Relevant research experience**

3. My expert statement draws on my research career over the last 25 years which has been focused on gender (in)equality in employment and the ways it is produced at the labour market, industry and organisational levels. I have undertaken a number of Australian Research Council (ARC) funded projects including on equal pay, quality part-time work, sexual harassment, work/life balance and decent work. My more recent research has focused mostly on paid care work, including a wide-ranging and collaborative research program on the work of aged care.
4. I have long-standing research interest in employment conditions for aged care workers both in Australia and internationally. My primary focus is on the 'frontline' workers – the personal care assistants and home care workers, who provide services to aged residents and clients in residential and private home settings. I have written on working time conditions for aged care workers in the two main aged care modern awards (Charlesworth & Heron 2012); on the ways in which funding regimes, employment regulation and gender norms shape employment conditions in aged care work in Australia (Charlesworth 2012; Baines, Dulhunty & Charlesworth 2021); on enforcement of minimum employment standards in aged care (Charlesworth & Howe 2018) and on differences in working conditions of migrant and Australian-born aged care workers (Charlesworth & Isherwood 2020). I have maintained a particular interest in the conditions of home care workers (Charlesworth 2017; Charlesworth & Malone 2017; Macdonald & Charlesworth 2021).
5. While I continue, in collaboration with other colleagues, to write on the employment conditions of aged care workers in analyses of both equal pay and of the conditions of low-paid women workers more generally, of direct relevance to the current claim are several research projects I have undertaken. These are set out in Appendix A.

**Basis of my report**

6. In my report I have responded to most of the questions raised in the letter of instructions to me from Maurice Blackburn Solicitors, dated 11 February 2021. I should note at the outset that my expertise relevant to the current claims relates to personal care assistants, sometimes called personal care workers or assistants in nursing, who provide 'hands on care' in residential aged care settings. I should also note that as several of the questions raised in the letter of instructions

overlapped I have responded to the key issues raised in those questions under aggregated headings .

7. I have indicated the evidence on which I base my expert opinion, including my own research and that of other scholars and researchers, and, where relevant, have clearly indicated where a particular issue or question falls outside my knowledge and/ or expertise.
8. I prepared an invited expert statement for the Royal Commission into Aged Care Quality & Safety, and gave expert evidence before the Commission in October 2019. I have also authored two other submissions to the Royal Commission. I made a detailed submission on the conditions of aged care work to the Senate Inquiry into the Future of Australia's Aged Care Sector Workforce in 2016. I also draw on this evidence where relevant below.

**The nature of the industrial history of setting the terms and conditions of personal care workers in residential settings in Australia covered by the Aged Care Award**

9. The current framework of the Aged Care Award 2010 was settled during the award modernisation process in 2008/2009. I have not studied the predecessor state and federal awards incorporated into this federal modern Award. However, it appears there was some contestation around the parameters of this award which resulted in a separate Nurses Award 2010 and Aged Care Award 2010, which covered all non-nurse employees in residential aged care (Kaine 2010: 102). Personal care workers undertaking home care work were initially covered by the Aged Care Award. However the Award was varied in 2011 to exclude care work undertaken in the home, with home care workers since covered by the Social Community Home Care and Disability Services Award 2010 (Charlesworth & Heron 2012: 172).
10. Pre-award modernisation wage rates paid to personal carer/ assistant in nursing occupations in hospitals were higher than in residential aged care. Kaine's comparative analysis of the NSW Charitable Sector Aged and Disability Care Services (State) Award 2003 with the Health Employees (State) Award shows that in 2007 the wage rates for non-nurse (personal care) workers working in not-for-profit aged care were 11% lower at level 1 and 8% lower at level 2 compared to those working in public hospitals (Kaine 2010: 104). It is noteworthy that despite historically differential standards for diverse groups of care workers in individual awards in health settings and in residential aged care, these different rates were not disputed by the parties during the award modernisation process. (Charlesworth & Heron 2012: 172)
11. Also notable is that employees in the Health Employees Award as in other similar health and hospital awards have historically had progression in wage and classification levels linked to years of experience. No such progression was set out in the Charitable Sector Award. The lack of a clear basis for progression through the attainment of qualifications and/or experience makes it difficult for employees to gain higher wages through the acquisition of skills and experience.
12. The award modernisation process in aged care, as in most other industries, was essentially a patching together of existing state and federal awards, rather than a fresh consideration of what might be the most appropriate industry minimum standards and wage rates. Interviews I conducted in 2011 with United Voice officials involved in the modernisation process for the Aged Care Award reported that the process was a highly adversarial one in which working time minima that had existed under several of the pre-Modern Awards, particularly for casual workers, were lost (Charlesworth & Heron 2012: 172) .

**Wages**

13. Any increase in wages in the Aged Care Award 2010 for relevant classifications has only been achieved through the flow on from National Minimum Wage Decisions. Table 1 sets out the wage rates for relevant classifications for personal care workers and the National Minimum Wage in 2011 and 2020.

**Table 1: Relevant Age Care Award Rates and the National Minimum Wage 2011 and 2020**

	Aged Care Award		NMW		
	Key specified responsibilities /qualifications	2011	2020	2011	2020
<b>Aged Care employee level 2 (Personal care worker grade 1)</b>	-Limited accountability/discretion; -Requires specific on-the-job training and/or relevant skills training or experience.	\$652.50 (\$17.17)	\$834.60 (\$21.96)	\$589.30 (\$15.51)	\$753.80 (\$19.84)
<b>Aged Care employee level 3 (Personal care worker grade 2)</b>	-Medium level of accountability & discretion; -Requires specific on-the-job training and/or relevant skills training or experience	\$678.30 (\$17.85)	\$867.30 (\$22.82)		
<b>Aged Care employee level 4 (Personal care worker grade 3)</b>	-Medium level of accountability & discretion; -Holds a relevant Cert 3 or equivalent & uses skills and knowledge gained from that qualification in the performance of their work	\$686.20 (\$18.06)	\$877.60 (\$23.09)		
<b>Aged Care employee level 5 (Personal care worker grade 4)</b>	-Is responsible for work performed with a substantial level of accountability; -May assist with supervision of others; -May require formal trade or certificate qualifications	\$709.30 (\$18.67)	907.30 (\$23.88)		

10. As highlighted in Table 1, between 2011 and 2020, the weekly national minimum wage (NMW) and the wage rates for personal care worker (PCW) grades classifications 1-4 have all increased by just 28%. Based on the 2020 award wage rates currently applicable, the ordinary time rate for personal care workers at grade 1 is just \$2.09 per hour more than the NMW, the lowest wage any adult employee in Australia can be paid.

11. There are also very small increases in the wages paid to workers if they progress up the frontline grades in what is in practice, in many residential facilities, just a 3 step classification scale, given any PCWs paid at grade 4 are typically assigned supervision duties. While industry practice appears to be that the grade 1 is used only for new staff without any qualifications or experience, there is little oversight or monitoring of this practice. As noted below, most personal care workers have Certificate III qualifications and thus should be employed at grade 3. However an award variation now makes it clear that employees with these qualifications only need to be paid at grade 3 where they use skills and knowledge gained from that qualification in the performance of their work. However the Award does not set out the basis on which an assessment as to the use of Certificate III qualifications should be made by employers and managers.

12. Despite the opaque basis for the correct classification of personal care workers, wage rates associated with progression between grades 1 to 4 are meagre. It is notable that the difference in hourly pay between grades 1 and 2 is only \$0.86 per hour; and between grades 2 and 3 (which requires a Cert III *and* use of Cert III skills) is only \$0.27 per hour. Between grades 3 and 4, despite the significant additional responsibilities undertaken in grade 4, the pay difference is only \$0.79 per hour.
13. As in other feminised awards, skills classifications in the Aged Care Award are rudimentary and compressed. They not only fail to provide meaningful progression in terms of pay rates but also lack any relevant description and specification of the skills actually required in PCW jobs, including at different skill levels (Charlesworth & Smith 2018). When married with short part-time hours, the very low pay rates linked to these PCW classifications in the Aged Care Award provide no meaningful prospect for higher income through progression. This creates income insecurity for many PCWs in the sector.
14. Data from the National Aged Care Workforce Census & Survey in 2012 and 2016 has examined satisfaction with various aspects of residential aged care work by nurses, PCWs and allied health staff. Survey results have shown consistently that dissatisfaction with total pay by personal care workers (PCWs) is relatively high both in comparison with other direct care employees in residential aged care and with other aspects of work such as the work itself and hours worked (Mavromaras et al 2017: 38). Dissatisfaction with low remuneration has been linked to intention to quit, including by new hires in residential aged care (Isherwood et al 2018: 34)
15. My own direct engagement with many PCWs suggests that while they overwhelmingly view the work they perform in residential aged care as important and meaningful work. However, they view the low wages paid in the sector for this work as a mark of disrespect for both them and the residents to whom they provide care and support.

***Other relevant Award conditions***

16. There is a greater degree of employer-orientated flexibility in the scheduling of part-time workers in aged care awards compared to many other awards. There is only a two hour minimum for part-timers under the Aged Care Award. In 2017 the FWC rejected the ACTU's general claim for a 4 hour minimum engagement period for part timers. In aged care, this means that part-time workers can continue to be rostered across a day with one or more broken shifts.
17. Under the Aged Care Award employers can, 'with written agreement' (cl 10.3(c)), change the scheduling of hours and increase employees' hours over contracted part-time hours at ordinary time rates, rather than overtime rates as provided for in most male-dominated industry awards. In practice such written agreement can be met by a text exchange. This can work to create effectively casualised or 'on-demand' work in residential aged care which builds on short part-time hours and related underemployment (Charlesworth & Howe 2018; Campbell, Macdonald & Charlesworth 2019).
18. Underemployment in residential aged care makes it more likely that part-time workers will agree to work additional hours over their agreed minimum hours when called on to do so. However, unlike male dominated awards, such as the Manufacturing and Associated Industries and Occupations Award, where part-time workers are paid at overtime rates when they work beyond their agreed minimum hours, part-time PCWs who work over their contracted hours up to 38 hours per week can be paid at ordinary time rates or, where 'with written agreement', they work beyond their contracted hours on any one day (cl25.1(b)). The capacity to flex part-time PCWs' hours up from, and down to, their contracted hours at ordinary time rates creates considerable employer flexibility without having to pay a casual loading. This flexibility arguably acts as a

disincentive to provide longer minimum part-time hours to PCWs, which is the expressed preference of many in the sector as noted below.

**The nature of the workforce in residential aged care including the demographics and whether the workforce is female dominated**

19. The lack of accurate and current data on the frontline aged care workforce, including in residential aged care, is a national disgrace. This is for two main reasons, the level of accurate detail available and the reliability of available data. The lack of accessible disaggregation of occupational classifications in Australian Bureau of Statistics data and the use of poorly described occupational classifications which do not reflect the work undertaken makes it hard to accurately describe the key characteristics of workers in residential aged care. Further, the four yearly National Aged Care Workforce Census and Survey (NACWCS), conducted on behalf of the Australian Department of Health, does not directly survey aged care workers but accesses only a sample of *directly employed* PAYG workers through surveys distributed by participating facilities.
20. Lack of disaggregated data also makes it difficult for the industrial parties and policy makers to accurately track the characteristics and features of employment in aged care. I note that the Royal Commission into Age Care Quality & Safety has recommended that the Australian Institute of Health and Welfare should undertake critical aged care data governance and management functions. This should include the demographics, skills and wages and conditions of the aged care workforce.
21. As above, the two main sets of data used to date to describe the main features of the residential aged care workforce each have their own limits and deficiencies: ABS Census data and the National Aged Care Workforce Census and Survey (NACWCS) data.

**Census data**

22. The lack of adequate statistical data on the Australian aged care workforce reflects the gendered lack of attention historically given to this important and growing sector of the economy. The Australian Bureau of Statistics (ABS) industry (ANZSIC) and occupational (ANZSCO) classifications, in particular, are increasingly inadequate in accounting for the rapidly growing employment of frontline aged care workers.
23. Industry level data is available for aged care residential services (8601), a 4 digit ANZSIC industry code. In single digit ANZSIC industry sectors, such as construction and manufacturing, ABS industry level data is readily available including in labour force surveys, which provides regular data on key features of employment in those sectors. However, the fact 'aged care residential services' is a 4 digit ANZSIC industry means that industry data which can be cross-tabulated by occupational classifications to identify the key occupational groups working in this industry, is only available in Census data.
24. Analysis via ABS Table Builder of 2016 Census data indicates that there were some 211,625 people employed in aged care residential services. Of these people, some 46,851 workers (22%) are Nursing Support and Personal Carer Workers (4233). This is an ANZSCO 4 digit classification, which includes nursing support workers and therapy aides as well as personal care assistants. Census data I purchased from the ABS in 2018 indicates that at the 2016 Census there were 28,897 workers who were categorised as personal care assistants (ANZSCO 423313), a 6 digit occupational classification that is not available to cross tabulate with the aged care residential services industry through Table Builder.
25. Personal care assistants (ANZSCO 423313) are inadequately described as people who provide 'routine personal care services' to people in a range of health care facilities or in a person's

home. Despite the fact that the ANZSCO 423313 description states that it does not include the occupational category of 'aged and disabled carers' who do provide care in people's homes, as above the ANZSCO 423313 does appear to blur the lines between people working in health care facilities and working in a person's home. Compared to the 2016 NACWCS estimates of directly employed personal care workers as set out below, 2016 Census data would appear to underestimate the numbers of personal care workers in residential aged care even if the more aggregated 4-digit Nursing Support and Personal Carer Workers ANZSCO classification was used.

26. My analysis of 2016 Census data, the most recent data available, indicates that personal care assistants (PCAs), as an ANZSCO 423313, occupational category, have the following characteristics:
- Women make up 85.4% of the PCA workforce but they comprise 47.5% of the entire Australian workforce
  - PCAs tend to be older compared to the entire workforce. The median age of these workers is 45-49 years, older than the Australian workforce in which the median age is 40-44 years.
  - There are 497 Aboriginal and Torres Strait Islander PCAs, some 1.7% of this workforce
  - Half of the PCA workforce were born outside Australia (50%), a substantially higher proportion than the Australian workforce (31%)
    - Male PCAs are much more likely to be born overseas (63.3%) compared to females (48.0%)
    - The three most common regions of birth for PCAs are Southern Asia (27.9%), Maritime South East Asia (18.8%) and the United Kingdom (9.3%).
    - India (16.7%) and the Philippines (16.0%) are the most common countries of birth among overseas born PCAs. England (7.7%), Nepal (6.7%) (New Zealand (4.7%) and China (4.3%) are also ranked in the top 10 countries of birth.
    - More than half of the PCA workforce arrived in Australia in the ten years prior to the Census (55.9%)
  - Two thirds of the PCA workforce work part time (that is less than 35 hours per week) (68.9%), with more women (70.8%) than men (58.1%) working part time
  - PCAs are more likely than the total workforce to work very short part-time hours (15 hours or less per week) (19.0%) and much more likely to work short part time hours (16-24 hours) (21.8%).
  - Certificate level qualifications (62.8%) were the most common category of post-school qualifications amongst PCAs. This pattern is the same for both male and female personal care assistants. Another 15.5% held Advanced Diploma and Diploma Level qualifications, 6.6% held Bachelor degree qualifications, while another 3.9% held post graduate degree qualifications.
27. As noted above there are deficiencies in the ANZSIC and ANZSCO classifications relevant to aged care that limit the analysis of Census data, and indeed labour force data, and the extent to which such data can be used to inform Australian aged care workforce policy. Nevertheless these classifications are used in government policy to designate the skill levels of particular occupations, which can act to reinforce the gendered assessment of skill. The ANZSCO classification descriptors designate the frontline aged care occupation of 'personal care assistant' as 'low-skilled' (Level 4). This assessment fails to recognise the skills required in this work and has

a direct flow-on to migration policy, which is based on ANZSCO definitions of skill. This limits transition to permanent residence of migrant PCAs on temporary visas, who are assessed as working in level 4 or 5 occupations (Howe, Charlesworth & Brennan 2019).

