

IN THE FAIR WORK COMMISSION (FWC) Matter No: AM2021/65
Application to vary the Social, Community, Home Care and Disability Services
Industry Award

SUPPLEMENTARY STATEMENT OF SARA CATHERINE MARY CHARLESWORTH

I, Dr Sara Catherine Mary Charlesworth, Professor of Gender, Work & Regulation at RMIT University in the State of Victoria, state as follows:

1. I have prepared a supplementary report dated 22 October 2021 which I prepared at the request of the Applicant for the purposes of these proceedings (**Supplementary Report**).
2. A copy of the Supplementary Report is annexed to this statement and marked **SC-5**.
3. The Supplementary Report expands on a report I previously provided in relation to Matter No: AM2020/99 (application by the HSU and others to vary the Aged Care Award 2010), which report was annexed to my statement in those proceedings dated 31 March 2021.
4. A copy of the letter of instruction issued to me by the Applicant in relation to the Supplementary Report is annexed to this statement and marked **SC-6**.
5. A copy of my Curriculum Vitae is annexed to this statement and marked **SC-7**. My Curriculum Vitae contains a summary of my training, qualifications and experience which provide me with the specialised knowledge to prepare the Supplementary Report annexed to this statement.
6. The opinions I have expressed in the Supplementary 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 Supplementary Report.
9. I have read the Expert Witness Code of Conduct and Agree to be bound by its terms.


Sara Charlesworth
Date: 22 October 2021

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 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 ones 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 from an international perspective.
4. I have a 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 (HCWs) who provide direct care services to aged residents and clients in residential and private home settings. I undertook the first Australian analysis of pay equity in home care work in Victorian local government (Charlesworth, 1993) for the federal government's former Pay Equity Unit. This research study was followed by analyses of the differential over-award payments paid to home care workers and other workers in local government (Charlesworth, 1994) and the impact of enterprise bargaining on women, including in care work (Charlesworth, 1996). Both studies were undertaken for the Australian Human Rights Commission. Over the last decade, I have written on:
 - a. working time conditions for aged care workers in the two main aged care modern awards (Charlesworth & Heron 2012);
 - b. the ways in which funding regimes, employment regulation and gender norms shape employment conditions in aged care work in Australia (Charlesworth, 2012; Charlesworth, 2017) Baines, Dulhunty & Charlesworth 2021);
 - c. enforcement of minimum employment standards in aged care (Charlesworth & Howe, 2018); and on
 - d. differences in working conditions of migrant and Australian-born aged care workers (Charlesworth & Isherwood 2020); and
 - e. the specific conditions of home care workers (Charlesworth, 2017; Charlesworth & Malone, 2017; Macdonald & Charlesworth, 2021).
5. In collaboration with other colleagues, I continue to write on the employment conditions of home care workers as well as equal pay and the conditions of low-paid women workers more generally. Of direct relevance to the current claim are several research projects I have undertaken focused on frontline aged care workers. These are set out in my CV, SC-3.

Basis of my report

6. In my report I have responded in substance to key questions raised in the letter of instructions to me from the National Office of the Health Services Union, dated 27 July 2021 (SC-2). I have focused on direct care or frontline home care workers rather than other community aged care occupations covered under the Award including supervisors.
7. I have indicated the evidence on which I base my 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 earlier report for the related Fair Work Commission (FWC) Matter No AM2020/99 Application to vary or revoke the Aged Care Award 2010 dated 31 March 2021. I refer to this Report where relevant. I also made an invited statement to the Royal Commission into Aged Care Quality & Safety, and gave expert evidence before the Commission in October 2019. I co-authored two other submissions to the Royal Commission. I made a detailed submission on the conditions of aged care workers to the Senate Inquiry into the Future of Australia's Aged Care Sector Workforce in 2016. I draw on this evidence where relevant in my report.

SC-A: Report of Sara Charlesworth

1. History of the evaluation of wage rates, including a description of the nature of the industrial history of setting the terms and conditions of aged care workers covered by the Award;

Industrial history and home care workers

1. The work performed by home care workers to care for frail older people was historically unpaid work within the family, overwhelmingly performed by women. In Australia, as in most developed economies, in the post-war period there was an increasing use of services provided by charities to support the elderly and others in their homes. While there were different developments in different Australian states, both state and local governments started to deliver what are now known as 'home care' services (Charlesworth, 2012, 2017). The nature of the care provided also expanded rapidly from the provision of domestic and support services to personal care delivered to an increasingly targeted group of more dependent older people. At the same time there was a decline in the direct government provision of home care services with an increasing contracting out by state and local governments and strong growth in government-subsidised not-for-profit and for-profit provision (Briggs et al., 2007: 501).
2. By the early 1970s, home care workers employed directly by state and or local governments started to be included in the relevant industry awards that provided the minimum wages and employment conditions for those sectors. It should be noted that from the beginning, home care workers were the lowest-paid of all workers in those awards and home care classification structures did not provide for any progression (Charlesworth, 1993). In some government awards a change in work value was recognised in the late 1980s–1990s, despite there having been no initial assessment of work value. In Victorian local government, for example, in 1986 the Australian Industrial Relations Commission held that there had been a change in the skill levels required by home care workers and introduced an additional skill level to recognise the personal care work they performed (Charlesworth, 1993: 18).
3. In the early 1990s, as part of an award restructuring process in local and state governments, the typically one- or two-level skill and pay home care classifications began to be unpacked, in recognition of the more intensive personal care work undertaken by home care workers and different skill levels required (Kenna, 1993). In Victorian local government, the provision of personal care was a defining feature of this reclassification, with increases in the complexity and difficulty of that work being recognised over three skill levels, with a fourth level recognising team leadership or supervisory responsibilities (Charlesworth, 1996).
4. Home care workers employed by the growing not-for-profit sector were excluded, as were other SACS workers in this sector from Australian 'industrial citizenship', that is coverage by an industry award, minimum wage rates and other employment conditions (Briggs et al., 2007). In 1991 the first Social and Community Sector (SACS) Award was won in the New South Wales (NSW) jurisdiction, covering non-government SACS workers. The NSW state government and the charitable sector fought a long battle against the establishment of this award, which only came into being after a successful High Court challenge in 1987 (Briggs et al., 2007: 509-510). Homecare workers who performed domestic work in private homes achieved a Home Care award in NSW in 1993 (Briggs et al., 2007: 501).
5. Developments were different in different states. In Victoria, where much of the federal and state funded HACC services were undertaken by local government, workers were covered by the relevant state local government award. However, a growing number of workers were employed in the not-for-profit sector, particularly after the introduction of compulsory competitive tendering in local government by the Kennett government that saw the contracting out of many in-house local government home care services. These workers were covered, in the main, by the federal

Home and Community Care Award 1995, followed by the Home and Community Care Award 2001. The recognition of different and articulated skill levels in state and local government industrial instruments was incorporated, at least in part, into the various relevant state-based and federal awards in the 1990s. However, from the late 1990s any advancements, particularly in home care, were stalled by three key policy shifts. These were:

- a. the increasing contracting out of home care services, including requirements in some states for the compulsory tendering of local government services as noted above;
 - b. the structural underfunding of aged care; and
 - c. the award modernisation process under the Fair Work Act 2006 (FWA) introduced in 2009/2010 (Charlesworth 2017) set out below.
6. The work value of work performed in home care changed considerably during the 1990s and 2000s, with more complex and demanding personal care work required by an increased targeting of HACC services to the very frail and dependent. However there was never any initial assessment of 'work value' undertaken in the NSW Home Care award, nor in the other federal awards that followed. Nor were any subsequent changes in work value recognised in these awards (Charlesworth 2012: 115).
 7. As it relates to home care, the award modernisation process, under the FWA, saw 23 different state and federal social and community services awards aggregated into one federal award: the SCHCDS Award. Some of the improvements won in several individual predecessor awards, such as a casual conversion clause, the right to a written agreement to hours worked and changes to hours, and payment for travel time between clients, were lost in this process as were some of the premia paid to workers who worked unsocial hours (Charlesworth & Heron 2012; Charlesworth 2017).
 8. Since then there have been some piecemeal improvements to the 2010 Award conditions. The right to a written agreement to hours worked and changes to hours was inserted into the SCHCDS award in 2013 and in the long drawn-out modern award review process there has been a reinstatement of a casual conversion clause that existed in some predecessor awards. There was also a FWC determination under the SCHCDS award that casual employees are to be paid their casual loading in addition to overtime, weekend and public holiday rates, with these changes phased in over 2019 to mid 2020.
 9. However, the modern review of the SCHCDS Award remains incomplete. The union claim for payment of home care workers for the time spent traveling between clients travel time for home care workers has still not been determined to be working time that should be remunerated under the Award. This feature alone suggests that the slow progress towards a full industrial recognition of home care work as 'work' remains unfinished business.
 10. It is important to note that while covered by the SCHCDS award, home care workers did not benefit from the FWA 2012 SACS equal pay case determination as did most other classifications in the Award. The determination provided wage increases of between 19% and 41% for most workers covered by the Award, phased in over eight years (Cortis & Meagher 2012: 381). There appear to be two main reasons for the exclusion of home care workers from this case. First, the federal case was a 'derived case' that built directly on a successful Queensland case for those covered by the relevant Queensland SACS state award, which had expressly excluded home care workers. Second, the union agreement with the federal Labor government to support the SACS claim was contingent on the case not covering home care workers who were funded out of the health budget, as it was feared the case might open up 'flow on' equal-pay claims in the much larger aged care residential and hospital sectors (Charlesworth 2017: 137).

11. As a result of this exclusion, the negligible pay relativity that existed between disability support workers and home care workers in 2010, before the 2012 SACS equal pay case, now sits at 25% for workers at level 2 (the base rate for workers providing at least some personal care).

Current wage rates

12. Table 1 sets out the wage rates for relevant SCHCDS Award classifications for home care employees (levels 1-4) and the National Minimum Wage (NMW) in 2011 and 2020. It should be noted, however, that under the Award classifications HCWs paid at Level 4 would be typically assigned supervision duties, rather than frontline engagement with clients. Those employed at Level 5 are typically in care co-ordinator, foreperson and maintenance supervisor positions.
13. Any increase in wages in the SCHCDS Award 2010 for home care classifications described in Schedule E of the Award has only been achieved through the flow on from National Minimum Wage decisions. Over 2011 to 2021 there has been a 31% increase in the NMW. Hence there has been the same increase in the award pay rates for home care employees, but there have been no additional increases for home care workers, despite the work increasing in complexity over this time
14. As highlighted in Table 1, based on the 2021 award wage rates currently applicable, the ordinary time rate for home care employees at Level 1 is just \$1.55 per hour more than the NMW, the lowest wage adult employees covered by the FWA can be paid. There are also very small increases in the wages paid to workers if they progress, in what is in effect only a 3-step classification scale for frontline workers. It is notable that the difference in hourly pay between Levels 1 and 2 (pay point 1) is only \$1.31 per hour; and between Level 2 (pay point 2) and Level 3 (which indicates the need for a Cert III qualification or equivalent) is only \$0.32 per hour. Further, despite the significant additional supervisory responsibilities undertaken at Level 4 of the SCHCDS Award, the pay difference between Level 3 pay point 2 and Level 4 pay point 1 is only \$1.43 per hour.
15. While the Award provides that the Level 1 is used only for new staff without any qualifications or experience, there is little oversight or monitoring of this award obligation. My experience is that many home care workers are paid at Level 2. The opaque classification descriptor of Level 3 which does not make payment at this level mandatory where a worker holds Cert 3 quals,¹ allows for the exclusion of employees not undertaking work such as office-based work, liaising with allied health or having roles in meal planning or coordinating diversional therapy programs. Providers are not currently required to provide data on the classification level of home care employees they employ.
16. Table 1 makes clear the Award has inadequate skill descriptors given the nature of the work undertaken. These descriptors have not been altered since the SCHCDS Award was put in place in 2010 and closely follow skill descriptors in one the key pre-modern awards, the Home and Community Care Award 2001. As in many other feminised awards, skills classifications 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 home care jobs, including at different skill levels.

