



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

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

AM2020/99

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

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

Sydney

10.00 AM, THURSDAY, 7 DECEMBER 2023

Continued from 06/12/2023

PN3050

JUSTICE HATCHER: Mr Ward, your witnesses this morning?

PN3051

MR WARD: Thank you, your Honour. If there's nothing else to deal with, I'd call Stuart Hutcheon.

PN3052

JUSTICE HATCHER: Come forward, Mr Hutcheon.

PN3053

THE ASSOCIATE: Mr Hutcheon, do you want to take the oath or the affirmation?

PN3054

MR HUTCHEON: Affirmation, please.

PN3055

THE ASSOCIATE: Can you please state your full name and address?

PN3056

MR HUTCHEON: Stuart John Hutcheon, (address supplied).

<STUART JOHN HUTCHEON, AFFIRMED [10.01 AM]

EXAMINATION-IN-CHIEF BY MR WARD [10.01 AM]

PN3057

MR WARD: Mr Hutcheon, could I ask you again to state your full name and address?---Stuart John Hutcheon, (address supplied).

PN3058

And I'm correct, you've prepared a statement for these proceedings, and a report?---Yes, that's correct.

PN3059

That statement is of some 12 paragraphs, with three annexures, one of which is the report you've provided?---Yes.

PN3060

I understand there's some small changes to be made to the statement. I might lead these, just for convenience. Mr Hutcheon, if you could go to paragraph 1, I understand where it says 'I'm currently a partner', it should say 'I am currently a managing partner'. Is that correct?---Yes, correct.

PN3061

Paragraph 5, you see the word - 'In my role I have an ongoing professional relationships within.' I understand the word 'within' is actually two words. It should be 'with in'?---Yes, correct.

*** STUART JOHN HUTCHEON

XN MR WARD

PN3062

Then very lastly, the final paragraph of your statement is not numbered. I understand that that should be paragraph 13. Is that correct?---Yes, correct.

PN3063

Subject to those corrections, is that statement true and correct to the best of your knowledge and believe?---Yes, it is.

PN3064

It is. For the Bench's convenience, the statement is found in the court book at 2951 to 3025. I'd seek to tender the statement.

PN3065

JUSTICE HATCHER: The witness statement of report of Stuart Hutcheon dated 31October 2023 will be marked exhibit JE16.

**EXHIBIT #JE16 WITNESS STATEMENT OF STUART HUTCHEON
DATED 31/10/2023**

CROSS-EXAMINATION BY MR HARTLEY

[10.03 AM]

PN3066

MR HARTLEY: If the Commission pleases. Mr Hutcheon, my name is Hartley. I appear for ANMF. Have you got a copy of your report there with you?---Yes, I do.

PN3067

I'm going to ask you some questions about it. I won't ask you to turn to pages of it, but it's not meant to be a memory test, so if you'd like to turn to something, feel free. Your firm conducts a survey which it calls the Aged Care Financial Performance Survey?---Yes, correct.

PN3068

You refer in your report to participants in the survey. What you mean by that is people who have agreed to provide you data as part of that survey?---Yes.

PN3069

So in that sense it's an opt-in survey?---Yes.

PN3070

The percentage of participation varies from place to place?---Yes, it does.

PN3071

So, for example, in residential aged care in the ACT you have something like 80 per cent coverage. If you – outlined in our survey report for 30 June 2023, which show a sort of a map of the participants.

PN3072

Yes. So you're talking about page 56 numbered red in your report?---Correct.

*** STUART JOHN HUTCHEON

XXN MR HARTLEY

PN3073

There's a map there and you can see this is residential aged care, looking at the ACT, 22 homes included, and you say that that's 81.5 per cent?---Yes.

PN3074

Whereas in, for example, the Northern Territory, 16.7 per cent?---Yes.

PN3075

Victoria, approximately 30 per cent?---Yes.

PN3076

And it's the case as well, isn't it, that your coverage – when I say 'coverage', I mean degree of participation. Your coverage varies depending on the type of home?---Yes. Type of home, type of organisation, whether that be, you know, for profit, not for profit, government, et cetera.

PN3077

So in terms of government, it's the case, isn't it, that government-owned providers are not participants in the survey?---No. There's only – and obviously I can't mention names. There is some regional and local council and there is one government organisation in South Australia.

PN3078

Right. So can you go to page 28, red-numbered page 28, in your report. Just tell me when you're there?---Yes.

PN3079

The first paragraph, last sentence, so you don't include two ASX listed entities, two large for profit providers, and when it says there 'government owned providers', you'd qualify that now to say that you have some government owned providers?---Yes.

PN3080

But mostly not?---Mostly not.

PN3081

You're an accountant and an auditor by trade?---Yes.

PN3082

And your area of study at university was accountancy and audit?---Yes.

PN3083

Not a criticism of you, but you don't have an economics qualification?---No.

PN3084

And you don't have a statistics qualification?---No.

PN3085

Or an econometrics qualification, for example?---No.

*** STUART JOHN HUTCHEON

XXN MR HARTLEY

PN3086

Your firm's primary purpose in conducting this survey is to enable participants to benchmark themselves against similar de-identified comparative participants?---Yes.

PN3087

The reports that you produce using the survey are for that purpose?---Yes. Yes. The detailed reports for the participants, yes.

PN3088

Yes. So again, not a criticism, but because your purpose is benchmarking rather than anything else, your survey reports don't contain, for example, an analysis by a statistician as to how statistically representative the survey results are?---No.

PN3089

You don't represent in your survey that you're producing a statistically representative picture of the industry in a way that a statistician might?---No.

PN3090

And that's true of both, if I can call it, the landscape survey report, which is an annexure to your report in this proceeding, but it's also true of the report that you produced specifically for this proceeding?---Yes.

PN3091

You're aware, Mr Hutcheon, that some employees in residential aged care are covered by awards?---Yes.

PN3092

For example, the Aged Care Award and the Nursing Award, and you know that the orders sought in this proceeding would, if they were made, modify rates of pay in those modern awards?---Yes.

PN3093

You're aware also, though, that some employees are covered by enterprise agreements?---Correct, yes.

PN3094

And some, at least, of the employees covered by enterprise agreements will be getting rates of pay that are higher than award rates of pay?---Yes.

PN3095

Other employees, who aren't covered by enterprise agreements, might have contracts that entitle them to above award rates of pay?---Yes. Yes.

PN3096

To the extent that there area employees in aged care on over-award rates of pay, their pay may be less affected by an increase in award rates than employees on award rates?---Yes, they could be.

*** STUART JOHN HUTCHEON

XXN MR HARTLEY

PN3097

And it could be that they aren't affected at all?---Yes, depending on the organisation's decision on whether they would honour a pay increase. So recently we've had the 15 per cent pay increase.

PN3098

Yes?---And it was, in our experience, and what we've seen, and also hearing from ministers in government, that that 15 per cent was to be passed on to all employees, whether they were under an award or enterprise agreement or other, you know, contract, if you like.

PN3099

Sure?---So we found that most organisations in a sense pledged that they would pass on that 15 per cent, and they were also asked to confirm that through the quarterly financial report as well.

PN3100

A decision of that kind, whether or not to, in the absence of legal obligation, confer a pay increase upon employees, might be affected by things including whether it was going to be funded by government?---Yes.

PN3101

In your report prepared for this proceeding, when you identify the increase in the wage bill of organisations based on particular outcomes, you don't identify that you've accounted for the possibility of absorption of that kind. Is that right?---So what we've done is, our calculations are based on what the average, say, per bed day cost is for a particular employee type, so if we said a personal care worker, and we've taken our base numbers as at 30 June 2023 from our data from our reports. We've applied the 15 per cent that was to come into effect, in a sense, on 30 June, the first pay in July, and then we've applied from the instructions the percentage increases that were expected to apply in this situation. So we've allowed for the current cost of those particular employees to an aged care organisation, to add that, in a sense - if we just took direct care workers, say 10 per cent. We've allowed the 15 per cent and then we've allowed for the 10 per cent as well to cover that overall.

PN3102

So is it fair to say then that what you're modelling here is, in effect, a worst case scenario, where there's no further funding from government and there's no absorption in enterprise agreement or contracts?---Yes. It would be our expectation that those increases would be paid onto enterprise agreements, so that would – and because they're already in place in the data, but, yes, we are saying without the government funding those additional costs it would be very difficult for organisations to afford to cover those.

*** STUART JOHN HUTCHEON

XXN MR HARTLEY

PN3103

Sorry, my question might have been unclear. What I mean is that if it were the case that employers being – given an employer who has employees on an enterprise agreement, they're above award rates, and suppose there's no legal compulsion to increase those rates of pay as a result of this proceeding, imagine a

world in which they don't, or they only do partially, the figures that you give as to what would be the effect on wage bills would come down?---Yes.

PN3104

Yes. Thank you, Mr Hutcheon. That's everything from me?---Thank you.

PN3105

JUSTICE HATCHER: Mr Gibian?

CROSS-EXAMINATION BY MR GIBIAN

[10.11 AM]

PN3106

MR GIBIAN: Yes, thank you, Mr Hutcheon. My name's Mark Gibian. I appear for the HSU in these proceedings. I just wanted to ask you some more questions about the detail which is particularly within the survey report. Just before I do that, Mr Hartley just asked you a question about the nature of the – or the source, sorry, of the information that's obtained in the StewartBrown survey report, that is, it's based upon those operators who choose to opt in, was the terminology?---Yes.

PN3107

By that we mean people who choose to pay the subscription to StewartBrown for the benchmarking information that StewartBrown provides?---Yes, correct. It's a paid subscription, so that was - - -

PN3108

The information that you obtain is information you obtain from subscribers to that service, and part of the subscription is that those operators undertake to provide the financial information to permit StewartBrown to conduct the benchmarking exercise?---Correct, yes.

PN3109

Understand. Can I then just go to the report that you prepared for the purposes of these proceedings. To the extent it was based upon data, is based upon the information that's contained in the StewartBrown survey report. Correct?---Yes.

PN3110

And that, for the 12 months to 30 June 2023, is in appendix B to - - -?---Yes. That's our most recent report.

PN3111

It's produced on a three-monthly basis, so I take it the September one has been published, but that only reflects the three months from June to September?---That's correct, and the data's being collected at the moment. The reports have not been completed.

PN3112

The September report has not been - - -?---The September reports, yes.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3113

I understand?---So that will be done in the next week or so.

PN3114

All right. Could I ask you then to go to the June 2023 survey report. It's page, with the red stamped numbers, 44; I think it's 3005 in the court book, and to go to – there's a page – it's in a landscape format with two columns in each page. The page that's numbered 2, page 47 in the red numbers, in the right-hand column there's a heading Financial Results Overview. Do you see that?---Yes.

PN3115

It's in the second paragraph there that you reflect the overall operating results on an average basis of the subscribers on a per bed day basis for residential care?---Yes.

PN3116

That's contained within your report for these proceedings, that is, the amount of \$16.54, and if you go over to the following, page 3, at the top of the left-hand column in bold there's a heading Summary – sorry, a bolded sentence, which reads, 'In summary, the residential aged care sector continues to make significant losses through their delivery of everyday living and accommodation services.' Do you see that?---Yes.

PN3117

JUSTICE HATCHER: If you can hold on a second, Mr Gibian.

PN3118

MR GIBIAN: Of course.

PN3119

JUSTICE HATCHER: There's something weird going on which is very distracting. Can we turn off that screen, please?

PN3120

THE ASSOCIATE: Mr Spreckley, can you please turn off your camera? Thank you.

PN3121

JUSTICE HATCHER: All right. Mr Gibian?

PN3122

MR GIBIAN: Thank you. Sorry, Mr Hutcheon. In the left-hand column in the – it's the new world we're still in. In the top left-hand column there's a bolded sentence, 'In summary, the residential aged care sector continues to make significant losses through the delivery of everyday living and accommodation services.' Do you see that?---Yes, correct.

PN3123

That's based upon the way in which you look at the data, that is, there are different funding or revenue sources for direct care costs as opposed to everyday living costs and accommodation costs. Correct?---Yes, correct.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3124

In the remainder of that first paragraph on the top left of page 3 of the report, stamp number 48, there's a reference to the direct care funding which is currently the AN-ACC model, A-N-A-C-C model?---Yes.

PN3125

Which replaced the former ACFI funding system. That took place in around October of 2022. Is that right?---Yes, correct.

PN3126

And what you say there is that both the prior funding model and the new funding model - which is, I think, intended to be improved?---Yes.

PN3127

By which I mean more funding, funding that reflects the actual cost of providing services in a more accurate way. Correct?---Yes, and I'd clarify that the purpose of the AN-ACC funding is to meet the mandated minutes of direct care.