28. It is my considered view that the long-term designation of personal care assistant as a 'low-skilled' occupation in the ANZSCO classification reflects and contributes to both the historical and contemporary gendered undervaluation of the nature of the skills actually used in this occupation today.

#### **NACWCS Data**

29. The 2016 National Aged Care Workforce Census and Survey (NACWCS), was the fourth NACWCS conducted by the National Institute of Labour Studies (NILS), on behalf of the Australian Department of Health. All aged care-funded residential facility and home care support providers were invited to participate. Each organisation was sent a package, which included the employer census, a set of surveys for direct care workers (stratified according to care places/client numbers), and information about how to distribute the surveys to obtain a random sample of workers (Mavromaras et al. 2017: 4-8). Responses were received from a total of 8,885 frontline workers in residential facilities (a response rate of 50 per cent) and 7,024 workers in community outlets (a response rate of 26 per cent) (Mavromaras et al. 2017: 8). This included 2,759 personal care assistants (PCAs) in residential facilities and 4,355 home care workers (HCWs) in community-based outlets. Sampling weights were constructed and applied to the worker survey data based on data on direct care worker numbers and occupational categories provided by residential and community-based outlets (see Mavromaras et al. 2017: 168-172). This weighted data is used in the published 2016 report and, despite its limitations, has been used as the best available workforce data by the Royal Commission into Aged Care Quality and Safety.
30. Nevertheless, there are some relevant limits to the 2016 NACWCS dataset. Firstly, aged care employer reliance on agency and brokered employment is increasing. It has been estimated that in 2016 'quite widespread use' of non-PAYG workers by residential facilities, with half of all facilities reporting some use (Mavromaras et al. 2017: 61). In the designated fortnight of the survey, some 9,085 non-PAYG PCWs were employed in residential facilities, mainly agency PCWs (8,588) (Mavromaras et al. 2017: 63). However, the NACWCS does not survey these workers and only includes workers in a direct employment relationship with the facilities surveyed; that is employees rather than all workers. Secondly, compared to the 2016 Census data outlined above, the NACWCS sample has both a lower proportion of PCAs born overseas and a lower proportion born in NESB countries. Compared to 2016 Census data, the NACWCS data also both overrepresents PCAs working longer weekly hours and underrepresents those working shorter hours.
31. Unlike the 2012 NACWCS, the Department of Health has not made the 2016 NACWCS dataset available to researchers for further analysis. Thus the main relevant characteristics of the directly employed PCWs in the 2016 NACWCS noted below are from the published report (Mavromaras et al. 2017). Where applicable I have supplemented this with my own analysis of the 2012 NACWCS and some specific analysis undertaken with Linda Isherwood of the 2016 NACWCS data on migrant frontline workers (Charlesworth and Isherwood 2020).
32. The 2016 NACWCS estimated that the *directly employed* PCW workforce in residential aged care had the following characteristics in 2016:
- There were 108,126 PCWs who made up 70.3% of direct care employees. The share of PCWs relative to other employees has grown from just 58.5% in 2003.



- 86.2% of PCWs are women
- The median age of PCWs is 46 years
- 40% of PCWs were born overseas (Charlesworth & Isherwood 2020)
- In terms of aged care qualifications around two-thirds of PCWs have a Certificate III in Aged Care (67%); 12% hold a Certificate III in Home and Community Care and 23% hold a Certificate IV in Aged Care, which has risen from just 8% in 2003. Because respondents may hold more than one qualification, these proportions cannot be simply added. However, it is worth noting that 4.5% of PCWs held a Certificate IV/Diploma in Enrolled Nursing and 4.3% held some other basic nursing qualification.
- In terms of employment contract, 80.3% of PCWs were employed on a part-time basis, with 10.8% employed on a casual basis and just 8.9% on a full-time basis.
- More than half of PCWs work regular daytime shifts, 15% work regular night-time shifts and 19.5% work rotating shifts. Perhaps surprisingly, given concerns by many part-time PCWs about broken shifts, only 0.8% are recorded in the NACWCS 2016 survey as working split shifts.
- While the NACWCS data suggests directly employed PCWs are working longer hours than is the case for PCAs in the 2016 Census, NACWCS data indicates that many PCWs are working fewer hours than they would like. While the extent of underemployment for PCWs was reported for the 2012 NACWCS it is only available in aggregate in the NACWCS 2016 report. Additional analysis by country of birth suggests that 33.6% of Australian born PCWAs want more hours of work than they currently have compared to 27.8% of PCWs born in English speaking background countries and 49.6% of PCWs born in NESB countries (Charlesworth & Isherwood 2020). Further disaggregated data available in the 2012 NACWCS, indicated that overall 34% of PCWs wanted more weekly hours of work (Charlesworth & Howe 2018: 124).
- Only 8.7% PCWs are recorded as holding more than one job. This rate has decreased slightly since 2012 (10.1%). Additional analysis by country of birth suggests that while only 6.7% of Australian born PCWs hold more than one job as compared to 5.9% of PCWs born in English speaking background countries. However, 13.4% of PCWs born in NESB countries hold more than one job (Charlesworth & Isherwood 2020).

**The challenges faced by unions and employees in achieving higher wage rates in residential aged care through industrial arbitration and enterprise bargaining.**

33. I was also asked to provide evidence to the Royal Commission into Aged Care and Safety in relation to the question of enterprise bargaining and reproduce much of that evidence here.
34. Access to enterprise bargaining is currently the only route for the improvement of wages and conditions above the safety net minima of the relevant award for workers in low-paid work such as PCWs under the Aged Care Award. In my view, enterprise bargaining has not provided an effective option for addressing low remuneration and poor working conditions in aged care or in any other low-paid feminised sector (Charlesworth & Smith 2018).
35. Several of the major challenges with bargaining in the residential aged care sector were canvassed in an application for a 'low-paid bargaining' order. In 2011, United Voice and the Queensland Branch of the Australian Workers' Union made an application under s242 of the Fair Work Act in respect of over 60,000 employees employed by more than 300 residential aged care employers. The low-paid bargaining stream, which provides for multi-employer rather than single employer bargaining in certain circumstances, was inserted in the Fair Work Act expressly to

- respond to the constraints of bargaining in low-paid and feminised sectors. These constraints, which were raised in relation to residential aged care in the union application, were seen by Parliament at the time the low-paid bargaining stream was being considered to include the lack of skills, resources, bargaining strength and previous bargaining experience (Macdonald, Charlesworth & Bridgen 2018). These constraints reflect the well-documented and historical difficulties for workers in low paid feminised sectors in pursuing enterprise agreements (Charlesworth & Smith 2018).
36. In its decision on the low-paid bargaining application in 2011, the FWC, then Fair Work Australia, accepted that aged care employees were generally low-paid, substantially lacked bargaining power and that employees covered by current enterprise agreements had terms and conditions that were little better than the relevant modern award. Nevertheless it decided to exclude employers with operational enterprise agreements from the planned authorisation.<sup>1</sup> An authorisation was made for multi-employer enterprise bargaining to proceed with the remaining 175 aged care providers. However despite some subsequent negotiations between those employers, the unions and the federal government as a 'third party', no agreement was reached (Macdonald, Charlesworth & Bridgen 2018).
  37. It is important to note that in its decision the Fair Work Commission found that even where residential aged care workers were covered by an EBA they received meagre if any wage increases on top of those provided for under the Award. This continues to be the case for the vast majority of enterprise agreements in the sector. In the Decent Work Good Care (DWGC) project, where we have focused on promising practices in organisations seen as providing both decent work and good care, all three aged residential aged care 'case studies' have enterprise agreements with the relevant unions. Two provide a small premia on top of award wage rates. The third is an industry exception providing for wage levels for PCWs that are well above the Award in order to reflect this provider's social justice mission.
  38. The low-paid bargaining stream does not provide a practical pathway for increased wages in residential aged care or indeed in other low-paid industries. After a decade of the operation of the FW Act only four substantive applications have been made using the low-paid bargaining provisions (Macdonald, Charlesworth & Bridgen 2018). The residential aged care application was the only one which actually achieved an authorisation, as practically ineffectual as this was.
  39. A particular constraint with enterprise bargaining relevant to residential aged care is that options to address low remuneration in aged care, both in awards and enterprise bargaining, are *entirely dependent* on federal government commitment and action. The federal government is effectively almost the sole purchaser and lead employer in an aged care supply chain of contracted out residential aged care services.
  40. The funding 'market' for residential age care is created through the contracting out of services by the federal government which sets the price for the services tendered for. The setting of these prices in turn imposes constraints on what employers pay workers (Charlesworth 2012). Back in 2011, the Productivity Commission noted that the various funding formulae used in the aged care sector do not bear any direct relationship to the costs of providing care. At the same time there continues to be no requirement on aged care providers to direct funding towards the payment of wages or indeed any additional funding towards higher wages to their workers. Government reluctance to directly provide for wage increases for care workers more generally was highlighted in a 2009 Queensland Industrial Relations Commission equal pay decision. Focused on the social

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<sup>1</sup> Fair Work Australia decision United Voice, Australian Workers' Union – Queensland Branch [2011] FWA 2633

and community workforce, the Queensland IRC found that inadequate government funding contributed to the gendered undervaluation of work performed and also limited the improvement of minimum employment standards in awards.<sup>2</sup> Similarly in residential aged care, the failure to ensure sufficient funding is directed to meeting wages not only dampens any prospect that enterprise bargaining can lead to meaningful wage increases but has also arguably worked to limit the improvement of award wages such as the Aged Care Award.

41. There have been many calls by unions for broad sectoral bargaining in sectors such as aged care. In my view, industry wide-collective bargaining would be a better mechanism than a revitalised low-paid bargaining stream. However it is also important that awards such as the Aged Care Award are not left 'hollowed out' in the process. Indeed one of the most significant and lasting impacts of enterprise bargaining, and the precedence given to it over awards in the setting of wages and conditions in Australia, is that any wage increases are restricted to increase in the NMW. Thus award rates have declined as a proportion of the average wage (Charlesworth & Smith 2018). In relation to Table 1 above, in the Aged Care Award, in November 2011 the personal care worker grade 3 weekly award wage was 51.6% of average weekly ordinary time earnings of \$1,330.20, and in November 2020 only 48.6% of average weekly ordinary time earnings of \$1804.20.<sup>3</sup> However it is important to note that in terms of actual wages, the fact many PCWs work short hours means their earnings are far lower than around 50% of average weekly ordinary time earnings.

**Whether you believe there has been an historical undervaluation of work performed in the industry, how that has affected wage rates contained in the Award and, if so, what factors have contributed to any historical undervaluation of work in residential aged care, including any contribution the gender composition of the workforce may have had to the undervaluation of work performed**

42. In my view there has been an historical as well as an ongoing undervaluation of work performed by PCWs in residential aged care. This undervaluation is profoundly gendered. As I set out in my evidence to the Royal Commission into Aged Care Quality & Safety, the key factors that have contributed to the undervaluation of work, reflected in the current wage structure for PCWs in the Aged Care Award, is the gendered nature of the workforce and of the work.
43. The workers who undertake frontline residential aged care work are overwhelmingly female and the nature of work they perform is highly gendered, historically viewed as quintessentially 'women's work' and therefore of little economic value. As above, according to both 2016 Census data and 2016 NACWS data, more than almost 90 percent of PCWs are women. There is substantial literature that problematises the (de)valuation of paid care work as a consequence of its connection to the unpaid caring work women have traditionally performed in the home and community (for a summary of this literature see: Charlesworth 2012, 2017). The gendered norms that underpin the devaluation of care work are premised on an 'ideology of domesticity' that positions the care that women do, both in home and as paid work, as natural and therefore unskilled. In particular, it is the link assumed between unpaid care work in the family and paid care work that means aged care work has been significantly undervalued in government funding, in employment protections and in societal, industrial and organisational recognition of the

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<sup>2</sup> Queensland Industrial Relations Commission (QIRC), Queensland Community Services and Crisis Assistance Award — State 2008, Queensland Services Industrial Union of Employees and Queensland Chamber of Commerce and Industry Ltd, Industrial Organisation of Employers, (2009) 191(2) QGIG 19 at cl 4.4.2.

<sup>3</sup> ABS 6302.0 - Average Weekly Earnings, Australia, Nov 2011, Nov 2020, seasonally adjusted.

increasingly complex skills required to undertake the work of aged care, including in residential settings.

44. As discussed above, because the federal government provides the overwhelming majority of aged care funding in Australia and is the key purchaser of aged care services, it is effectively the lead employer in aged care, shaping the context within which employment minima including wages are established and modified in relevant awards, which has materially affected the wages set in the Aged Care Award. As above, the *only* increases in award wages in the Aged Care Award have been on the basis of the flow on from National Minimum Wage decisions.
45. The historical disregard the federal government has demonstrated for ensuring decent award rates in a sector for which it is directly responsible works to normalise low wages in residential aged care. Despite numerous government inquiries establishing the detrimental impact low wages have on the attraction and retention of aged care workers, the government's disregard reinforces a dominant aged care sector logic or narrative that continues to assert that (good) aged care workers are not overly concerned with low wages and poor working time conditions as they find meaning in their work. As above, this view is not supported by the PCWs surveyed in the 2016 NACWVS. Indeed it is hard to imagine that similar assumptions would be made about government infrastructure spending in relation to workers in the male-dominated construction industry.
46. The gendered view of aged care work as similar to the unpaid care work women may perform means the nature and value of work undertaken by non-professional workers within residential care is profoundly undervalued by the federal government and many residential aged care providers. Likewise, despite a shift to a discourse of 'relationship-based care' (Baines, Dulhunty & Charlesworth 2021), there is little recognition of the skills and time required to provide 'good' aged care in many contemporary residential aged care facilities in Australia as detailed below.

#### **Whether there has been a change in the composition of the workforce in residential aged care**

47. The occupational composition of the residential aged care workforce has dramatically shifted over time. As set out in the 2016 NACWCS report in Table 3.2, between 2003 and 2016 there was a decline of the share of registered nurses in the direct care workforce from 21% in 2003 to 14.6% in 2016 with a decline in enrolled nurses from 13.1% in 2003 to 10.2% in 2016. In 2016, PCWs constituted 70.3% of the direct care workforce, a dramatic increase from 58.5% in 2003 (Mavromaras et al 2017: 34). The Royal Commission into Aged Care Quality & Safety found that changes around the introduction of the Aged Care Act 1997 had resulted in providers replacing nursing staff with PWCs to reduce costs (2021, Vol 2: 211).
48. There has also been a significant change in the proportion of direct care workers in residential aged care. Drawing on NACWCS data, the Royal Commission into Aged Care Quality & Safety found the estimated proportion of the residential aged care workforce in direct care roles fell significantly: in 2016, 65% of residential aged care employees worked in direct care roles, compared with 74% in 2003 (2021, Vol 2: 211). Indeed calculations undertaken by Emerita Professor Gabrielle Meagher, using NACWCS data, suggest falling staff ratios in residential aged care (Meagher et al 2019: 12-13). She found that examining the average ratio of direct care workers to operational places in residential aged care between 2003–2016, that while the number of FTE direct care workers increased 29% across this period, the number of operational places increased by 32%.
49. The increased reliance on PCWs and the falling ratios of direct care staff to residents place unacceptable burdens on the PCW workforce who are trying to provide care and support to

increasingly older, frailer residents with complex needs with inadequate staffing and insufficient time in which to undertake their work (Meagher et al 2019).