¹Schedule E3.5 provides: Indicative but not exclusive of the qualifications required in this level is an accredited qualification to the position at the level of Certificate 3 and/or knowledge and skills gained through on-the-job training commensurate with the requirements of the work in this level.

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

Social Community Home Care & Disability Services Award				NMW	
	Key specified responsibilities /qualifications	2011	2021	2011	2021
Home Care Employee Level 1	<ul style="list-style-type: none"> < 12 months in industry work activities routine & clearly defined specialist knowledge & skills limited to domestic work basic oral communication & appropriate written interpersonal skills 	\$634.50 (\$16.69)	\$831.60 (\$21.88)	\$589.30 (\$15.51)	\$772.60 (\$20.33)
Home Care Employee Level 2	<ul style="list-style-type: none"> work falls within general guidelines but with scope to exercise discretion may assist in supervision of workers at lower level responsible for assuring quality of work specialist knowledge & skills include personal care, monitoring medications, fitting & changing of catheters, assistance with communication... require oral communication & appropriate written interpersonal skills Quals inc home care certificate or equivalent experience 	Paypoint 1: \$672.40 (\$17.69) Paypoint 2: \$677.10 (\$17.81)	Paypoint 1: \$881.40 (\$23.19) Paypoint 2: \$887.40 (23.35)		
Home Care Employee Level 3	<ul style="list-style-type: none"> Contact with public/ other employees involves explanations of specific procedures & practices Accountable for quality, quantity & timeliness of own work & personal judgement required Specialist knowledge includes computer or other office-based work, liaising with allied health, also plan, develop & co-ordinate diversional therapy programs Oral communication & appropriate written interpersonal skills with clients, other employees Quals: Cert 3 or equivalent knowledge 	Paypoint 1: \$686.20 (\$18.06) Paypoint 2: \$707.40 (\$18.62)	Paypoint 1: \$889.50 (\$23.67) Paypoint 2: \$927.20 (\$24.40)		
Home Care Employee Level 4	<ul style="list-style-type: none"> May provide direction, leadership, administration & rostering of direct care employees Required to plan, direct & train subordinate staff Office skills include rostering staff, directing work programs, oversight of work & training of lower level employees 	Paypoint 1: \$748.70 (\$19.70) Paypoint 2: \$763.60 (\$20.09)	Paypoint 1: \$981.40 (\$25.83) Paypoint 2: \$1001.00 (\$26.34)		

17. Skill descriptors for home care employees were much more comprehensively outlined in the former NSW Ageing, Disability and Home Care (State) Award 2014. In this Award more precise distinctions were made in relevant classifications according to the complexity of personal care. For example, Grade 1 was for basic domestic assistance work only; while Grade 2 was for domestic work that required some capacity to adjust around clients' needs and/or personal care work that required some assistance, such as helping a client wash and dry their own hair. Grade 3 home care workers took on domestic work with clients who were very difficult or aggressive, and/or they performed complex personal care tasks, such as those concerned with 'bodily intrusion' e.g. assisting with bowel management, catheterisation, changing colostomy and drainage bags, and changing wound dressings. Further, guidelines governing the grading of home care work accounted for not only the types of tasks performed and level of interpersonal skills required, but also the

impact of factors such as client behaviour illustrated with vignette examples (Charlesworth 2017: 138-139).

18. The former Victorian Local Authorities Award 2001, which covered local government home care workers, also made a distinction, that is not present in the SCHCDS Award, between skill levels required according to the complexity of personal care services provided to clients. This Award distinguished between the provision of personal care to service users who are physically unable to undertake the tasks themselves, but are able to make the decisions about the care they need (Band 2) and service users who are physically unable to undertake the tasks and cannot make the decisions about the care they need (Band 3).
19. When married with casual or short part-time hours, the very low pay rates linked to these HCW classifications in the SCHCDS Award provide no meaningful prospect for higher income through progression. Casual contracts or permanent part-time contracts with low numbers of guaranteed hours leave workers wanting more hours of work to provide sufficient income on which to live. This creates underemployment and income insecurity for many HCWs in the sector, reflected, as noted below, in high rates of multiple job holding by HCWs.
20. The National Aged Care Workforce Census & Survey (NACWCS) in 2012 and 2016 examined data on satisfaction with various aspects of community-based aged care work by nurses, HCWs and allied health staff. Both sets of survey results showed dissatisfaction with total pay by HCWs is relatively high, both in comparison with other direct care employees in community aged care and with other aspects of work, such as the work itself and hours worked (Mavromaras et al 2017: 97).² As noted below, the 2020 Aged Care Workforce Census did not survey workers so we have no recent data on worker satisfaction with pay from that survey. This data is crucial in the context of retention of existing employees as dissatisfaction with low remuneration has been linked to intention to quit, with workers feeling their wages did not adequately reflect the level of responsibility required in their work (Isherwood et al 2018: 15).
21. My own direct engagement with many HCWs and research that has involved undertaking detailed interviews with home care workers has spanned over many years. Recently my research has included being part of a 2019 study on meeting the social and emotional needs of older people (Meagher et al., 2019), the federally-funded Quality Jobs Quality Care project, and my ARC Decent Work & Good Care project (eg Baines et al., 2021). My research suggests that HCWs overwhelmingly view the work they perform in home care as important and meaningful work. However, they view the low wages paid in the sector for this work as a mark of disrespect to both them and the clients to whom they provide care and support.

Other relevant Award conditions

22. 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. While an improvement on conditions before the modern award review, there is only a two-hour minimum engagement for both casuals and part-timers under the SCHCDS Award. In 2017 the FWC rejected the ACTU's general claim for a 4-hour minimum engagement period for part time workers. In home care, this means that part-time workers can continue to be rostered across a day with one or more broken shifts.
23. Under the SCHCDS Award, at the commencement of employment employers and part-time employees are to agree in writing on a regular pattern of work, including hours, days of the week and starting and finishing times (cl 10.3(c)). However, employers can, 'with written agreement' (cl 10.3(e)), change this agreement. Further, under the Award the scheduling of hours and increase in

² In the NACWCS, workers were asked to rate various aspects of job satisfaction. Average satisfaction with total pay in both 2012 and 2016 surveys was rated the lowest of the listed aspects. While nurses and allied health respondents were also dissatisfied with total pay, they were not as dissatisfied as HCWs (Mavromaras et al 2017: 97).

employees' hours over their contracted part-time hours is to be paid for at ordinary time rates, rather than overtime rates as provided for in most male-dominated industry awards (Charlesworth & Heron 2012). In practice such written agreement can be 'observed' by a text exchange. Underemployment in home 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 HCWs 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 HCWs' hours up from, and down to, their contracted hours at ordinary time rates in the SCHCDS Award 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 HCWs, which is the expressed preference of many in the sector as noted below.

24. Some key 'silences' in the SCHCDS Award also contribute to income and working time insecurity for home care workers. A widespread employer practice in home care, which further erodes the job quality of part-time work, is requiring workers on commencement to nominate their 'availability' beyond their contracted weekly minimum hours. That is, in order to be guaranteed a certain number of minimum weekly hours, workers have to be available for additional hours to that minimum. The practice of 'availability' operates as an 'on-call' function where an employee may be called and expected to cover shifts at very short notice in circumstances where another employee is ill and/or shifts have been reconfigured. Organisational practices vary, but it is not unusual for part-time workers with 20 guaranteed minimum hours per week to be required to be available at agreed times for up to an additional 10 hours a week. There is no additional payment for this availability, nor for undertaking any additional hours of work when called in. As in casual work, employees are not strictly obligated to agree to work these additional hours within their designated availability, but there are very strong industry and organisational expectations that they should do so. Both the porous Award working time conditions described above and the industry practice of availability work to create effectively casualised or 'on-demand' work which builds on short part-time hours and time-related underemployment (Campbell, Macdonald & Charlesworth 2019).
25. As noted above there is no Award requirement that workers be paid for their time in travelling between clients. This working time was recognised in the former NSW Ageing, Disability and Home Care (State) Award 2014 and the Victorian Local Authorities Award 2001 and is currently recognised in many current Victorian local government and to varying degrees in some larger provider enterprise agreements. In contrast, while the SCHCDS Award provides for reimbursement of fuel costs for in-between client travel mileage, there is no provision for paid travel time between clients.³ It is hard to think of any other Australian industry sector where an inherent requirement of the job (travelling between clients) would remain unremunerated.
26. There are statutory provisions in other countries providing home care workers receive at least some payment for the time it takes them to travel between clients. In New Zealand, for example, payment for travel time at the minimum wage was introduced in 2017 for home care workers when they travel between clients. The NZ government provided considerable additional funding to meet the costs payment for travel time in the provision of home care by providers.⁴ In the UK, while a

³ I note that there was an initial consent agreement between the parties in 2017 in the modern award review of the SCHCDS award that travel time would be paid time. This became a matter of dispute and this claim remains outstanding to be determined at a later time. See 2021 FWCFB 5641, 18 October 2021, para 10.

⁴ <https://decentworkgoodcare.com/wp-content/uploads/2019/05/DWGC-Promising-Policy-One-NZ-Payment-for-In-between-travel-FINAL-8-May-2019.pdf>

2013 Employment Tribunal case found travel between clients was indeed work time payable at the minimum wage,⁵ no additional government funding was provided to contracted services to cover these costs, and there is little enforcement of this provision.

2. The demographics of the workforce in home aged care including a description of the nature of the workforce in home care
27. Given the nature of my expertise, I focus below on frontline home care workers rather than other community-based home care occupations covered under the Award.
28. The lack of accurate and current data on the home care workforce 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 industry and occupational classifications in Australian Bureau of Statistics data and the use of poorly described occupational classifications, which do not reflect the work undertaken nor the skills used to perform it, makes it hard to accurately identify the key characteristics of either the home care sector or of home care workers.
29. While a useful set of data, the National Aged Care Workforce Census and Survey (NACWCS), previously conducted independently on behalf of the Department of Health, in 2003, 2007, 2012 and 2016 has a number of limitations. It did not directly survey aged care workers but accessed only a sample of directly employed PAYG workers through surveys distributed by participating facilities. Further, in community aged care, the response rate from community-based workers in 2016 was 26%, far lower than in residential aged care (50%) (Mavromaras et al 2017: 8). There are also indications in the 2016 NACWCS data of the use by providers of non-directly employed workers in home care, such as agency workers, brokered workers⁶ and self-employed workers.
30. The 2020 National Aged Care Census Report by the Department of Health has very recently been released. Inexplicably this 'census' did not attempt to survey aged care workers. As a result the data is not comparable with either the 2016 Census or the 2016 NACWCS data based on worker reports. However, where relevant, worker demographic data gained from this survey of providers is included below.
31. Lack of disaggregated data reported by workers 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 Aged 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. Such an exercise needs to directly survey workers to produce accurate data.
32. As above, the main sets of data used to date to describe the main features of the home care workforce each have their own limits and deficiencies.

