



Fair Work Commission: 4 Yearly Review of Modern Awards

OUTLINE OF SUBMISSIONS

AM2014/196—PART TIME EMPLOYMENT

AM2014/197—CASUAL EMPLOYMENT

CLAIM TO VARY CLAUSE 10.3 OF THE SOCIAL, COMMUNITY, HOME
CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010

30 NOVEMBER 2015

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OUTLINE OF SUBMISSIONS

FILED ON BEHALF OF AUSTRALIAN BUSINESS INDUSTRIAL AND THE NSW BUSINESS CHAMBER LTD

INTRODUCTION

1. Australian Business Industrial (**ABI**) and the NSW Business Chamber Ltd (**NSWBC**) seek a variation to clause 10.3 of the *Social, Community, Home Care and Disability Services Industry Award 2010 (Award)*.
2. The terms of the variation sought are recorded in a Draft Determination filed in the Fair Work Commission.
3. The proposed variation is to delete clause 10.3 of the Award and to insert in lieu therein:

10.3 Part-time employment

- (a) A part-time employee is one who is engaged to work less than 38 hours per week (or an average of less than 38 hours per week) in accordance with this clause.
 - (b) The terms of this award will apply to part-time employees on a pro rata basis on the basis that the ordinary weekly hours of work for full-time employees are 38.
 - (c) Before commencing employment, an employer:
 - (i) must agree in writing with the employee on the minimum number of hours to be worked each week; and
 - (ii) may agree in writing with the employee on the days of the week the employee will work and/or the starting and finishing times each day.
 - (d) Any agreed variation to (c)(i) must be recorded in writing.
 - (e) To avoid any doubt, where an employer and employee have only agreed on the minimum number of hours to be worked each week (in accordance with clause 10.3(c)(i), they may agree to work additional hours from time to time and such agreement is not required to be recorded in writing.
4. The proposed variation seeks to redefine the notion of part-time employment in the Award, to ensure that the Award is properly relevant to the nature of working arrangements that currently exist in the social, community, home care and disability services industry (the **industry**) and are relevant to the ongoing needs of the industry arising from the reforms driven by the National Disability Insurance Scheme (**NDIS**).
 5. The Award currently defines a part-time employee as one 'who is engaged to work less than 38 hours per week ... and who has reasonably predictable hours of work' [emphasis added].
 6. The reality in the industry is that many employees who are engaged on a part-time basis do not work reasonably predictable hours of work.

7. The proposed variation also seeks to remove inflexible and onerous requirements which currently hinder the engagement of part-time employees in this industry.
8. The proposed variation, in the context of the Award, reflects a minimum safety net that is consistent with the modern awards objective.
9. The variation is sought to resolve the significant practical problems that have emerged following the introduction of clause 10.3(c) into the Award on 1 August 2013.¹
10. The variation is also sought to address further exacerbating practical problems that have, and will continue to, emerge as a result of the staged introduction of the NDIS.

CONTEXT FOR THE APPLICATION

11. The industry is currently undergoing unprecedented change by reason of the significant reforms being rolled out across the sector.
12. In the disability services sector, the Productivity Commission review during 2010 and 2011 culminated in the creation of the National Disability Insurance Scheme; a major reform which is steadily being rolled out across Australia.
13. In the aged care and home care sectors, the Federal Government announced reforms in 2012 creating 'Consumer Directed Care'.
14. The NDIS reforms will be progressively implemented across Australia until 2019 and will similarly give individuals greater choice and control in the type, nature, and timing of care they receive.
15. Other similar reforms are also taking place in respect of State and Territory funding models.
16. These reforms all have a shared focus; empowering individual clients and customers to exercise a greater level of choice and control over the receipt of their supports.
17. However, the reforms also represent a major challenge for employers and employees in the industry and require businesses to transform the structure and nature of their workforces in order to drive the efficient and productive performance of work, productivity, and sustainable employment costs, which can only be achieved through a reasonable and not unduly onerous regulatory framework.

¹ See [2013] FWC 4141.