**If you are of the view that there has been a change in the composition of the workforce in residential aged care, the nature of those changes, and impact (if any) the change in composition has had on the duties, responsibilities and skills required of personal care workers in residential aged care**

50. As a consequence of the decrease in nursing qualified staff in residential aged care and a declining ratio of direct care staff to residents, together with the increased needs of residents, the nature of the work, the level of skill and responsibility involved in doing work in residential aged care has changed over time.
51. While I note the sets of skills required by PCWs below it is worth noting that they are now expected to do more clinical type care, such as peg feeding and managing catheters, with often scant supervision in conditions of understaffing and a lack of time to spend with residents. My experience in observing workers in both general and dementia specific Australian residential care units is that PCWs are also required to exercise a large degree of judgement and discretion about how to best to provide care to particular residents, whilst also juggling the competing needs of other residents for care and support. They are also the main conduit for communication with residents' families and may on occasions have to manage intrafamilial disputes between family members about the care of their relative. There are now significant physical demands in personal care work with the increase in the share of residents who are physically dependent and frail (Eagar, Westera & Kobel 2020). The performance of physical tasks under tight time lines such as showering, toileting and dressing requires the application of considerable skill and judgement in order to avoid injury and to also treat residents with respect and dignity.

**The skills required to perform work in residential aged care by personal care workers covered by the Award**

52. As the Royal Commission into Aged Care Quality & Safety has found, today aged care residents are older and frailer and have more complex care needs than 20 years ago. As noted in my submission to the Royal Commission, a 2019 UK report suggests that there are distinct areas of skills required to carry out care work with the aged and frail. (Hayes et al 2019). These include:
- health or medical-related skills and knowledge of complex conditions;
  - knowledge, understanding and ability to provide person-centred care and enablement;
  - literacy, numeracy, language and communication competencies to be able to administer medicine, do the necessary documentation and communicate with service-users, carers, and medical professionals;
  - technological and digital capabilities;
  - 'employability' skills including the capacity to problem-solve, work in a team, management of stress and one's own health and wellbeing; and
  - 'body work' skills, which require specialist knowledge and skill to enable care workers to care for the bodies of service-users, to protect skin integrity, uphold the dignity of the service-user, and adhere to hygiene and infection control policies.
53. In my view this categorisation of skills is useful in identifying the type of skills increasingly required in personal care work in residential aged care in the Australian context. The exercise of those skills is reflected in the work I have observed being performed by PCWs.

54. However, even where they are acknowledged requirements, such skills tend to be viewed as somehow 'natural' attributes of the predominantly female workforce, requiring the 'right' attitude or personality rather than demonstrable skill. Discourses about aged care workers only needing the right attitude and personality rather than specific demonstrated skills is something I have heard many times from residential aged care managers.
55. The capacity to know how to provide care in diverse situations with individual people, whose needs might change on a daily basis, requires the type of specific and demonstrable knowledge and skills as outlined above as well as a high degree of autonomy, responsibility and judgment. I note that these responsibilities and skills are not currently outlined in personal care worker classifications in the Aged Care Award and are certainly not reflected in the low pay rates that adhere to those classifications.
56. In its summary of its Final Report the Royal Commission refers to one of the challenges in aged care being 'an under-resourced and under-skilled workforce'. While there is no doubt the PCA workforce is under-resourced, in my view it is simply inaccurate to state that the workforce is 'under-skilled'. This is a frequently made assertion yet it assumes that most current staff, including PCAs, do not have sufficient skill, knowledge and competencies to provide good quality care. In the DWGC project we did not find that to be the case in the Australian case study sites we visited. The residential aged care facilities visited as part of this project are recognised in the sector as providing comparatively high quality care. Even in this better practice context what we did find in relation to the exercise of skills by PCWs is that there is often a lack of sufficient time for the *practice* of skills held. As we noted in our DWGC submission to the Royal Commission, the allocation of adequate time to care is crucial to the optimum use of both existing and acquired skills, knowledge and competencies. We also pointed, as noted above, to the lack of recognition of the skills and competencies required and used in award skill classifications. The inadequate provision of additional on-the job training opportunities together with the lack of any meaningful wage increases in progression up the limited skill classification in the Aged Care Award works to reinforce a view of the workers as 'under-skilled'.
57. There is no doubt that PCAs need to be provided with the opportunities to gain further skills in working with residents with complex care needs including advanced dementia and in specific types of care, such as end of life care. However relatively few residential aged care employers provide the opportunity for PCAs to gain such additional skills on paid time. In several of our DWGC case study sites we found that employers encouraged and, in some cases subsidised, the gaining of additional qualifications by workers. But this experience is very far from the Australian norm in residential aged care. The lack of importance placed by many providers on their workers gaining the required additional formal skills is surprising given the increasingly complex and varied competencies across technical and non-technical domains required of PCWs. Even in some residential aged care providers that appear to provide good quality care, there has been a shift away from on-the job training to e-learning, including on workers own time, to complement formal qualifications. This trend has led to some worker concern about the quality of e-learning modules as well as no longer being able to undertake relevant training in paid time.

**The benefits and consequences of improving rates of pay and conditions for personal care workers in residential aged care**

58. Decent pay and working conditions underpin good quality residential care. Indeed, properly valuing the work of the majority PCW workforce in residential aged care is linked to properly valuing the residents to whom it is provided.

59. The Final Report of the Royal Commission into Aged Care Quality & Safety recognises the crucial dependence of a high quality system of residential aged care on a skilled, well-resourced and decently remunerated workforce. It is the first of many inquiries into the aged care system over the last 20 years to make *concrete proposals* to increase the remuneration of aged care workers. Not only did the Royal Commissioners recommend that the federal government, providers and unions should collaborate on a work value case and equal remuneration application to the Fair Work Commission (Recommendation 76), but they also recommended that amendments be made to residential aged care indexation arrangements so as to ensure wage increases that might come out of the current claim for PCWs are reflected in government funding (Recommendation 110). Further, the proposed minimum staff time standard of mandated care hours per resident per day would provide more resourcing and more PCW staff time to enable them to provide good quality care and support to residents (Recommendation 86) As the Royal Commissioners note in their Executive Summary:

Knowing those they care for helps care staff to understand how someone would like to be cared for and what is important to them. It helps staff to care—and to care in a way that reinforces that person’s sense of self and maintains their dignity. This type of person-centred care takes time. The evidence is that current funding levels in residential aged care do not allow workers the time to provide high quality relationship-based care. (2021, Vol 1: 9):

60. Increased pay and better working conditions has been cited in successful reports in the aged care sector as a key factor in improving both attraction and retention in the short term as well as providing for necessary expansion of the aged care workforce to meet the needs of an ageing population. In 2011 the Productivity Commission estimated that in 2050 that the aged care workforce would need to more than quadruple. The Commission stated that as part of a coordinated approach to improving the attractiveness of the aged care sector as an employer that fair and competitive wages would have to be paid (2011 Vol 1: XLI). The federal government has to date eschewed any action to improve wages in the sector. However as an attempt to address demand for aged care workers particularly in regional and rural areas in 2018 the government implemented the Pacific Labour Scheme. This temporary labour migration scheme focuses on the provision of non-seasonal labour in service sectors, and in care work in particular, outside major cities. It is unclear what the uptake of the Scheme has been to date. However experience in both North America and Europe would suggest the use of temporary migrant care labour operates to depress local wages and conditions and leads to exploitation of the temporary migrant workers (Howe, Charlesworth & Brennan 2019).
61. The implementation of the 2017 Equal Pay Settlement in New Zealand in aged care, while not without its challenges, points to significant benefits for workers, providers and local economies of increasing pay for frontline workers. The settlement originated from the Terranova pay equity claim brought by the Service & Food Workers Union (now E tū) on behalf of residential aged care worker, Kristine Bartlett. The settlement of this case led to a sector-wide settlement that covers over 55, 000 frontline residential and home care workers. The claim argued that there was systemic undervaluation of aged care work because it was mainly performed by women. The settlement, underpinned by over NZ\$2 billion in government funding, provides significant wage increases for aged care workers of between 15% and 50% and an articulated career structure tied to the gaining of additional qualifications with meaningful relativities between the wage rates at each level (Charlesworth & Smith 2018). Along with the pay equity settlement, the government undertook to ‘regularise’ the hours that aged care workers work. The majority of workers are now employed on ‘guaranteed hours’, with training supported for career progression up the 4 level classification scale. Workers are required to be paid on the basis of their level of qualification, with the introduction of caseloads to ensure safe and fair staffing levels.

62. In my view, an important lesson for the Australian context is that to address low wages in residential aged care, increasing wage rates needs to be accompanied by a comprehensive skill classification structure tied to training. Workers to whom we spoke in case study organisations in New Zealand as part of the DWGC project stressed the material difference the wage increases, paid travel time and regular hours had made to their lives in this comprehensive renovation of pay and conditions in the aged care sector.
63. The pay equity settlement and related regulatory improvements outlined above were also seen to have a flow-on benefit to the broader economy. When New Zealand's former National Government was passing the Care and Support Worker's (Pay Equity) Settlement Agreement Bill in Parliament, former National Party MP, Dr Shane Reti highlighted the economic benefits of a wage rise for this large and expanding workforce and for the economy in his local area. In the final reading of the Bill, Dr Reti stated: 'The economic impact for the 2,000-plus Northland healthcare workers, at an extra \$100 per week, is \$10.5 million into the local economy per annum.' (See [www.decentworkgoodcare.com](http://www.decentworkgoodcare.com) website under 'selected external videos').
64. Finally, there are significant social and economic benefits of investing in decent wages and conditions for aged care workers. As the Australian Work+Family Policy Roundtable (2020) has recently argued:
- Care is essential to human wellbeing and economic prosperity. High quality care – both paid and unpaid – enables the development of human capabilities, wellbeing and economic productivity. Inadequate investment in care services and supports, uneven coverage of paid leave for workers in casual and precarious employment, and low wages for the essential workers who keep our communities functioning, weaken our economy. Inadequate care infrastructure leaves communities vulnerable and exacerbates inequalities.
65. In the context of COVID, Jerome de Henau and Sue Himmelweit (2020) have modelled the differential economic and social impacts of additional government investment in the care economy and in construction. They found that public investment in high-quality care services and better conditions for care workers, in terms of better paid and secure jobs, can build a more gender-equal caring economy. Their analysis also shows that a care-led recovery would create more jobs with superior employment outcomes to investment in construction, even when wages and hours are matched. Of relevance to the current claim, they found that more jobs would be created even when employment conditions for care workers are improved. This is because investment in increased wages for current care workers *and* in additional employment in care sectors at those increased wages, both generate employment and, in turn, increase average wages and the total level of employment in the economy.

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## **Appendix A: Relevant research undertaken that has involved personal care workers working in residential aged care**

- Quality Jobs Quality Care. This three year project (2013 – 2016) was a collaborative project between researchers and partners from the aged care industry. I led this action research-based project with A/Prof Deb King (Flinders) and a research team based at the former Centre for Work Life at the University of South Australia. The Project was funded under the Australian Government: Aged Care Service Improvement and Healthy Ageing Grants Fund Priority 3a: Better Health Care Connections: Promoting better practice and partnerships - Research translation. Three leading aged care organisations joined the project as industry partners: Brightwater (WA), HammondCare (NSW) and Helping Hand (SA). United Voice, one of the main unions representing aged care workers, was the fourth industry partner. See our website here: <http://www.qualityjobsqualitycare.com.au/>.

The project aim was to develop innovative workplace tools, models and benchmarks to improve job quality and the quality of services in aged care. Two groups of direct care workers were the focus of this project: personal care attendants (residential services) and community care workers (community services). The objectives of the Project were to:

- Develop Benchmarks to evaluation interventions in workplace practices that improve both job quality and care quality;
- Develop, trial and evaluate against the above Benchmarks six specific workplace interventions in three exemplary aged care organisations that improve the quality of jobs and care services;
- Develop and disseminate Tools and Models that illustrate changed workplace practices that improve the quality of jobs and care services;
- Collaborate with agencies, workers, care managers and care recipients through a collaborative, interactive action research methodology to develop the above Benchmarks, Interventions and Tools and Models to improve both job quality and care quality.

The Benchmarks developed used NACWCS 2012 data to highlight key job quality issues for both personal care workers and home care workers. See [http://www.qualityjobsqualitycare.com.au/pdfs/2014\\_QJQC\\_Benchmarks\\_final.pdf](http://www.qualityjobsqualitycare.com.au/pdfs/2014_QJQC_Benchmarks_final.pdf)

Of the six interventions that were designed with the three aged care services, five were completed and evaluated. In each case interviews were held with senior managers as well as managers, supervisors and PCWs & HCWs at specific worksites at three points in time: in the design of the intervention; midway evaluation of the intervention; and at the end of the intervention. Completed interventions involved two in residential aged care settings and three in home care settings. A scoping study was also developed with United Voice to capture the perspectives of members employed in not-for-profit, for profit, and government aged care organisations. Fifteen United Voice members participated in both focus groups and interviews.

We held several industry fora and produced the benchmarks and briefings for the industry and partner organisations on client perspectives on quality care and relevant analyses of the NACWCS data (see <http://www.qualityjobsqualitycare.com.au/resources.html>). The main findings of this work are distilled in confidential reports to the aged care providers involved and in the Quality Jobs Quality Care Toolkit which was designed to provide practical advice

to the broader aged care sector (see <http://www.qualityjobsqualitycare.com.au/toolkit.html>).

- Markets, Migration and Care in Australia is an ARC Discovery Project (2016-2018) that was led by Prof Deborah Brennan (UNSW), with myself, A/Prof Elizabeth Hill (Sydney) and Prof Ito Peng (Toronto) as Chief Investigators. The project explored the emerging connections between care marketisation, employment regulation and migration and how these impact on care workers, service users and industries in Australia. Our methods and our wider team are set out on the website: <https://www.arts.unsw.edu.au/social-policy-research-centre/our-projects/markets-migration-work-care-australia>. As part of the project, in-depth interviews were undertaken with 60 frontline migrant care workers including 12 working in residential aged care and another 13 in home care.
- Decent Work & Good Care: International Approaches to Aged Care (2017-2020) is an ARC Discovery Project that I have been leading with other Chief Investigators including: Prof Donna Baines (Sydney/British Columbia), A/Prof Deb King (Flinders), Prof Ian Cunningham (Strathclyde), Prof Tamara Daly (York). The project explores the links between decent work and good quality care in aged care in Australia, Canada, New Zealand and Scotland. The main objective of this cross-national study is to better understand how national policies, funding and regulation, operationalized through organisational practices and work design, shape both the quality of work and the quality of care (<https://decentworkgoodcare.com/wp-content/uploads/2019/01/Final-DWDC-1-page-project-summary-v5-Jan-2019.pdf>).

Of relevant to the current claim, analysis was undertaken of the employer regulation and pay structures in the 4 different aged care systems and in-depth case studies of both residential aged care and home care organisations. This included a detailed analysis of the successful New Zealand pay equity settlement in aged care (Charlesworth & Heap 2020). Of relevance to the current claim, in the Australian setting, in-depth week long ethnographic case studies were undertaken by 5 researchers at two large residential aged care organisations, which both had multiple sites, as well as a one day visit to the site of another large residential aged care provider. Interviews, observations and the shadowing of workers on all or part of shifts in different residential aged care settings were undertaken.

- Staffing, relational care and quality aged care services (2019). This research project was commissioned by the Health Services Union and United Voice to inform their evidence to the Royal Commission into Aged Care Quality & Safety. This project was led by Emerita Prof Gabrielle Meagher (Macquarie) together with Dr Natasha Cortis (UNSW), myself and my DWGC colleague, Wendy Taylor. The report from the project is: Meagher, G., Cortis, N. Charlesworth, S., Taylor, W. (2019). *Meeting the social and emotional support needs of older people using aged care services*. Macquarie University, University of New South Wales and RMIT University. I understand that Emerita Prof Gabrielle Meagher will be providing specific evidence from this report. As part of the project Wendy Taylor and I undertook in-depth interviews with 10 frontline aged care workers including 6 working in residential aged care.