2016 Census data (ABS)

33. 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.

⁵ Whittlestone v BJP Home Support Limited [2013] UKEAT 0128/13/1907, <https://www.lrdpublications.org.uk/publications.php?pub=LR&iss=1705&id=idm7223928>

⁶ In the NACWCS 2016, 'brokered workers' are not direct employees of the employer but are workers sourced through other aged care providers (Mavromaras et al 2017: 127)

34. While industry level data is available for residential aged care, data on home care in aged care is not available in ANZSIC classifications used by the ABS. Home care services are grouped with other very diverse community service sub-sectors. For example, at the aggregated level of 'other social assistance' (ANZSIC 879) alongside 'aged care assistance services' are youth welfare, disability support, adoption services, adult day care centre operations and marriage guidance services. This lack of any industry disaggregation of the home care sector has flow-ons including limiting the capacity of the Fair Work Ombudsman to monitor and respond to potential breaches of the employment rights of home care workers (Charlesworth & Howe 2018)⁷.
35. Home care workers are mainly captured in the ANZSCO classification 'aged and disabled carer' (ANZSCO 4231), although disability support workers may also be included in this classification. This occupation is inadequately described as people who provide 'general household assistance, emotional support, care and companionship for aged and disabled persons in their own homes' and holding a level of skill commensurate with the AQF Certificate II or III (ANZSCO Skill Level 4). These ANZSCO classifications are used in government policy to designate the skill levels of particular occupations, which as argued below can act to reinforce the gendered assessment of skill.
36. My analysis of 2016 Census data, the most recent Census data available, indicates that home care workers or 'aged and disabled carers' in the ANZSCO 4231 occupational category, have the following characteristics:
- a. Between 2011 and 2016, the number of aged and disabled carers in Australia increased from 106,101 to 129,343.⁸
 - b. Women make up 80.1% of the HCW workforce, while women comprise 47.5% of the entire Australian workforce
 - c. HCWs tend to be older compared to the entire workforce. The median age of these workers is 47 years, older than the Australian workforce in which the median age is 40 years.
 - d. There are 3,196 Aboriginal and Torres Strait Islander HCWs, some 2.6% of this workforce
 - e. Over a third of the HCW workforce were born outside Australia (36%), a substantially higher proportion than the Australian workforce (30%).
 - i. Male HCWs are much more likely to be born overseas (43%) compared to females (34%)
 - ii. The three most common regions of birth for HCWs are Southern Asia (18%), the United Kingdom (15%) and Maritime South East Asia (13%)
 - iii. England (13%), India (11%) and the Philippines (10%) are the most common countries of birth among overseas born HCWs. New Zealand (10%), Nepal (4%) and China (3%) are also ranked in the top 10 countries of birth.
 - iv. More than half of the HCW overseas born workforce arrived in Australia in the ten years prior to the Census (54%)

⁷ This is because the FWO relies on ANZSIC industry classifications to monitor complaints and breaches in specific industry sectors. The recognition of residential aged care in the disaggregated ANZSIC 86011 and 86012 classifications allows the FWO to audit and take strategic action in respect of residential aged care entities. The absence of any specific industry classification for home care beyond the aggregate 'other social assistance' limits such systemic monitoring in the home care sector (Charlesworth & Howe, 2018: 139).

⁸ Thus the 2016 NACWCS estimates of directly employed home care workers set out below, would appear to underestimate the numbers of home care workers in 2016. The 2020 Department of Health Aged Care Census estimates on the other hand, which may well count workers reported by providers more than once, may overestimate the current size of the frontline home care workforce .

- f. Two thirds (66%) of the HCW workforce work part time (that is less than 35 hours per week), with more women (70%) than men (55%) working part time
- g. Compared to the total workforce, HCWs are more likely to work very short part-time hours (15 hours or less per week). The data shows 17% of HCWs work very short part-time hours compared to 12% of the total workforce. Furthermore, HCWs are twice as likely to work short part time hours (16-24 hours), with 20% of HCWs working short hours compared to 10% of the total workforce.
- h. Three quarters (76%) of HCWs had post school qualifications. Certificate level qualifications (62%) were the most common category of post-school qualifications amongst HCWs. Another 19% held Advanced Diploma and Diploma Level qualifications and 15% held Bachelor degree qualifications.

37. As noted above, there are deficiencies in the ANZSIC and ANZSCO classifications relevant to home care that limit the analysis of Census data, and indeed labour force data. This in turn reduces 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. It is my considered view that the long-term designation of aged and disabled carer as a 'low-skilled' occupation in the ANZSCO classification both reflects and contributes to the historical and contemporary gendered undervaluation of the nature of the skills actually used in this occupation.

NACWCS Data

38. 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 7,024 workers in community outlets (a response rate of 26 per cent) (Mavromaras et al. 2017: 8). This included 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 community-based outlets (see Mavromaras et al. 2017: 168-172). This weighted data is used in the published 2016 report and, despite its limitations, was used as the best available workforce data by the Royal Commission into Aged Care Quality and Safety.
39. Nevertheless, there are some relevant limits to the 2016 NACWCS dataset. Firstly, compared to the 2016 Census, the 2016 NACWC, with its focus on PAYG-only workers, may underestimate the number of home care workers in 2016. Secondly, home care employer reliance on agency and brokered employment has increased since 2007. It was estimated that in 2016 27% of all home care providers used non-PAYG workers (Mavromaras et al. 2017: 127). In the designated fortnight of the survey, some 10,099 non-PAYG HCWs were employed in community-based aged care, mainly brokered HCWs (6,586) (Mavromaras et al. 2017: 127). However, the NACWCS does not survey these workers but only workers in a direct employment relationship with the facilities surveyed; that is employees rather than all workers. Thirdly, compared to the 2016 Census data outlined above, the NACWCS sample has both a lower proportion of HCWs born overseas, and a lower proportion born in NESB countries. Finally, compared to 2016 Census data, the NACWCS data also both overrepresents HCWs working longer weekly hours and underrepresents those working shorter hours.
40. 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 HCWs 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 dataset on home care workers (Charlesworth 2017; Charlesworth & Howe 2018) and some specific analysis undertaken with Linda Isherwood on the 2016 NACWCS data on migrant home care workers (Charlesworth & Isherwood 2020).

41. The 2016 NACWCS estimated that the directly employed HCW workforce in community-based aged care had the following characteristics in 2016:
 - a. There were 72,495 HCWs who made up 84% of direct care employees. This represents a decrease in HCW numbers from 76,046 in 2012.
 - b. 89% of HCWs are women
 - c. The median age of HCWs is 52 years
 - d. 30% of HCWs were born overseas (Charlesworth & Isherwood 2020)
 - e. In terms of employment contract:
 - i. 79% of HCWs were employed on a part-time basis;
 - ii. 15% employed on a casual basis; and
 - iii. just 6% on a full-time basis.
 - f. More than three quarters (80%) of HCWs work regular daytime shifts , and 12% work an irregular schedule. Perhaps surprisingly, given concerns by many part-time HCWs about broken shifts, only 2.5% of respondents are recorded in the NACWCS 2016 survey as working split shifts. However, in qualitative analysis undertaken by the 2016 NACWCS team, split shifts, where daily hours are broken into two or more episodes of paid work, were reported as a source of significant stress for HCWs (Mavromaras et al. 2017: 141).
 - g. While the NACWCS data suggests directly employed HCWs are working longer hours than is the case for HCWs in the 2016 Census, NACWCS data indicates that many HCWs are working fewer hours than they would like. While the extent of underemployment for HCWs 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:
 - i. 44% of Australian-born HCWs want more hours of paid work than they currently have;
 - ii. 45% of HCWs born in English-speaking-background countries want more hours of paid work than they currently have;
 - iii. 56% of HCWs born in NESB countries want more hours of paid work than they currently have (Charlesworth & Isherwood 2020: 7).
 - h. Disaggregated data available in the 2012 NACWCS, indicated that in 2012, 32% of HCWs wanted more weekly hours of work (Charlesworth & Howe 2018: 124).
 - i. 16% of HCWs are recorded as holding more than one job. This rate has increased slightly since 2012 (14%). Additional analysis by country of birth suggests that 16% of Australian born HCWs hold more than one job compared to 12% of HCWs born in English speaking background countries. However, 21% of HCWs born in NESB countries hold more than one job (Charlesworth & Isherwood 2020: 7). This rate of multiple job far exceeds that in the total Australian workforce, estimated in to be around 5.3% in 2013, and is an indicator of spare capacity within the home care workforce (Mavromaras et al. 2017: 87).
 - j. In terms of aged care qualifications around two-thirds of HCWs hold a Certificate III in Aged Care (51%); 27% hold a Certificate III in Home and Community Care and 12% hold a

Certificate IV in Aged Care.⁹ While most HCWs did not hold other specialist qualifications in ageing, 6% held qualifications in palliative care. However, it is worth noting that 4% of HCWs held a Certificate IV/Diploma in Enrolled Nursing and 3% held some other basic nursing qualification. Another 9% held a Cert III in disability with 6% holding a Cert IV in disability and 15% holding a Cert III or IV in another area. 10% held Diploma Level qualifications and 8% held Bachelor degree qualifications.