PN3128

Yes?---Which currently sits at 200 minutes, which is 40 minutes of RNs and 160 minutes of other direct care workers.

PN3129

Yes, which reflects an increase in the funding, in the amount of care minutes funded?---Yes.

PN3130

Or upon which the funding is calculated?---Correct, yes.

PN3131

You say then in the – or the report says – perhaps I should withdraw that. I take it you were involved in the preparation of this report?---Yes.

PN3132

Among others, I assume?---Yes.

PN3133

But you're familiar with its content?---As a team, yes.

PN3134

You're familiar with its contents?---Absolutely.

PN3135

So then in the second sentence of that first paragraph in the top left-hand column, you indicate that historically the funding has been sufficient, both under the current system and, albeit it's in its emerging period, no doubt - - -?---For the - - -

PN3136

- - - the current AN-ACC model is sufficient to meet the direct care costs of providers?---Yes, the direct care costs of providing residential aged care.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3137

Yes, and at least on the average basis of the operators that are subscribers to your service, the extent to which there are operating losses is in the area of everyday living and accommodation costs?---On average in our benchmark data that is correct. There would be homes and operators who are losing money at a direct care – if you get into the detail, at a direct care level, and that generally is around they may not be under the previous system, the ACFI system, maximising their revenue, but more importantly, probably the statistics were telling us that their staffing – their roster or their staff cost is greater than what they're getting paid through the AN-ACC model.

PN3138

One of the purposes, or the intended purposes, at least, of the StewartBrown survey is to allow individual operators to analyse their own – both staffing and other cost arrangements - - -?---Yes.

PN3139

- - - in a manner which would allow them to alter their operations in a manner which would bring them within the funding that they receive?---That's correct. Yes, one of the purposes of it is so they can make comparisons to their peers, so then they can make a decision on where they might need to do further work - you know, consider, you know, cost overruns, look at their roster. Are they spending too much in particular areas or are they not – you know, they don't have the correct revenue line on. So that's the purpose.

PN3140

To the extent you say there might be some operators who in the provision of direct care are experiencing deficits, would I be right in saying that that is likely to be for perhaps one of two reason. One is that, at least on an economist optimum utilisation view, they are not rostering their staff or arranging their expenses in a way which is optimal to operate within the funding they received?---That's correct, yes, and that could be they're – they might be, in a sense, use the word, overstaffed in a particular area, or they might be having staff doing the work – like, a higher level staff member doing the work that would be done by low-level worker. But, yes, definitely the benchmark data allows them to go and look at that and then make decisions.

PN3141

Yes, I understand. The other reason, I was going to suggest to you, is – and I think there was some evidence in stage 1 of the proceedings in this respect – is that some operators may deliberately, that is, make a conscious decision that there are additional resources needed in particular areas, and if the particular operator is in a - particularly larger not for profit or government operators may be in a position to provide additional resourcing in particular areas because they see the need and wish to do so?---Yes. That would be their decision internally.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3142

Of course?---And also, as you can see through our data, it also depends on particular things such as the size of a home. You know, you might have a small

home in a regional town that might have only 30 beds or something and you can't get the economies of scale that you might be able to get in a larger organisation as well.

PN3143

Then can I ask you to go forward to – it's page 12 within the actual report, page number 57 in the red numbers, where I think, so far as residential aged care is concerned, we see the detail of that on a per bed day basis in the left-hand column?---Yes.

PN3144

The table on the left-hand of the page.

PN3145

MR WARD: Which page, Mark?

PN3146

MR GIBIAN: It's page 12 of the report itself, page 57. So you'll see there the title headings on the left-hand side refers to Direct Care, Indirect Care and then Accommodation in the red bolded – red capitalised rows?---Yes.

PN3147

Then the outcome of the survey so far as the 2023, 22 and 21 financial years are then set out. Again, this is on an aggregate average basis of subscribers?---Yes, that's correct.

PN3148

We see there that the direct care result, a quarter of the way, maybe, down that table, for the 2023 financial year was a surplus of \$3.13 per bed day for direct care costs?---Yes.

PN3149

And just going down, the indirect care – so that's what you referred to earlier in the report as the everyday living costs?---Yes.

PN3150

A deficit of \$6.62, and for the accommodation results, towards – the fourth-last entry on the page, a deficit of \$13.05?---Yes.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3151

So what we have there, what that reflects, albeit obviously on an average basis, but there is some subsidisation out of the direct care revenue, albeit not complete, obviously of the figures, of everyday living and accommodation costs which are incurred by operators?---Yes, and I think it's worth noting that in that direct care result, the \$3.13, for the 2023 year it's the first financial year with the new AN-ACC funding model, and from 1 October 2022 the new 200 minutes came in, and provider organisations were receiving the full funding for their 200 minutes, or, depending on their home, what they were estimated to be, but we say the 200 minutes, but they didn't have to meet the mandated minutes until 1 October 2023. So in a sense, there was a transition benefit that we write about in our

report of getting the full funding but not having to meet the full minutes. So there's some transition benefit in that first year so there is a surplus there.

PN3152

I understand?---But in any view, that surplus, as we've seen go through that FY 23 year, quarter by quarter, the transition benefit's been reducing as the care minutes have been increasing.

PN3153

I understand. I understand?---And I think that's worthwhile noting.

PN3154

Yes. No, I understand. Sorry, I might have missed it in the answer that you just gave, and I apologise if I did. What was the delay between the change of the funding model and the implementation of the actual requirement to provide the care minutes?---It was part of the legislation that government - - -

PN3155

Yes. So what was the period, sorry, I meant?---A year. A year. So in the financial sense it was from 1 October 22 to 30 June 23 - - -

PN3156

I understand?--- - - - under the new funding model, but you didn't have to have the full minutes by 1 October 2023. SO there's just a - - -

PN3157

I understand?---There's a bit of a transition benefit that we saw through the numbers.

PN3158

And that transition benefit would have been partly in 2022 financial year and partly in the - - -?---Not in – no.

PN3159

Sorry?---Not in the 22 financial.

PN3160

Not in – okay. I understand?---All in the FY 23 year.

PN3161

I understand. Just to go into that a little further, there was somewhat of an improvement from 1.85 to 3.13 between 2022?---Yes.

PN3162

Again on the average basis, between 2022 and 2023. I think that seems to be substantially because of the change in the revenue from an average of 194 to 213, which is the change in the funding model?---Yes, correct.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3163

There's also a significant increase in direct labour costs between those two years, 138 to 159 per bed day?---Yes, and that's because of moving towards getting that mandated 200 minutes.

PN3164

Yes. So I think there's perhaps a couple of things there. Firstly, just to be clear, that's not the 15 per cent interim pay rise?---No.

PN3165

Which only came into effect after the 2023 period. It's partly contributed to, I think you understood to say, by the care minutes, that is, an increase in care minutes is going to lead to an increase in direct care costs?---Yes.

PN3166

I think the other element that you referred to in your report is an increase in agency employment costs?---Yes.

PN3167

I'm right in understanding the direct care labour costs include agency workers as well as directly engaged employee?---Yes.

PN3168

I think you say earlier on in your report – or the report says earlier on - if we go back to page 2 of the report, stamp numbered 47, in the middle part of the right-hand column on that page, the fourth paragraph in that column, there's a paragraph that starts, 'Staffing, though, has had significant challenges.' Do you see that?---Yes.

PN3169

That refers in part to staffing shortages being required to be managed by increased level of agency staff and overtime and there having been an increase of \$6.20 per bed day in agency staff costs?---Yes.

PN3170

So that would also be contributing to that figure, the increase in the direct labour cost, in 2022 to 2023?---Yes. Yes, and on that – sorry, that page that we were looking at, just worth noting - - -

PN3171

Sorry, page 12?---Yes. So page 12, red 57, where we're looking at the table on the left with the direct care, when you look to the overall – to the right.

PN3172

Yes?---You see we've got those, you know, Direct Care Result, Indirect Care Result, Accommodation Result.

PN3173

Yes, I see that?---You can see the wage cost.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3174

That's, sorry, figure 2, that on the right-hand side?---Yes, sorry, figure 2.

PN3175

Yes?---I should have said that. You can see figure 2 there – you can see 'Direct costs, wages, \$168.13', 'Agency staff costs, \$17.10.'

PN3176

Yes, I understand.

PN3177

JUSTICE HATCHER: Just so I understand that, that implies, obviously, that agencies charge a higher rate for labour than is paid to direct employees?---Yes.

PN3178

Is that attributable to just the costs of the agency itself, or do they in turn pay higher wages to their staff?---I think they pay an additional wage to attract their staff, but certainly the agency cost has increased dramatically, and that has been a consequence of COVID. Those costs have been rising. In our report – so again, our report for this, if we are able to turn to red page 36 and page 11 of our report, you can see in figure 9 we show – you know, if you go back, if you took say a rural and remote area, in FY 21 it was \$4.55 per resident per day, and now they're at \$24.16 per resident per day.

PN3179

But, sorry, is that attributable to greater use of agency staff due to labour shortages or them charging more per hour, whatever their charging unit is, or both?---It's both, but there's certainly a greater use because of staff shortages, there's no doubt, and in particular in regional and remote areas of Australia. It's not uncommon metro, but that's where we've seen that significant jump because of not being able to get staff, and the agency costs have also risen dramatically, so what they're charging providers.

PN3180

Does that imply that if the interim 15 per cent and any further wage increases alleviate staff shortages, that might have a corresponding reduction in cost because of a lesser need to use agency staff?---That could occur, because one of the things of having an increased pay rate for an aged care worker at any level is that - retaining them in the aged care system, and potentially you would look to a retention and an attraction with the right pay rate to get workers in the aged care system.

PN3181

All right. Thank you.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3182

DR RISSE: May I ask a clarifying question about cost as well? Within your data and analysis can you extract the cost of staff turnover? So removed of – whether or not the provider is relying on agency workers, when we're talking about recruitment, training, on-boarding and therefore the cost of losing workers if they're leaving the sector, can we extract that from your data?---We wouldn't have

a direct line item as, 'This is the cost of staff turnover.' We would ask the question about staff turnover, say percentages and the like, but we wouldn't necessarily be able to say the cost of staff turnover is, you know, X. But we know in the sector there are – you know, there is data around that and there has been significant staff churn, in particular, in the last recent years, COVID, burnout, those sorts of things.

PN3183

Thank you.

PN3184

JUSTICE HATCHER: So that would also imply that to the extent that wage increases reduce direct staff turnover, that might have a corresponding saving attached to it?---It could, yes.

PN3185

Thank you.

PN3186

MR GIBIAN: Sorry, can I just ask a couple of questions following up from that. You referred to the table at the bottom of page 36 of the stamped numbers, page 11 of the report prepared for these proceedings, to the very substantial increases in the spending on agency direct care costs. You pointed to the regional and remote, but it's really in all areas, isn't it, that it's gone up very substantially?---Yes. Absolutely, yes.

PN3187

And almost as much in inner regional and very substantially in major cities as well?---Yes.

PN3188

I think in answer to the questions that the President asked you said that the increase in costs was both increase in utilisation because of staff shortages, that is, the need to use more agency staff by operators or providers?---Yes.

PN3189

And because agencies themselves had increased their fees or the cost of engaging agency staff?---Yes.

PN3190

In your perception, is that because, in a sense, it's a buyer's market in the market the agencies are working on because providers are experiencing shortages and need?---Yes. I would suggest that the agencies have seen an opportunity and they have increased costs in line with that. There's interesting circumstances. We can talk about city based and the like, but some of these organisations have almost got fly-in/fly-out staff as well, so there's an additional cost that's attached to that.

PN3191

All right. But there is travel and accommodation - - -?---Yes.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3192

You were then asked some questions about the extent to which any improvement in attraction and retention that may be consequent upon pay increases, and I think there are other measures that are endeavouring to be taken in that area as well, may have a positive financial impact upon the performance of aged care providers, and I was just going to clarify – one is that there may be a reduction in the extent to which providers are required to use agency staff, and savings made in that area. A second that you were asked about was a reduction in staff turnover costs and training and on-boarding and the costs that are associated with that process. They're both areas?---Yes. Yes, both those areas.

PN3193

Is another that – as I understood it, I think the occupancy rates that are reported by the subscribers to your service have been steady, I think, between the last couple of years, but are we right in understanding that as a general proposition there has been a depression in occupancy rates, not because of a shortage of demand for aged care places but because of the capacity of providers to staff their facilities in a manner which would allow them to increase occupancy?---Yes, certainly has been providers that have indicated to us that they haven't been able to, in some cases, make every bed available in their home because they can't staff the floor or, you know, that particular area. That's certainly been a thing.