CHANGING WORKFORCE DYNAMICS

18. There is a high level of part-time and casual employment in the industry.
19. This is in large part due to the characteristics of the industry and the nature of the work that is performed. By way of example:
 - (a) much of the hands-on support delivered in some service areas are on 'shifts' of a short duration (i.e. 2-6 hours);
 - (b) 'shifts' are often subject to change, sometimes at short notice for a variety of reasons;
 - (c) many of the hands-on support services are delivered at unconventional times (i.e. not during standard office hours) that reflect the support requirements of individual client/customer groups; and
 - (d) due to the nature of funding in the industry, there is sometimes a high level of uncertainty about the future or security of certain programs or services, and some services may not be sustained for extended periods of time.
20. The reforms in the industry are having a significant impact on the way in which services are provided.
21. By way of summary:
 - (a) the reforms have caused an increase in the casualisation of the workforce;
 - (b) there is increasingly a preference for clients and/or families to organise their support and changes to their support arrangements directly with their support staff rather than through an administrative hierarchy;
 - (c) clients are changing the support they request from week to week rather than receiving long-term consistent programs;
 - (d) client cancellations are often with little or no notice;
 - (e) clients have "preferred" or favourite staff and decline support from any other staff; and
 - (f) clients and families request support workers of a particular 'type' to fit their own profile (e.g. young, sporty, musical, etc).

LEGISLATIVE FRAMEWORK

'Merit'

22. The legislative framework applicable to the 4 Yearly Review has been considered in detail in the Preliminary Issues Decision.²
23. The Preliminary Issues Decision addresses the legislative framework applying to these proceedings in detail.
24. We draw particular attention to three specific principles determined in the Preliminary Issues Decision.

Modern Awards Objective Must Be Considered

25. The Preliminary Issues Decision confirms (at [23]) that the Commission remains at all times obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions, taking into account:
 - (a) relative living standards and the needs of the low paid;
 - (b) the need to encourage collective bargaining;
 - (c) the need to promote social inclusion through increased workforce participation;
 - (d) the need to promote flexible modern work practices and the efficient and productive performance of work;
 - (da) 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
 - (iiii) employees working shifts;
 - (e) the principle of equal remuneration for work of equal or comparable value;
 - (f) the likely impact of any exercise of modern award powers on business, including on productivity employment costs and the regulatory burden;
 - (g) 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

² [2014] FWCFB 1788

- (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

(This is the modern awards objective).

- 26. This means that, when considering any variation, the Commission should be focused upon ensuring that any new version of the minimum safety net is consistent with the modern awards objective.

Merit based evidence required

- 27. The discretion conferred on the Commission to make determinations varying modern awards is expressed in general terms. However, the need for a 'stable' modern award system suggests that parties seeking to vary a modern award must advance a merit argument in support of the proposed variation.³

Requirement for probative evidence

- 28. When considering the merit basis to make variations, the Preliminary Issues Decision held that:
 - (a) there may be cases where the need for an award variation is self-evident. In such circumstances, proposed variations can be determined with little formality;⁴ and
 - (b) where significant award changes are proposed, they must be supported by submissions which address the legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation.⁵
- 29. The evidence bought by the ABI and NSWBC in this case meets the requirements set out in the Preliminary Issues Decision.

THE MODERN AWARDS OBJECTIVE

- 30. Section 134 of the FW Act is in the following terms:

FAIR WORK ACT 2009 - SECT 134

The modern awards objective

What is the modern awards objective?

- (1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

- (a) relative living standards and the needs of the low paid;

³ Preliminary Issues Decision at [60]

⁴ Preliminary Issues Decision at [23] and [60]

⁵ Ibid

- (b) the need to encourage collective bargaining;
- (c) the need to promote social inclusion through increased workforce participation;
- (d) the need to promote flexible modern work practices and the efficient and productive performance of work;
- (da) 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;
- (e) the principle of equal remuneration for work of equal or comparable value;
- (f) the likely impact of any exercise of modern award powers on business, including on productivity employment costs and the regulatory burden;
- (g) 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
- (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

This is the modern awards objective.