2020 Aged Care Census

42. The NACWCS study was not repeated in 2020 and instead the Department of Health used a new methodology. The Census was sent to 834 Home Care Packages Program (HCPP) providers who were asked to complete a separate response for each of the aged care planning regions in which they operated (a total of 1,308 responses); and 630 Commonwealth Home Support Programme (CHSP) providers who were asked to complete a separate response for each of the aged care planning regions in which they operated (a total of 1,340 responses) (Department of Health 2021: 7). In community-based care, survey responses were received from 47% of the 616 HCPP and 38% of the 505 CHSP providers (38%) who were asked to complete a separate survey response for each service type. Given the fact that there are far more providers in the CHSP (1454 in 2019/20) than in the HCPP (920 in 2019/20), with over 70% providing just one form of home care service (ACFA 2021: 11), this weighting of the sample may bias any aggregate responses. The CHSP still remains the largest home care program in terms of service users. In 2019/20 there were 839,373 service users of the CHSP (ACFA 2021: 35, 41) and 173,743 service users of the HCPP (ACFA 2021: 35, 41).
43. There are a number of distinct limitations to this data in respect of worker demographics. The 2020 report only relies on data from providers, which it assumes are unbiased and factual. There are clear issues with the reliability of this data in respect of the demographics of workers actually employed in aged care as reporting on worker demographics and worker qualifications was left up to the providers. Further, responses were collected at the provider level for each service care type, and hence 'workers may be counted more than once across providers as well as across service care types' (Department of Health 2021: 2).
44. The 2020 Department of Health Census report estimates that:
 - a. In the HCPP there were 54,837 personal care workers (excluding those in traineeships) in direct care roles (88% of the total workforce); in the CHSP there were 45,861 personal care workers (excluding those in traineeships) in direct care roles (80% of the total workforce);
 - b. In both the HCPP and CHSP 89% of personal care workers were women;
 - c. In both the HCPP and the CHSP the median age for personal care workers was 40-49;
 - d. In the HCPP, 52% of personal care workers were permanent part-time, 44% were casual or contractors, 1% were agency or subcontract workers and only 3% were permanent full-time; in the CHSP, 73% of personal care workers were permanent workers with 97% of these positions part-time, 25% were employed as a casual or contractor and 2% were employed as an agency/subcontractor;
 - e. In the HCPP, 63% of personal care workers were reported by providers as holding a Cert III or higher in a relevant field with 4% studying for a Cert III or higher; in the CHSP 71% of personal care workers were reported as holding a Cert III or higher in a relevant field with 2% studying for a Cert III or higher;

⁹ Because respondents may hold more than one qualification, these proportions cannot be simply added.

- f. In the HCPP, there was a 35% attrition rate of personal care workers between November 2019 and November 2020; in the CHSP in the same period there was an attrition rate of 27%. These attrition rates are very high.
- g. Providers were asked to provide data on the number of direct care workers with formally obtained specialist skills. No details were provided as to how, where and when these skills were acquired nor the nature of the training undertaken. This data is set out below and is discussed further in this report.

Formally Obtained Specialist Skills	Personal care worker in HCPP	Personal care worker in CHSP
IPC	71%	70%
Dementia care	64%	60%
Medications	70%	58%
Elder Abuse	68%	44%
Wound care	64%	16%
Palliative Care	45%	27%
Falls risk	63%	41%
Diversity awareness	61%	56%
None	10%	12%

- 45. It is noteworthy that providers reported only 12% of their HCWs in the CHSP and only 10% in the HCPP program had no formally obtained specialist skills.
- 46. While the 2020 Census data has limitations as noted above, one of the advantages is that it includes employer reports of non-directly employed workers. It indicates, via the disaggregation of provider data on home care workers by program, that workers are less casualised in the CHSP than in the HCPP. Further, as noted below provider reports of formally obtained specialist skills by the HCWs they employ suggest the practice of distinctive skills used in home care that well exceed the meagre skills descriptions in the Award and the designation of this group of workers in the relevant ANZSCO classification as low-skilled.
- 3. Whether challenges have been faced by unions and employees in achieving higher wage rates in home aged care through industrial arbitration and enterprise bargaining, and if so, the nature of those challenges
- 47. There are significant challenges faced by unions and employees in achieving higher award rates and increased wages through enterprise bargaining. The ongoing modern award review process involving the SCHCDS award has been a long drawn-out contested process over almost a decade that remains incomplete. As above the pay and classification structure for home care workers has not been adjusted to reflect the value of the work performed nor indeed to pay at all for work performed in travelling between clients. Very few award improvements have been achieved in the modern award process with many union claims for award improvements falling by the wayside and as noted above and below the issue of travel time - that is that the workers be paid for the work time they spend travelling between clients - is still outstanding.¹⁰
- 48. The problems with enterprise bargaining in residential care (see my expert report in the related FWC Matter No AM2020/99 Application to vary or revoke the Aged Care Award 2010 dated 31 March 2021) are amplified in home care. As in residential aged care, access to enterprise bargaining is currently the only route for the improvement of wages and conditions above the safety net minima of the SCHCDS Award. It is my strong view that enterprise bargaining has not

¹⁰ See 2021 FWCFB 5641, 18 October 2021, para 10.

provided an effective option for addressing low remuneration and poor working conditions in home care or indeed in any other low-paid feminised sector (Charlesworth & Smith 2018).

49. The low-paid bargaining stream in the Fair Work Act, which provides for multi-employer rather than single employer bargaining in certain circumstances, was inserted in the Act expressly to respond to the constraints of bargaining in low-paid and feminised sectors. These constraints were seen by Parliament at the time the low-paid bargaining stream was inserted into the Fair Work Bill to include the lack of skills, resources, bargaining strength and previous bargaining experience (Macdonald, Charlesworth & Brigden 2018). These constraints reflect the well-documented and historical difficulties for workers in low paid feminised sectors in pursuing enterprise agreements (Charlesworth & Smith 2018).
50. As set out in detail in my report on the Aged Care Award, there has been one failed attempt in residential aged care to use this route to secure increased wages through a multi-employer agreement. There has been no low-paid bargaining application in home care and indeed none of the applications for a low-paid bargaining order have been practically successful (Macdonald, Charlesworth & Bridgen 2018).
51. 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. This is also the case in home care in the dwindling number of agreements secured with home care providers.
52. Given the inadequacies with industry level data outlined above in respect of the home care sector there is no available data that tracks the number of home care enterprise agreements. However I note that in the aggregate health and social assistance industry data held by the Attorney-General's Department that there has been a steady decline in both the number of EBAs and the number of employees covered by EBAs in this broad industry sector. Another issue is the increasing reluctance of providers to enter enterprise agreements. As an example, this reluctance is illustrated in the 2019 dispute between Bolton Clarke, a very large home care provider, and the AMNF over a prospective EBA covering home care workers.¹¹ To date no Bolton Clarke agreement appears on the FWC database.
53. In a search of current EBAs covering home care workers on the Fair Work Commission website I explored a number of non-union agreements as well as union agreements. A brief summary of several indicative agreements comparing their wage rates to the applicable SCHCDS award rates is set out below at Schedule A. I have included the details of two Victorian local government EBAs which have the Victorian Local Government Award 2015 as their base award. It is only the latter which contain any meaningful wage increases on top of the award. I have also noted whether these EBAs pay for the time HCWs spend travelling between clients, an important component of wages which is not currently included in the SCHCDS award.
54. I note the following, with the proviso that these hourly rate comparisons do not take into account grading practices that may have been negotiated with the relevant employer where there are union agreements:
 - a. In the Angel Home Care Solutions (non-union) EBA the wage rates range between 10 cents and 71 cents above award wages at the relevant time;
 - b. In the NNA Home Care Pty Ltd (non-union) EBA, the wage rates either provide no increase above award wages or are in fact 1 or 2 cents less than in the Award at the relevant time;

¹¹ See: <https://insideageing.com.au/bolton-clarke-to-lead-industry-first-national-employment-agreement/>;
<https://otr.anmfvic.asn.au/articles/bolton-clarke-members-say-no-to-unfair-eba>;
<https://otr.anmfvic.asn.au/articles/bolton-clarke-members-endorse-new-proposal>

- c. In the South Eastern Community Care Community & Disability Support Workers Enterprise Agreement (union agreement) 2020, the wage rates either provide relatively little increase above award wages (ranging from 31 cents to 95 cents at Level 3 in the EBA) until level 4 in the EBA, which recognises the use of a broad range of ADL skills and provides a \$2.20 wage increase over applicable award rates;
 - d. Calvary Home Care Services Limited Support Workers & Administrative & Operational Employees (NSW & Act) - Enterprise Agreement (union agreement) 2019 which at February 2021 rates provides some above award wage increases of between \$1.91 – 0.73 at Level 2 in the EBA (levels 2 and 3 in Award);
 - e. However in Victorian local government EBAs wage increases above the relevant award are much more substantial:
 - i. Frankston City Council Enterprise Agreement No. 9 (2019) (union agreement) has wage increases which sit between \$6.40 and \$8.90 above the relevant award rates;
 - ii. Kingston City Council Enterprise Agreement No 9 2019 – 2022 (union agreement) has wage increases which sit between \$7.47 and \$10.63 above award rates;
 - f. In respect to recognising the time taken to travel between clients as paid time to which the applicable wage rate should apply, I note the following:
 - i. Neither of the non-union agreements nor the South Eastern Community care union EBA provide for paid travel time;
 - ii. The Calvary Home Care union agreement provides for paid travel time 'reasonably required';
 - iii. The Kingston City Council union agreement provides for 15 mins paid travel time between clients;
 - iv. Only the Frankston City Council union agreement provided for travel time for the time actually taken by workers to travel between clients.
55. A particular constraint with enterprise bargaining relevant to both home care and residential aged care is that options to address low remuneration in aged care, both in awards and enterprise bargaining, are almost entirely dependent on federal government commitment and governance action. The federal government is effectively the sole purchaser and lead employer in an aged care supply chain of contracted out home care services. The funding 'market' for home 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). In 2011, the Productivity Commission noted that the various funding formulae used in the aged care sector did not bear any direct relationship to the costs of providing care.
56. At the same time there continues to be no requirement on aged care providers to direct government funding towards the payment of wages or indeed any additional funding towards wages. The Royal Commission found that there was limited scrutiny applied to the suitability of many new home care providers and that government oversight, including by the Aged Care Quality and Safety Commission, is particularly undeveloped in respect to home care (RCACQS 2021). There is very little transparency as to how providers spend the funds they receive from government beyond general data collected by ACFA. Recent aggregate ACFA data indicates that the average expenditure per consumer per day on wages and salaries for care staff has in fact reduced from \$28.78 per day in 2016/2017 to \$25.49 per day in 2019/20 (ACFA 2021: 48). This is a cause for some concern especially when the aggregate financial performance of home care providers per consumer per year has increased (ACFA 2021: 49).

57. The gendered nature of 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 and community workforce, the Queensland IRC found that inadequate government funding contributed directly to the gendered undervaluation of work performed and also limited the improvement of minimum employment standards in awards.¹² Similarly in home 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 worked to limit the improvement of award wages, such as in the SCHCDS Award. Further, funding models such as the CDC model in the HCPP have led to persistent employer lobbying in the modern award review of the SCHCDS award for still further employer-orientated 'flexibility'. Any additional employer-oriented flexibility would further degrade already eroded working time protections and hence income security for permanent part-time home care workers.
58. Another constraint to enterprise bargaining and the improvement of award wages and conditions in the SCHCHDS award, is the isolation of home care workers and the location of their work in private homes. Many workers rarely see their managers receiving notifications, rosters and changes to rosters via text. They very rarely see each other and do not have the opportunity to gather in a common workplace and create a collective identity. The fragmentation of much home care work, especially under the rationed, task-orientated provision of care in the HCPP, further amplifies this isolation. Many workers are also concerned that taking industrial action or even pressing managers for a fairer allocation of time in which to complete tasks would jeopardize services to their clients whom they perceive as far more vulnerable than themselves. These features create significant challenges for unions in organising home care workers. As a result there is extremely low unionisation in home care and, as noted above, union enterprise agreements outside government home care employment are relatively scarce.
59. 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 SCHCDS Award do not continue to be further 'hollowed out' as a safety net 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 the Fair Work Act, despite its very small coverage in home care, is that any wage increases have been 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 SCHCDS Award in November 2011 the HCW level 2 weekly award wage (pay point 1 \$672.40) was 50.5% of average weekly ordinary time earnings of \$1,330.20, and in November 2020 (\$859.94) only 47.7% of average weekly ordinary time earnings of \$1804.20 (ABS 2020). However, it is important to note that in terms of actual wages earned, the fact many HCWs work very short weekly hours means their earnings are far lower than such a comparison with AWOT earnings may suggest.
60. The history of the SCHCDS Award suggests that significant union resources are spent on defending the basic minima that exist in that Award with relatively few significant improvements in those conditions. This is highlighted in the extraordinarily contested preservation of basic conditions and some small improvements in the long running Modern Award Review process in the SCHCDS award. As above the key point is that the pay and classification structure for home care workers has not been adjusted to reflect the value of the work performed nor indeed to ensure home care workers are paid for the work performed in travelling between clients

¹² 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.