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11 February 2021

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Dear Professor Charlesworth

### Health Services Union of NSW - Regarding work value for aged care members

1. We act for the Health Services Union NSW/ACT/Qld and various employees covered by the *Aged Care Award 2010* (**the Award**).
2. On 12 November 2020 we filed a work value case in the Fair Work Commission seeking an increase in wages and enhancing the career paths for workers who are covered by the Award (**the Application**).
3. We **enclose** a copy of the most recent iteration of the Application for your perusal. The Application is supported by (without limitation) the United Workers Union and the Australian Nursing and Midwifery Federation.
4. By way of background:
  - (a) The employment conditions, classifications and wages of a significant portion of employees working in residential aged care facilities in Australia are governed by the Award.
  - (b) The Award came into effect on 1 January 2010 after proceedings before the Fair Work Commission (**Award Modernisation**).
  - (c) The Applicants contend that the current Award wage rates do not recognise the nature of work, the level of skill and responsibility involved in performing the work or the conditions under which work is performed by employees covered by the Award and working in personal care services, general and administrative services and food services.
  - (d) The Award rates were not evaluated during the Award Modernisation process which led up to the making of the Award. No consideration of the minimum wages (other than by annual minimum wage adjustments) or the work value of the work performed by employees covered by the Award has been conducted since the Award commenced to operate in 2010.
  - (e) The Applicants contend that the current Award minimum wage undervalues the work of employees covered by the Award by more than 25%. The Liability limited by a scheme approved under Professional Standards Legislation.

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Applicants, being employees covered by the Award, seek an increase to wages of 25% for all classification levels in the Award to rectify the undervaluation.

- (f) The Applicants also seek a variation to the classification structure in Schedule B of the Award to provide for an additional pay level for personal care workers who have undertaken specialised training in a specific area of care and use those skills.
- (g) The Applicants contend that the claimed increase would address the historic undervaluation of Award wages, the gendered undervaluation of work performed in what is considered a feminised industry, and recognise significant increases in work value of employees covered by the Award.
- (h) The Applicants also contend that the rates in the Award do not reflect any recent (or possibly any) assessment of the wages by reference to the:
  - (i) Nature of the work;
  - (ii) Level of skill and responsibility involved in doing the work; and
  - (iii) The conditions under which work is performed.
- (i) We are instructed that various employers and employer associations will oppose the Application.

5. We request that you prepare a Report in relation to the Application. In so doing, we ask that you provide your expert opinion on the following matters:

- (a) the nature of the industrial history of setting the terms and conditions of workers covered by the Award and in residential settings in Australia;
- (b) the nature of the workforce in residential aged care including the demographics and whether the workforce is female dominated;
- (c) the challenges faced by unions and employees in achieving higher wage rates in residential aged care through industrial arbitration and enterprise bargaining.
- (d) whether you believe there has been an historical undervaluation of work performed in the industry, how that has affected wage rates contained in the Award and, if so, what factors have contributed to any historical undervaluation of work in residential aged care, including any contribution the gender composition of the workforce may have had to the undervaluation of work performed;
- (e) whether there has been a change in the composition of the workforce in residential aged care;
- (f) if you are of the view that there has been a change in the composition of the workforce in residential aged care, the nature of those changes, and the

- impact (if any) the change in composition has had on the duties, responsibilities and skills required of workers in residential aged care;
- (g) the nature of the work performed (being care work) in the aged care sector (including in the Personal Care worker, General and Administrative Services, and Food Services streams covered by the Award);
  - (h) the skills required to perform work in residential aged care (including in the Personal Care worker, General and Administrative Services, and Food Services streams covered by the Award);
  - (i) whether there has been a change in the nature, level of skill and responsibility involved in doing work in residential aged care over time (including in the Personal Care worker, General and Administrative Services, and Food Services streams covered by the Award);
  - (j) if you are of the view that there has been changes in the nature of work, responsibility and/or skills required in residential aged care over time, please provide a description and explanation of, the reasons for and nature of, those changes;
  - (k) the benefits and consequences of improving rates of pay and conditions for employees working in residential aged care; and
  - (l) any other information that you consider relevant.
6. At the hearing of this matter (currently provisionally set down for **10 – 26 November 2021**) our clients intend to lead evidence (including the Report and any reply to evidence filed by parties who oppose the Application) in support of the Application. You may be required to attend the hearing as a witness to provide your evidence to the Fair Work Commission.
7. As mentioned above, evidence is due to be filed on 1 April 2021 and our preference would be to receive a draft of the Report on or before **15 March 2021**.
8. In addition to the Report and to facilitate your giving of evidence in the Fair Work Commission, we request that read the **attached** Expert Witness Code of Conduct and **attached** Rule 23.02 of the Federal Court Rules and ensure that the report complies with Rule 23.02. We will also ask you to affirm or swear an affidavit that includes a statement that you have read the Expert Witness Code of Conduct and agree to be bound by its terms. Please also identify your training, study/qualifications and experience relied upon that provide you with the specialised knowledge to provide the Report and an acknowledgement that this has been relied upon to provide the opinions contained in the Report.
9. Please do not hesitate to contact us if you would like to discuss the matter further.

Yours faithfully



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**Coronavirus Update**

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

## Form F46 Amended Application to vary a modern award

Fair Work Act 2009, ss.157–160

This is an application to the Fair Work Commission to make a modern award or make a determination varying or revoking a modern award, in accordance with Part 2-3 of the Fair Work Act 2009.

### The Applicant



These are the details of the person who is making the application.

Title  Mr  Mrs  Ms  Other please specify: (see below)

First name(s) and Surname (s) 1. Ms Virginia Ellis,  
2. Mr Mark Castieau,  
3. Ms Sanu Ghimire,  
4. Mr Paul Jones, and  
5. Health Services Union

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Phone number 1300 478 679 Fax number 1300 329 478

Email address james.fox@hsu.asn.au; lauren.hutchins@hsu.asn.au;  
ayshe.lewis@hsu.asn.au

If the Applicant is a company or organisation please also provide the following details

Legal name of business Health Services Union

Trading name of business As Above

ABN/ACN 68 243 768 561

Contact person james.fox@hsu.asn.au; lauren.hutchins@hsu.asn.au;  
ayshe.lewis@hsu.asn.au

Does the Applicant need an interpreter?



If the Applicant requires an interpreter (other than a friend or family member) in order to participate in conciliation, a conference or hearing, the Fair Work Commission will provide an interpreter at no cost.

Yes—Specify language

No

Does the Applicant require any special assistance at the hearing or conference (e.g. a hearing loop)?

Yes— Please specify the assistance required



No

Does the Applicant have a representative?



A representative is a person or business who is representing the Applicant. This might be a lawyer, or a representative from a union or employer association. There is no requirement to have a representative.

Yes—Provide representative's details

below  No

### Applicant's representative



These are the details of the person or business who is representing the Applicant.

Name of person	Alexandra Grayson and Penny Parker		
Organisation	Maurice Blackburn Lawyers		
Postal address	Level 32, 201 Elizabeth St		
Suburb	Sydney		
State or territory	NSW	Postcode	2000
Phone number	02 8267 0949	Fax number	(02) 9261 3318
Email address	<a href="mailto:agrayson@mauriceblackburn.com.au">agrayson@mauriceblackburn.com.au</a> ; <a href="mailto:pparker@mauriceblackburn.com.au">pparker@mauriceblackburn.com.au</a>		

## 1. Coverage

1.1 What is the name of the modern award to which the application relates?

Aged Care Award 2010 (MA18)

1.2 What industry is the employer in?

Aged care

## 2. Application

2.1 What are you seeking?

Specify which of the following you would like the Commission to make:

- a determination varying a modern award  
 a modern award  
 a determination revoking a modern award
- 2.2 What are the details of your application?

1. The Applicants apply to replace subclause 14.1 of the Aged Care Award (MA000018) with the following replacement subclause:

### 14.1 Minimum wages – Aged Care Employee

Classification	Per Week
	\$
<b>Aged care employee – level 1</b>	<del>801.40</del> \$1001.75
<b>Aged care employee – level 2</b>	<del>834.60</del> \$1043.25
<b>Aged care employee – level 3</b>	<del>867.30</del> \$1084.13
<b>Aged care employee – level 4</b>	<del>877.60</del> \$1097.00
<b>Aged care employee – level 5</b>	<del>907.30</del> \$1134.13
<b>Aged care employee – level 6</b>	<del>956.20</del> \$1195.25
<b>Aged care employee – level 7</b>	<del>973.40</del> \$1216.75

2. The Applicants apply to replace Schedule B of the Aged Care Award (MA000018) with the replacement Schedule B contained in Annexure A to this application.

Attach additional pages, if necessary.

2.3 What are the grounds being relied on?

Using numbered paragraphs, specify the grounds on which you are seeking the proposed variations.

The grounds relied upon are contained in Annexure B to this application.

YOU MUST OUTLINE how the proposed variation etc is necessary in order to achieve the modern awards objective as well as any additional REQUIREMENTS set OUT in the FW Act.

Attach additional pages, if necessary.

**Signature**



Name                      Alexandra Grayson, Maurice Blackburn Lawyers

Date                        17 November 2020

Capacity/Position:    Solicitor for the Applicants

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

## Annexure A

(with additions in underline and deletions in strikethrough)

General and Administrative Services	Food Services	Care Services
<p><b>Entry level:</b> An employee who has less than three months' work experience in the industry and performs basic duties.</p> <p>An employee at this level:</p> <ul style="list-style-type: none"> <li>▪ works within established routines, methods and procedures;</li> <li>▪ has minimal responsibility, accountability or discretion;</li> <li>▪ works under direct or routine supervision, either individually or in a team; and</li> <li>▪ requires no previous experience or training.</li> </ul> <p>Indicative <u>roles</u> <del>tasks performed</del> at this level are:</p>		
<p><b>General and Administrative Services:</b></p> <p>General clerk Laundry hand Cleaner Assistant gardener</p>	<p><b>Food Services:</b></p> <p>Food services assistant</p>	
<p><b>Aged care employee—level 2</b></p> <p><u>An employee who has more than three months' work experience in the industry or is an entry level employee (up to 6 months) in the case of a Personal Care Worker.</u></p> <p>An employee at this level:</p> <ul style="list-style-type: none"> <li>▪ is capable of prioritising work within established routines, methods and procedures;</li> <li>▪ is responsible for work performed with a limited level of accountability or discretion;</li> <li>▪ works under limited supervision, either individually or in a team;</li> <li>▪ possesses sound communication skills; and</li> <li>▪ requires specific on-the-job training and/or relevant skills training or experience.</li> </ul> <p>Indicative <u>roles</u> <del>tasks performed</del> at this level are:</p>		
<p><b>General and Administrative Services:</b></p> <p>General clerk/Typist (between 3 months' and less than 1 year's service) Laundry hand Cleaner Gardener (non-trade) Maintenance/Handyperson (unqualified) Driver (less than 3 ton)</p>	<p><b>Food Services:</b></p> <p>Food services assistant</p>	<p><b>Personal Care:</b></p> <p>Personal Care Worker <b>Grade 4</b> <u>(entry- up to 6 months)</u></p>

### Aged care employee—level 3

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures (non admin/clerical);
- is responsible for work performed with a medium level of accountability or discretion (non admin/clerical);
- works under limited supervision, either individually or in a team (non admin/clerical);
- possesses sound communication and/or arithmetic skills (non admin/clerical);
- requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical); and
- In the case of an admin/clerical employee, undertakes a range of basic clerical functions within established routines, methods and procedures.

Indicative roles tasks performed at this level are:

<p><b>General and Administrative Services:</b></p> <p>General clerk/Typist (second and subsequent years of service)          Receptionist          Pay clerk          Driver (less than 3 ton) who is required to hold a St John Ambulance first aid certificate</p>	<p><b>Food Services:</b></p> <p>Cook</p>	<p><b>Personal Care:</b></p> <p>Personal Care Worker <u>Grade 2 (from six months)</u>          Recreational/Lifestyle activities officer (unqualified) <u>(entry- up to 6 months)</u></p>
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### Aged care employee—level 4

An employee at this level:

- is capable of prioritising work within established policies, guidelines and procedures;
- is responsible for work performed with a medium level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses good communication, interpersonal and/or arithmetic skills; and
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience.
- in the case of a personal care worker, holds a relevant Certificate 3–III qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work.

Indicative roles tasks performed at this level are:

<p><b>General and Administrative Services:</b></p> <p>Senior clerk          Senior receptionist          Maintenance/Handyperson (qualified)          Driver (3 ton and over)          Gardener (trade or TAFE Certificate III or above)</p>	<p><b>Food Services:</b></p> <p>Senior cook (trade)</p>	<p><b>Personal Care:</b></p> <p>Personal Care Worker <u>(qualified) Grade 3</u>  <u>Recreational/Lifestyle activities officer (from 6 months)</u></p>
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### Aged care employee—level 5

An employee at this level:

- is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability;
- works either individually or in a team;
- may assist with supervision of others;
- requires a comprehensive knowledge of medical terminology and/or a working knowledge of health insurance schemes (admin/clerical);
- may require basic computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.
- in the case of a Senior Personal Care Worker, may be required to assist residents with medication and hold the relevant unit of competency (HLTHPS006), as varied from time to time.

Indicative ~~roles~~ tasks performed at this level are:

<p><b>General and Administrative Services:</b></p> <p>Secretary interpreter (unqualified)</p>	<p><b>Food Services:</b></p> <p>Chef</p>	<p><b>Personal Care:</b></p> <p><u>Senior Personal Care Worker-Grade 4-</u></p> <p><u>Recreational/Lifestyle activities officer (qualified)</u></p>
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**Aged care employee—level 6**

An employee at this level:

- is capable of functioning with a high level of autonomy, and prioritising their work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- works either individually or in a team;
- may have the responsibility for leading and/or supervising the work of others;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at post-trade or ~~Advanced Certificate IV~~ or ~~Associate Diploma~~ level and/or relevant skills training or experience.
- in the case of a Specialist Personal Care Worker, provides specialised care and may have undertaken training in specific areas of care (e.g. Dementia Care, Palliative Care, Household Model of Care).

Indicative ~~roles~~ tasks performed at this level are:

<p><b>General and Administrative Services:</b></p>	<p><b>Food Services:</b></p> <p>Senior chef</p>	<p><b>Personal Care:</b></p>
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Maintenance tradesperson (advanced) Gardener (advanced)		<u>Specialist Personal Care Worker</u>  <u>Senior Recreational/Lifestyle activities officer</u>
<p><b>Aged care employee—level 7</b>  An employee at this level:</p> <ul style="list-style-type: none"> <li>▪ is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures;</li> <li>▪ is responsible for work performed with a substantial level of accountability and responsibility;</li> <li>▪ may supervise the work of others, including work allocation, rostering and guidance;</li> <li>▪ works either individually or in a team;</li> <li>▪ may require comprehensive computer knowledge or be required to use a computer on a regular basis;</li> <li>▪ possesses developed administrative skills and problem solving abilities;</li> <li>▪ possesses well developed communication, interpersonal and/or arithmetic skills; and</li> <li>▪ may require formal qualifications at trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.</li> </ul> <p>Indicative <u>roles</u> <del>tasks performed</del> at this level are:</p>		
<b>General and Administrative Services:</b>  Clerical supervisor Interpreter (qualified) Gardener superintendent General services supervisor	<b>Food Services:</b>  Chef /Food services supervisor	<u>Personal Care:</u>  <del>Personal care worker grade 5</del> <u>Personal Care Supervisor</u>

## Annexure B

This Annexure provides the grounds and reasons that support the Applicants' application pursuant to s157 of the *Fair Work Act 2009* (Cth) (**the Act**) to vary the Aged Care Award 2010 (**the Award**).