FAIR AND RELEVANT MINIMUM SAFETY NET

31. The purpose of section 134 is the creation of a 'fair and relevant minimum safety net of terms and conditions' that is constituted by the National Employment Standards and modern awards.
32. It is implicit within this that the reference to modern awards should be read as a reference to the modern awards cumulatively but also individually in relation to their specific content.
33. What is "fair and relevant" is a contextual consideration.
34. It should be uncontroversial that what section 134 is setting is the terms and conditions of employment that no employee in a given circumstance should fall below; such is clear from the words "minimum safety net".
35. In arriving at this fair and relevant minimum safety net, the Commission is to "take into account" those matters set out in section 134(1)(a)-(h) inclusive. This said the ultimate outcome is the

creation of a “fair and relevant minimum safety net” having taken into account and weighed up the matters set out in section 134 (1) (a)-(h).

36. The phrase “take into account” has a relationship with similar phrases such as “consider” and “have regard to”. Such expressions are frequently used in legislation that vests a discretion in a decision making body to condition the scope of the discretion otherwise vested in the decision-maker. Relevantly section 134 is not the section in the FW Act that vests the discretion but rather a section that conditions the exercise of ‘modern award powers’ which include for instance the discretion vested by section 139.
37. Such phrases have been consistently interpreted to mean that the decision-maker must take into account the matter to which regard is to be had and give weight to it as an element in making the decision.
38. However, the significance of the stated matters will depend upon their context.⁶ The weight to be given the matter is for the decision-maker to determine, provided that the consideration of the matter is genuine. The fact that a decision-maker is directed to have regard to certain matters that are specified does not preclude consideration of other factors thought to be relevant.⁷

THE LIMBS OF SECTION 134 CONSIDERED

39. A deeper examination of the various limbs of section 134(1) illuminates a set of quite different requirements. Some of the limbs are written in terms of the ‘need’ to do something, others not. The degree to which the Commission is moved in relation to these ‘needs’ is qualified using different phrases:
 - (a) “encourage”;
 - (b) “promote”;
 - (c) “provide”; and
 - (d) “ensure”.
40. In addition, some of the provisions are focused on the impact of a possible exercise of power.

⁶ Barwick CJ in *Rathborne v Abel* (1964) 38 ALJR 293 at 295

⁷ Kitto J in *Rathborne v Abel* (1964) 38 ALJR 293 at 301, *R v Hunt*; *Ex parte Sean Investments Pty Ltd* (1979) 180 CLR 322 at 286; 25 ALR 497 at 504; *R v Toohey*; *Ex parte Meneling Station Pty Ltd* (1982) 158 CLR 327 at 333; 44 ALR 63 at 67; *Haplin v Lumley General Insurance Ltd* (2009) 261 ALR 741 at 748; *Minister for Immigration and Citizenship v Khadgi* [2010] FCAFC 145 at [57]-[67].

134(1)(A) - RELATIVE LIVING STANDARDS AND THE NEEDS OF THE LOW PAID

41. Section 134(1)(a) is written differently from other the limbs (except perhaps 134(1)(e)). It requires consideration of 'relative living standards' and the 'needs of the low paid' generally.
42. 'Relative living standards' and the 'needs of the low paid' are related but not identical considerations.
43. Neither phrase is defined in the FW Act but they are relevant to the modern awards objective (s 134(1)), the low paid bargaining regime (s241) and the minimum wages objective (s 284). These phrases have been given closest consideration in minimum wage reviews and have been considered in:
 - (a) Measuring the Needs of the Low Paid Report to the Minimum Wage Panel of 14 December 2011,⁸
 - (b) Research Report 2/2011 Relative Living Standards and Needs of Low Paid Employees Jocelyn Pech - Minimum Wages and Research Branch Fair Work Australia, January 2011;
 - (c) Annual Wage Review 2009-2010;⁹ and
 - (d) Annual Wage Review 2013-2014.¹⁰
44. The Commission has made a number of observations about the phrase 'relative living standards' including that central to the examination of relative living standards is the extent to which low paid workers are able to purchase the essentials for a decent standard of living and to engage in community life (AWR2014, 302).
45. The Commission has focused on the comparison between award reliant employees and other employed employees, especially non managerial. Employees' relative living standards are also affected by the level of wages an employee earns, hours they work, household circumstances and tax transfer payments.
46. The Commission has acknowledged that the maintenance of the value of minimum award wages is not adequate alone to maintain relative living standards and that this is but one method for doing so. The maintenance of other pecuniary modern award benefits as well as the ability to bargain all comes into the mix in considering relative living standards.
47. When considering the needs of the low paid, the Commission has generally adopted the notion that low paid persons are those who are award reliant and receive a rate of pay that as an adult full