4. Whether you believe the work performed in the industry is currently properly valued by reference to the work value reasons set out above. If not, please identify any factors that have contributed to any undervaluation of work in the home care sector of aged care, including any contribution the gender composition of the workforce may have had to the undervaluation of work performed;
61. In my view there has been an historical as well as an ongoing undervaluation of work performed by HCWs. 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 HCWs in the SCHCDS Award, are the gendered nature of the workforce, of the work and its location outside an institutional setting.
62. The workers who undertake home 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 the 2016 Census data, the 2016 NACWS data and the 2020 Department of Health data, up to 90% of HCWs are women.
63. As I noted in my evidence to the Royal Commission, 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 is the subject of a rich scholarship (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 in private homes, as 'natural' and therefore 'unskilled'. The spatial location of paid care work is thus crucially important. The apparent proximity of home care work undertaken in a client's home to the work women do 'for free' in their own households imbues it with the aura of 'non-work' (Charlesworth 2017). Thus, it is the link assumed between unpaid care work in the family and paid care work that means home care work has been significantly undervalued. It is undervalued in government funding, in employment protections and in societal, industrial and organisational recognition of the increasingly complex skills required to undertake the 'invisible' work of home care in private homes with increasingly frail clients with complex care needs.
64. Government funding and governance of home care also contribute to the gendered undervaluation of home care work. As noted above, because the federal government provides the overwhelming majority of home care funding in Australia and is the key purchaser of home care services, it is effectively the lead employer, shaping the context within which employment minima including wages are established and modified in relevant awards, which has materially affected the wages set for home care workers. As above, the only increases in award wages in the SCHCDS have been on the basis of the flow on from National Minimum Wage decisions.
65. Indeed, 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. Despite numerous government inquiries and the Royal Commission establishing the detrimental impact low wages have on the attraction and retention of aged care workers, the government continues to demonstrate a lack of interest in, or accountability for, the low wages in home care. This disregard reinforces a dominant aged care sector logic or narrative that (good) home 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 HCWs surveyed in the 2016 NACWS. 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.

The nature of the work

66. Three main factors support the contention that the nature of the work performed by home care workers and the skills required to do so have changed over time.
67. Firstly, there is abundant evidence about the growing longevity of older people brings with it a growing complexity of needs for assistance with the activities of daily living. The 2018 ABS survey of disability, ageing and carers Australia shows that as people age, the need for assistance with the activities of daily living increases. Indeed of those aged 85 to 90 years, 73% required assistance with at least with one activity with 85% of this group still living in households. Some 89% of those aged over 90 years and over required such assistance with 68% of those in this age group still living in households. In terms of the activities for which assistance was needed, the need for assistance with self-care rose sharply for those aged 85 and over as did the need for assistance with health care for people in this age cohort for (ABS 2018). Within this broader context, the numbers of much older home care clients has also grown. With a decline in the numbers of people admitted to permanent residential age care, there has been an increase in the numbers of clients using homecare. in 2020 around 840,000 people used the CHSP with around 175,000 people using the HCPP. Indeed in the 10 years to 2020, the number of people using home care has tripled. We know from Australian Institute of Health of Welfare data that an increasing portion of homecare clients in both programmes who are aged over 85 years, are likely to have increased needs for care and support.
68. Secondly, despite the growing number and complexity of the care needs of home care clients, the number of directly employed HCWS in community based aged care appears to have decreased since 2012. Further according to NACWCS 2016 data, HCWs now making up a larger share of the home care support workforce (84% in 2016 compared to 81% in 2012) as there is a decreasing proportion of both registered and enrolled nurses working in community based aged care. The declining share of nursing qualified staff is also reflected where FTE data is used (Mavromaras et al. 2017: 70). This growing reliance on HCWs in the provision of home care places more responsibility on them to take on what might be seen as quasi-nursing tasks to ensure that older clients can remain in their homes.
69. Thirdly, the increased complexity of care demanded in home care work is reflected in the high number of workers who reported that they needed additional training. Dementia training was nominated by 61% of homecare workers followed by palliative care training nominated by 30% of home care workers (Mavromaras et al. 2017: 18). This desire for additional training reflects the nature of the work home care workers are now expected to do. We also know from the Department of Health data above that home care providers reported on the significant additional specialist training undertaken by home care workers as set out above. However the Department of Health 2020 data shows that home care providers were unlikely to provide much professional development to many of their home care workers. In the last 12 months in the CHSP the average number of training places per home care worker was 0.33 while in palliative care it was just 0.05. In the last 12 months in the HCPP, the average number of training places per worker was just 0.28 while in palliative care it was 0.14 (Department of Health 2021: 45, 34). As noted above both dementia care and palliative care are areas of training frequently nominated by homecare workers as areas of training they would like to undertake.

Skills held by HCWs, level of skill or responsibility involved in doing the work; and conditions under which the work is done

70. The formal qualifications held by homecare workers are set out above. The skills they use in their work with individual clients on a day-to-day basis in their job are, however, not reflected in the inadequate skill descriptors in the award nor in their occupational classification at ANZSCO skill level 4. Some better skill descriptors exist in Victorian Local government EBAs. These EBAs distinguish between the levels of skill required to provide care for people who are unable to care

for themselves, but are able to make decisions about their care, and levels of skill required to provide care for people who are neither able to care for themselves nor make decisions about their care. However in my view the best set of skill descriptors that reflects the nature of home care work are those captured in the former NSW Ageing, Disability and Home Care (State) Award 2014. In this Award, as detailed above, more precise distinctions were made in relevant classifications according to the complexity of and skills required to perform personal care with, guidelines governing the grading of home care work accounting for the types of tasks performed and level of interpersonal skills required, and very importantly the impact of factors such as client behaviour illustrated with vignette examples (Charlesworth 2017: 138-139).

71. 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 frail aged, including in home care settings. (Hayes et al., 2019). These skills, all of which are exercised by many home care workers with different clients, include:
 - a. health or medical-related skills and knowledge of complex conditions; some examples of such skills use in home care include supporting clients to take the appropriate medication and providing sensitive end-of-life care;
 - b. knowledge, understanding and ability to provide person-centred care and enablement; some examples of such skills use in home care include skills in building trust and ensuring clients' dignity, managing clients with dementia or severe memory loss as well as skills to enable rehabilitation after a period of hospitalisation; skills in negotiating differences in clients and clients' family members/carers expectations of care services
 - c. 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; some examples of such skills used in home care include skills such as writing reports, documenting incidents and having regard for how those reports and documentation will be used and acted on;
 - d. technological and digital capabilities; include supporting clients with operating digital devices and technological aids such as personal alarms;
 - e. 'employability' skills including the capacity to problem-solve, work in a team, management of stress and one's own health and wellbeing; some examples of such skills used in home care are management and leadership skills such as dealing with conflict, assisting clients who may be at crisis points in their lives or who are carrying heavy emotional and or physical burdens;
 - f. 'body work' skills, which require specialist knowledge and skill to enable care workers to care for the bodies of service-users; some examples of such skills used in home care are high level skills needed to protect skin integrity, uphold the dignity of the client, and adhere to hygiene and infection control policies;
72. In my view this categorisation of skills is useful in identifying the type of skills increasingly required in home care in the Australian context. The exercise of those skills is reflected in the work I have observed being performed by HCWs. However, many of these skills are either assumed or invisible in home care work. This is because, even where they are acknowledged requirements, such skills, particularly the high-level interpersonal skills and problem-solving skills required in home care work, are still viewed as the 'natural' attributes of the predominantly female workforce, requiring the 'right' attitude or personality, rather than acquired and demonstrable skill.
73. Home care workers work alone with clients. This characteristic of their work involves the exercise of a significant degree of responsibility not only for the client but also ensuring that the work performed is done so in the most appropriate way. Individual clients' needs and personal

preferences for the ways in which their care is undertaken vary considerably. Being able to adjust to such needs and preferences requires the knowledge, judgement and capacity to respond appropriately. In addition, the needs of particular clients may change on a daily basis and home care workers exercise judgement and discretion to work out how to adjust the care and/or tasks specified in care plans around the needs of a particular homecare client on a particular day. HCWs are expected to monitor the health and well-being of clients and report any irregularities or concerns to providers and /or family members. This monitoring function is assumed and rarely articulated in care plans or tasks. It requires the exercise of discretion and judgement and that home care workers are familiar with the health, well-being and preferences of their clients, and have the capacity to recognise even small changes in demeanour, behaviour or health that may be indicative of more serious health or well-being issues. In my experience homecare clients also often get caught between the competing expectations of the family members and clients and need significant interpersonal skills to negotiate and resolve possible conflicts.

74. 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 outlined above as well as a high degree of autonomy, responsibility and judgment, particularly in the lone activity of home care work undertaken in private homes. I note that these responsibilities and skills are not currently outlined in HCW classifications in the SCHCDS Award and are certainly not reflected in the low pay rates that adhere to those classifications.
 72. 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 HCW 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 HCWs, do not have sufficient skill, knowledge and competencies to provide good quality care. This assertion is also belied by the specialist skills CHSP and HCPP providers asserted were held by HCWs in the Department of Health 2020 Census report, which highlight the additional skills required to undertake the range of tasks allocated by providers to home care workers. In the DWGC project we found, however, that there is often insufficient time for the practice of skills held (see also Meagher et al 2019). The allocation of adequate time to care is crucial to the optimum use of both existing and acquired skills, knowledge and competencies. However many home care workers report rushed care, particularly under the CDC model in the HCPP (see Meagher et al 2019).
 73. It is the lack of recognition of the skills and competencies required and used by home care workers in award skill classifications, the inadequate provision of additional on-the job training opportunities and the lack of any meaningful wage increases in progression up the limited skill classification in the SCHCDS Award that work to reinforce a view of home care workers as 'under-skilled'.
5. Responses to other questions from the HSU
74. The above evidence I have provided also responds substantially to the following additional questions 5-8 put to me by the HSU (see SC-2).