PN3194

Again, that is a phenomenon that if there could be an improvement in attraction and retention and addressing of the staffing issues, that could be improved?---Yes, and I guess it's worth noting that occupancy is a major driver of financial performance in the residential aged care sector. So having higher occupancy, having beds full – because you have so many fixed overhead costs that exist in an aged care home, so having as many, you know, residents in a bed in a home, as much capacity as you can have, is better financial performance overall.

PN3195

Yes, I understand. So that is, if you are below 100 per cent occupancy, or the greater degree you are below 100 per cent occupancy, you are still incurring a significant proportion of the costs but not obtaining the revenue from having the residents in the facility?---Yes.

PN3196

I understand. Then so far as home care is concerned, I don't think the data's quite presented in exactly the same way, but going back again to appendix B, the June 2023 report, there is a summary document at page 9 which sets out the home care package results.

PN3197

JUSTICE HATCHER: Sorry, what court book page are we - - -

PN3198

MR GIBIAN: I'm sorry. It's page stamp numbered 54. The court book number would be, I think, 1015 – sorry, 3015.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3199

JUSTICE HATCHER: Thank you.

PN3200

MR GIBIAN: I take it this is a summary of – so it's just home care package clients?---Yes.

PN3201

Not the Commonwealth home support program?---No, just home care package.

PN3202

Just home care. I understand. Is there any reason why it's done in that way? Does your survey only deal with home care package?---We only do home care package. We don't – we do not benchmark Commonwealth home support.

PN3203

I understand. In terms of the results, the aggregate and average result of the subscribers on the same metric – sorry, I've just lost it on the page. Sorry. The fourth row is Operating Results?---Yes.

PN3204

The first dot point refers to the operating results having declined by 84 cents per client per day to \$3.14 per client per day in the year?---Yes.

PN3205

So that's a surplus of \$3.14 per client per day?---Yes, it is.

PN3206

In home care package clients. And I take it that the reduction in profitability margin is a – well, is just associated with that average outcome?---Yes.

PN3207

The row above that refers to Unspent Funds. Do you see that?---Yes.

PN3208

That indicates that there's been a further increase in the amount of unspent funds per client to an amount of \$12,604 per client?---Yes.

PN3209

That is, as I understand it, money which has been allocated for particular home care packages. That is, a person has been assessed as being level 4 or level 3 or whatever it might be, which has a budget attached to it?---Yes.

PN3210

And during the 12-month period the budget which has been allocated for a particular client has not been utilised by the home care provider because the services were not required or able to be provided. Is that as we understand it?---Yes, that's correct, and it wouldn't just be a 12-month period, it would be over their time that they've been in a home care package.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3211

All right?---Because it would roll year on year.

PN3212

Sorry, maybe I misunderstood, but then the amount of \$12,604 is the average amount per client?---Unspent, yes.

PN3213

Unspent?---Unspent, yes.

PN3214

That may be from moneys that were unspent in the 2022-23 financial year?---Yes.

PN3215

But it may also be moneys that were unspent at an earlier period of time?--- Yes, from a previous year.

PN3216

That money, I assume, has to be returned to the Commonwealth at some point?---Yes.

PN3217

If it is unspent?---Yes. When a home care client leaves a home care service, goes into residential aged care or unfortunately passes away, then that money is returned, and under a new system the money is actually kept with Services Australia. So it used to be a system where all of that money was sitting on the balance sheets of home care providers. There is still some – because we're in a transition phase there is still some of those moneys sitting in the balance sheet of providers. Otherwise the money is actually sitting with the government, but then it gets returned back to government, yes, when they leave a home care package.

PN3218

That is, the system at the moment - noting what you said about it still being in transition, the system at the moment is that the government retains the money until it is spent?---Yes.

PN3219

But there's a nominal entitlement on the part of a particular client to services up to that level, that is, including, on an average basis, the additional \$12,600?---Yes. So that – on average that 12,600 is sitting there unspent, which equates to 2.9 billion across the nation, and if they leave the service, then that money just goes back to government, back to treasury.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3220

What we can see from the fact that that figure was \$10,736 at the end of the 2022 financial year is that it's not been caught up, it's rather going in the other direction. It's continuing to increase?---Yes, correct, and I think if you look at red page 51, which is page 6 of our report, on the right-hand side under Home Care, the bottom left table that says 'Unspent funds per package', you can see that trend

graph, where you go back to June 19 and on average it was \$6,995, and it's now increased to \$12,604. So that's an ongoing problem

PN3221

It's a trend?---A trend, yes.

PN3222

The practical upshot of that so far as the Commonwealth is concerned is that there is, on an aggregate basis, at the moment, in excess of \$2.9 billion which have been allocated to be expended - - -?---Yes.

PN3223

- - - on home care package clients which has not been expended, and, if the trend continues, will not be expended by the individual – the clients?---That's right, yes.

PN3224

And ultimately will, for one of the reasons that you mentioned, be returned to the Commonwealth?---Yes.

PN3225

Finally, can I just go back to the text of your report for the purposes of these proceedings, just so I can understand what has been done. Page 8 of the report which is appendix A, page stamp numbered 33 – I think, your Honour, it's 2994 of the court book. On this page, under a heading 3.2, you're dealing with direct care workers, including RAOs?---Yes.

PN3226

As I understand it, this is an attempt to answer the question that was posed to you about the impact of the 10 per cent increase – or of a 10 per cent additional increase for direct care workers, as you say, including recreational activities officers. It might be actually RAOs rather than ROAs, but anyway, and excluding RNs. Is that right?---Yes, correct.

PN3227

There's then in the box that appears – sorry, table 1, there's some figures which have been calculated on a sector basis and then an overall amount in the shaded column?---Yes.

PN3228

JUSTICE HATCHER: Sorry, Mr Gibian, what page are we on?

PN3229

MR GIBIAN: Sorry, it's the page red numbered 33, page 8 of the witness's report. I thought it was 299 - - -

PN3230

JUSTICE HATCHER: I think it's 2983.

PN3231

MR GIBIAN: I'm not sure why my numbers are different then.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3232

VICE PRESIDENT ASBURY: Yes, mine - - -

PN3233

MR GIBIAN: You're special.

PN3234

DR RISSE: And mine's 2994 so we've got different - - -

PN3235

MR GIBIAN: I'm not sure whether we downloaded it at a different or something. I don't know, because I did have a different number than Mr Ward mentioned earlier for the start of the report.

PN3236

PROF BAIRD: This is 3.2, Direct Care Workers, is it?

PN3237

MR GIBIAN: Yes.

PN3238

PROF BAIRD: Yes, I have it.

PN3239

MR GIBIAN: It should have a red number 33 at the bottom of the page, hopefully, at least, which allows us to know we're on the right page. So as I say, the question that you're endeavouring to answer is that posed in the blue shaded box under the heading 3.2?---Yes.

PN3240

In the box that is headed Table 1 you've done some calculations which have produced aggregate figures for what you say the effect of the 10 per cent increase for direct care workers, including RAOs and RNs, would be. Correct?---Yes.

PN3241

Am I right in understanding what you did in that respect was to take the actual costs, staffing costs, for your subscribers for the 2022-23 financial year?---Yes.

PN3242

And increased those costs by 10 per cent?---Increased those costs firstly by 15 per cent, then by 10 per cent, yes.

PN3243

All right. That is, we already know what's already happened, that the 15 per cent increase has already happened. This is based upon an assumption that there was that increase plus the additional 10 per cent?---Yes.

PN3244

You did that across the staffing profile of the subscribers?---Yes.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3245

So that is taking proportionately the number of personal care workers, RNs – sorry, excluding RNs?---Yes. The dollar - - -

PN3246

Personal care workers, RAOs, et cetera?---Yes. The dollar per bed day cost by those individual line items that those group of – in the workforce, yes, and then applied that by what that cost was, applied by the 15 per cent, applied by the 10 per cent, by the number of residents in care per day by the number of days in the year.

PN3247

I take it you then extrapolated that as if your subscriber base was representative of the whole sector?---Correct, yes. Yes, so based on 188,000 residents in care per fee.

PN3248

That is, you calculated the resident per day costs?---Yes.

PN3249

Extrapolated on the number derived from Commonwealth data, I assume, as to - - -?---Yes. From Commonwealth data, yes.

PN3250

- - - number of residents. All right. Then you've endeavoured to reflect that on a per bed day basis in the figure 4 at the bottom of that page?---Yes. Well, that is the - figure 4 is what would be the - the green bar is what is the current deficit per resident per day as at 30 June 2023, and then if we apply the additional cost of the 10 per cent, then our estimate would be – the overall deficit would be \$29.98 per resident per day.

PN3251

Sorry, just taking it one step at a time, the green column or box is the actual average for your subscriber operator result on a per bed day basis for the 2022-23 financial year?---Yes.

PN3252

Which was obtained on the basis of the funding arrangements and staffing costs during the 2022-23 financial year?---Yes.

PN3253

That is, without the 15 per cent or the 10 per cent?---Yes.

PN3254

The red box is then headed Operating Results Financial year 2023, plus additional 10 per cent?---Yes.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3255

Is that assuming everything else was the same? So the 2022-23 financial year happened exactly as it did happen but you increased costs by the 15 per cent – staff costs by the 15 per cent and the 10 per cent?---Yes.

PN3256

You haven't separated out the impact of the additional 10 per cent from the additional 15 per cent which has in fact happened. Is that right?---No, we haven't separated it - - -

PN3257

Yes. I understand, yes?--- - - - in this report, no.

PN3258

As I say, otherwise you've assumed everything else was the same in terms of revenue?---Yes.

PN3259

And other costs, et cetera, which contributed to the \$16.54 result, that is, accommodation costs, non-direct care costs, et cetera?---Yes, based on known facts at the time of writing the report.

PN3260

Yes, that is, the exercise you've engaged in is not a projection as to what you think is going to happen in the future, it's what the position would have been if everything else had been the same in the 2022-2023 financial year if there had been essentially a 25 per cent increase in direct care labour costs?---Yes.

PN3261

PROF BAIRD: Excuse me, could I just clarify, please - - -

PN3262

MR GIBIAN: Of course.

PN3263

PROF BAIRD: The green column, did I hear you correctly saying that did not include the 15 per cent that had been awarded?---Yes, that's - - -

PN3264

That was awarded?---Yes.

PN3265

Did not include?---Did not include. Yes, that's correct, because that's the overall deficit at 30 June and the 15 per cent came into effect on 30 June for the first pay in July.

PN3266

From the pay - - -?---Yes.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3267

So then the pink column, where it says, 'Plus an additional 10 per cent', but you just said it included the 15 per cent as well?---Yes. When we did the calculation we uplifted by 15 per cent first, because that was in play, and then we added 10 per cent to the 15 per cent base then, yes.

PN3268

So is the 10 per cent on the pre amount, before the 15 per cent was added, or is it 10 per cent on 15 plus?---Yes. So it's the cost to that particular staff line item, so we say personal care worker, as at 30 June 2023, then we added 15 per cent to get to a number, and then we added 10 per cent on top of that number - - -

PN3269

On top of that number?--- - - - that included the 15 per cent.

PN3270

That included the 15 per cent?---Yes.

PN3271

VICE PRESIDENT ASBURY: Because that would be the effect of a further 10 per cent wage increase?---Yes.

PN3272

Yes?---So we're trying to isolate - - -

PN3273

(Indistinct)?--- - - - what is the effect of the 10 per cent – a further 10 per cent increase.

PN3274

MR GIBIAN: Yes, so I think I was slightly inaccurate in saying you did a 25 per cent increase. You did a 15 per cent increase plus a 10 per cent increase on the 15 per cent under - - -?---Yes.

PN3275

And that's to reach the 29.98 figure. As I say, you also assumed that everything else was the same, that is, the revenue was the same and other costs were the same?---Yes.

PN3276

We know that the 2022-23 financial year was, even leaving aside what we know is going to happen, an unusual one so far as funding arrangements were concerned, because there was during that financial year a change in the funding model for direct care?---That's correct, yes. There was a change in the funding model.

PN3277

From October, also, 2022, from the ACFI to AN-ACC model?---Yes.

PN3278

As we know, at the moment the AN-ACC model is proposed to continue to operate for the remainder of this financial year at least?---Yes.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3279

And we hope much longer, no doubt. We also know that the government is providing funding to cover the 15 per cent increase?---Yes.

PN3280

You said something about leave costs and the like, but leaving that sort of secondary issue to one side, is providing funding to cover the 15 per cent increase?---Yes.