⁸ PR517718

⁹ 3 June [2010] FWAFB 4000

¹⁰ 4 June [2014] FWCFB 3000

time equivalent would place them below two thirds of the median adult ordinary time earnings (AWR2014, 391).

134(1)(B) - THE NEED TO ENCOURAGE COLLECTIVE BARGAINING

48. The phrase “encourage” means “...to inspire with courage, spirit or confidence; ...to stimulate by assistance, approval...”¹¹.
49. To encourage is on any proper reading a positive act. That is to say that the Commission does not simply need to find that a provision does not discourage enterprise bargaining.

134(1)(C) - THE NEED TO PROMOTE SOCIAL INCLUSION THROUGH INCREASED WORKFORCE PARTICIPATION

50. The word “promote”, like “encourage” involves a positive act. “Promote” has a stronger positive meaning than “encourage” and it is usually taken to mean ‘...to advance in rank, dignity, position etc to further the growth development progress of; to help to found, originate, organise or launch...’¹².
51. “Social inclusion” is a term that has been considered by the Commission previously and essentially goes to the diversity of demographic composition within the workforce and the broader issue of having employment and reasonably engaging in community life.
52. Clauses that ordinarily promote social inclusion through workforce participation are those that encourage the optimum level of participation irrespective of the employee’s circumstance; flexibility clauses, broad flexibility in types of employment and its flexibility to meet different social circumstances etc are examples of provisions which promote social inclusion.

134(1)(D) - THE NEED TO PROMOTE FLEXIBLE MODERN WORK PRACTICES AND THE EFFICIENT AND PRODUCTIVE PERFORMANCE OF WORK

53. As with bargaining and social inclusion this limb is expressed as a “need” but is qualified by the word “promote”.
54. This limb of the modern awards objective is aimed squarely at promoting:
 - (a) flexible modern work practices; and
 - (b) the efficient and productive performance of work.
55. The language in this limb of section 134 is aimed at the nature of the work practices and then to the performance of work as regulated by the modern award to achieve a particular goal. Elements of this would seem uncontroversial:

¹¹ Macquarie Dictionary Third Edition 365

¹² Macquarie Dictionary Third Edition 923

- (a) ensuring that there are no artificial barriers to the performance of work; and
- (b) ensuring appropriate fluidity of the use of labour without unnecessary or arbitrary restrictions.

56. The notion of the efficient and productive performance of work can extend to how employees are engaged and the level of flexibility surrounding this.

134(1)(DA) - THE NEED TO PROVIDE ADDITIONAL REMUNERATION

57. This limb does not appear to be enlivened by the nature of the proposed term.

134(1)(E) - THE PRINCIPLE OF EQUAL REMUNERATION FOR WORK OF EQUAL OR COMPARABLE VALUE

58. This limb does not appear to be enlivened by the nature of the proposed term.

134(1)(F) - THE LIKELY IMPACT ON EXERCISING MODERN AWARD POWERS ON BUSINESS INCLUDING ON PRODUCTIVITY, EMPLOYMENT COSTS AND THE REGULATORY BURDEN

59. This limb of section 134(1) requires the Commission to consider the likely impact of exercising its power on business, whether positive or negative.