### INTRODUCTION

1. The current Award wage rates do not recognise the nature of work, the level of skill and responsibility involved in performing the work or the conditions under which work is performed by employees covered by the Award and working in personal care services, general and administrative services and food services.
2. The Award should be varied so as to achieve the modern award objective and the minimum wages objective.
3. The Award rates were not evaluated during the award modernisation process which led up to the making of the Award. No consideration of the minimum wages (other than by annual minimum wage adjustments) or the work value of the work performed by employees covered by the Award has been conducted since the Award commenced to operate in 2010.
4. The current Award minimum wage undervalues the work of employees covered by the Award by more than 25%. The Applicants, being employees covered by the Award, seek an increase to wages of 25% for all classification levels in the Award to rectify the undervaluation. The Applicants also seek a variation to the classification structure in Schedule B of the Award to provide for an additional pay level for personal care workers who have undertaken specialised training in a specific area of care and use those skills.
5. The claimed increase would address the historic establishment of Award wages and recognise significant increases in work value of employees covered by the Award.

### CURRENT WAGE RATES

6. The rates in the Award were not subject to any work value assessment at the time of the making of the Award or subsequently and the precise origin of the rates remains unclear.
7. The rates in the Award do not reflect any recent (or possibly any) assessment of the wages by reference to the:
  - a. Nature of the work;
  - b. Level of skill and responsibility involved in doing the work; and
  - c. The conditions under which work is performed.
8. The award rates that apply in New South Wales for similar roles and in other modern awards where a work value or equal remuneration assessment has been conducted are substantially higher than those in the Award.



### **S.157(2)(A) - WORK VALUE REASONS**

9. S 157(2) (a) requires the Commission to establish whether it is satisfied that a variation to minimum wages is justified by work value reasons. This satisfaction will be dependent on a consideration of the "work value reasons" defined at s 157(2)(2A) of the Act.
10. Whilst no specific datum point is required for an analysis of work value the Commission should have regard to changes in the nature of the work, the skills required to perform that work; the responsibility involved in doing the work and the conditions under which work is performed which have occurred over time.
11. Any consideration by the Commission should readily ascertain that the variation is justified based on the following work value reasons:

#### **The nature of the work (s 157(2A))**

##### *Personal Care Stream*

12. The nature of the work of workers in the Personal Care Stream justifies the variation to award minimum wages sought by the Applicants. The work performed includes a broad range of duties and requires a broad range of knowledge, skills and sound judgement in order to:
  - a. Understand and assess the needs of an aging population with an increased level of frailty, vulnerability and or behavioural and psychological symptoms of dementia or equivalent;
  - b. Provide high quality physical, social and emotional care that is appropriate to the needs of people who require it;
  - c. Provide care that protects the safety, health and wellbeing of aged care residents;
  - d. Provide care that supports psychological, cultural and emotional wellbeing of aged care residents;
  - e. Provide restoration and rehabilitation to the aged;
  - f. Provide specialist care in key areas of need, such as palliative care or dementia care.
  - g. Provide care in an increasingly diverse aged care population;
  - h. Allow the aged to be able to exercise choice and be treated as individuals;
  - i. Liaise with clinical and health professional staff to ensure the changing care needs of aged care residents are met;
  - j. Facilitate the engagement, social participation and independence of aged care residents in an aging population; and/or
  - k. Communicate effectively with a range of stakeholders, from family members to clinical and health professionals, on issues which are often of a sensitive nature.
13. There have been significant changes in the nature of the work performed by employees in the Personal Care stream resulting from:
  - a. Changes in the acuity levels of aged care residents (with an increase in those with higher needs requiring a higher degree of responsibility from personal care workers, a higher level of care and a greater breadth of care and assistance);
  - b. Changes in theories and models of care provision (including a move to the household model of care);

- c. Increased requirements to assess the medical needs of residents and to assist residents with medication and medical needs;
- d. Increases in the need to devise and provide individualised and complex physical, social and emotional care for each resident;
- e. Increased skills required in providing resident choice-centred care and assessing, planning and implementing same;
- f. Industry implementation of a requirement for minimum qualifications and training;
- g. Introduction of additional duties not previously performed including (without limitation) cleaning, kitchen duty, food preparation, food service, personal shopping, meal planning, physical therapy, recreational activity support and provision;
- h. Increased interaction with other health professionals with a focus on individual treatment and rehabilitation of residents;
- i. Assessment, planning and implementation arising from increased community engagement and external attendances for residents;
- j. Changes to infection control procedures;
- k. Changes to requirements when preparing residential care documentation arising from (without limitation) altered governmental regulation, increased governance and accreditation requirements;
- l. Increased use and implementation of technology in aged care facilities and instruction of residents on same;
- m. Increased mentoring, supervisory and performance management responsibilities at a senior level, and/or
- n. Other related productivity measures.

### **The level of skill and responsibility in doing the work**

#### *Personal Care Stream*

- 14. The work of employees in the Personal Care stream increasingly requires Certificate III or IV qualifications and additional formal specialised training (for example, in dementia care or medication dispensation).
- 15. Personal Care Workers have a high level of responsibility in a broad range of areas arising from their role as carers of the uniquely vulnerable, highly dependent aged people of Australia. This responsibility is to provide care in all aspects for the aged and extends to responsibility for the physical, emotional and mental wellbeing of one of the most acutely ill and highly dependent cohorts in Australian society.
- 16. Personal Care Worker roles have become increasingly complex with the necessary attainment and exercise of a higher level of skill arising from (without limitation):
  - a. New duties being introduced such as cleaning, kitchen duty, food preparation, food service, personal shopping, meal planning, physical therapy, recreational activity support and provision;
  - b. Changes in qualification requirements;
  - c. Increased accreditation requirements for employers;
  - d. Changes in technology utilised in aged care homes;
  - e. Changes in the model of care (including the household model, specialist dementia care

- and palliative care);
- f. Increased responsibility for assessing the medical needs of residents and assisting residents with medication and medical needs;
  - g. Increased skills required in providing resident choice-centred care and assessing, planning and implementing same; and
  - h. Evolution of a more complex regulatory environment resulting in increased responsibility for care workers and a greater emphasis on regulatory compliance.
17. The level of responsibility of workers in the Personal Care stream has increased arising from (without limitation):
- a. Increased reliance on workers to assess the medical needs of residents, to assist residents with medication and medical needs (rather than reliance on Allied Health Professionals, nurses and doctors) and liaise with medical practitioners;
  - b. Increased prevalence of high acuity residents with more varied and more high needs and a consequential need to assess, plan around and treat increasingly complex, physical, social and emotional needs of residents;
  - c. Increased responsibilities arising from the shift to the provision of resident choice-centred care and assessing, planning and implementing same;
  - d. More responsibility for the provision of physical, social and emotional care of residents;
  - e. The move to the household model of care has required workers to take responsibility for all needs of residents including (without limitation) cleaning, kitchen duty, food preparation, food service, personal shopping, meal planning, physical therapy, recreational activity support and provision; and/or
  - f. Increasing ongoing quality assessment and accreditation requirements.

### **The conditions under which the work is done**

#### *Personal Care Stream*

18. Workers in the Personal Care stream perform work in a diverse range of environments (including specialised dementia care, palliative care, household cottages and traditional nursing homes).
19. The provision of aged care has changed markedly since the Award was made or since the work was last evaluated arising from (without limitation):
  - a. Changes in the model of care (including the household model, specialist dementia care and palliative care);
  - b. Changes in the philosophy of care (including the shift to the provision of resident choice-centred care and the decreased role of clinical staff in the residential aged care environment);
  - c. Increased prevalence of high acuity residents with more varied and more high needs;
  - d. Changes arising from COVID-19 that will likely continue including-
    - Changes in infection control procedures;
    - Changes in use of technology; and
    - Changes in emotional needs of residents arising from increased isolation.
20. In addition, it is anticipated that further changes to the conditions under which work is performed will result from the Royal Commission into Aged Care Quality and Safety (legislated to hand

down its report on 26 February 2021).

### **The nature of the work (s 157(2A))**

#### *Food Services Stream*

21. The nature of the work of employees in the Food Services stream of the Award justifies the variation to award minimum wages sought by the Applicants. The work performed includes a broad range of duties and requires a broad range of knowledge, skills and sound judgement in order to:
  - a. Understand and assess the dietary needs of an aging population with an increased level of frailty, vulnerability and ill health and often compromised capacity to communicate dietary needs or preferences;
  - b. Provide high quality nutritional food that is appropriate to the needs of people who require it;
  - c. Provide food tailored to meet the needs of an increasingly diverse aged care population;
  - d. Allow the aged to be able to exercise choice and be treated as individuals; and
  - e. Integrate food services into the overall provision of quality care, to enhance the physical, social and emotional wellbeing of aged care residents.
  
22. There have been significant changes in the nature of the work performed by employees in the Food Services stream resulting from:
  - a. Changes required to meet stricter and increased regulatory compliance requirements including food safety standards, accreditations and aged care quality standards (including dealing with auditors and food safety authorities);
  - b. Changes required in order to service a 24 hour/seven day a week food service environment;
  - c. Introduction of additional duties not previously performed including (without limitation) managing stock levels, ordering food, dealing with suppliers, designing many and varied menus as opposed to a simple, universal menu for all residents, understanding and assessing allergies and intolerances, budget management (at a senior level);
  - d. Increased skills required in liaising with residents and personal care staff and providing resident choice-centred meals and assessing, planning and implementing same;
  - e. Increased requirements to assess the dietary needs of residents;
  - f. Increases in the need to devise and provide individualised and complex meal solutions for residents rather than deliver a standardised menu;
  - g. Increased expectations of residents with regard to the quality and variety of meals offered;
  - h. Increases in the need to liaise with dieticians and understand diet and nutritional theories to provide best practice care to residents;
  - i. Changes to infection control procedures;
  - j. Increased use and implementation of technology in aged care facilities (including food preference/dietary need databases, complex ordering systems, online food safety records and online computer programs) and instruction of more junior colleagues on same;

- k. Changes in the acuity levels of aged care residents (with an increase in those with higher needs requiring a higher degree of responsibility from food services staff to deliver food that residents are physically capable of eating including modified texture foods and food that is tailored to meet the physical, social and emotional needs of residents);
- l. Industry implementation of a requirement for minimum qualifications and training;
- m. Increased mentoring/training, supervisory and performance management responsibilities at a senior level (including work allocation and quality control), and/or
- n. Other related productivity measures.

### **The level of skill and responsibility in doing the work**

#### *Food Services Stream*

- 23. The work of employees in the Food Services stream increasingly requires Certificate III or IV qualifications and/or formal specialised training (dependent on classification).
- 24. Food Services workers have a high level of responsibility in a broad range of areas arising from their role as custodians of the nutritional and emotional needs of the uniquely vulnerable, highly dependent aged people of Australia. This responsibility is to ensure that nutritional food, tailored to the emotional and physical needs of residents is provided. The provision of appropriate food has a profound effect on the physical and emotional wellbeing of residents (leading to less medical issues requiring intervention and more dignity in dependence).
- 25. Food Services roles have become increasingly complex with the necessary attainment and exercise of a higher level of skill arising from (without limitation):
  - a. New duties being introduced including (without limitation) managing stock levels, ordering food, dealing with suppliers, designing many and various menus as opposed to a simple, universal menu for all residents, understanding and assessing allergies and intolerances and budget management (at a senior level);
  - b. Changes in qualification requirements;
  - c. Increased minimum standards, accreditation and regulatory requirements for employers;
  - d. Changes in technology utilised in food service, planning and delivery in aged care homes;
  - e. Increased responsibility for assessing the nutritional and hydration needs of residents;
  - f. Increased skills required in providing resident choice-centred meals and assessing, planning and implementing same rather than delivering a standard menu;
  - g. The requirement to deliver nutritious food on demand, often in a 24/7 environment; and
  - h. Increased expectations of residents with regard to the quality and variety of meals offered.
- 26. The level of responsibility of workers in the Food Services stream has increased arising from (without limitation):
  - a. Increased reliance on workers to assess the dietary needs of residents, to assist residents with meals and liaise with dieticians;
  - b. Increased prevalence of high acuity residents with more varied and more high needs and a consequential need to assess, plan around and deliver food to a cohort of residents with increasingly complex physical, social and emotional needs;

- c. Increased responsibilities arising from the shift to the provision of resident choice-centred resident care and assessing, planning and implementing same;
- d. More emphasis on the provision of nutritious food as a fundamental element of the care of residents; and
- e. Increasing ongoing quality assessment and accreditation requirements.

**The conditions under which the work is done**

*Food Services Stream*

- 27. Food Services workers perform work in a diverse range of environments with a diverse range of resident needs. Whilst operationally distinct from care or clinical roles Food Services employees are environmentally integrated. This means that they need to be sensitive to and responsive to the particular circumstances that they operate in. Food Services employees will interact with residents in the course of their duties directly and casually, they need to conduct themselves with awareness of resident's emotional, social and physical needs.
- 28. The provision of aged care has changed markedly since the Award was made or since the work was last evaluated arising from (without limitation):
  - a. Changes in the philosophy of food provision to residents (including the shift to the provision of resident choice-centred care);
  - b. Increased prevalence of high acuity residents with more varied and more high needs;
  - c. Changes arising from COVID-19 that will likely continue including-
    - Changes in infection control procedures;
    - Changes in use of technology;
    - Changes in food preparation; and
    - Changes in emotional needs of residents arising from increased isolation.
- 29. In addition, it is anticipated that further changes to the conditions under which food preparation and provision work is performed will result from the Royal Commission into Aged Care Quality and Safety (legislated to hand down its report on 26 February 2021).

**The nature of the work (s 157(2A))**

*General and Administrative Services Stream*

- 30. The nature of the work of employees in the General and Administrative Services stream justifies the variation to award minimum wages sought by the Applicants. The work performed includes a broad range of duties and requires a broad range of knowledge, skills and sound judgement in order to:
  - a. Deal with regulators and accrediting authorities;
  - b. Liaise with visitors to facilities including families, guests and external contractors;
  - c. Manage day to day compliance with an increasingly complex regulatory regime (including quality and safety standards) and Aged Care industry policies and guidelines;
  - d. Manage an increasingly complex accreditations process;
  - e. Perform a broad range of administrative and human resource related duties including recruitment processes, rostering, induction, orientation, staff liaison and event organisation;

- f. Perform sales and promotional functions, targeted at prospective residents;
  - g. Manage and assess new or respite residents including (without limitation) responding to enquiries from potential new clients, reviewing their Aged Care Assessment (**ACATs**) and government funding, considering resident suitability for care, making arrangements with potential residents, preparing paperwork for new residents including contracts, reconciling payments for care, admitting new residents and discharging residents;
  - h. deal with external auditors and compliance officers;
  - i. deal with resident, family and staff complaints and enquiries;
  - j. oversight of outsourced providers (including cleaning and catering) and internal providers including gardening and maintenance;
  - k. manage the financial affairs of an aged care facility (including accounts payable and receivable, payment of invoices, checking of invoices, purchasing, managing petty cash, banking, receiving residents' payments); and
  - l. operate in an increasingly sophisticated care environment.
31. There have been significant changes in the nature of the work performed by employees in the General and Administrative Services stream resulting from:
- a. Changes in the acuity levels of aged care residents (with an increase in those with higher needs requiring a higher and more diverse range of paperwork and assessments to be performed prior to joining a facility, whilst in care or while maintenance, driving and other functions are being performed);
  - b. Increased skills required in the administering of resident choice-centred care and assessing, planning and implementing same;
  - c. Introduction of additional duties not previously performed including (without limitation – financial management, oversight of outsourced providers, dealing with external auditors and compliance officers, human resource functions, managing accreditations and ensuring compliance, visitor, regulator and staff liaison);
  - d. Changes to infection control procedures;
  - e. Increased use and implementation of technology in aged care facilities (including Customer Relationship Management systems, Human Resources and payroll systems, file management systems, financial and billing software and systems, Health record management systems) and ensuring that policies and protocols regarding same are complied with such as data security and confidentiality requirements;
  - f. Increased delegation of more sophisticated work, once associated with specialist management roles, such as procurement, human resources/employee relations, finance, governance, regulatory and compliance and facilities management;
  - g. Increased mentoring, supervisory and performance management responsibilities at a senior level, and/or
  - h. Other related productivity measures.