PN3281

That's not taken into account in working out the \$29.98 projection – not projection. The \$29.98 figure doesn't take into account that there will be changes in any revenue or funding?---Well, what we're trying to say here is that, yes, the government will fund the 15 per cent, and then what we're doing in our calculation here is saying what would it cost to add an extra 10 per cent to that new rate or new cost of that worker, and that cost, as we've, you know, put in the table there, is, you know, residential, 923 million.

PN3282

JUSTICE HATCHER: I'm a bit unclear. So does the 29.98 take into account additional funding received to fund the 15 per cent increase?---So the 29.98 is at – no, it doesn't. So the 29.98 is if we had - the average operating result for FY 23 is \$16.54. If wages went up an extra 10 per cent on that date, or at 1 July, the additional cost would mean the overall operating result would move from \$16.54 to \$29.98.

PN3283

VICE PRESIDENT ASBURY: But would that include funding of the first 15 per cent?---It would include funding the first 15 per cent, yes.

PN3284

And it would be an additional cost of - - -?---Yes, but the additional cost of the 10 per cent - - -

PN3285

JUSTICE HATCHER: If unfunded.

PN3286

VICE PRESIDENT ASBURY: If unfunded?---If it was unfunded would mean the deficit would move from \$16.54 to 29.98.

PN3287

Yes?---Sorry if I wasn't clear.

PN3288

PROF BAIRD: So the deficit would - - -

PN3289

MR GIBIAN: I think I'm a bit confused now.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3290

PROF BAIRD: So the deficit would be lower if the 10 per cent – assumed 10 per cent is funded?---Yes, and that's at that point in time, because things - - -

PN3291

JUSTICE HATCHER: So should we assume that if the 10 per cent was funded the operating result would remain as 16.54?---That's correct, at that point in time.

PN3292

MR GIBIAN: That is, it would remain t 16.54 if everything else was the same as it was in the 2022-2023 financial year?---That's correct, and - - -

PN3293

Which we know it won't be, because a different funding model will be in place for the whole year?---No, and, you know, at that point in time in writing the report, because we know things can change. So the minister announced last Friday that through the AN-ACC funding they're going to fund the 5.75 per cent increase that just came through for other workers in the sector as well. So my point being, things change over time. We had to determine this number at this point in time.

PN3294

Yes. No, I'm not being critical?---Yes.

PN3295

I'm just trying to understand the exercise you undertook?---Yes.

PN3296

The exercise you undertook was to look at the 2022-2023 financial year, assume everything was the same but that there would be an increase of 15 per cent in staff costs, plus a further increase of 10 per cent in staff costs?---Yes, knowing that the 15 per cent is fully – is funded.

PN3297

Yes?---So that what we're purely looking at there, what would be the additional cost of a 10 per cent pay increase.

PN3298

The issue that I just wasn't sure I entirely followed was whether the red box, the 29.98, includes the 15 per cent and the 10 per cent?---Yes, it includes both, but it also allows for that the 15 per cent is funded.

PN3299

All right?---Yes. So what we're saying is the loss would increase by that amount due to the 10 per cent increase on those wages.

PN3300

I think I understand that. That is, you've taken the cost of the 15 per cent out entirely. Is that right?---Yes.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3301

I understand. I don't think we need to go through the same exercise, but that's the same exercise you've conducted over the page, onto the top of page 34, with respect to home care. I think the heading Figure 5 is, slightly conveniently, right at the bottom of page 33?---Yes. The same methodology has been applied to each of those rate increases.

PN3302

I understand, and with direct – indirect care and then nursing employees. Just with the nursing figure on red 35, page 10 of the report, the heading 3.4 refers to nursing employees, ENs, RNs and nurse practitioners. Do you see that?---Yes.

PN3303

Do I take it that each of those were excluded from the direct care workers?---Yes.

PN3304

All right?---Yes.

PN3305

That is, where it's said on page 33 that the direct care excluded RNs, you'd also include it excluded ENs and nurse practitioners. Is that right?---Yes.

PN3306

I understand. Thank you, Mr Hutcheon.

PN3307

JUSTICE HATCHER: Mr Hutcheon, if you just go to the section on nursing employees at 3.4. Perhaps I missed something. Why is an 18.11 per cent figure used for that calculation?---That was from the instructions that we were asked to do the calculation on.

PN3308

And that assumes that all the categories of nurses are currently paid award rates of pay and not anything higher than might be absorbed or - - -?---Yes. Yes. And it's – we've based it on what the current cost is as per our data for those particular workers.

PN3309

An actual cost?---Yes.

PN3310

And so you just assume that regardless of whether they're on award or something above that they would receive that increase uniformly?---Yes.

PN3311

Right. Thank you. Anything arising out of that?

PN3312

MR HARTLEY: I'm going to say that, your Honour, perhaps not now but in closing we can explain where the 18 per cent comes from.

*** STUART JOHN HUTCHEON

XXN MR GIBIAN

PN3313

JUSTICE HATCHER: Right. Thank you.

PN3314

MR WARD: Thank you, your Honour. Just a couple of questions in re-examination if I can?

RE-EXAMINATION BY MR HUTCHEON

[11.00 AM]

PN3315

MR WARD: Mr Hutcheon, can I just take you back? You were being asked some questions by Mr Gibian about home care under use. Do you recall that evidence?---Yes.

PN3316

I think you said something about the fact that – I'm paraphrasing. I think you said the money goes back to the Commonwealth?---Yes.

PN3317

Could you just explain what 'goes back to the Commonwealth' means and when the Commonwealth get to use it?---Yes. So for a person, a consumer in a home care package, whilst they have a package they get allocated a package amount, depending on the level that they're assessed at and then they're able to use services for that money out of those funds. At the moment the average unspent funds for homecare package clients is \$12,604.00. So what that represents at any point in time a home care package consumer has funds that they are unspent. If they leave their home care package due to moving into residential care, they might pass away or for other purposes, the balance of their unspent funds is returned to government. And then the government – so that goes back into government Treasury if you like.

PN3318

And by the phrase, 'return to government' do you mean return to their coffers or - - -?---Yes.

PN3319

Right. And can you just explain what you meant by the proposition of the person coming off the package and until they come off the package is the money frozen?---Yes. So until – until they – whilst they're still in the package the money is theirs to be used however they choose in line with the services they requested in their plan and it's all available to them. Then the moment that they are no longer in that home care package – whatever the balance of their unspent funds that is in relation to the government subsidy is returned back to government.

PN3320

But you were being asked some questions by Mr Gibian at red page 57. Ms Rafter might get the court book reference for me. I think you were being taken through tables four. Can you just quickly go to there?---Yes.

*** STUART JOHN HUTCHEON

RXN MR HUTCHEON

PN3321

You talked about this thing called a transition benefit. Then you said it was reducing. Can you just explain what reducing means and over what period?---Yes. So when the new AN-ACC funding model came in during that financial year on the 1 October 2022 providers were being fully funded for the AN-ACC classification for each of the residents in their aged care home and the purpose and the calculation of that AN-ACC funding is based on the provider needing the mandated 200 minutes of care. But where the transition benefit comes in is that at that point in time, whether it be the 1 October or during that financial year through to 30 June 2023 their minutes were not at 200. Their minutes might have been at an average of 175 or 180 but they were being fully funded for 200 minutes. So they had the full revenue but weren't paying out the full cost associated with that. So as we have moved through that financial year provider organisations have been increasing their minutes, which means an additional spend. But they're not getting additional revenue. So that transition profitability benefit is reducing over time, and that will continue past 30 June 2023 really to where we are today where each provider organisation is supposed to be at their 200 minutes.

PN3322

Well, so when do you expect the reduction to have played out?---In theory it should be now but the average minutes, if you look at our report that I don't necessarily have in front of me at the moment were not at 200 now. So, in theory it should have played out already and that every dollar of AN-ACC funding is spent on direct care delivery.

PN3323

Can I just keep you on that page? Page red 57. Mr Gibian asked you some questions about agency staff and you took him to figure two on that page. Do you recall that?---Yes. I do.

PN3324

If you observed figure two the reference to agency staff appears, as I read it, under direct care. There's no similar reference under indirect care?---No.

PN3325

Could you explain that for me?---No. So what was showing there is just that the agency costs are absolutely at the direct care level. So at a nursing and personal care level. We're not seeing agency in indirect care level – so at your catering, cleaning, laundry areas of labour. So it's all in the direct care area.

PN3326

I see?---That's where the shortages are.

PN3327

And then, just very lastly. You gave some evidence. Mr Gibian asked you some questions I think very early on about direct care staff. I think this was in reference to table four again on page 57. You gave some evidence about in some operations direct care staff costing greater than paid through the AN-ACC model. Do you recall that evidence?---Yes. Yes.

*** STUART JOHN HUTCHEON

RXN MR HUTCHEON

PN3328

You said – I just want to clarify it. You said you gave – I think you gave them a number of reasons why that might be the case?---M'mm.

PN3329

And one of them was, you said, they might employ people at a higher level than a lower level. Could you just explain what you meant by that?---Yes. So what my point is with that is you would have in any aged care home you will have a mix of registered nurses, personal care workers, AINs and Ens. And sometimes when we look at the detailed data we can see that an organisation might be spending more say on average, on registered nurses, and what would – that would then indicate to us on discussions with organisations is that they are maybe overstaffed in that particular area. And those workers – their mix of staff is – you know – overstaffed, if you like, in relation to the funding. And therefore one of the things you're able to do by looking at this benchmark data is making a decision around well we need to go away and look at our roster to get our staffing mix correct.

PN3330

But so just to clarify that. So the funding is not related to the mix of staff. It's related to the minutes?---Yes. It's related to the mandated minutes and that mandated minutes, as I have said – the 200 minutes and particularly needs to be 40 minutes of RN. So you have got to hit that 40 minutes and then the 160 is there further – other mix of staff.

PN3331

So how you hit the 160 the funding doesn't care about that?---No. No. That's correct.

PN3332

No further questions, your Honour.

PN3333

PROF BAIRD: Just one clarification if I could or Mr Hutcheon? Referring back to the labour hire agencies who apparently are providing a lot of labour hire for direct care workers do you know if they are completely independent of aged care companies or providers?---I couldn't comment to know an absolute factor that it is. Normally what I would see is that they are. So they're just an independent nursing age labour hire company who are providing agency staff to aged care organisations and not particular areas around the country. So there isn't that I am aware of where an aged care organisation is also a nursing agency, if that answers the question.

PN3334

PROF BAIRD: Okay, thank you?---Yes.

PN3335

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

*** STUART JOHN HUTCHEON

RXN MR HUTCHEON

<THE WITNESS WITHDREW

[11.09 AM]

PN3336

JUSTICE HATCHER: So when are we ready for the next witness, Mr Ward?

PN3337

MR WARD: I'll ask.

PN3338

JUSTICE HATCHER: Perhaps they're in the waiting room.

PN3339

MR WARD: I was told 11.15 but if – I assume – the waiting room - - -

PN3340

JUSTICE HATCHER: So ready to go? All right. Well, we'll get Ms Ribaldi in please.

PN3341

THE ASSOCIATE: Ms Ribaldi, are you able to hear the Sydney hearing room.

PN3342

Excellent. Before you give your evidence today I am going to ask whether you agree with an affirmation. And at the end if you agree please say I do.

<LOUANNE RIBALDI, AFFIRMED

[11.10 AM]

EXAMINATION-IN-CHIEF BY MR WARD

[11.10 AM]

PN3343

MR WARD: Ms Ribaldi, my name is Nigel Ward. I don't think we have met. I think you have been dealing with my colleague Alana Rafter. I appear in these proceedings for the joint employers. Can I ask you to restate your full name and address please?---Yes. Louanne Ribaldi, (address supplied).

PN3344

And you're currently the Chief of Operations at Royal Freemasons Benevolent Institution. Is that correct?---Yes.

PN3345

And you have prepared a statement for these proceedings?---Yes.

PN3346

And do you have a copy of that statement with you?---Yes. I do.

PN3347

And that is a statement of 87 paragraphs and four annexures totalling 132 pages, is that correct?---Yes.

*** LOUANNE RIBALDI

XN MR WARD

PN3348

For the Commission's benefit Ms Ribaldi's statement is contained at pages 2781 to 2912 of the Bench book. Ms Ribaldi is that statement true and correct to the best of your knowledge and belief?---Yes.

PN3349

I tender the statement. Sorry, I think I might not have tendered. Did I seek to tender – I did – didn't I? Yes, I did. So I apologise.

PN3350

JUSTICE HATCHER: Yes. So Mr Hutcheon's statement was JE16.

EXHIBIT #JE16 WITNESS STATEMENT OF STUART JOHN HUTCHEON

PN3351

MR WARD: Perhaps I'll write it down. Thank you, your Honour.