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Schedule A: Selected Home Care Providers EBAs

Provider EBA	Hourly Pay rates in EBA	Comparable SCHCDS award rates at relevant time	Difference between EBA & Award	Travel time
Angel Home Care Solutions Pty Ltd EBA (non union) August 2021	https://www.fwc.gov.au/documents/agreements/fwa/ae512593.pdf	July 2021 wage rates		Nil
Level 1	\$21.98	\$21.88	0.10 cents	
Level 2 pp1	\$23.90	\$23.19	0.71 cents	
Level 2 pp2	\$23.45	\$23.35	0.10 cents	
Level 3 pp1	\$23.77	\$23.67	0.19 cents	
Level 3 pp2	\$24.51	\$24.40	0.11 cents	
<hr/>				
NNA Homecare Pty Ltd (non union) EBA August 2020	https://www.fwc.gov.au/documents/agreements/fwa/ae508797.pdf	July 2020 wage rates		Nil
Level 1	\$21.03+1.5%=\$21.34	\$21.35	One cent less	
Level 2 pp1	\$22.29+1.5%=\$22.62	\$22.63		
Level 2 pp2	\$22.44+1.5%=\$22.78	\$22.78		
Level 2 pp2	\$22.44+1.5%=\$22.78	\$22.78	same	
Level 3 pp1	\$22.75+1.5%=\$23.09	\$23.09	same	
Level 3 pp2	\$23.44+1.5%=\$23.79	\$23.81	0.2 cents less	
<hr/>				
South Eastern Community Care Community & Disability Support Workers Enterprise Agreement (Union agreement) 2020	https://www.fwc.gov.au/documents/agreements/fwa/ae511970.pdf after 1 July 2020	July 2020 wage rates		Nil
Level 1 Basic skills domestic task	\$21.36-\$21.90	\$21.35	0.1-0.54 cents	
Level 2 Cert II working towards Cert III. Domestic & support tasks	\$22.68	No direct award comparator		
Level 3 Holds Cert 111 Assistance with ADL	\$23.40-\$24.76	\$23.09-\$23.81 (Level 2 & level 3 in Award)	-\$31 -\$0.95	
Level 4 Formal accreditation Cert IV – broad range of ADL tasks	\$26.01		Based on top of level 3 in award \$23.81	\$2.20

Provider EBA	Hourly Pay rates in EBA	Comparable SCHCDS award rates at relevant time	Difference between EBA & Award	Travel time
Calvary Home Care Services Limited Support Workers & Administrative & Operational Employees (NSW & Act) - Enterprise Agreement (Union agreement) 2019 (Feb 21 rates)	https://www.fwc.gov.au/documents/agreements/fwa/ae508063.pdf	August 2021 award rates		Yes 'time reasonably required'
Support Worker New Entrant > 12 months)	\$22.99	\$21.35	\$1.64	
Support Worker level 1 (domestic work only)	\$23.52	No comparator in award		
Support Worker level 2 Dom + personal care	\$24.54	\$22.63-23.81 (Levels 2-3)	\$1.91-\$0.73	
Frankston City Council Enterprise Agreement No. 9 (2019) (union agreement) October 2021				
Band 2 (A-D) (Provision of Personal Care to service users physically unable to undertake tasks themselves, but able to make decisions about care they need	\$28.93-\$29.76	Level 2 \$856.00=\$22.52	\$6.40-\$7.24	YES
Band 3 Provision of Personal Care to service users neither physically able to undertake the tasks themselves nor make decisions about care they need	\$29.92-\$31.70	Level 3 (indicative quals Cert III). \$866.50 = \$22.80	\$7.11-\$8.90	
Kingston City Council Enterprise Agreement No 9 2019 – 2022 (union agreement) May 2020				
Band 2 (A-C) (Provision of Personal Care to service users physically unable to undertake the tasks themselves, but able to make decisions about care they need	\$1139.66-\$1170.40 = \$29.99-\$30.80	Level 2 \$856.00=\$22.52	\$7.47-\$8.28	YES paid 15 mins between clients
Band 3 (A-D) Provision of Personal Care to service users neither physically able to undertake the tasks themselves nor make decisions about care they need.	\$1186.41-\$1270.39= \$31.22-\$33.43	Level 3 (indicative quals Cert III). \$866.50 = \$22.80	\$10.42-\$10.63	

Tuesday 27 July 2021

Professor Sara Charlesworth
Director
Centre for People, Organisation and Work
RMIT University
124 La Trobe Street
MELBOURNE VIC 3000

By Email: sara.charlesworth@rmit.edu.au

Dear Professor Charlesworth,

RE: Health Services Union – Work value claim for aged care workers working in home care settings under the SCHCDS Award

On 31 May 2021, the Health Services Union ('**HSU**') filed an application to vary the *Social, Community, Home Care and Disability Services Industry Award 2010* ('**SCHCDS Award**') seeking an increase in wages for home care workers providing aged care who are covered by the Award ('**the Application**'). A copy of the Application is **enclosed** for your perusal.

The Application is advanced on a similar basis to that made by the HSU in relation to the Aged Care Award late last year, in which you have already provided an expert report ('**Aged Care Award Application**').

On 1 July 2021, the Fair Work Commission ('**Commission**') determined that the Application will be joined with the Aged Care Award Application, and a further separate application by the Australian Nursing and Midwifery Foundation to vary the Aged Care Award and the Nurses Award. In the result, the matters will be heard jointly by one Full Bench and any evidence given in the matters will be admitted in relation to all of them.

By way of background:

1. The employment conditions, classifications and wages of many employees working in aged care home care services are governed by the Award, or by enterprise agreements for which the Award is the reference instrument for the purposes of the application of the better off overall test.
2. The Award came into effect on 1 January 2010 after the Award Modernisation ('**Award Modernisation**') proceedings before the Fair Work Commission.
3. The HSU seeks to create, by the Application, a new definition of 'home aged care worker' in the Award and a 25% increase in the rates applying to those workers on work value grounds.



4. The Commission's power to vary the Award is governed by s.157 of the *Fair Work Act 2009* (Cth) ('the Act'). It may make a determination varying modern award minimum wages if satisfied that making the variation is justified by 'work value reasons', being reasons justifying the amount that home aged care employees should be paid for doing the work they do. Those reasons are set out at s.157(2A) of the Act and are reasons related to any of the following:
 - a. The nature of the work;
 - b. The level of skill or responsibility involved in doing the work;
 - c. The conditions under which the work is done.
5. In considering the 'work value reasons', the Commission will also consider the extent to which there have been changes in the nature of the work, changes to the skills required to perform that work, changes to the responsibility involved in doing the work, and changes to the conditions under which the work is performed which have occurred over time.
6. To make any determination varying modern award minimum wages outside the annual wage review process, the Commission must also be satisfied that the variation it determines to make is necessary to achieve the 'modern awards objective'. The modern awards objective requires the Commission to ensure that modern awards, together with the National Employment Standards, provide a fair a relevant minimum safety net of terms and conditions, taking into account the following (s.134(1) of the Act):
 - a. Relative living standards and the needs of the low paid; and
 - b. The need to encourage collective bargaining; and
 - c. The need to promote social inclusion through increased workforce participation; and
 - d. The need to promote flexible modern work practices and the efficient and productive performance of work; and
 - e. The need to provide additional remuneration for:
 - i. Employees working overtime; or
 - ii. Employees working unsocial, irregular or unpredictable hours; or
 - iii. Employees working on weekends or public holidays; or
 - iv. Employees working shifts; and
 - f. The principle of equal remuneration for work of equal or comparable value; and
 - g. The likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
 - h. The need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
 - i. The impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.
7. The Commission is obliged, when exercising its powers to vary modern award minimum wages to apply the 'minimum wages objective' which requires the Commission, when setting modern award minimum wages, to establish a safety net of fair minimum wages taking into account:
 - a. The performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth; and
 - b. Promoting social inclusion through increased workforce participation; and



- c. Relative living standards and needs of the low paid; and
 - d. The principle of equal remuneration for work of equal or comparable value; and
 - e. Providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.
8. In performing its functions and exercising powers, the Commission is also obliged, by s.578 of the Act, to take into account:
- a. the object of the Act, which is set out at s.3 of the Act;
 - b. equity, good conscience and the merits of the matter;
 - c. the need to respect and value the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
9. The HSU will ask the Commission, in the exercise of its powers, to have regard to the Final report of the Royal Commission into Aged Care Quality and Safety, *Final Report: Care, Dignity and Respect* about the conditions under which aged care work is performed, and the workforce needs of the aged care system.

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

1. The history of the evaluation of wages rates for aged care workers, including a description of the nature of the industrial history of setting the terms and conditions of workers in aged care covered by the Award;
2. The demographics of the workforce in home aged care including a description of the nature of the workforce in home care;
3. Whether challenges have been faced by unions and employees in achieving higher wage rates in home aged care through industrial arbitration and enterprise bargaining, and if so, the nature of those challenges;
4. Whether you believe the work performed in the industry is currently properly valued by reference to the work value reasons set out above. If not, please identify any factors that have contributed to any undervaluation of work in the home care sector of aged care, including any contribution the gender composition of the workforce may have had to the undervaluation of work performed;
5. Whether there has been a change in the composition of the workforce in the provision of aged care in the home, and if so, what change/s. Please provide a description of the nature of these changes and the impact (if any) the change in composition has had on the duties, responsibilities, and skills required of workers in the aged home care services;
6. Whether there has been a change in the nature of the work performed (being care work) in the home aged care sector (including personal care, maintenance, domestic and support services covered the Award) over time, and if so, what change/s. Please provide a description and explanation of the reasons for, and nature of, those changes (if any);



7. Whether there has been a change in the skills required to perform work in the aged home care sector (including personal care, maintenance, domestic and support services covered the Award), and if so, what change/s. Please provide a description and explanation of the reasons for, and nature of, those changes (if any);
8. Whether there has been a change in the responsibility involved in doing work in the home aged care sector over time (including personal care, maintenance, domestic and support services covered the Award), and if so, what change/s. Please provide a description and explanation of the reasons for, and nature of, those changes (if any);
9. Whether there has been a change in the conditions under which work in the home aged care sector is done (including personal care, maintenance, domestic and support services covered by the Award), and if so, what change/s. Please provide a description and explanation of the reasons for, and nature of, those changes (if any).

In preparing your report, should you consider that there are other issues, not encapsulated in the questions above which are relevant to the issues arising on the application before the Commission, please identify and address those issues.

At the hearing of this matter, set down for between 26 April to 11 May 2022 (inclusive), the HSU intends to lead evidence (including your Report and any reply to evidence filed by parties who oppose the Application). You may be required to attend the hearing as a witness to provide your evidence to the Commission.

The HSU's evidence, including any expert reports, is due to be filed on 8 October 2021, and our preference would be to receive your Report on or before **20 September 2021**.

We **enclose** a copy of Rule 23.13 of the Federal Court Rules and ask that you ensure your Report complies with the same. In addition to your Report and to facilitate your giving evidence in the Commission, we also request that you read the **enclosed** Expert Witness Code of Conduct. We will 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 which provide you with the specialised knowledge to prepare your Report and an acknowledgement that those things have been relied upon to provide the opinions contained in your Report.

Please do not hesitate to contact me on 0418 538 989 or Louise de Plater on 0429 928 192 if you would like to discuss the matter further.