### **The level of skill and responsibility in doing the work**

#### *General and Administrative Services Stream*

32. Workers in this stream of Aged Care have a high level of responsibility in a broad range of areas arising from their role as administrators, cleaners and laundry workers, drivers and maintenance workers interacting and liaising with the uniquely vulnerable, highly dependent

aged people of Australia. This work has developed from work that happens quite separate from the care of residents to something that is integrated and part of holistic models of care. This has developed alongside an industry that has developed more focus on autonomy, independence, agency and respect for residents.

33. A radical shift in duties, skills and responsibilities has been implemented in administrative roles in Aged Care. Traditionally administrative roles in Aged Care have been more narrow in focus and responsibility, for example, roles such as a 'typist' or a 'senior receptionist' with a job of greeting and providing directions to enquiries. Administrative stream employees are now engaged in the running of aged care facilities to a highly sophisticated degree and across a broad range of functions, requiring many and varied skills.
34. General and Administrative roles have become increasingly complex with the necessary attainment and exercise of a higher level of skill arising from (without limitation):
  - a. New duties being introduced such as financial management, oversight of outsourced providers, dealing with external auditors and compliance officers, human resource functions, managing accreditations and ensuring compliance, visitor, regulator and staff liaison and more varied and more complicated maintenance and other functions;
  - b. Increased responsibility for this cohort of employees to fulfil and/or manage the accreditation, regulatory and compliance requirements for employers;
  - c. Changes in technology utilised in aged care homes;
  - d. Increased responsibility for assessing the needs of residents when organising services and providing assistance and/or services;
  - e. Increased skills required in administering a broad range of resident choice-centred care and assessing, planning and implementing same;
  - f. Increased skills arising from financial management of a facilities affairs;
  - g. More diverse skills required as a result of oversight of outsourced functions;
  - h. Sales and promotion work, particularly in the arranging and facilitation of 'facility tours' and similar activities;
  - i. The implementation and oversight of policies, protocols, etc. based on (without limitation);
    - i. The Charter of Aged Care Rights,
    - ii. Aged Care Quality Standards,
    - iii. organisational policy,
    - iv. facility policy,
    - v. cultural or religious particulars relevant to organisation, facility or residential composition; and
  - j. Complying with complex and evolving reporting, accreditation, assessment guidelines in all areas of the business.
35. The level of responsibility of workers in the General and Administrative Services stream has increased arising from (without limitation):
  - a. Increased prevalence of high acuity residents with more varied and more high needs;
  - b. the shift to the provision of resident choice-centred care and assessing, planning and implementing same;
  - c. Devolution to administrative staff of financial management, oversight of outsourced providers, dealing with external auditors and compliance officers, human resource functions, visitor, regulator and staff liaison;



- d. Delegation to manage and assess new or respite residents including (without limitation) responding to enquiries from potential new clients, reviewing their Aged Care Assessment (**ACATs**) and government funding, considering resident suitability for care, making arrangements with potential residents, preparing paperwork for new residents including contracts, reconciling payments for care, admitting new residents and discharging residents;
- e. an increasingly complex regulatory regime (including quality and safety standards) and Aged Care industry policies and guidelines; and
- f. Increasing ongoing quality assessment and accreditation requirements.

**The conditions under which the work is done**

*General and Administrative Services Stream*

- 36. General and Administrative Services workers perform work in a diverse range of environments (including dementia facilities, household cottages and traditional nursing homes). Whilst operationally distinct from care or clinical roles General and Administrative stream employees are environmentally integrated. This means that they need to be sensitive to and responsive to the particular circumstances that they operate in. General and Administrative employees will interact with residents in the course of their duties directly and casually, they need to conduct themselves with awareness of resident's emotional, social and physical needs.
- 37. Dignity in care requires greater and greater direct interaction between employees and residents. It is no longer sufficient that a maintenance employee or driver (for example) takes directions and executes work. They must be responsive to residents, requiring heightened sophistication, adaptability and communication skills.
- 38. Similarly, an administrative employee will need to undertake their work, and duties that go above and beyond mere-administration type tasks, with care and emotional intelligence.
- 39. The provision of aged care has changed markedly since the Award was made or since the work was last evaluated arising from (without limitation):
  - a. Increased prevalence of high acuity residents with more varied and more high needs;
  - b. An increase in the sophistication of care and the regulatory framework that care operates in;
  - c. Changes arising from COVID-19 that will likely continue including-
    - Changes in infection control procedures;
    - Changes in use of technology; and
    - Changes in emotional needs of residents arising from increased isolation.
- 40. In addition, it is anticipated that further changes to the conditions under which work is performed will result from the Royal Commission into Aged Care Quality and Safety (legislated to hand down its report on 26 February 2021).

**SS157(1)(B) AND 284(1) - THE VARIATION IS NECESSARY TO ACHIEVE THE MODERN AWARD AND MINIMUM WAGES OBJECTIVE**

**A fair and relevant safety net of minimum wages**

- 41. Many employees in the aged care sector are paid minimum Award rates. The Award rates do not provide a relevant safety net of minimum wages. For the reasons set out above, the current Award rates significantly undervalue the work performed by aged care workers. Even where rates of pay are set by enterprise agreements these rates are heavily referable to the Award rates of pay.

### **The need to encourage collective bargaining**

42. There are significant and widespread difficulties associated with collective bargaining in the aged care sector with the result that the majority of employees are being paid minimum rates pursuant to the Award or rates set under enterprise agreements that are usually no higher than 5% above the minimum rates set under the Award.
43. Factors impeding enterprise bargaining include:
  - a. the lack of incentive for employers to bargain with employees due to the existing low wage rates;
  - b. the dispersed nature of the work;
  - c. the undesirable interruptions to resident's care posed by industrial action; and
  - d. the fact that the majority of funding for the sector comes from the Commonwealth Government.
44. The variations sought in this application would encourage employers to engage in collective bargaining by:
  - a. increasing the relevance of the minimum rates applicable to the work performed;
  - b. encouraging industrial parties to bargain for particular arrangements in workplaces to improve productivity and properly utilise a skilled workforce; and
  - c. increasing the competitiveness of enterprises who currently engage in enterprise bargaining;

### **The need to promote social inclusion through increased workforce participation**

45. Given an overwhelming majority of employees in the aged care sector are women, creating an incentive for employees to remain in the sector (by increased rates of pay and an enhanced classification structure), has the potential to increase the workforce participation of women. Further, given women still perform the majority of unpaid caring responsibilities to the elderly outside of paid employment, increased confidence in the aged care sector may allow those women providing unpaid care to their elderly relatives, the opportunity to return to the workforce.

### **The need to promote flexible modern work practices and the efficient and productive performance of work**

46. The undervaluation of the work performed in the aged care sector is a significant obstacle to attracting and retaining skilled aged care workers. This presents a material risk to the efficient and productive performance of work in the sector given that it is estimated that in order to maintain adequate levels of care, three times the current numbers of aged care workers will be required to sustain the sector by 2050. This is largely due to the aging population, and the expectation that the number of residents in aged care is likely to increase significantly during that time.
47. The challenges in retaining and attracting staff as a result of disproportionately low wages is well documented. The inability to retain and attract staff is a contributing factor to understaffing, increased workloads and more challenging working conditions within the sector which necessarily has a negative impact on the quality of care provided to residents. As a result, the persistence of the undervaluation of aged care work is likely to dramatically decrease the efficient delivery of a high standard of care within the sector.
48. Further, granting the variation sought, is also likely to provide incentives for aged care workers to increase their qualifications and skills, which would necessarily translate into productivity gains.

### **Equal remuneration for work of equal or comparable value**

49. As demonstrated comprehensively above, unlike other comparable professions, an increase in the qualifications, knowledge and skills required to perform work in the aged care sector, has not led to an increase in wages.
50. The workforce is female dominated. The undervaluation of aged care work has been contributed to significantly by the fact that the work has commonly been considered 'women's work' and is therefore inherently undervalued. Granting the variation sought would address the inherent undervaluation of feminised work and would be an important step in closing the gender pay gap that currently exists and is concentrated in the caring sectors (including in aged care).

#### **Likely impact on business, including on productivity, employment costs and the regulatory burden**

51. The variation sought is likely to address the skill shortage that currently exists in the aged care sector. This skill shortage is forecast to dramatically increase in the coming decade, addressing this issue will increase productivity and benefit business.

#### **The need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards**

52. Granting the variation sought is crucial to ensuring a stable and sustainable modern award system. The variation will simplify progression in the Personal Care Stream, through the inclusion of tenure-based progression and will set wages that accurately reflect the value of the work performed. This is fundamental to the integrity of the modern award system and maintaining its relevance to the labour market. Indeed, maintaining wage rates that are fair and equitable is a key component of an Award system that is simple and easy to understand.

#### **Likely benefit to the sustainability, performance and competitiveness of the national economy**

53. An aged care system which provides good quality and reliable care to the elderly is critical in permitting the working aged population to contribute to the economy, reducing pressures on the health care system and supporting economic activity, competitiveness and growth.
54. The setting of proper and fair rates of remuneration for employees in the aged care sector will foster an efficient, productive and skilled workforce and support an aged care system which is able to contribute to the maintenance of a sustainable, productive and competitive national economy.

#### **Other discretionary reasons**

55. The correlation between adequate remuneration and the provision of a high level of care to elderly Australians is well documented. Increasing the minimum wage rates in the Award is fundamental to attracting and retaining skilled members of the workforce in the aged care sector. Without the ability to retain employees in the sector, the standard of care able to be provided is significantly reduced. Providing a level of care to elderly Australians which affords them dignity in their old age, is an essential feature of a just and prosperous society.

#### **Conclusion**

56. On the basis of the above the variations sought are:
  - a. justified by work value reasons pursuant to s.157(2)(a);
  - b. meet the minimum wages objective pursuant to Part 2-6 of the Act; and
  - c. necessary to be varied as soon as possible in order to achieve the modern awards objective pursuant to s.157(2)(b).

# Harmonised Expert Witness Code of Conduct

## **Application of Code**

1. This Code of Conduct applies to any expert witness engaged or appointed:

(a) to provide an expert's report for use as evidence in proceedings or proposed proceedings;  
or

(b) to give opinion evidence in proceedings or proposed proceedings.

## **General Duties to the Court**

2. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

## **Content of Report**

3. Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:

(a) the name and address of the expert;

(b) an acknowledgment that the expert has read this code and agrees to be bound by it;

(c) the qualifications of the expert to prepare the report;

(d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];

(e) the reasons for and any literature or other materials utilised in support of such opinion;

(f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;

(g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;

(h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;

(i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;

(j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;

(k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and

(l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

#### **Supplementary Report Following Change of Opinion**

4. Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.

5. In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

#### **Duty to Comply with the Court's Directions**

6. If directed to do so by the Court, an expert witness shall:

(a) confer with any other expert witness;

(b) provide the Court with a joint-report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and

(c) abide in a timely way by any direction of the Court.

#### **Conference of Experts**

7. Each expert witness shall:

(a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and

(b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

## 23.02 Court expert's report

- (1) The Court expert must provide the report to the Court within the time fixed by the Court.

Note: A Registrar will provide a copy of the report to any party interested in the question.

- (2) The Court expert's report must:
  - (a) be signed by the Court expert; and
  - (b) contain particulars of the training, study or experience by which the Court expert has acquired specialised knowledge; and
  - (c) identify the questions that the Court expert was asked to address; and
  - (d) set out separately each of the factual findings or assumptions on which the Court expert's opinion is based; and
  - (e) set out separately from the factual findings or assumptions each of the Court expert's opinions; and
  - (f) set out the reasons for those opinions; and
  - (g) contain an acknowledgement that the opinions are based wholly or substantially on the specialised knowledge mentioned in paragraph (b).

## Natasha Prasad

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**From:** Penny Parker  
**Sent:** Thursday, 18 March 2021 4:21 PM  
**To:** Sara Charlesworth  
**Cc:** Alex Grayson; Elsie Jordan  
**Subject:** Your report [MBC-VIC.FID5239939]  
**Attachments:** Federal Court Rules 2011 (Cth), Rule 23.12..pdf; Federal Court of Australia Expert Evidence Practice Note (GPN-EXPT).pdf

Dear Professor Charlesworth

Our correspondence to you of 11 February 2021 contained a reference to Federal Court Rule 23.02. This reference should have been to Federal Court Rule 23.13.

Accordingly, please find the following documents attached;

1. A copy of Federal Court Rule 23.13; and
2. A copy of the Federal Court Practice Note on Expert Evidence (Practice Note).

### (Documents)

Please review both Documents carefully when preparing your report.

Please ensure that you:

- 1) comply with the Practice Note when preparing your report; and
- 2) include an acknowledgement at the beginning of your report that you have read, understood and complied with the Practice Note.

Kind regards

**Penny Parker** | Lawyer

**E:** pparker@mauriceblackburn.com.au | **T:** (02) 8267 0940 | **F:** (02) 9261 3318

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### Coronavirus Update

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



# **Federal Court Rules 2011**

**Select Legislative Instrument No. 134, 2011**

made under the

*Federal Court of Australia Act 1976*

## **Compilation No. 7**

**Compilation date:** 2 May 2019

**Includes amendments up to:** F2019L00665

**Registered:** 21 May 2019

Prepared by the Office of Parliamentary Counsel, Canberra



Rule 23.11

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## Division 23.2—Parties' expert witnesses and expert reports

### 23.11 Calling expert evidence at trial

A party may call an expert to give expert evidence at a trial only if the party has:

- (a) delivered an expert report that complies with rule 23.13 to all other parties; and
- (b) otherwise complied with this Division.

Note: *Expert* and *expert report* are defined in the Dictionary.

### 23.12 Provision of guidelines to an expert

If a party intends to retain an expert to give an expert report or to give expert evidence, the party must first give the expert any practice note dealing with guidelines for expert witnesses in proceedings in the Court (the *Practice Note*).

Note: A copy of any practice notes may be obtained from the District Registry or downloaded from the Court's website at <http://www.fedcourt.gov.au>.

### 23.13 Contents of an expert report

- (1) An expert report must:
  - (a) be signed by the expert who prepared the report; and
  - (b) contain an acknowledgement at the beginning of the report that the expert has read, understood and complied with the Practice Note; and
  - (c) contain particulars of the training, study or experience by which the expert has acquired specialised knowledge; and
  - (d) identify the questions that the expert was asked to address; and
  - (e) set out separately each of the factual findings or assumptions on which the expert's opinion is based; and
  - (f) set out separately from the factual findings or assumptions each of the expert's opinions; and
  - (g) set out the reasons for each of the expert's opinions; and
  - (ga) contain an acknowledgement that the expert's opinions are based wholly or substantially on the specialised knowledge mentioned in paragraph (c); and
  - (h) comply with the Practice Note.
- (2) Any subsequent expert report of the same expert on the same question need not contain the information in paragraphs (1)(b) and (c).

### 23.14 Application for expert report

A party may apply to the Court for an order that another party provide copies of that other party's expert report.



## EXPERT EVIDENCE PRACTICE NOTE (GPN-EXPT)

### General Practice Note

#### 1. INTRODUCTION

- 1.1 This practice note, including the *Harmonised Expert Witness Code of Conduct* (“**Code**”) (see Annexure A) and the *Concurrent Expert Evidence Guidelines* (“**Concurrent Evidence Guidelines**”) (see Annexure B), applies to any proceeding involving the use of expert evidence and must be read together with:
- (a) the Central Practice Note (CPN-1), which sets out the fundamental principles concerning the National Court Framework (“**NCF**”) of the Federal Court and key principles of case management procedure;
  - (b) the Federal Court of Australia Act 1976 (Cth) (“**Federal Court Act**”);
  - (c) the *Evidence Act 1995* (Cth) (“**Evidence Act**”), including Part 3.3 of the Evidence Act;
  - (d) Part 23 of the *Federal Court Rules 2011* (Cth) (“**Federal Court Rules**”); and
  - (e) where applicable, the Survey Evidence Practice Note (GPN-SURV).
- 1.2 This practice note takes effect from the date it is issued and, to the extent practicable, applies to proceedings whether filed before, or after, the date of issuing.