PN3352

JUSTICE HATCHER: And the witness statement of Louanne Ribaldi dated 31 October 2023 will be marked JE17.

EXHIBIT #JE17 WITNESS STATEMENT OF LOUANNE RIBALDI DATED 31/10/2023

PN3353

Mr Gibian?

CROSS-EXAMINATION BY MR GIBIAN

[11.12 AM]

PN3354

MR GIBIAN: Thank you. Ms Ribaldi, can you see and hear me?---Yes, I can.

PN3355

Yes. My name is Mark Gibian. I'm appearing for the HSU in these proceedings. Can I just firstly ask you some questions just about the nature or the extent of RBO's operations. You set out in paragraph five of your statement that RBO operates both residential aged care villages, retirement villages and conducts or provides home and community services?---Correct.

PN3356

And I am right in understanding the distinction between – what you refer to as the aged care villages and retirement villages – is that retirement villages are more independent living apartments whereas aged care is where persons require personal and daily living care?---Yes. That's correct.

PN3357

And the home and community services operations are they for clients who have either home care packages or are funded through the Commonwealth Home Support Program?---We only have home care packages. No Commonwealth funding.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3358

I understand. And RFBI is the employer of the care workers both in the residential aged care context and those who provide home care pursuant to - - - ?---Yes.

PN3359

Well defined to in receipt of home care packages. Yes?---Yes.

PN3360

Now, can I just understand how those two or three parts, perhaps that the operations are managed. Your responsibilities as the chief of operations cover both the residential aged care and retirement villages and the home care services?---Yes. That's correct.

PN3361

At paragraph six on the second page of your statement you refer to part of your roles as mentoring and supporting regional general managers?---Yes. That's correct.

PN3362

Are those regional managers also responsible both for the residential aged care and home care services?---We have five recall managers, four are responsible for residential care and one is responsible for the home care services.

PN3363

Right. That is the – sorry, you say one is responsible for the home care services. Is that because the home care services are specific to a particular geographical area? Or is that person responsible for those home care services across all of the country?---We're only in New South Wales and the ACT.

PN3364

Yes?---And she is responsible for the home care services across New South Wales and ACT.

PN3365

Okay. It's arranged that way. Yes. Sorry.

PN3366

Whereas the other regional managers are responsible for the residential care services in particular geographical regions within the New South Wales and the ACT?---Yes. Correct.

PN3367

All right. Over on page four of your statement at paragraph 11 you set out the categories of employees employed by RFBI. Do you see that?---I don't but go on.

PN3368

Sorry. Page four. Paragraph 11. Mine has both black numbers and red numbers in the bottom right-hand corner?---Go ahead.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3369

Sorry, do you have that?---Not in my statement, no.

PN3370

JUSTICE PRESIDENT HATCHER: So just paragraph 11 of your statement. It starts with the words 'RFBI employed the following'. Can you see that?---I'm sorry. I'll have to pull it up. Yes. Go ahead. I can.

PN3371

All right. Thank you.

PN3372

MR GIBIAN: Sorry, you have - - -?---My apologies.

PN3373

You have that in front of or available to you now? All right. In paragraph 11 you set out the various classes of employees that are RFBI employees. That's as I read it. Yes?---Yes.

PN3374

(b) refers to care workers. Do you see that?---Yes.

PN3375

That's both – is that intended to refer both to persons employed in residential carers as personal care workers or as home care workers?---Correct.

PN3376

In RFBI's operation what's the break-up at least in approximate terms? How many home care workers do you have? And how many residential personal care workers do you have? Do you know?---Overall we've got 2,000 plus workers. Home care has about 200 and the majority of them are care workers.

PN3377

Yes. I understand. All right. Is there any overlap? That is, do you have care workers who do both home care and residential care work?---Very few. We tried to do that but no, it hasn't worked.

PN3378

That is, when you say you've tried to do it that is something that you would like to achieve? That is to have some flexibility for care workers to do both home care work and work in a residential facility?---Yes.

PN3379

Why is it that something you would like to achieve?---Because of the recruitment issues we're having.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3380

That is it would allow you to deploy staff where you need them most in circumstances in which the care workers have the skills, or at least would

relatively readily acquire them to work either in a home care or in a residential care context?---Yes.

PN3381

All right. When you say that that – sorry, I perhaps don't have the precise words that you said. I take it that to the extent that that's something you would like to achieve I understood you achieved that to a relatively small degree. Is that right?---That's correct. Yes.

PN3382

What steps have you taken to try and achieve that outcome?---We make it a part of the interview process. We ask potential staff whether they're prepared to work across both services which is our preference. In their induction and buddying stage of their employment we give them some buddy shifts in the home care, and if they have applied for residential care and if they apply for home care we give them some buddy shifts and residential care to get them to have the feel of it. And then encourage them and put out information about shifts that are available where we need – you know – support. Where we need assistance, where we need more staff. And it's mentioned at staff meetings – in both services that the opportunity is there to work across both if they want, if the staff want more shifts.

PN3383

Right. I understand. And is that – those steps that you have just described are they efforts that you have been undertaking for some period of time or is it something that's been attempted more recently?---No. Well, over 18 months.

PN3384

All right. So that's something that you have been trying to do for around the last 18 months. Is that right?---Yes.

PN3385

But not prior to that or not so much?---No. Not so much.

PN3386

All right. I understand. All right. And with the home care workers that you have do they – obviously they perform their day to day duties at the client's homes substantially. Do they have any relationship with or do they have a home base which is the same place as a residential facility?---They do. All our home care services are co-located – their support, their office support and administration support are co-located in our residential care facilities homes.

PN3387

And perhaps I'll return to it shortly but in relation to – if the home care workers are undertaking training and I think you've referred already to buddy shifts at the commencement of employment, that would ordinarily be done physically at the aged care – at the residential facility?---Yes, that's correct.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3388

And the managers or administration staff that deal with home care or that deal – that provide the administrative support so far as home care is concerned they are also located physically at the residential facilities?---Yes. They are.

PN3389

And the administrative that – individual administrative staff allocated to work either in relation to home care service or the residential facility or do they do both?---They don't do both. They work in their own service.

PN3390

All right. I understand. Now, then at paragraph 12 on the same page you refer to the engagement of agency staff?---Yes.

PN3391

And also the migration seeking to source labour through – what you describe as the migration pathways. Do you see that?---Yes, I do.

PN3392

Yes. And I think you refer to that in greater detail further on in your statement on page 14 from paragraph 76?---Yes. Yes. I do.

PN3393

I'm right in understanding from that that so far as the RFVI are concerned agency staff are engaged, I think as you described, as the last resort?---Yes. That's true. We prefer not to. We prefer our own staff.

PN3394

And I take it that's both because – firstly to put it simply I think there is significant additional costs involved in engagement of agency staff. That's part of it?---Absolutely. Significant cost. Yes.

PN3395

It's also because agency staff are perhaps the varying degrees I will come to but necessarily less familiar with the facility with RFVI's policies and processes with the individual residents at the aged care facility?---Yes. That's all true and we have to spend time – sorry – yes, that's true.

PN3396

No, no. Sorry? You were going to say?---Perhaps spend time inducting them at the beginning of every shift which takes away from the time they can provide care.

PN3397

In that respect when you say you have to – so when you get an agency staff member who then undertakes the induction of that agency employee?---The staff on duty.

PN3398

So that is the other – I take it this is mainly in the fair worker category? Is that right?---(Indistinct reply)

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3399

Do you also have agency RNs?---Registered nurses, yes.

PN3400

All right. But most of the agency staff would be in the personal care worker category?---I'm sorry. Most of the agency staff are registered nurses at (indistinct). We've had a significant – go on - - -

PN3401

I'm sorry?---No. That's okay. Sorry.

PN3402

All right. I'm sorry. If I interrupt you it's only because of the video I think and I apologise so I'll try and wait a moment, rather than to jump in. All right. When you say that you indicated that agency staff are inducted, that is, you rely upon the existing – just the other staff who happen to be rostered on the same shifts?---We've got an induction checklist for staff so have to know where particular – you know – the exits are, fire, et cetera and there's an induction checklist of – takes about half an hour?---

PN3403

All right?---To work through.

PN3404

Yes. All right. And sorry what other things – type of things are on the induction checklist?---Significant issues with any residents in – you know – a short handover but also the clinical documentation system, the need for notes. And, any particular issues that affect that village. I don't deal with it. And I haven't sent it to you I'm sorry but – yes, as I understand, I helped develop the checklist but it takes about half an hour to work through.

PN3405

All right. And that checklist can be undertaken with the agency employee by any other member that happens to be on shift?---Correct. Because they're familiar with the fireys – that the fire panels, the clinical documentation – they're aware of the residents issues at any particular times. So, yes, they can.

PN3406

Right. And I take it in addition to just the checklist that the induction process – the half an hour process at the commencement of the shift throughout the period of time that an agency staff member is at a facility you are likely to rely upon the existing staff to assist them with processes or procedures or assist them with familiarising themselves with residents, their particular needs, and preferences and the like?---Absolutely.

PN3407

Because that is something that the existing staff members know and are familiar with but the agency worker, however good that worker may be will necessarily not be familiar?---Absolutely true.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3408

All right. And no doubt perhaps an additional reason why agency staff is not an ideal staffing solution you recognise that that places an additional burden on the other staff members working at the same time?---Absolutely it does.

PN3409

And requires them to exercise a mentor or education-type role with respect to the agency employees?---It helps with the workload but it's a burden on our existing staff.

PN3410

Compared – both a burden in the sense of increasing their work intensity but also requiring them to undertake tasks of instruction mentoring education role on a day to day basis that they wouldn't otherwise need to do?---That's absolutely true. They have – yes.

PN3411

All right. Can I just ask you about paragraphs 77 of your statement on page 14 if you have that available to you?---Page 14. Yes. Yes.

PN3412

And you say in that paragraph in the first sentence that RFVI has had labour agreements with preferred agencies. Just stopping there for a moment. That is, you have standing agreements with agencies who, I assume you have a relationship with, and are able to provide appropriate staff generally speaking. Correct?---That's correct. Yes.

PN3413

But those agreements, I take it, are just standing agreements that the staff that are provided from time to time will apply the agency will vary, depending upon the occasion and the need?---Who's available. Yes, that's correct.

PN3414

I understand. You then - - -?---Some of the agencies – sorry - - -

PN3415

Sorry. Go on?---We had to vet the agencies. Some of them were simply ripping us off.

PN3416

By vet – that is some of them were charging fees which you determined, on assessment, were excessive?---Correct.

PN3417

JUSTICE PRESIDENT HATCHER: I prefer 'ripping off' myself.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3418

MR GIBIAN: Yes. Well, perhaps the initial expression was sufficiently clear. I apologise – and I mean does that remain a problem in the sense that what you described as the preferred agencies are not, from time to time, able to provide the

agency staff that you require and you have to go elsewhere?---That is correct. Yes.

PN3419

You then, in the same sentence, go on to say including some long-term contracts with the same agency workers. Do you see that?---Yes.

PN3420

Am I right in understanding that you're not directly contracting with the individual agency worker. Is that right?---That's correct.

PN3421

You're referring to ongoing contract with the agency itself?---Yes, that's correct.

PN3422

No doubt you would prefer the agency, where there is an ongoing need for agency staff at a particular facility, to provide the same staff member on an ongoing basis to the extent that is possible; is that right?---We would, if that's possible, but it's rarely possible.

PN3423

That's what I was going to ask you. That's something that you hope to achieve, but it's not something that is generally able to be provided by the agency?---Absolutely correct, yes.

PN3424

I understand. On the same page, from paragraph 80, you refer to the migration pathways. Do you see that?---Yes, I do, yes.

PN3425

By way of example, you refer to having established a labour hire agreement in relation to Fiji?---Yes, we did.

PN3426

I take it this is a reasonably recent facility?---Over the last 12 months, we've employed 120 to 130 Fijian registered nurses to come and work as carers.

PN3427

That's under the - sorry, I've lost the name - the Commonwealth Government initiative which was implemented in that period?---That's correct.

PN3428

JUSTICE HATCHER: Sorry, Ms Ribaldi, the answer you just gave a second ago, you said you engaged these Fijian nurses, but did you say they are working as carers, not nurses?---They're working as carers and RFBI is supporting them to become registered in Australia. Their registration isn't recognised in Australia, so they have to go through NCLEX and OSCE.

PN3429

Thank you.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3430

MR GIBIAN: So that the 120 are nurses, or were nurses, in Fiji, as you understand it?---Yes, they were all registered nurses in Fiji, but they're working for us in the scope of a carer.