134(1)(G) - THE NEED TO ENSURE A SIMPLE, EASY TO UNDERSTAND STABLE AND SUSTAINABLE MODERN AWARD SYSTEM FOR AUSTRALIA THAT AVOIDS UNNECESSARY OVERLAP OF MODERN AWARDS

60. Like many limbs of the modern awards objective, this limb is expressed in imperative terms as a need but it is also qualified with the word “ensure”.

61. This suggests that an object that must be achieved by modern awards is a simple, easy to understand stable and sustainable modern award system.

62. The word “simple” means “... easy to understand, deal with, use ... not elaborate or artificial ...”¹³. The words “easy to understand” are expressly stated and there is clearly some overlap between the notion of “simple” and “easy to understand”.

63. The notions of “stable” and “sustainable” are more complex. These could be said to introduce notions going to the inter-relationship of modern awards and their relevance and therefore longevity.

¹³ Macquarie Dictionary Third Edition 1081

134(1)(H) - THE LIKELY IMPACT OF EXERCISING MODERN AWARD POWERS ON EMPLOYMENT GROWTH, INFLATION AND THE SUSTAINABILITY PERFORMANCE AND COMPETITIVENESS OF THE NATIONAL ECONOMY

64. This limb of section 134 requires the Commission to consider the likely impact of exercising its power in the context of the broader economy.
65. Again such an impact could be positive or negative.

CONCLUSION

66. ABI and NSWBC have presented evidence in these proceedings, probative in nature, of the need for the change sought.
67. In addition it is submitted that the evidence supports the conclusion that the change sought when included in the Award will result in an Award that meets the Modern Awards Objective ensuring a fair and relevant minimum safety net.

FAIR WORK COMMISSION
4 Yearly Review of Modern Awards

Applicants: Australian Business Industrial and the NSW Business Chamber Ltd
Matter: AM2014/196 (Part-Time Employment)

WITNESS STATEMENT OF HUGH KENNETH PACKARD

I, Hugh Kenneth Packard of 131 Lacmalac Rd Tumut in the State of New South Wales, affirm:

BACKGROUND

1. I am the Chief Executive Officer of Valmar Support Services Ltd (**Valmar**, or the **Company**) based in Tumut, New South Wales.
2. I have been employed with the Company since around September 1991.
3. My role as Chief Executive Officer involves overall managerial and operational responsibility for the business.
4. Prior to working with Valmar, I was employed in the disability field for two years as an Information Officer with IDEAS inc.
5. I hold a Bachelor of Arts from the Australian National University and a Graduate Diploma from the University of Canberra.
6. In 2002 I was a recipient of the Churchill Fellowship administered by the Winston Churchill Memorial Trust. As the Blakeney Millar Churchill Fellow, I travelled to Canada, USA, the Republic of Ireland, Sweden and the United Kingdom to study overseas innovations and best practices in providing employment options for people with disabilities in isolated, rural and remote locations.
7. During the last 25 years I have also been involved in numerous government or industry committees including:
 - (a) the Commonwealth Business Services Review Implementation Group; and
 - (b) as a NSW National Disability Services State Committee Member.

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8. I make this statement from my own personal knowledge and belief (save where indicated to the contrary).

INFORMATION ABOUT THE COMPANY

9. The Company has been in operation since around 1966 and is a not-for-profit, public company limited by guarantee overseen by a voluntary board of directors.
10. The Company is based in Tumut NSW and operates in the local government areas of Tumut, Tumbarumba, Gundagai, Lockhart, Griffith, Yass, Boorowa, Goulburn, Upper Lachlan, Queanbeyan, Palarang and in the Australian Capital Territory.
11. The Company's mission or purpose is to provide support services for people with disabilities and the frail aged.
12. The Company operates in the social, community, home care and disability services industry, and its core functions or activities include:
 - (a) the provision of disability services through the provision of personal care and domestic and lifestyle support to people with disabilities in a community and/or residential setting (disability services and group house support);
 - (b) the provision of disability and aged services through respite centres and day services (respite services);
 - (c) the provision of personal care, domestic assistance or home maintenance to aged people and people with disabilities in their private residence (home care services);
 - (d) the provision of supported employment services;
 - (e) the provision of Meals on Wheels to the frail aged and people with disabilities; and
 - (f) the provision of Community Transport (bus and car) for the frail aged, transport-disadvantaged and people with disabilities.
13. The Company is funded through the NSW Department of Family and Community Services, the Commonwealth Department of Social Services, the National Disability Insurance Scheme (**NDIS**) and fees charged for various services delivered.
14. Valmar also generates income through its Supported Employment businesses.