#### 2. APPROACH TO EXPERT EVIDENCE

- 2.1 An expert witness may be retained to give opinion evidence in the proceeding, or, in certain circumstances, to express an opinion that may be relied upon in alternative dispute resolution procedures such as mediation or a conference of experts. In some circumstances an expert may be appointed as an independent adviser to the Court.
- 2.2 The purpose of the use of expert evidence in proceedings, often in relation to complex subject matter, is for the Court to receive the benefit of the objective and impartial assessment of an issue from a witness with specialised knowledge (based on training, study or experience - see generally s 79 of the Evidence Act).
- 2.3 However, the use or admissibility of expert evidence remains subject to the overriding requirements that:
- (a) to be admissible in a proceeding, any such evidence must be relevant (s 56 of the Evidence Act); and
  - (b) even if relevant, any such evidence, may be refused to be admitted by the Court if its probative value is outweighed by other considerations such as the evidence

being unfairly prejudicial, misleading or will result in an undue waste of time (s 135 of the Evidence Act).

- 2.4 An expert witness' opinion evidence may have little or no value unless the assumptions adopted by the expert (ie. the facts or grounds relied upon) and his or her reasoning are expressly stated in any written report or oral evidence given.
- 2.5 The Court will ensure that, in the interests of justice, parties are given a reasonable opportunity to adduce and test relevant expert opinion evidence. However, the Court expects parties and any legal representatives acting on their behalf, when dealing with expert witnesses and expert evidence, to at all times comply with their duties associated with the overarching purpose in the Federal Court Act (see ss 37M and 37N).

### **3. INTERACTION WITH EXPERT WITNESSES**

- 3.1 Parties and their legal representatives should never view an expert witness retained (or partly retained) by them as that party's advocate or "hired gun". Equally, they should never attempt to pressure or influence an expert into conforming his or her views with the party's interests.
- 3.2 A party or legal representative should be cautious not to have inappropriate communications when retaining or instructing an independent expert, or assisting an independent expert in the preparation of his or her evidence. However, it is important to note that there is no principle of law or practice and there is nothing in this practice note that obliges a party to embark on the costly task of engaging a "consulting expert" in order to avoid "contamination" of the expert who will give evidence. Indeed the Court would generally discourage such costly duplication.
- 3.3 Any witness retained by a party for the purpose of preparing a report or giving evidence in a proceeding as to an opinion held by the witness that is wholly or substantially based in the specialised knowledge of the witness<sup>1</sup> should, at the earliest opportunity, be provided with:
  - (a) a copy of this practice note, including the Code (see Annexure A); and
  - (b) all relevant information (whether helpful or harmful to that party's case) so as to enable the expert to prepare a report of a truly independent nature.
- 3.4 Any questions or assumptions provided to an expert should be provided in an unbiased manner and in such a way that the expert is not confined to addressing selective, irrelevant or immaterial issues.

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<sup>1</sup> Such a witness includes a "Court expert" as defined in r 23.01 of the Federal Court Rules. For the definition of "expert", "expert evidence" and "expert report" see the Dictionary, in Schedule 1 of the Federal Court Rules.

#### **4. ROLE AND DUTIES OF THE EXPERT WITNESS**

- 4.1 The role of the expert witness is to provide relevant and impartial evidence in his or her area of expertise. An expert should never mislead the Court or become an advocate for the cause of the party that has retained the expert.
- 4.2 It should be emphasised that there is nothing inherently wrong with experts disagreeing or failing to reach the same conclusion. The Court will, with the assistance of the evidence of the experts, reach its own conclusion.
- 4.3 However, experts should willingly be prepared to change their opinion or make concessions when it is necessary or appropriate to do so, even if doing so would be contrary to any previously held or expressed view of that expert.

##### ***Harmonised Expert Witness Code of Conduct***

- 4.4 Every expert witness giving evidence in this Court must read the *Harmonised Expert Witness Code of Conduct* (attached in Annexure A) and agree to be bound by it.
- 4.5 The Code is not intended to address all aspects of an expert witness' duties, but is intended to facilitate the admission of opinion evidence, and to assist experts to understand in general terms what the Court expects of them. Additionally, it is expected that compliance with the Code will assist individual expert witnesses to avoid criticism (rightly or wrongly) that they lack objectivity or are partisan.

#### **5. CONTENTS OF AN EXPERT'S REPORT AND RELATED MATERIAL**

- 5.1 The contents of an expert's report must conform with the requirements set out in the Code (including clauses 3 to 5 of the Code).
- 5.2 In addition, the contents of such a report must also comply with r 23.13 of the Federal Court Rules. Given that the requirements of that rule significantly overlap with the requirements in the Code, an expert, unless otherwise directed by the Court, will be taken to have complied with the requirements of r 23.13 if that expert has complied with the requirements in the Code and has complied with the additional following requirements. The expert shall:
  - (a) acknowledge in the report that:
    - (i) the expert has read and complied with this practice note and agrees to be bound by it; and
    - (ii) the expert's opinions are based wholly or substantially on specialised knowledge arising from the expert's training, study or experience;
  - (b) identify in the report the questions that the expert was asked to address;
  - (c) sign the report and attach or exhibit to it copies of:
    - (i) documents that record any instructions given to the expert; and

- (ii) documents and other materials that the expert has been instructed to consider.

5.3 Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the other parties at the same time as the expert's report.

## 6. CASE MANAGEMENT CONSIDERATIONS

6.1 Parties intending to rely on expert evidence at trial are expected to consider between them and inform the Court at the earliest opportunity of their views on the following:

- (a) whether a party should adduce evidence from more than one expert in any single discipline;
- (b) whether a common expert is appropriate for all or any part of the evidence;
- (c) the nature and extent of expert reports, including any in reply;
- (d) the identity of each expert witness that a party intends to call, their area(s) of expertise and availability during the proposed hearing;
- (e) the issues that it is proposed each expert will address;
- (f) the arrangements for a conference of experts to prepare a joint-report (see Part 7 of this practice note);
- (g) whether the evidence is to be given concurrently and, if so, how (see Part 8 of this practice note); and
- (h) whether any of the evidence in chief can be given orally.

6.2 It will often be desirable, before any expert is retained, for the parties to attempt to agree on the question or questions proposed to be the subject of expert evidence as well as the relevant facts and assumptions. The Court may make orders to that effect where it considers it appropriate to do so.

## 7. CONFERENCE OF EXPERTS AND JOINT-REPORT

7.1 Parties, their legal representatives and experts should be familiar with aspects of the Code relating to conferences of experts and joint-reports (see clauses 6 and 7 of the Code attached in Annexure A).

7.2 In order to facilitate the proper understanding of issues arising in expert evidence and to manage expert evidence in accordance with the overarching purpose, the Court may require experts who are to give evidence or who have produced reports to meet for the purpose of identifying and addressing the issues not agreed between them with a view to reaching agreement where this is possible ("**conference of experts**"). In an appropriate case, the Court may appoint a registrar of the Court or some other suitably qualified person ("**Conference Facilitator**") to act as a facilitator at the conference of experts.

- 7.3 It is expected that where expert evidence may be relied on in any proceeding, at the earliest opportunity, parties will discuss and then inform the Court whether a conference of experts and/or a joint-report by the experts may be desirable to assist with or simplify the giving of expert evidence in the proceeding. The parties should discuss the necessary arrangements for any conference and/or joint-report. The arrangements discussed between the parties should address:
- (a) who should prepare any joint-report;
  - (b) whether a list of issues is needed to assist the experts in the conference and, if so, whether the Court, the parties or the experts should assist in preparing such a list;
  - (c) the agenda for the conference of experts; and
  - (d) arrangements for the provision, to the parties and the Court, of any joint-report or any other report as to the outcomes of the conference (“**conference report**”).

***Conference of Experts***

- 7.4 The purpose of the conference of experts is for the experts to have a comprehensive discussion of issues relating to their field of expertise, with a view to identifying matters and issues in a proceeding about which the experts agree, partly agree or disagree and why. For this reason the conference is attended only by the experts and any Conference Facilitator. Unless the Court orders otherwise, the parties' lawyers will not attend the conference but will be provided with a copy of any conference report.
- 7.5 The Court may order that a conference of experts occur in a variety of circumstances, depending on the views of the judge and the parties and the needs of the case, including:
- (a) while a case is in mediation. When this occurs the Court may also order that the outcome of the conference or any document disclosing or summarising the experts' opinions be confidential to the parties while the mediation is occurring;
  - (b) before the experts have reached a final opinion on a relevant question or the facts involved in a case. When this occurs the Court may order that the parties exchange draft expert reports and that a conference report be prepared for the use of the experts in finalising their reports;
  - (c) after the experts' reports have been provided to the Court but before the hearing of the experts' evidence. When this occurs the Court may also order that a conference report be prepared (jointly or otherwise) to ensure the efficient hearing of the experts' evidence.
- 7.6 Subject to any other order or direction of the Court, the parties and their lawyers must not involve themselves in the conference of experts process. In particular, they must not seek to encourage an expert not to agree with another expert or otherwise seek to influence the outcome of the conference of experts. The experts should raise any queries they may have in relation to the process with the Conference Facilitator (if one has been appointed) or in

accordance with a protocol agreed between the lawyers prior to the conference of experts taking place (if no Conference Facilitator has been appointed).

- 7.7 Any list of issues prepared for the consideration of the experts as part of the conference of experts process should be prepared using non-tendentious language.
- 7.8 The timing and location of the conference of experts will be decided by the judge or a registrar who will take into account the location and availability of the experts and the Court's case management timetable. The conference may take place at the Court and will usually be conducted in-person. However, if not considered a hindrance to the process, the conference may also be conducted with the assistance of visual or audio technology (such as via the internet, video link and/or by telephone).
- 7.9 Experts should prepare for a conference of experts by ensuring that they are familiar with all of the material upon which they base their opinions. Where expert reports in draft or final form have been exchanged prior to the conference, experts should attend the conference familiar with the reports of the other experts. Prior to the conference, experts should also consider where they believe the differences of opinion lie between them and what processes and discussions may assist to identify and refine those areas of difference.

#### ***Joint-report***

- 7.10 At the conclusion of the conference of experts, unless the Court considers it unnecessary to do so, it is expected that the experts will have narrowed the issues in respect of which they agree, partly agree or disagree in a joint-report. The joint-report should be clear, plain and concise and should summarise the views of the experts on the identified issues, including a succinct explanation for any differences of opinion, and otherwise be structured in the manner requested by the judge or registrar.
- 7.11 In some cases (and most particularly in some native title cases), depending on the nature, volume and complexity of the expert evidence a judge may direct a registrar to draft part, or all, of a conference report. If so, the registrar will usually provide the draft conference report to the relevant experts and seek their confirmation that the conference report accurately reflects the opinions of the experts expressed at the conference. Once that confirmation has been received the registrar will finalise the conference report and provide it to the intended recipient(s).

## **8. CONCURRENT EXPERT EVIDENCE**

- 8.1 The Court may determine that it is appropriate, depending on the nature of the expert evidence and the proceeding generally, for experts to give some or all of their evidence concurrently at the final (or other) hearing.
- 8.2 Parties should familiarise themselves with the *Concurrent Expert Evidence Guidelines* (attached in Annexure B). The Concurrent Evidence Guidelines are not intended to be exhaustive but indicate the circumstances when the Court might consider it appropriate for

concurrent expert evidence to take place, outline how that process may be undertaken, and assist experts to understand in general terms what the Court expects of them.

- 8.3 If an order is made for concurrent expert evidence to be given at a hearing, any expert to give such evidence should be provided with the Concurrent Evidence Guidelines well in advance of the hearing and should be familiar with those guidelines before giving evidence.

## **9. FURTHER PRACTICE INFORMATION AND RESOURCES**

- 9.1 Further information regarding Expert Evidence and Expert Witnesses is available on the Court's website.
- 9.2 Further information to assist litigants, including a range of helpful guides, is also available on the Court's website. This information may be particularly helpful for litigants who are representing themselves.

J L B ALLSOP  
Chief Justice  
25 October 2016



## Annexure A

# HARMONISED EXPERT WITNESS CODE OF CONDUCT<sup>2</sup>

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### APPLICATION OF CODE

1. This Code of Conduct applies to any expert witness engaged or appointed:
  - (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or
  - (b) to give opinion evidence in proceedings or proposed proceedings.

### GENERAL DUTIES TO THE COURT

2. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

### CONTENT OF REPORT

3. Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:
  - (a) the name and address of the expert;
  - (b) an acknowledgment that the expert has read this code and agrees to be bound by it;
  - (c) the qualifications of the expert to prepare the report;
  - (d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];
  - (e) the reasons for and any literature or other materials utilised in support of such opinion;
  - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
  - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
  - (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;
  - (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the

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<sup>2</sup> Approved by the Council of Chief Justices' Rules Harmonisation Committee

knowledge of the expert, been withheld from the Court;

- (j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and
- (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

#### **SUPPLEMENTARY REPORT FOLLOWING CHANGE OF OPINION**

- 4. Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.
- 5. In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

#### **DUTY TO COMPLY WITH THE COURT'S DIRECTIONS**

- 6. If directed to do so by the Court, an expert witness shall:
  - (a) confer with any other expert witness;
  - (b) provide the Court with a joint-report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and
  - (c) abide in a timely way by any direction of the Court.

#### **CONFERENCE OF EXPERTS**

- 7. Each expert witness shall:
  - (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and
  - (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

## ANNEXURE B

# CONCURRENT EXPERT EVIDENCE GUIDELINES

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### APPLICATION OF THE COURT'S GUIDELINES

1. The Court's Concurrent Expert Evidence Guidelines ("**Concurrent Evidence Guidelines**") are intended to inform parties, practitioners and experts of the Court's general approach to concurrent expert evidence, the circumstances in which the Court might consider expert witnesses giving evidence concurrently and, if so, the procedures by which their evidence may be taken.

### OBJECTIVES OF CONCURRENT EXPERT EVIDENCE TECHNIQUE

2. The use of concurrent evidence for the giving of expert evidence at hearings as a case management technique<sup>3</sup> will be utilised by the Court in appropriate circumstances (see r 23.15 of the *Federal Court Rules 2011* (Cth)). Not all cases will suit the process. For instance, in some patent cases, where the entire case revolves around conflicts within fields of expertise, concurrent evidence may not assist a judge. However, patent cases should not be excluded from concurrent expert evidence processes.
3. In many cases the use of concurrent expert evidence is a technique that can reduce the partisan or confrontational nature of conventional hearing processes and minimises the risk that experts become "opposing experts" rather than independent experts assisting the Court. It can elicit more precise and accurate expert evidence with greater input and assistance from the experts themselves.
4. When properly and flexibly applied, with efficiency and discipline during the hearing process, the technique may also allow the experts to more effectively focus on the critical points of disagreement between them, identify or resolve those issues more quickly, and narrow the issues in dispute. This can also allow for the key evidence to be given at the same time (rather than being spread across many days of hearing); permit the judge to assess an expert more readily, whilst allowing each party a genuine opportunity to put and test expert evidence. This can reduce the chance of the experts, lawyers and the judge misunderstanding the opinions being expressed by the experts.
5. It is essential that such a process has the full cooperation and support of all of the individuals involved, including the experts and counsel involved in the questioning process. Without that cooperation and support the process may fail in its objectives and even hinder the case management process.

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<sup>3</sup> Also known as the "hot tub" or as "expert panels".