PN3431

With the intention that they would become registered in Australia?---Yes.

PN3432

What's the time period expected for that to take?---Two years.

PN3433

Sorry?---Two years, yes, by the time they settle and establish a home, yes, become familiar, and then there are problems because of where they can undertake the practical element of their training to become registered. You can only do it in South Australia at one hospital.

PN3434

Do you know why that is the case?---No. We're lobbying to find out and to see if we can have it changed, but they - yes.

PN3435

As to how that plays out, you will just have to - we're still in the process of finding out?---Correct.

PN3436

So the 120/130 that you refer to at paragraph 81 are all registered nurses from Fiji who are working, currently at least, as carers in an RFBI facility?---Yes.

PN3437

Are there other overseas workers who have been engaged as carers directly, that is, without the expectation they become registered nurses?---We have, yes.

PN3438

How has that come about?---We have an agent who sources people from overseas who want to come and work in Australia and we work with her.

PN3439

Is that through any particular government program or just a private agency that you engage?---That's through a private agency.

PN3440

Can I then just ask you some questions about what you say about training?---Yes, of course.

PN3441

You deal with that in your statement from paragraph 13, which commences at the bottom part of page 4. Initially, in paragraph 13, you refer to the onboarding process for new staff?---Okay.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3442

And at paragraph (a), you indicate that each new staff member is required to attend and complete a two-day in-person induction at the village. Do you see that?---Yes, I do.

PN3443

And you provide some information as to the content of that induction process. It refers to induction at the village. Is that induction undertaken both by workers who are working in residential care and providing home care services?---That particular list applies to care workers in the residential care facility. The only difference is that the home care workers don't meet the general manager of the village, they meet the hub manager of their own hub, as we call it, and that's the only difference.

PN3444

Otherwise, the content and duration of the induction are the same?---Yes, that's correct.

PN3445

The induction process that you describe in paragraph 13 is undertaken by all employees, that is, care workers or administrative employees or cleaners, laundry people?---Maintenance - everybody.

PN3446

I understand. Elements of the training that are required of staff are set out in a document which is marked as LR3, which is at page red number 22. I will have to rely on someone else to tell the Bench the correct court book number, I'm afraid.

PN3447

MR WARD: You've got two barristers to your right.

PN3448

MR GIBIAN: Well, there are two, but I think they are suffering from the same numbering difficulty that I suffer from, certainly, but it's got the red number 22. It's a landscape - - -

PN3449

MR WARD: 2802.

PN3450

MR GIBIAN: 2802?

PN3451

MR WARD: Yes.

PN3452

MR GIBIAN: Are you able to turn to that page, Ms Ribaldi? Are you able to turn to that page, Ms Ribaldi?---Sorry, yes, I am.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3453

That sets out the content of the two days. I just wanted to make sure that I understood correctly that all of those elements which are on page 22 and 23 are undertaken by all staff in all the categories we just mentioned?---Correct.

PN3454

If you go back to the text of your statement itself, still within paragraph 13, at paragraph 13(e), which is on page 6, two-thirds of the way down that page, you list three types of training which are specific to the care workers; is that right?---Yes.

PN3455

That is restrictive practices, sensory loss, and a particular manual handling training that is in relation to the safe movement and handling of residents themselves?---Specific lifting equipment, yes. Everyone does basic manual handling, but the carers do additional.

PN3456

They are the three specific areas in which the induction training of carers differs from the non or indirect care staff, the (indistinct), laundry, cleaning, (indistinct), et cetera?---Yes, that's correct.

PN3457

On the following page, from paragraph 17, you describe the buddy system?---Yes.

PN3458

That's an arrangement whereby an existing staff member is paired with a new staff member for a period of time at the commencement of their employment?---Yes, that's correct.

PN3459

Essentially to provide instruction and familiarisation to the new staff member?---Yes, that's correct. Support.

PN3460

Is it the case that, or at least as you understand it, generally speaking, you would endeavour to rely upon the more experienced or skilled staff members to undertake that buddying role?---Yes, we do.

PN3461

At paragraph 19, you say that there is no hard and fast rule for the duration of the buddy shift allocation and that the key determiner is whether the new staff member understands the necessary competencies and both the employer and employee feel confidence the employee can exercise them on their own. Do you see that?---Yes, I do.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3462

Who makes that assessment, that is, it's the experienced staff member who is the buddy who makes that assessment?---The experienced staff member who is providing the support, the buddy, will talk to the senior staff, so the care manager and/or the general manager.

PN3463

That is, the staff member would, after a period of time, say, 'Look, they're going pretty well, I think this is reasonable', or, alternatively, 'I've identified that there is this issue that this person needs to work on further'?---Yes, that's right.

PN3464

And there will be a discussion with the care manager?---The care manager most likely, yes.

PN3465

All right, I understand. You then give some observations from around paragraph 30 on page 8 in relation to the expectations and procedures for I think what are generally being referred to in these proceedings as indirect care staff. That is what you have referred to as hotel services, catering, administration and maintenance?---Yes.

PN3466

At paragraph 31, you indicate the elements, or some elements, of the training that is received by those employees, covering interaction with residents, responding to incidents, and responding to preferences and interactions with families?---Yes, that's correct.

PN3467

So am I right in understanding that RFBI provides training to all of those - to those categories of staff in relation to those issues?---Yes, we do.

PN3468

Can I just ask a few questions about some of that. Over the page, at paragraph 36, you say, on page 9, that:

PN3469

As part of that training, indirect care workers are instructed to direct any concerns they may have about a resident they observe or interact with to the RN or senior care staff on duty.

PN3470

Do you see that?---Yes, I do.

PN3471

You indicate they are not expected to make clinical assessments or to intervene in clinical matters; do you see that?---Yes.

PN3472

But, in the final sentence, you say that those workers may be in a position to notice - I take it by way of an example - a mood change, which it may be appropriate to report to care staff as an issue of concern to be subject to further investigation?---That's correct.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3473

That is part of the training and expectation - sorry, I withdraw that question. Going back a step, cleaning staff or catering staff may be in a position where they interact with the same residents on a frequent basis, and maybe as frequent, or more frequently, than care staff?---That's true. The cleaners are in the residents' rooms for periods of time and they talk to them, they get to know them a little bit - the residents love their cleaners. Catering staff will notice who's eating, who's not eating, who's struggling to feed themselves, yes.

PN3474

Does RFBI try to allocate the cleaning and catering staff, for example, on a basis in which there will be a consistency in terms of the individual staff member who provides those services to particular residents?---Wherever we can, yes.

PN3475

To endeavour to foster the type of relationship that you just described, that is, that there can be an ongoing and continuous relationship developed between the worker and the resident?---Definitely, yes.

PN3476

That assists both in providing a form of social support to the resident?---It does. It's very important to them.

PN3477

And it also places the worker in a position where they will be able to make the types of observations you refer to in paragraph 36 because they will have that continuous or ongoing relationship and observation of the resident?---Correct.

PN3478

Part of the training that is provided to those staff is endeavoured to enable them to identify changes, whether they be mood, a potential psychological change, or physical changes that are appropriate to be identified and raised with care staff?---That's correct. It's also to give them the confidence to know that we want them to say, 'I think', you know, 'Joe isn't feeling himself today; is he okay?'

PN3479

Yes, that is, you want to empower them to - - -?---Empower them so that - - -

PN3480

- - - make observation and not feel that they are going to be - that it's going to be brushed to one side or considered as not significant?---Correct.

PN3481

Yes, I understand. You then, from paragraph 38, make some observations about responding to incidents and particularly refer to both training with respect to work health and safety and what's referred to as SIRS, the serious incident response scheme; is that right?---Yes.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3482

The SIRS scheme was subject of some earlier evidence in these proceedings, but, as I understand it, you commenced operation in 2021?---Yes.

PN3483

I think it was extended to home care in 2022?---Yes, that's right.

PN3484

Putting things briefly, it requires providers to have an incident management system?---Yes, it does.

PN3485

To report what are defined as reportable incidents to the Aged Care Quality and Safety Commission?---Yes, that's right.

PN3486

And requires that all staff be trained in relation to their obligations under the SIRS scheme?---Yes, that's right.

PN3487

As part of that, all staff, that is both the direct care staff and the indirect care staff, are required to be trained in identifying incidents that are reportable?---Yes, they are.

PN3488

Reporting through the incident management scheme if they witness or perceive there has been an incident?---That's right.

PN3489

Including if an incident is reported to them by residents, to participate in incident management?---Yes.

PN3490

And, to the extent they are directly involved, to participate in or prepare a report in relation to an incident?---That's correct.

PN3491

The next matter - and it may be the final matter I need to raise with you - on page 10, from paragraph 41, you refer to responding to preferences. I take it from that part of your statement that, consistent with the Aged Care Quality Standards, the intention of RFBI is that all care and services provided to residents are provided in a manner which respects their autonomy and independence and dignity and their capacity to make decisions about their own care and support?---That's absolutely correct.

PN3492

And all staff, including the indirect care staff, it is intended that they will perform their work in a manner which respects the independence and autonomy and decision-making capacity of residents?---Absolutely.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3493

I think the initial example you have provided is in relation to catering, which is perhaps the easiest to understand, that is, in paragraph 42, you say catering staff don't have access to the full care plan, but are provided with information, I think,

through what's described as the Simple system in relation to both the clinical needs, relevantly, and likes and dislikes and preferences of individual residents?---That's correct, yes.

PN3494

In performing their work, they are intended to familiarise, or it is intended they familiarise themselves with that information in relation to each individual resident?---Most definitely.

PN3495

I think there's particular issues arise if there are - I will withdraw that question, going back a step. And to respond to and accommodate, to the extent that they can, individual requests which are made as to the provision of food services?---Yes, that's correct.

PN3496

Both as to matters of timing and what types of food are provided; correct?---Yes.

PN3497

I think the matter that you refer to from paragraph 42 particularly is that that may raise an issue as to if requests are made which might be inconsistent with the clinical needs of the resident, that is, they may request something that it may not be safe for them to consume. The intention, where requests are made by residents, is that the worker will be able to interpret that request and consider whether it is within the scope which is the scope of foods which are able to be provided to that resident as conveyed in the information in the Simple system?---Yes, that's correct. It's very clear.

PN3498

And make a judgment about whether it is within what that person can receive or not?---Yes, that's correct.

PN3499

If it is not, then is the expectation that the worker will engage in an interaction with the resident to assess whether they wish - whether that's appropriate or whether there is some alternative that they can provide that the resident would be happy with?---It's reasonable to expect that they would offer an alternative that's appropriate. If it goes further and the resident wishes very hard about something they want that the catering staff know isn't appropriate, then it would be escalated, but they certainly can offer an alternative, and we would expect them to. There's a wide range and it's quite clear in that program.

PN3500

That is, you would expect them to engage in a personal interaction with the resident to explore ways in which they could provide an appropriate alternative - - -?---Definitely.

PN3501

- - - that the resident would be happy with?---Yes, definitely.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3502

If that's not resolved and there is a desire to go down a route that the worker doesn't feel maybe safe, then that's a matter that they might take up with the care worker or RN to the extent necessary?---With the registered nurse.

PN3503

Yes, all right. A similar approach is intended to be adopted for other indirect care workers? So the cleaners, for example, if there's a particular way in which a resident wants the cleaning to be done, or timing, or the like, then they are encouraged to accommodate requests or preferences in that way, or, if it's impossible, to engage in a dialogue and an interaction with the client - with the resident, I should say - to endeavour to accommodate their desires within achieving an outcome of performing the work?---Yes, definitely.

PN3504

Thank you. All right, thank you, Ms Ribaldi, I think that was the matters that I wanted to raise.

PN3505

Mr McKenna is going to deal with the evidence that Ms Ribaldi gives about the pandemic issue. If there's anything that I want to raise about that, I will pipe up, if that's convenient.

PN3506

JUSTICE HATCHER: Mr McKenna, I just want to ask the witness a bit about the role of enrolled nurses, so it might be better if I do that now and then, if you want to follow up about that, you can.

PN3507

MR McKENNA: If your Honour pleases.

PN3508

JUSTICE HATCHER: Ms Ribaldi, I just want to get a better understanding of what enrolled nurses do in your organisation as distinct from registered nurses. Can you tell me what their functions are?---The enrolled nurses that we employ largely work in a team leader role, so to direct the care workers and to make sure that things run smoothly within their scope of practice, but they work underneath the auspices of a registered nurse. We do - when we can't get registered nurses, we will endeavour to have our endorsed ENs work in that shift within their scope as an EN, but to provide that slightly higher - you know, that higher level of training and knowledge, but largely they're employed as team leaders.