THE COMPANY'S WORKFORCE

15. The Company currently employs approximately 288 employees. These employees are employed in a variety of roles including:
- (a) Hands-On Disability Support;
 - (b) Hands-On Aged Care Support;
 - (c) Support and Production in our Supported Employment Services business (covered by the Supported Employment Services Award 2010);
 - (d) Service Coordination and Management; and
 - (e) Administration and Finance.
16. The Company's workforce currently consists of approximately:
- (a) 52 full-time employees;
 - (b) 168 part-time employees; and
 - (c) 68 casual employees.
17. Where I refer to 'hands-on' staff in this affidavit, I am referring to those employees who physically provide support services to the frail-aged or to those with a disability.

INDUSTRIAL ARRANGEMENTS APPLYING TO THE WORKFORCE

18. The majority of the employees of Valmar are covered by the *Social, Community, Home Care and Disability Services Industry Award 2010* (the **Award**), and the Award applies to their employment.
19. Not every employee of Valmar is covered by the Award, however. For example, approximately 70 employees work in Valmar's supported employment business and are therefore not covered by the Award.
20. Of the employees who are covered by the Award, approximately:
- (a) 37 are full-time employees;
 - (b) 115 are part-time employees; and
 - (c) 66 are casual employees.

PART-TIME AND CASUAL EMPLOYMENT

21. As detailed at paragraph 20 above, approximately 53% of our workforce covered by the Award is made up of permanent part-time employees, while another 30% of the workforce covered

by the Award is made up of casual employees, making a total of approximately 83% of our workforce that is either casual or part-time. Based on my experience in the industry, I have observed that most businesses in this industry utilise relatively high levels of part-time and casual employment. In my experience, Valmar and the aged care and disability support sectors have never really been able to provide many genuine full-time jobs, with part-time work being the norm.

22. Valmar's workforce composition and its high levels of part-time and casual employment reflect the nature of the industry, which has the following characteristics:
- (a) much of the hands-on support we deliver in some service areas are in shifts of a short duration (i.e. 2-6 hours);
 - (b) shifts are often subject to change, sometimes at short notice for a variety of reasons;
 - (c) many of the hands-on support services we deliver are at unconventional times (i.e. not during standard office hours) that reflect the support requirements of individual groups; and
 - (d) due to the nature of funding in the industry, there is sometimes a high level of uncertainty about the future or security of certain programs or services, and some services may not be sustained for extended periods of time.
23. These types of situations occur almost every week in Valmar's business as more and more of our support is individually focussed and genuinely community based.

BENEFITS OF PART-TIME EMPLOYMENT

24. Valmar has for many years sought to keep the percentage of casual employees in the organisation as low as possible, and to engage staff on a permanent basis wherever practicable.
25. This reflects Valmar's strong commitment to its clients and its desire to provide clients with consistent, predictable and known staff members to support them, to the extent we can.
26. Valmar invests heavily in securing, retaining, training and developing our permanent workforce.
27. Throughout my 25 years' experience in the industry, I have observed great benefits to clients when they are provided with a 'familiar face' and they are able to develop a relationship with the staff member who provides them with their particular service.