## **CASE MANAGEMENT**

6. Parties should expect that, the Court will give careful consideration to whether concurrent evidence is appropriate in circumstances where there is more than one expert witness having the same expertise who is to give evidence on the same or related topics. Whether experts should give evidence concurrently is a matter for the Court, and will depend on the circumstances of each individual case, including the character of the proceeding, the nature of the expert evidence, and the views of the parties.
7. Although this consideration may take place at any time, including the commencement of the hearing, if not raised earlier, parties should raise the issue of concurrent evidence at the first appropriate case management hearing, and no later than any pre-trial case management hearing, so that orders can be made in advance, if necessary. To that end, prior to the hearing at which expert evidence may be given concurrently, parties and their lawyers should confer and give general consideration as to:
  - (a) the agenda;
  - (b) the order and manner in which questions will be asked; and
  - (c) whether cross-examination will take place within the context of the concurrent evidence or after its conclusion.
8. At the same time, and before any hearing date is fixed, the identity of all experts proposed to be called and their areas of expertise is to be notified to the Court by all parties.
9. The lack of any concurrent evidence orders does not mean that the Court will not consider using concurrent evidence without prior notice to the parties, if appropriate.

## **CONFERENCE OF EXPERTS & JOINT-REPORT OR LIST OF ISSUES**

10. The process of giving concurrent evidence at hearings may be assisted by the preparation of a joint-report or list of issues prepared as part of a conference of experts.
11. Parties should expect that, where concurrent evidence is appropriate, the Court may make orders requiring a conference of experts to take place or for documents such as a joint-report to be prepared to facilitate the concurrent expert evidence process at a hearing (see Part 7 of the Expert Evidence Practice Note).

## **PROCEDURE AT HEARING**

12. Concurrent expert evidence may be taken at any convenient time during the hearing, although it will often occur at the conclusion of both parties' lay evidence.
13. At the hearing itself, the way in which concurrent expert evidence is taken must be applied flexibly and having regard to the characteristics of the case and the nature of the evidence to be given.
14. Without intending to be prescriptive of the procedure, parties should expect that, when evidence is given by experts in concurrent session:

- (a) the judge will explain to the experts the procedure that will be followed and that the nature of the process may be different to their previous experiences of giving expert evidence;
  - (b) the experts will be grouped and called to give evidence together in their respective fields of expertise;
  - (c) the experts will take the oath or affirmation together, as appropriate;
  - (d) the experts will sit together with convenient access to their materials for their ease of reference, either in the witness box or in some other location in the courtroom, including (if necessary) at the bar table;
  - (e) each expert may be given the opportunity to provide a summary overview of their current opinions and explain what they consider to be the principal issues of disagreement between the experts, as they see them, in their own words;
  - (f) the judge will guide the process by which evidence is given, including, where appropriate:
    - (i) using any joint-report or list of issues as a guide for all the experts to be asked questions by the judge and counsel, about each issue on an issue-by-issue basis;
    - (ii) ensuring that each expert is given an adequate opportunity to deal with each issue and the exposition given by other experts including, where considered appropriate, each expert asking questions of other experts or supplementing the evidence given by other experts;
    - (iii) inviting legal representatives to identify the topics upon which they will cross-examine;
    - (iv) ensuring that legal representatives have an adequate opportunity to ask all experts questions about each issue. Legal representatives may also seek responses or contributions from one or more experts in response to the evidence given by a different expert; and
    - (v) allowing the experts an opportunity to summarise their views at the end of the process where opinions may have been changed or clarifications are needed.
15. The fact that the experts may have been provided with a list of issues for consideration does not confine the scope of any cross-examination of any expert. The process of cross-examination remains subject to the overall control of the judge.
16. The concurrent session should allow for a sensible and orderly series of exchanges between expert and expert, and between expert and lawyer. Where appropriate, the judge may allow for more traditional cross-examination to be pursued by a legal representative on a particular issue exclusively with one expert. Where that occurs, other experts may be asked to comment on the evidence given.
17. Where any issue involves only one expert, the party wishing to ask questions about that issue should let the judge know in advance so that consideration can be given to whether

arrangements should be made for that issue to be dealt with after the completion of the concurrent session. Otherwise, as far as practicable, questions (including in the form of cross-examination) will usually be dealt with in the concurrent session.

18. Throughout the concurrent evidence process the judge will ensure that the process is fair and effective (for the parties and the experts), balanced (including not permitting one expert to overwhelm or overshadow any other expert), and does not become a protracted or inefficient process.

**Curriculum Vitae March 2010-2021: Sara Charlesworth**

**Academic qualifications**

2001	PhD (Legal Studies)	La Trobe University
1994	Grad Dip Government Law (Law)	University of Melbourne
1976	BA (Hons) (Political Science)	University of Melbourne
1976	Grad Dip Social Studies (Social Work)	University of Melbourne

**Employment 2010-2021**

2019 -	RMIT Distinguished Professor	School of Management, RMIT University
2019-	Director, Centre of People Organisation & Work	College of Business & Law, RMIT University
2017 -	Deputy Head of School (R&I)	School of Management, RMIT University
2014 -	Professor	School of Management, RMIT University
2011-2014	Principal Research Fellow	Centre for Work+ Life, University of SA
2010-2011	Principal Research Fellow	Centre for Applied Social Research, RMIT University

**Publications 2010-2021**

**Refereed Journal Articles**

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## Research Funding 2010-2021

### Category 1

<b>Year of award</b>	<b>Grant period</b>	<b>Title of grant &amp; CI(s)</b>	<b>Role</b>	<b>Grant program</b>	<b>Total Funding</b>
2018	7 years	<i>Imagining Age-Friendly 'Communities' within Communities: International Promising Practices</i> , led by Prof Tamara Daly (York) (Canada, Australia, Denmark) & 5 co-applicants inc Sara Charlesworth	Co- applicant	Canadian SSHRC Partnership grant	\$C2,750,300
2017	7 years	<i>Sustainable Care: Connection People&amp;Systems</i> 22scholarsin 7 universities, led by Prof Sue Yeandle (Sheffield) inc Sara Charlesworth	Partner	UK Collaborative ESRC Large Grant	£2,500,200
2017	3 years	<i>JobQuality&amp;carequalityinaged care: comparative perspectives</i> led by Sara Charlesworth with Prof Donna Baines (Sydney) A/Prof Deb King (Flinders), Prof Ian Cunningham (Strathclyde), Prof Tamara Daly (York)	Lead CI	ARC Discovery grant	\$354,500
2016	3 years	<i>Markets, Migrations and Care in Australia</i> led by Prof Deb Brennan (UNSW), <b>Sara Charlesworth</b> , Dr Elizabeth Hill (Sydney), Prof Ito Peng (Toronto)	CI	ARC Discovery grant	\$369, 110
2015	3 years	<i>Changes in the nonprofitsocial services in international, comparative perspective</i> led by Prof Donna Baines (McMaster), <b>Sara Charlesworth</b> , Prof Ian Cunningham (Strathclyde) & Prof Laila Patel (Johannesburg)	Collaborator	Canadian SSHRC Insight grant	\$C237,865
2013	3 years	Work, care, retirement and health: Aging agenders led by) Prof Barbara Pocock, Prof Carol Kulik, <b>Sara Charlesworth</b> & Prof Lyndall Strazdins with IPs Carla Harris (WGEA) & Cate Wood (Women in Super)	CI	ARC Linkage grant	\$239,956
2013	6 years	<i>Closing the Enforcement Gap: Improving Employment Standards ProtectionsforPeopleinPrecarious Jobs</i> led by Prof Leah Vosko (York) with 12 Co-applicants & 10 International Collaborators inc <b>Sara Charlesworth</b> .	International Collaborator	Canadian SSHRC Partnership grant	\$C2,001,351
2013	6 years	<i>Gender, Migration and the Work of Care: Comparative Perspectives</i> led by Prof Ito Peng (Toronto) & 8 Co-leads inc <b>Sara Charlesworth</b> & 19 Collaborators	Co-lead	Canadian SSHRC Partnership grant	\$C2,001,351
2012	4 years	<i>ProspectsforDecentWork&amp;Gender EqualityinFrontlineCare Work</i> <b>Sara Charlesworth</b>	Future Fellow	ARC Future Fellowships	\$720,452
2011	5 years	<i>From margins to mainstream: gender equality and employment regulation</i> <b>Sara Charlesworth</b>	Sole CI	ARC Discovery grant	\$485,880

2010	3 years	<i>Sexual Harassment in Australia Causes Outcomes and Prevention</i> led by Prof Paula McDonald (QUT) with <b>Sara Charlesworth</b>	CI	ARC Discovery grant	\$396,000
2010	3 years	<i>Children of the Recession: The social consequences of an economic downturn</i> led by Prof Michael Bittman (UNE), with CIs inc <b>Sara Charlesworth</b>	CI	ARC Linkage Learned Academies Special Projects	\$300,000
2010	1 year	<i>Convergence and Particularity: International Comparisons of the Nonprofit Social Services</i> led by Prof Donna Baines (McMaster) with <b>Sara Charlesworth</b> & Prof Ian Cunningham (Strathclyde)	International collaborator	Canadian SSHRC International Opportunity fund	C63,000

## Category 2

Year of award	Grant period	Title of grant & CI(s)	Role	Funder	Total Funding
2020	6 months	<i>Scoping Study on Gender-Based violence</i> <b>Sara Charlesworth</b> & Fiona Macdonald	CI	Worksafe Victoria	\$19,800
2018	6 months	<i>Policy Brief: Gender-based violence in the World of Work: Home-care workers and Day Labourers</i> led by Dr Lydia Hayes (Cardiff); <b>Sara Charlesworth</b> ; Prof Derick Blaauw (North-West) and Prof Caterina Schenck (Western Cape)	CI	International Labour Organization	US\$3,500
2017	1 year	<i>Scoping review on informal care, social protection and gender: policy implications for countries in the WHO Western Pacific Region</i> , led by Dr Fiona Macdonald with <b>Sara Charlesworth</b>	CI	World Health Organization	US\$20,000
2013	3 years	<i>Quality Care and Quality Jobs: Improving work practices to deliver quality aged care jobs and aged care services for older Australians</i> . CIs: <b>Sara Charlesworth</b> & A/Prof Debra King (Flinders)	Lead CI	Dept of Health & Aging: Better Health Care Connections grants	\$1,133,000
2012	1 year	<i>Working together well: best practice case studies in work health and safety</i> Prof Barbara Pocock & <b>Sara Charlesworth</b>		SafeworkSA	\$83,096
2011	1 year	<i>Work/life Outcomes in SME Construction Companies</i> led by <b>Sara Charlesworth</b> with Prof Helen Lingard (RMIT)	Lead CI	Workforce Victoria	\$15,000
2010	6 months	<i>The Impact of the Global Economic Downturn on Women</i> led by Prof Marian Baird (Syd) with <b>Sara Charlesworth</b> , Prof Rae Cooper (Syd) & Alex Heron (Syd)		Federal Office of Women's Policy	\$38,500

### Category 3

Year of award	Grant period	Title of grant & CI(s)	Role	Funder	Total Funding
2016	N/A	<i>Gender, Migration and the Provision of Social Care</i> Australia Academy of the Social Sciences in Australia (ASSA) Expert Workshop, UNSW, March 21-22. Prof Deb Brennan (UNSW), <b>Sara Charlesworth</b> & Dr Liz Hill (Sydney)	Co-chair	Academy of Social Sciences in Australia	\$8,500
2015	6 months	<i>AWALI 2014 Unsocial Hours and Penalty Rates: Provision of Expert Evidence</i> in Fair Work Australia Review of the terms of various modern awards led by <b>Sara Charlesworth</b> with Dr Fiona Macdonald	Lead Academic expert	Shop Distributive & Allied Employees Association	\$58,000
2015	6 months	<i>Workforce Demographic Study</i> led by Prof Helen Lingard (RMIT) with <b>Sara Charlesworth</b> , Dr Michelle Turner (RMIT)	CI	Lend Lease Pty Ltd	\$84,417
2013	N/A	<i>AI RAANZ Symposium for 5 Sep 2013: Consumer-directed funding models Will increased choice deliver quality: jobs and quality care?</i> <b>Sara Charlesworth</b> & A/Prof Deb King (Flinders)	Co-chair	Association of Industrial Relations Academics of Australia and New Zealand	\$2000
2012	6 months	<i>Ratification and Implementation of ILO 156: Australia Country Study</i> <b>Sara Charlesworth</b>	Sole CI	International Labour Organization	US\$6000
2012	4 months	Provision of Expert Evidence in Fair Work Australia Review of the terms of various modern awards pursuant to Item 6 of Schedule 5 of the <i>Fair Work Act (Transitional Provisions and Consequential Amendments) 2009</i> <b>Sara Charlesworth</b>	Academic expert	Shop Distributive & Allied Employees Association	\$10,000
2012	N/A	<i>Work, Care and Family in Australia: linking new research to policy effect in Australia</i> , Australia Academy of the Social Sciences (ASSA) Expert Workshop, University of South Australia, November 21-22, 2012. Prof Barbara Pocock, <b>Sara Charlesworth</b> & Dr Liz Hill (Sydney)	Co-chair	Academy of Social Sciences in Australia	\$7000

2010	2 months	Australia-The Netherlands Exchange Program Travel Grant <b>Sara Charlesworth</b>	Sole CI	Academy of Social Sciences in Australia + Royal Netherlands Academy of Arts & Sciences	\$6000
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### Formal External Leadership & Engagement 2010-2021

- 2018-19: Member, Organising Committee of 33rd Annual Conference of Association of Industrial Relations Academics in Australia and New Zealand (AIRAANZ)
- 2018: Co-chair, Work+Family Policy Roundtable Annual Workshop, RMIT University, 21 September.  
Advisor to the Australian Workers' Delegation on the Standard-Setting Committee on Violence & Harassment in the World of Work, 107th Session of the International Labour Conference, International Labour Organization, Geneva, 28 May - 8 June.  
Academic advisor to Australian Human Rights Commission's 2018 Sexual Harassment Prevalence Survey.
- 2017 - Member, Victorian Government Equal Workplaces Advisory Council.
- 2017 -2020 Member, Victoria Police VEOHRC Review Academic Governance Board.
- 2017-2019 Invited member of ESRC and ILO-funded Network on Unacceptable Forms of Work, hosted at Durham University.
- 2016 -2020 Member, Steering Group of the Migrant Workers Rights Campaign
- 2016: Co-editor, Special issue 'Care work in the context of constraint' Journal of Industrial Relations 58(4)  
Co-chair, Australian Academy of Social Science Gender Migration & the Work of Care Workshop, UNSW March 7-8.
- 2015: Co-chair, Work+Family Policy Roundtable Annual Workshop, University of Sydney, 6 November.  
Co Chair, Gender Migration & Work of Care PhD & ECR Workshop University of New South Wales, 10- 11 September.
- 2015 - Member, Data Consultation Group of the Workplace Gender Equality Agency  
Member, Editorial Board of Journal of industrial Relations
- 2014: Co chair, Work+Family Policy Roundtable Symposium on Childcare University of Sydney, 25 September
- 2013: Co-chair, AIRAANZ-sponsored Workshop Consumer-directed funding models: Will increased choice deliver quality jobs and quality care? Adelaide, 5 September.
- 2012 - Co-convenor, Work + Family Policy Roundtable  
Member, Work Family Research Network (WFRN), USA
- 2011-12: Academic member, ACTU Independent Inquiry into Insecure Work.  
Co-chair, Academic & Industry Workshop Home Care in a Changing Terrain, 29 August.  
Co-editor, Special issue on Work family and care policy in Australia, Australian Bulletin of Labour 38(3).
- 2011-12: Member, Prevention Project (Sexual Harassment in Hospitality) Committee, South Australian Department of Health.
- 2011: Co-convenor Expert Workshop: Employment Regulation & Work–Life–Community: Taking a Place/Space Perspective, RMIT University, 24 March.
- 2011 - Member, UK Family & Work Network
- 2010-17 Member, Discrimination Law Experts Roundtable.  
ARC Peer Reviewer, Excellence in Research Australia.