PN3509

All right. You spoke a bit earlier about recruitment difficulties with registered nurses. Are there similar difficulties with enrolled nurses?---Yes, there are.

PN3510

Right. Approximately how many enrolled nurses do you have in the organisation?---I don't think a great deal. About 20.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3511

Twenty. All right, thank you?---We're employing more all the time.

PN3512

All right, thank you.

PN3513

VICE PRESIDENT ASBURY: Can I just ask also whether - when you say 'endorsed ENs', is that the medication endorsement?---Well, that changed a couple of years ago. That's me referring back to the past. They're just referred to as enrolled nurses now, as ENs.

PN3514

Okay?---They are no longer referred to as endorsed enrolled nurses. They are all medication. That competency is accepted as being a given.

PN3515

Can I just ask you one more question about the training that all staff do. So to take you back to paragraph 13 of your witness statement and if you could just clarify for me, the manual handling that all staff do, as opposed to direct care workers, can you just clarify whether, when it says 'safe lifting and safe transfer', does that include or exclude residents, lifting residents?---For our care workers, that includes lifting residents, but we do not expect our catering, cleaning and hotel services or maintenance staff to lift residents.

PN3516

So when that says 'safe transfer', that is not for the indirect staff - or the training that everybody does in manual handling, that doesn't include transferring residents?---No, it's safe transfer of goods and other things like that, yes.

PN3517

Thank you?---Sorry.

PN3518

DEPUTY PRESIDENT O'NEILL: Ms Ribaldi, can I just ask a couple of questions. The enrolled nurses predominantly provide supervisory or team leader functions for the care workers. Do you have any personal care workers who you engage to perform team leading or supervisory roles in addition to the enrolled nurses?---Definitely, yes, we do.

PN3519

With the introduction of the mandated care minutes, do you anticipate any change in the number of enrolled nurses that you would intend to employ?---No, we have to employ the best people we can.

PN3520

Thank you.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3521

JUSTICE HATCHER: Just to follow up from that, when you said you have got team leaders who are enrolled nurses and also some team leaders who are personal care workers, are they paid in the same way?---No, they're not. The care coordinators - team leaders who aren't ENs usually have their Cert IV and additional leadership training that we provide, but they are not paid as ENs. It's similar.

PN3522

So, to be absolutely clear, the enrolled nurses are paid at a higher rate?---Slightly, yes.

PN3523

In respect of both registered nurses and enrolled nurses, do you pay above the award rate in the Nurses Award?---We do.

PN3524

How much above, approximately?---I couldn't tell you off-hand, I'm sorry, I'd have to look it up, but our nurses are on about \$55 an hour.

PN3525

Thank you. Mr McKenna?

PN3526

MR GIBIAN: Sorry, could I just ask one question arising out of that?

PN3527

JUSTICE HATCHER: Yes.

PN3528

MR GIBIAN: You were asked some questions by Deputy President O'Neill and by the President just now in relation to the extent to which there are - I think you call them care coordinators - but persons in a supervisory role who are either ENs or care workers. Is there any differentiation between the supervisory work that is done by a person who is in a care coordinator role, depending on whether they have to be an EN or a care worker?---No.

PN3529

What's the kind of supervisory role or responsibility that that person has?---It's a matter of ensuring that all the work on the floor is being done, that they're not being task-oriented, that they are looking at the residents as a whole person, that they're respecting their dignity, that they're meeting their needs, that, you know, the medications are delivered correctly. It's about making sure that it runs smoothly and that people are aware that - that workers are aware that they need to be doing what they need to do at any given time. So, no, there's no difference between the Cert IV or the care coordinator's responsibility and the EN's responsibility in that role.

*** LOUANNE RIBALDI

XXN MR GIBIAN

PN3530

So, if I can just summarise, the role is a work allocation role, but also an on the floor observational role in supervising and directing work to ensure that it is

undertaken both appropriately, within the appropriate guidelines, and that everything is done or all necessary work is completed on the particular shift?---They have a role in liaising with families as well and visitors, you know, family members and people who are responsible, persons responsible. So they have that additional responsibility as well.

PN3531

VICE PRESIDENT ASBURY: One final question. Is it the case that - the ENs have the medication competency. Would the supervisory staff who are the care coordinators, would they also have that administer and monitor medications competency?---Yes.

PN3532

So they have a Cert IV and they have that competency?---That's correct.

PN3533

Thank you.

PN3534

JUSTICE HATCHER: Mr McKenna?

CROSS-EXAMINATION BY MR MCKENNA

[12.01 PM]

PN3535

Ms Ribaldi, my name's Jim McKenna, I appear on behalf of the ANMF. As Mr Gibian indicated, I have some questions to ask you about the impact of the pandemic, but you have been asked a number of questions just now by a number of people and particularly with respect to what you have described, I think, as care coordinators, so people performing a supervisory role who are not enrolled nurses. Am I right that those people who are referred to as care coordinators would be ultimately responsible to a registered nurse in the facility?---Correct.

PN3536

So they would be subject to supervision by that registered nurse as well?---Yes.

PN3537

Ms Ribaldi, in your statement, you address infection prevention and control from paragraph 55. In that paragraph, you say:

PN3538

Prior to the pandemic in 2020, RFBI had a standard protocol for managing outbreaks and infectious diseases within the villages.

PN3539

You have referred to 'villages' a number of times in your evidence. Is that word used interchangeably with 'facilities'?---We're trying to weed out the word 'facilities'; we use 'villages'.

PN3540

Okay?---Yes.

*** LOUANNE RIBALDI

XXN MR MCKENNA

PN3541

But where there have been reference to 'facilities', they are one and the same?---Yes. They are one and the same, yes.

PN3542

I understand that you have been asked to attempt to obtain a copy of what you described as the standard protocol for managing outbreaks of infectious diseases prior to the pandemic; that's right?---I was able to locate that from our archives last night, but it's not in - it's purely just pulled into a Word document, it's not formatted.

PN3543

You have obtained a document and you have provided that to the solicitor for the Joint Employers; that's right?---Yes.

PN3544

Do you have a copy of that with you now?---I have a copy on my computer.

PN3545

I understand that a copy of this document was emailed to the Bench. I'm afraid I don't have hard copies, but is that - I'm very indebted to your Honour's associate.

PN3546

Just to make sure that we're literally and metaphorically on the same page, do you have a document with the 'Royal Freemasons' Benevolent Institution' header at the top and then the words 'Outbreak Management'?---Yes, I do.

PN3547

The document that I have runs to three pages, but, as you say, the formatting seems to have been lost. About three-quarters of the way down the first page, in amongst the text, there's the words:

PN3548

Clinical procedure manual copyright July 2016, copyright Business Solutions Aged Care...

PN3549

and then ABN and then a page number:

PN3550

...produced for the Royal Freemasons' Benevolent Institute. Printed versions are uncontrolled.

PN3551

So we have the same document?---Yes, we do.

PN3552

I take it from that that this is your standard protocol for managing outbreaks as at July 2016?---Yes.

*** LOUANNE RIBALDI

XXN MR MCKENNA

PN3553

Do you understand that a document in similar terms to this was in place until really the start of the pandemic?---Yes, that's right.

PN3554

Perhaps not in the exact same terms, but of a similar format?---Yes.

PN3555

JUSTICE HATCHER: Do you want to tender that, Mr McKenna?

PN3556

MR MCKENNA: Yes, thank you, your Honour, I do.

PN3557

JUSTICE HATCHER: The Royal Freemasons' Benevolent Institution Outbreak Management Protocol will be marked exhibit ANMF36.

**EXHIBIT #ANMF36 ROYAL FREEMASONS' BENEVOLENT
INSTITUTION OUTBREAK MANAGEMENT PROTOCOL**

PN3558

MR MCKENNA: Thank you, your Honour.

PN3559

Ms Ribaldi, in your evidence at paragraph 61, you talk about the pandemic and you say:

PN3560

In 2020, when the pandemic was declared, RFBI implemented a strict protocol for managing the risk of a COVID-19 outbreak.

PN3561

I understand that the institution, at that point, moved away from the simple outbreak management plan that we have been to and started to implement new and more complicated procedures?---Correct.

PN3562

Those arose in response to government directives? I'm sorry, you'll have to verbalise your answer for the transcript. We missed that?---Yes.

PN3563

You describe, I think, what arose as something of a strict protocol?---That's correct.

PN3564

It was in large part COVID-specific?---That's correct.

PN3565

Throughout the pandemic, RFBI had a few outbreaks that required adherence to the outbreak management plan?---Yes, that's correct.

*** LOUANNE RIBALDI

XXN MR MCKENNA

PN3566

I presume, as a result of that, staff on the ground became familiar with the outbreak management plan?---Yes, they did.

PN3567

And they developed skills in implementing that?---Yes, they did.

PN3568

I presume the institute as well learnt lessons from what worked and what didn't work?---Yes, we did.

PN3569

I presume that the institution took those learnings and applied them to the other villages?---We did, yes. We do.

PN3570

As a result of that, the institution was able to refine the training that was provided to staff?---Correct.

PN3571

And correct any shortfalls that might have arisen in the application of the outbreak management plan?---Yes.

PN3572

I take it, at the moment, there are no outbreaks in any of your villages?---That's not correct. There are.

PN3573

There are? So at the moment, the institution is applying an outbreak management plan?---Definitely.

PN3574

How many villages?---Four.

PN3575

Leaving aside the implementation of the outbreak management plan, I presume that there are other infection prevention control procedures that are put in place on a day to day basis?---Yes, definitely.

PN3576

There is daily work in prevention?---Yes.

PN3577

It's also daily activities to be prepared for any possible outbreak?---Yes.

PN3578

Then there is the response, which is the outbreak management plan itself, I take it?---That's right, yes.

*** LOUANNE RIBALDI

XXN MR MCKENNA

PN3579

Following on from that, there will be a recovery process?---Yes.

PN3580

All of those things are part of infection prevention control protocols?---That's correct.

PN3581

At 67 of your statement, you say:

PN3582

As at 2023, RFBI has returned to having a standard protocol for managing outbreaks in the villages.

PN3583

?---Yes.

PN3584

You exhibit to your statement at LR4 a copy of what you describe as the current RFBI outbreak plan. Is that what you mean by a standard protocol?---That's the outbreak management plan, yes, not specifically just for COVID any more.

PN3585

So that's what you described as - you say you have returned to a standard protocol?---Yes, that's correct.

PN3586

That's a reference to that document at LR4. Can I ask you to turn to that. I am working off the same numbering as my learned friends from the HSU. I think there's 11 pages different. In my book it's 2815, so I think it might be at 2804 for others. I'm not sure - are you working on a hard copy, Ms Ribaldi?---No, I need to access it via my computer, I'm sorry, because I had no access to the printed copies.

PN3587

Let us know when you have that. I want to take you to LR4, the Royal Freemasons' Benevolent Institution Guideline and Outbreak Management Plan for RFBI. Does the Bench have that?---I'm sorry, but we're having computer problems at the village that I'm at today, which is why I don't have the hard copy and it won't let me access it from my computer.

PN3588

Do you have access to the internet?---I do.

PN3589

Mr Ward, I think, can email it to you, or Ms Rafter?---I am sorry.

PN3590

No, no. Is it appropriate to stand the matter down for a few minutes or would we just wait?

*** LOUANNE RIBALDI

XXN MR MCKENNA

PN3591

JUSTICE HATCHER: We will just wait, I think.

PN3592

MR McKENNA: Certainly.

PN3593

THE WITNESS: SharePoint's not working and it won't let me access it.

PN3594

MR McKENNA: Ms Ribaldi, if you just stand by and we will have it emailed to you as soon as we can and then I'll ask you some questions about it. I understand it's been sent. Ms Ribaldi, could you perhaps just indicate when you have it and when you are able to open it and when you're ready to talk to it. Thank you?---I have the document open.

PN3595

Terrific. I understand you have been sent a PDF of your statement, so your particular document starts at page 24?---Yes.

PN3596

Do you have that?---Yes, I do.

PN3597

Terrific, look, thank you?---I apologise.

PN3598

No, no, not at all. I will take you to some specific parts of this in a moment, but, as a general proposition, I understand that you say that it doesn't apply now solely to COVID; is that right?---The intent?

PN3599

Well, for example, if there was a flu outbreak, you would use this document?---Yes, we would. If there's a gastro outbreak, we'd use this document, yes.

PN3600

Notwithstanding that, you accept that the vast majority of the document is COVID-specific?---Yes, it is.

PN3601

If one were to conduct a comparison between the pre-COVID outbreak management plan and what we now have, are the differences between the two a result of the COVID pandemic?---Yes, they are.