28. In my experience, there is a client benefit:
- (a) of services being provided by a familiar face; and
 - (b) in developing relationships with staff members.
29. By way of example, in around August 2015 I spoke with a number of parents and guardians of people with disabilities living in a group house run by the ACT Government. Valmar will shortly be taking on the running of this house through the NDIS.
30. One of the parents I spoke with was Elspeth Bonfield, the mother of a severely disabled adult daughter who lives in the group house. Ms Bonfield informed me that the group house had historically been staffed with permanent staff, however in recent times had been staffed almost entirely by casual and agency staff. During that discussion Ms Bonfield said words to the effect of:
- “Our biggest priority is that support must be provided by reliable, consistent, long-term permanent staff instead of by a passing parade of casuals”.
31. The above conversation is representative of the sentiments expressed to me by many parents and guardians over the years.
32. The same sentiments are also reflected by Aged Support clients: staffing consistency, especially when those staff members are going into their homes, is of paramount importance.
33. There are also many other benefits in having and retaining a core workforce of permanent staff. These include, but are not limited to:
- (a) having a skilled and experienced workforce whom we can trust with the support of the vulnerable people we work with;
 - (b) having a dedicated workforce with a commitment to the organisation and to its clients;
 - (c) having certainty for the clients around who will be supporting them; and
 - (d) not having to continually recruit, train, induct and support casual staff.
34. I also believe the majority of our staff would rather have the certainty of a permanent position, even with some flexibility and/or uncertainty in working arrangements, rather than being engaged in a casual position.

CHANGING NATURE OF WORK AND CHANGING WORKFORCE REQUIREMENTS

35. Valmar has already commenced operating under the NDIS in the ACT. The Company is a registered service provider with the National Disability Insurance Authority.
36. Under the NDIS, clients now have a far greater level of control and choice in the services provided to them.
37. The NDIS has led to a number of new workforce challenges such as:
- (a) A preference for clients and/or families to organise their supports and changes to their support arrangements directly with their support staff rather than through an administrative hierarchy;
 - (b) Clients changing the support they request from week to week rather than receiving long-term consistent programs;
 - (c) Client cancellations with little or no notice;
 - (d) Clients having “preferred” or favourite staff and declining support from any other staff; and
 - (e) Clients and families requesting support workers of a particular gender or “type” (e.g. young, sporty, musical, etc.).
38. There are also similar reforms occurring in the aged care sector.
39. In 2012, the Federal Government announced aged care reforms identifying the need for more choice and flexibility for people receiving care at home. This led to the creation of ‘Consumer Directed Care’ with individualised funding in the aged care sector (**CDC**).
40. As part of the 2015 budget, the Federal Government announced that from February 2017 funding for ‘Home Care Packages’ will be allocated directly to the consumer, giving them more choice and control in the type of care they receive and which provider delivers the care. The Home Care Packages will also be portable, meaning consumers can change their service provider whenever they want and if moving house, they can take the package with them.
41. For many decades, prior to the current introduction of the NDIS and the announcement of the CDC reforms, there was a high degree of certainty and stability around the funding for organisations like ours.
42. The historical stability in funding arrangements allowed Valmar to predict, with a reasonable degree of precision, when, where, what and with whom hands-on support was able to be provided.

43. In preparation for the introduction of the NDIS and CDC models, traditional funding models have been replaced with far more individualised and flexible models.
44. This change to funding models has led to a reduction in the predictability around the nature of support being provided by Valmar. For example, while the hours of work for hands-on staff are still often made up of short shifts in differing locations, the quantum of support hours has been increasing and the predictability around many of the support shifts has steadily been reducing.
45. Valmar was historically able to provide part-time staff with a good degree of certainty about some of their hours, with additional hours made available when the opportunities arose.
46. However, in the past two or three years this has been changing with much less certainty around part-time staff hours.