Yours sincerely,



Leigh Svendsen
Senior Industrial and Compliance Officer



Form F46 – 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	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address	Suite 46, 255 Drummond St		
Suburb	Carlton		
State or territory	VIC	Postcode	3053
Phone number	0418 538 989	Fax number	
Email address	leighs@hsu.net.au ; louised@hsu.net.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	Health Services Union
ABN/ACN	68 243 768 561
Contact person	Leigh Svendsen leighs@hsu.net.au 0418 538 989 Louise de Plater louised@hsu.net.au 0429 928 192

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 (eg a hearing loop)?

Yes – Please specify the assistance required

No

Does the Applicant have a representative?



A representative is a person or organisation who is representing the applicant. This might be a lawyer or paid agent, a union or employer organisation, or a family member or friend. 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 organisation who is representing the Applicant (if any).

Name of person			
Firm, organisation or company			
Postal address			
Suburb			
State or territory			
Phone number			
Email address			

Is the Applicant’s representative a lawyer or paid agent?

Yes

No

1. Coverage

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



Include the Award ID/Code No. of the modern award

Social, Community, Home Care and Disability Services Award 2010 [MA000100] (SCHCDS Award)
--

1.2 What industry is the employer in?

That part of the home care sector (as defined in the SCHCDS Award) which operates in the aged care industry.

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 Applicant applies to amend the SCHCADS Award as follows:

A. To insert into clause 3.1, the following definition:

Home aged care employee means a home care employee providing personal care, domestic assistance or home maintenance to an aged person in a private residence;

B. To amend the heading to clause 17 as follows:

Minimum weekly wages for home care employees other than home aged care employees.

C. To insert clause 17A, as follows:

17A. Minimum weekly wages for home aged care employees

17A.1 Home aged care employee Level 1

	Per week
	\$
Pay point 1	1014.13

17A.2 Home aged care employee Level 2

	Per week
	\$
Pay point 1	1074.88
Pay point 2	1082.25

17A.3 Home aged care employee Level 3

	Per week \$
Pay point 1 (certificate III)	1097.00
Pay point 2	1130.75
<hr/>	
17A.4 Home aged care employee Level 4	
<hr/>	
	Per week \$
Pay point 1 (certificate IV)	1196.88
Pay point 2	1220.75
<hr/>	
17A.5 Home aged care employee Level 5	
<hr/>	
	Per week \$
Pay point 1 (degree or diploma)	1283.13
Pay point 2	1333.75

D. To make such further or other amendments to the SCHCDS Award as appear appropriate to the Commission in light of the evidence in the proceeding.

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.



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.

The grounds relied upon by the Applicant are contained in Annexure A to this application.

Attach additional pages, if necessary.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	Lloyd Williams
Date	31 May 2021
Capacity/Position	HSU National Secretary



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

ANNEXURE A

GROUND AND REASONS FOR APPLICATION

INTRODUCTION

1. This application raises for consideration a number of issues that arise in respect of the application by the Health Services Union to vary the Aged Care Award 2010 [MA000018] (**Aged Care Award**) in proceedings number 2020/99 and the application by the Australian Nursing and Midwifery Federation in proceedings number 2021/63 to vary the Aged Care Award and the Nurses Award 2010 [MA000034] (**Nurses Award**).
2. Employees, other than nurses, providing aged care in residential aged care facilities are covered by the Aged Care Award 2010. Employees providing aged care in home settings (**the home aged care employees**) are covered by the Social, Community, Home Care and Disability Services Industry Award [MA000100] (**SCHCDS Award**).
3. As is the case with the minimum wage rates contained in the Aged Care Award, the minimum wage rates in the SCHCDS Award pertaining to home aged care employees were not evaluated during the award modernisation process which led to the making of the SCHCDS Award. No consideration of the minimum wages (other than by annual minimum wage adjustments) or the work value of the work performed by home aged care employees covered by the SCHCDS Award has been conducted since that Award commenced to operate in 2010.
4. The current minimum wage rates pertaining to home aged care employees in the SCHCDS Award do not recognise the nature of work, the level of skill and responsibility involved in performing the work, nor the conditions under which the work is performed by home aged care employees providing aged care services in home settings.
5. The current minimum wage rates pertaining to home aged care employees in the SCHCDS Award undervalue the work of employees currently covered by that Award by more than 25 percent.
6. The Applicant seeks an increase in wages of 25 percent for home aged care employees at all classification levels in Schedule E of the Award to rectify the undervaluation.
7. The claimed increase would address the historic establishment of Award wages and recognise significant increases in work value of home aged care employees.
8. In considering the application, the Commission would be informed by the findings of the Final Report of the Royal Commission into Aged Care Quality and Safety, *Final Report: Care, Dignity and Respect* (**Final Report**) about the conditions under which aged care work is performed, and the workforce needs of the aged care system.
9. The claimed increase would give effect to Recommendation 84 of the Final Report, namely:

Recommendation 84: Increases in award wages

Employee organisations entitled to represent the industrial interests of aged care employees covered by the Aged Care Award 2010, the Social, Community, Home Care and Disability Services Industry Award 2010 and the Nurses Award 2010 should collaborate with the Australian Government and employers and apply to vary wage rates in those awards to:

- a. *reflect the work value of aged care employees in accordance with section 158 of the Fair Work Act 2009 (Cth), and/or*
- b. *seek to ensure equal remuneration for men and women workers for work of equal or comparable value in accordance with section 302 of the Fair Work Act 2009 (Cth).*

S.157(2A) - WORK VALUE REASONS

- 9. Section 157(2) of the *Fair Work Act 2009 (the Act)* enables the Commission to make a determination varying modern award minimum wages, where such variation is justified by work value reasons and making the determination outside the system of annual wage reviews is necessary to achieve the modern awards objective. 'Work value reasons' are addressed at section 157(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)(a)

- 10. The nature of the work of home aged care employees justifies the variation to applicable minimum Award wages sought by the Applicant. The work performed includes a broad range of duties and requires a broad range of knowledge, skills and sound judgment in order to (in sum):
 - a. Understand and assess the needs of an ageing population with an increased level of frailty, vulnerability and/or behavioural and psychological symptoms of dementia or equivalent. Those needs include the physical, mental, social, emotional, nutritional and hygiene needs of clients;
 - 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 clients in home settings;
 - d. Provide care that supports psychological, cultural and emotional wellbeing of aged care clients in home settings;
 - e. Provide re-ablement to the aged;
 - f. Provide specialist care in key areas of need, such as palliative 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, health professional and supervisory staff to ensure the changing care needs of aged care clients in home settings are reported and can be reassessed when required;
 - j. Facilitate the engagement, social participation and independence of aged care clients in home care settings in the context of an ageing population;
 - 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.
 - l. Operate autonomously with a high level of responsibility and limited level of supervision and support;
 - m. At higher levels, manage day to day compliance with an increasingly complex regulatory regime (including quality and safety standards) and Aged Care industry policies and guidelines;
 - n. Perform a broad range of administrative and human resource related duties including recruitment processes, rostering, induction, orientation, staff liaison and event organisation;
 - o. Perform sales and promotional functions, targeted at prospective residents;
 - p. Manage and evaluate capacity to deliver care to clients, making arrangements with potential clients, preparing paperwork for new clients including contracts, reconciling payments for care, admitting new clients and discharging clients;
 - q. Deal with external auditors and compliance officers;
 - r. Deal with resident, family and staff complaints and enquiries;
 - s. Oversight of staff and outsourced providers;
 - t. Manage the financial affairs of the service (including accounts payable and receivable, payment of invoices, checking of invoices, purchasing, managing petty cash, banking, receiving residents' payments); and
 - u. Operate in an increasingly sophisticated care environment.
11. There have been significant changes in the nature of the work performed by home aged care employees resulting from:
- a. Changes in the acuity levels of aged care clients in home settings (with an increase in those with higher needs requiring a higher degree of responsibility from personal care workers, a higher level of care, a greater breadth of care and assistance and an increase in those with higher needs requiring a higher and more diverse range of paperwork and assessments to be performed prior to and whilst receiving care);
 - b. Changes in theories and models of care;

- c. Increased requirements to, in consultation with the client, assess the medical, physical, emotional, social, dietary, nutritional and mobility needs of aged care clients in home settings and to assist clients with medication and medical needs;
- d. Increases in the need to, in consultation with the client, devise and provide individualised and complex physical, social and emotional care for each client, to document same and to report on significant developments to the client, employers and family members;
- e. Increases in the need to, in consultation with the client, plan and administer the provision of home aged care;
- f. Increasingly complex duties in financial management, oversight of outsourced providers, dealing with external auditors and compliance officers, human resource functions, managing accreditations and ensuring compliance, regulator and staff liaison;
- g. Increased community expectations with regard to the extent and quality of care;
- h. Increased skills required in providing client choice-centred care and assessing, planning and implementing the same;
- i. Employer requirements for higher qualifications and training, the content and complexity of which are increasing;
- j. Changes to infection control procedures;
- k. Changes to requirements when preparing client directed care documentation arising from (without limitation) altered government regulation, increased governance and accreditation requirements;
- l. Increased use and implementation of technology, including assisting and instructing older persons on the same;
- m. 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;
- n. Demands and pressures arising from the management of client directed care packages, and inadequate allowance for care in those packages.
- o. Other related productivity measures.

The level of skill or responsibility involved in doing the work – s 157(2A)(b)

- 12. The work of home care employees providing aged care in home settings increasingly requires Certificate III or IV qualifications and additional formal specialised training (for example, in dementia care or medication dispensation).
- 13. Home care employees have a high level of responsibility in a broad range of areas arising from their role as carers of 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 some of the most acutely ill and highly dependent cohorts in Australian society.

14. Home care employees work, almost exclusively, alone without direct support or supervision. They are solely responsible for the care provided, monitoring, observing and reporting changes in the client's physical and mental health, activity and cognitive functions to ensure responses, intervention or reassessment of their needs by the appropriate health professionals.
15. Home care employees frequently provide care for periods in excess of their engagement, or at levels above their classification where the home care package allocated to the client is insufficient to provide an appropriate level of care to the client.
16. Home care roles have become increasingly complex with the necessary attainment and exercise of a higher level of skill arising from (without limitation) the factors set out above as well as the evolution of a more complex regulatory environment resulting in increased responsibility for care workers and a greater emphasis on regulatory compliance, increased accreditation requirements for employers, and increased responsibility for assessing the medical needs of residents and assisting clients with medication and medical needs.
17. The level of skill and responsibility required of home aged care employees has increased arising from (without limitation):
 - a. Increased reliance on workers to assess the medical and other needs of clients, to assist clients with medication and medical needs (rather than reliance on Allied Health Professionals, nurses and doctors) and liaise with medical practitioners and other health professionals;
 - b. Increased prevalence of high acuity clients with more varied and high needs and a consequential need to assess, plan around and treat increasingly complex physical, social and emotional needs of residents;
 - c. Changes in qualification requirements;
 - d. Increased minimum standards and regulatory requirements for employers;
 - e. Changes in technology used in performance of the work;
 - f. Increased skills and responsibilities arising from the shift to the provision of *client directed care* and assessing, planning and implementing the same;
 - g. More responsibility for the provision of physical, social and emotional care of clients;
 - h. Increasing ongoing quality assessment and accreditation requirements;
 - i. Reduction in the use and availability of registered nursing care and assessment;
 - j. Increasingly complex duties of financial management, oversight, compliance, human resource functions, liaison and more varied and more complicated maintenance and other functions;
 - k. The need to perform sales and promotional work at higher levels;

- I. The need to implement and oversee policies and protocols governing the delivery of services.

The conditions under which the work is done – s 157(2A)(c)

18. Home care employees perform work in a diverse range of environments, without supervision;
19. The provision of aged care in the home has changed markedly since the SCHCDS Award was made as a result of (without limitation):
 - a. Changes in the model of care (including the introduction of client directed care, specialist dementia care and palliative care);
 - b. Changes in the philosophy of care (including the shift to the provision of client directed care and the decreased role of health professionals in the home care environment);
 - c. Increased prevalence of high acuity clients with varied and higher needs including clients with later stage dementia and/or palliative care needs as more people choose to die at home;
 - d. An increase in the sophistication of care and the regulatory framework that care operates in;
 - e. Changes arising from COVID-19 that will likely continue, including:
 - i. Changes in infection control procedures;
 - ii. Changes in the use of technology; and
 - iii. Changes in emotional needs of clients 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 report of the Royal Commission into Aged Care Quality and Safety.

**MODERN AWARD AND MINIMUM WAGES OBJECTIVE – SS 157(1)(b), s134(1) and 284(1)
– FAIR AND RELEVANT SAFETY NET**

Relative living standards and the needs of the low paid

21. Many employees in the aged care sector, including home aged care employees, are paid minimum Award rates. Home aged care employees are predominantly engaged in roles for less than full time hours. 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 home aged care workers. Even where rates of pay are set by enterprise agreements these rates are little more than Award rates of pay.

The need to encourage collective bargaining

22. 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 percent above the minimum rates set under the relevant Award.

23. Factors impeding enterprise bargaining include:

- a. the fact that the majority of funding for the sector comes from the Commonwealth Government.
- b. the lack of incentive for employers to bargain with employees due to the existing low wage rates;
- c. the dispersed nature of the work;
- d. the undesirable interruptions to client care posed by industrial action.

24. 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

25. 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

26. 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 ageing population, and the expectation that the number of persons requiring aged care is likely to increase significantly during that time.

27. 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 clients. 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.

28. 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

29. 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.
30. 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).
31. The need to increase wages for aged care workers in order to achieve this objective is recognised in Recommendation 84 of the Final Report.

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

32. 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

33. Granting the variation sought is crucial to ensuring a stable and sustainable modern award system. The variation will simplify progression for home aged care workers, 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

34. An aged care system which provides good quality and reliable care to the elderly is critical in permitting the working-age population to contribute to the economy, reducing pressures on the health care system and supporting economic activity, competitiveness and growth.
35. The setting of proper and fair rates of remuneration for home aged care employees 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

36. 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 system. Without the ability to retain employees in the system, 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

37. On the basis of the above the variations sought are:

- a. justified by work value reasons pursuant to s.157(2A);
- 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).



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
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Registered: 21 May 2019

Prepared by the Office of Parliamentary Counsel, Canberra

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.

Annexure A

HARMONISED EXPERT WITNESS CODE OF CONDUCT²

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

² 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.

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

- Macdonald F & Charlesworth S (2021) Regulating for gender-equitable decent work in social and community services: Bringing the state back in, *Journal of Industrial Relations*, 1-24. DOI 0022185621996782
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- Charlesworth, S. (2010) 'The Sex Discrimination Act: Advancing Gender Equality and Decent Work?' in M Thornton (ed) *Sex Discrimination in Uncertain Times*, ANU E Press, Canberra, pp 133-151.

Other Contributions to Refereed Journals & Edited Books: Reviews & Editorials

- Baines, D., Charlesworth, S., Daly, T., & Williamson, S. (eds) (2017) 'The work of care: tensions, contradictions and promising practices.' *Labour & Industry* 34(3), 257-260. (ABDC: B)
- Charlesworth, S. (2017) Book review of Cristiano Gori, José-Luis Fernández and Raphael Wittenberg (editors) *Long-term Care Reforms in OECD Countries*, Policy Press, University of Bristol, Bristol, UK, 2016 *Journal of Aging & Society*.
- Baines, D. Charlesworth, S. and Daly T. (2016) Editorial: 'Underpaid, unpaid, unseen, unheard and unhappy? Care work in the context of constraint' *Journal of Industrial Relations*, 58(4) 449-454.
- Charlesworth, S, Elder, A. Hill, E and Pocock, B. (2012) 'Work and Family Policy in Australia: Current Policy and Outstanding Issues: Guest Editors' Introduction to the Special Issue' *Australian Bulletin of Labour*, 38 (3), 178-183.
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- Macdonald, F. Malone, J & Charlesworth, S (2021) *Women, work, care and COVID*, RMIT University
- Charlesworth, S., Macdonald, F & Clarke, J. (2020). *Scoping Study on Gender-Based Violence in Individualised Support & Care Services in Victoria* : Worksafe Victoria Melbourne
- Charlesworth, S & Low, L. (2020). *The Long-Term Care COVID-19 situation in Australia* International Long-term care policy network London, UK
- Meagher, G., Cortis, N. Charlesworth, S., Taylor, W. (2019). *Meeting the social and emotional support needs of older people using aged care services*. Sydney: Macquarie University, UNSW Sydney and RMIT University.
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- Eastman, C. Charlesworth S. and Hill E. (2018) FACT SHEET 2: Child Carers Social Policy Research Centre UNSW https://www.sprc.unsw.edu.au/media/SPRCFile/Child_Carers_Final.pdf

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- Eastman, C. Charlesworth S. and Hill E. (2018) FACT SHEET 4: Personal Care Assistants Social Policy Research Centre UNSW https://www.sprc.unsw.edu.au/media/SPRCFile/Personal_Care_Assistants_Final.pdf
- Hayes, L. Charlesworth, S. and McCann, D. (2018) Violence and Harassment in the Care Economy: A global research agenda <https://www.dur.ac.uk/resources/law/8.DUUFWViolenceHarassmentinCEONLINE.pdf>
- 2018 video: Violence and Harassment in the Care Economy- part of the 'Unacceptable Forms of Work: Global Dialogue /Local Innovation' project led by Durham University <https://www.dur.ac.uk/law/policyengagement/ufw/challenges/careeconomy/>
- Skinner, N, Smith, J. Charlesworth, S. King, D., & Jarrad, S. (2017) *Quality Jobs Quality Care Toolkit A step- by- step approach to improving job quality in aged care*, Centre for Workplace Excellence, School of Management, Business School, University of South Australia.
- Charlesworth, S. and Macdonald F. (2015) Expert Report to the Shop Distributive and Allied Employees Association for use in the Four Yearly Review of Modern Awards being conducted by Fair Work Australia – Penalty Rates AM2014/305
- Parvazian, S., Charlesworth, S., King, D., Skinner, N. (2014). *Developing job quality benchmarks in Australian aged care services*, Centre for Work + Life, University of South Australia, Adelaide, Australia.
- Parvazian, S., Charlesworth, S., King, D., Skinner, N. (2014). *Developing job quality benchmarks: Work related injuries and illnesses* Centre for Work + Life, University of South Australia, Adelaide, Australia.
- Charlesworth, S, McDonald, P. and Worley, A. (2012) '*Sexual Harassment Report to JobWatch in 2009*' Centre for Work+Life, University of South Australia.
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- Charlesworth, S. and Lingard, H (2011) *Work Life Balance in Construction SMEs: A Scoping Study* Commissioned by Department of Business and Innovation, Victoria.
- Baird, M., Charlesworth, S., Cooper, R. and Heron A. (2011) *Women, Work and the Global Economic Downturn*, An essay commissioned by the Federal Office for Women.
- Charlesworth, S. and Campbell, I (2010) *The Attrition of Employee Lawyers: A Scoping Study*, Victorian Law Foundation.
- Charlesworth, S. (2010) *The Women and Employment Survey: Final Report*, Security4Women, Sydney.
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- Charlesworth, S. and Marshall, H. (2010) '*Strategies to Attract and Retain Paid Care Workers: Some Paradoxical Effects*' School of Global Studies, Social Science & Planning Working Paper Series, No 8, RMIT University, Melbourne.
- Haynes, K., Charlesworth, S., Baird, M., Campbell, I. and Bamberly, L. (2010) *Victorian Work and Life Survey (VicWAL); Technical Report* Centre for Applied Social Research, RMIT University, Melbourne.

Research Funding 2010-2021

Category 1

<i>Year of award</i>	<i>Grant period</i>	<i>Title of grant & CI(s)</i>	<i>Role</i>	<i>Grant program</i>	<i>Total Funding</i>
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&Systems</i> 22scholarsin7 universities, led by Prof Sue Yeandle (Sheffield) inc Sara Charlesworth	Partner	UK Collaborative ESRC Large Grant	£2,500,200
2017	3 years	<i>Job Quality&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), Sara Charlesworth , Dr Elizabeth Hill (Sydney), Prof Ito Peng (Toronto)	CI	ARC Discovery grant	\$369, 110
2015	3 years	<i>Changes in the nonprofit social services in international, comparative perspective</i> led by Prof Donna Baines (McMaster), Sara Charlesworth , 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, Sara Charlesworth & 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 Protections for People in Precarious Jobs</i> led by Prof Leah Vosko (York) with 12 Co-applicants & 10 International Collaborators inc Sara Charlesworth .	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 Sara Charlesworth & 19 Collaborators	Co-lead	Canadian SSHRC Partnership grant	\$C2,001,351
2012	4 years	<i>Prospects for Decent Work & Gender Equality in Frontline Care Work</i> Sara Charlesworth	Future Fellow	ARC Future Fellowships	\$720,452
2011	5 years	<i>From margins to mainstream: gender equality and employment regulation</i> Sara Charlesworth	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 Sara Charlesworth	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 Sara Charlesworth	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 Sara Charlesworth & 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> Sara Charlesworth & 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); Sara Charlesworth ; 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 Sara Charlesworth	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: Sara Charlesworth & A/Prof Debra King (Flinders)	Lead CI	Dept of Health & Aging: <i>Better Health Care Connections</i> grants	\$1,133,000
2012	1 year	<i>Working together well: best practice case studies in work health and safety</i> Prof Barbara Pocock & Sara Charlesworth	CI	SafeworkSA	\$83,096
2011	1 year	<i>Work/life Outcomes in SME Construction Companies</i> led by Sara Charlesworth 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 Sara Charlesworth , 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), Sara Charlesworth & 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 Sara Charlesworth 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 Sara Charlesworth , Dr Michelle Turner (RMIT)	CI	Lend Lease Pty Ltd	\$84,417
2013	N/A	<i>AIRAANZ Symposium for 5 Sep 2013: Consumer- directed funding models Will increased choice deliver quality: jobs and quality care?</i> Sara Charlesworth & 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> Sara Charlesworth	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> Sara Charlesworth	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, Sara Charlesworth & Dr Liz Hill (Sydney)	Co-chair	Academy of Social Sciences in Australia	\$7000

2010	2 months	Australia-The Netherlands Exchange Program Travel Grant Sara Charlesworth	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.