INCREASING CASUALISATION OF WORKFORCE

47. Up until 2013, there was a very high level of part-time employment within Valmar of employees covered by the Award. For example, in 2012-2013 permanent part-time employment represented 68%, while casual employment represented only 15% of our workforce.
48. However, the make-up of our workforce has changed in recent times, with a steady decline in part-time employment and a growth in casual employment of employees covered by the Award.
49. Casual employment within Valmar has grown as follows:
 - (a) in 2012-2013, casual employment represented 15% of the workforce;
 - (b) in 2013-2014, casual employment increased to 21%; and
 - (c) in 2014-2015 casual employment increased to 30%.
50. This increase in casual employment has occurred prior to the implementation of the NDIS, yet I anticipate the trend towards greater engagement of casuals will further increase with the roll-out of the NDIS as well as the implementation of Consumer Directed Care with Individualised Funding (CDC) in the aged care sector.
51. Based on my 26 years' experience as a significant employer in the sector, the past three years' data from our HR system, and my hands-on experience of the NDIS, I anticipate a continued significant, rapid albeit unpopular move to a highly casualised workforce in Valmar and likely the industry.

ARRANGEMENTS WITH PART-TIME EMPLOYEES

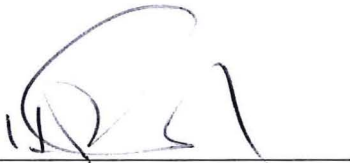
52. Valmar employs numerous part-time employees who have a highly predictable regular pattern of work. However, this would be for only a minority of part-time employees, and the proportion of these employees is reducing.
53. The far more common situation is for part-time employees to have a proportion of their working hours which are predictable, and the rest which are subject to a significant degree of variability.
54. When engaging part-time employees, Valmar typically prescribes a minimum number of hours and as much detail as possible concerning the employee's 'regular pattern of work' (i.e. the days the employee can expect to work) in the employee's Letter of Engagement and Duty Statement.
55. Part-time employees perform their 'predictable' hours of work in accordance with a roster that is published pursuant to the requirements of the Award. If an employee accepts additional hours with sufficient notice these would also be displayed on the roster, however if the hours are accepted on short notice these hours would not usually be on the roster.
56. Valmar always strives to request and have written agreement to any additional or changed hours worked by permanent part-time staff, but in reality this is often very onerous and impractical. With the introduction of the NDIS, clients are more likely to change arrangements with no notice and immediate additional hours are more likely to arise due to urgent client needs. Rostering changes are also sometimes required at short notice when staff members call in sick.
57. Given Valmar's investment in its permanent part-time staff and their general level of superior skills and experience to casual employees, Valmar would always rather offer additional hours to part-time employees rather than offering these hours automatically to casuals. In my experience the clients and guardians prefer this as well.

CLAUSE 10.3 OF THE AWARD

58. Clause 10.3 of the Award defines a 'part time employee' as being someone who has 'reasonably predictable hours of work', however in my experience very few hands-on staff hold roles where all of their hours of work are 'reasonably predictable'.
59. Clause 10.3(c) of the Award also requires employers and employees to agree on a fixed number of hours, days and starting and finishing times, however in our industry this is almost

impossible as clients' needs and choices have a large influence on this and employers have only limited control over employees' hours of work.

60. Given the nature of services we provide, it is very difficult to provide employees with consistent, predictable starting and finishing times.
61. A simple example involved a permanent part-time staff person undertaking a shift which involved supporting a person with a disability to attend a social function on a Saturday evening. This particular staff person's normal hours of work (as agreed to in writing) were from 3pm to 8pm and those hours were published on the roster. At the social event the kitchen was very slow serving the meals and by 8pm the client had still not had their meal, and the social event was still some hours from being finished. The client's strong desire on that occasion was to stay at the social event, and so the staff member decided to stay on and work additional hours until the event concluded.
62. The above example is illustrative of the lack of predictability in working hours in this industry.
63. Valmar almost always prefers to use its more competent permanent workforce to provide the support. However, clause 10.3(c) makes it operationally very difficult and impractical to use part-time employees, and incentivises the business to use casual employees, which is to the detriment of permanent part-time staff as in my experience they like these types of shifts.
64. It has been my experience, as detailed above, that our clients do not want their support to be delivered by casual staff.
65. It has also been my experience that the employee representative bodies we deal with strongly advocate for staff being moved from casual to permanent part-time wherever possible. Clause 10.3(c) as it stands works against this.



Signature

26th November 2015
Date