PN3602

On my count, this document, the guide and outbreak management plan for RFBI, runs to some 108 pages with some very detailed and prescriptive requirements?---That's correct.

*** LOUANNE RIBALDI

XXN MR MCKENNA

PN3603

I take it that this document, the guideline and outbreak management plan for RFBI, it's not a temporary document, is it?---No, it's not.

PN3604

There's no intention to revert back to the simple sort of three-page outbreak management plan?---No, there's not.

PN3605

If I can just ask you to turn to the first page, so just over the page to page 25 of your statement. About halfway down that page, you'll see reference to:

PN3606

Throughout this document the Organisation at all times ensures that consideration is given to the cultural and diverse background of each and every consumer.

PN3607

You see that?---I do.

PN3608

I take it that there would be an expectation - I'll withdraw that. Within this statement, there are a number of obligations or requirements for care staff to communicate certain matters?---That's correct.

PN3609

For example, care staff might have to communicate to a resident that they are COVID positive?---Yes, they may do, yes.

PN3610

Care staff may have to communicate to a resident prior to any outbreak occurring to discuss with them whether they would like to receive antiviral medication?---Yes, that's correct.

PN3611

Likewise, care staff may have to have those same discussions with the loved ones of residents?---Yes, that's correct.

PN3612

From time to time, care staff will need to encourage residents to wear PPE themselves?---Yes, that's correct.

PN3613

In doing that, I take it that you would expect care staff to tailor their communications to the particular resident?---Definitely.

PN3614

They would bring to that communication their knowledge of that resident's preferences?---Yes, they would.

*** LOUANNE RIBALDI

XXN MR MCKENNA

PN3615

And how that resident might react to what they are being told?---Yes.

PN3616

They would need to exercise skills in doing that?---Yes, they do.

PN3617

Where the resident might be culturally or linguistically diverse, there may be additional challenges in that communication?---Yes.

PN3618

Could I ask you to turn to page 32 of that document, on my version of the court book 2823, otherwise I think 2812?---Yes.

PN3619

Here referring to 'Preparedness'. So again, what we were discussing earlier, this is not involving an outbreak itself, this pre-dates an outbreak?---Yes.

PN3620

This is tasks, as I understand it, that are overseen by IPC leads?---Yes, that's correct.

PN3621

IPC leads - each village now has an IPC lead?---Yes, we do.

PN3622

They are specialised roles, so they are all registered nurses to start with?---Yes, they are.

PN3623

And they all have additional training skills?---Yes, they do.

PN3624

One of their roles - we will discuss this in a minute - one of the roles of IPC leads is to conduct training for direct care staff?---Yes.

PN3625

I presume there would be training, both formal and informal training; is that right?---Yes.

PN3626

So from time to time, they might conduct a training of all staff at a village?---Yes, they might do, or they might train someone on shift, as it happens.

PN3627

If they observe something on shift that they have concerns about, they would conduct on the spot training?---Definitely.

*** LOUANNE RIBALDI

XXN MR MCKENNA

PN3628

For example, if they observed PPE not being used properly, they would say, 'This is how the PPE should be used'?---Yes, or handwashing not happening properly, or - yes.

PN3629

Is it correct that there is no intention to remove those IPC leads, is there?---None at all.

PN3630

Returning to the document and the preparedness, I take it that these are daily requirements at all villages?---Yes, they are.

PN3631

IPC leads, as I understand it, now maintain vaccination registers?---Yes.

PN3632

You would expect them to be following up with residents when they are due for further vaccinations?---Yes.

PN3633

And encouraging unvaccinated residents to be vaccinated?---Yes.

PN3634

Again that may well involve some difficult discussions?---Yes, it certainly does.

PN3635

On the next page, so page 33 of your statement, you will see towards the bottom of the page the fourth-last dot point before we get to the last paragraph. This is a part of the preparedness role undertaken by an IPC lead:

PN3636

- Ensure staff are training in the collection of appropriate specimens for testing

PN3637

- Develop a systematic method for detecting and reporting consumer in the facility who develop respiratory systems, such as fever or cough.

PN3638

As I understand it, there are now proactive steps being taken to monitor and record symptoms?---That's correct, yes, there are.

PN3639

The IPA lead oversees this, but I presume it's also carried out on a day to day basis by all direct care workers?---Yes, it is.

PN3640

You would expect every direct care worker who observed a resident developing any form of respiratory symptoms to report that to the IPC lead or RN?---Definitely.

*** LOUANNE RIBALDI

XXN MR MCKENNA

PN3641

Are you in a position to observe the fact that this is occurring?---Yes.

PN3642

Would you agree that these are skills that direct care staff have developed through the pandemic?---Definitely.

PN3643

Then the next dot point:

PN3644

- Support enhanced infection prevention and control training for staff, including appropriate use of PPE and recognition of ARI symptoms.

PN3645

I will leave the ARI symptoms to one side, but you would agree that the use of PPE has improved significantly over the last few years?---It most definitely has. It's become second nature, whereas it was not previously for other than direct care staff.

PN3646

The second-last dot point:

PN3647

- Ensure staff are trained in responding to an outbreak.

PN3648

I take it that's all staff?---Absolutely, every staff member.

PN3649

You would expect all of your direct care staff to be in a position to carry out the requirements of this plan, subject to the direction of their supervisor?---Yes, I would.

PN3650

The final dot point is:

PN3651

- Establish workforce surge capacity and contingency planning for staff absenteeism.

PN3652

I take it that that's something that is certainly not occurring pre-pandemic?---Not at all.

PN3653

If you turn through to page 34, you will see number 3:

PN3654

Isolate and implement infection prevention and control (IPC) measures.

*** LOUANNE RIBALDI

XXN MR MCKENNA

PN3655

Do you have that?---Yes.

PN3656

Am I right in understanding that really is what happens when an outbreak occurs?---That's correct, yes.

PN3657

You referred a moment ago to the fact that I think a number of villages are currently subject to outbreaks?---They are.

PN3658

In those villages, the requirements that follow in this plan are being implemented?---They are.

PN3659

And they are being implemented in large part by direct care staff?---Absolutely.

PN3660

If I could ask you to turn to page 48 of your statement, which is on my version 2839, perhaps 2828 for others. Number 4:

PN3661

Signs and symptoms of Coronavirus (COVID-19).

PN3662

Do you see that, Ms Ribaldi?---Yes.

PN3663

Briefly, it is set out there what are the possible signs and symptoms of COVID-19. I take it that you would expect each of your direct care staff to know those symptoms?---Yes, I would.

PN3664

And to report any of those symptoms that they observed?---Yes, I would.

PN3665

JUSTICE HATCHER: Just to be clear, when you said 'all your staff', what staff are we talking about here?

PN3666

MR McKENNA: I'm sorry, I did mean to say 'all direct care staff'.

PN3667

JUSTICE HATCHER: All direct care staff?

PN3668

THE WITNESS: Direct. I thought that's what you said, I beg your pardon, yes, all direct care staff.

*** LOUANNE RIBALDI

XXN MR MCKENNA

PN3669

MR MCKENNA: Finally, if I could ask you to turn to page 58, which is 2849 or 2838, perhaps. Number 15, 'Screening'. Do you have that?---Yes.

PN3670

I take it this is something that's entirely - I take it this screening wasn't occurring pre-pandemic?---That was not.

PN3671

It continues to be applied now, that is, screening of residents and visitors?---Yes.

PN3672

I take it that the screening is undertaken by care staff?---Correct.

PN3673

I said last, but there's one further topic, I'm sorry. Page 83, 2874 or 2863, item 25, 'Isolation or Cohorting'?---Yes.

PN3674

Do you accept that the process of cohorting is challenging?---Exceptionally challenging.

PN3675

I take it you would agree with the proposition that the changes to infection prevention and control that have occurred at the villages since the pandemic have put those villages in a better position to respond to any further COVID-19 outbreak?---Yes, that's true.

PN3676

Indeed, the villages are all now in a much better position to prevent a COVID-19 outbreak?---Yes, much better.

PN3677

And in a much better position to prevent an influenza outbreak?---Yes, they are.

PN3678

Or indeed gastro, or any other outbreak?---Yes, and in a much better position to deal with it and to contain it.

PN3679

That's in large part due to increased skills of your direct care staff?---Definitely, and the learnings, yes, we've applied.

PN3680

I take it that in your role as COO, you would be very keen to retain those learnings?---Absolutely.

PN3681

I take it that these are not temporary learnings?---No, they're not, they're learnings for life, yes.

*** LOUANNE RIBALDI

XXN MR MCKENNA

PN3682

I also presume that expectations of family members and residents have moved substantially in terms of their expectations of infection prevention and control?---They have substantially.

PN3683

My learned friend Mr Gibian asked you some questions about staffing. I will endeavour not to traverse the same ground, but just turning to paragraph 85 of the body of your statement, which is page 15; do you have that?---Yes, I do.

PN3684

You there say:

PN3685

For RFBI facilities that are unable to meet the 24/7 RN coverage via their permanent workforce, we adopt the following strategies.

PN3686

The first is to engage agency staff as a last resort, and you have been asked questions about that. I won't repeat those. But do I take it from subparagraphs (b), (c), (d) and (e), those are steps that are taken when the particular village remains unable to meet the requirement to place an RN in a facility?---Yes, that's correct.

PN3687

They are occasions on which RFBI fails to meet the 24/7 coverage requirements?---That's correct.

PN3688

I take it that RFBI is not subject to an exemption to those requirements?---No, they're not.

PN3689

I take it that RFBI have passed on the 15 per cent interim increase to all staff, including RNs?---Yes, we have.

PN3690

Notwithstanding that and the other measures that you identify in your statement and you have been asked about, it's still the case that, from time to time, you are unable to fully staff the RN shifts?---That's correct. We cover it about 95 per cent of the time.

PN3691

Thank you, Ms Ribaldi. If the Full Bench pleases.

PN3692

MR GIBIAN: I'm sorry, I think I do just have to ask some further questions on that issue because of the way in which Mr McKenna phrased his questions.

*** LOUANNE RIBALDI

XXN MR MCKENNA

PN3693

JUSTICE HATCHER: Sorry, are we cross-examining on the cross-examination?

PN3694

MR GIBIAN: We had endeavoured to divide the matters between Mr McKenna and myself so that we weren't - - -

PN3695

JUSTICE HATCHER: No, I'm not going to allow this. Mr Ward.

PN3696

MR WARD: Thank you, your Honour.

RE-EXAMINATION BY MR WARD

[12.29 PM]

PN3697

Ms Ribaldi, just a couple of questions, if I can, and I will work backwards. Mr McKenna asked you some questions about learnings from COVID and he asked you a question about direct care workers observing a resident who might have a respiratory issue and reporting it. Do you recall that evidence?---Yes.

PN3698

Would you have expected a direct care worker before COVID to have reported a respiratory issue with a resident?---Yes. They wouldn't have been so familiar.

PN3699

But you would have expected them to report it?---Yes, I would, if they noticed a resident was unwell.

PN3700

JUSTICE HATCHER: Just to be clear, is the point that the skills of direct care workers in being able to identify illnesses of that nature have changed as a result of training and learnings arising from the COVID pandemic?---From my perspective, they absolutely have improved enormously as a result of the COVID. I would have expected the staff to be able to say if a resident was unwell, but they have a much better understanding these days and they are much better trained. We have learned a lot.

PN3701

MR WARD: Arising from that, you just used the word 'improved'. Is that because they have become more familiar?---More familiar, more training.

PN3702

And that's - - -?---More learnings applied.

PN3703

The training is the training that you have talked about earlier in your statement around this?---Yes.

*** LOUANNE RIBALDI

RXN MR WARD

PN3704

Can I just take you back then to - do you recall you were having a conversation about team leaders? I think Mr Gibian asked you some questions about team leaders who were not enrolled nurses. Do you recall that? I think your answer was - you said you required them to have a Certificate IV and leadership?---We offer them leadership training.

PN3705

Is the Certificate IV the Certificate IV in Aged Care?---Yes.

PN3706

Can you just explain what the leadership training is?---Just recently, we've implemented sending them to ACCPA for leadership training, but, before that, we had private providers provide leadership training.

PN3707

What would that private provider leadership training have involved?---How to manage staff, how to have difficult conversations, how to monitor performance, those sorts of things.

PN3708

So it's the combination of the Certificate IV and the leadership training that you require?---Yes.

PN3709

Can I just then take you way back to a conversation you had about agencies. It was quite a while ago now, so I apologise about that. Just a couple of questions on that. You said you had preferred agencies. Can you just explain what a preferred agency is?---Yes, we found across the organisation, the villages were using a wide variety of agencies, so we reviewed what they offered, the costs, of course, and whether they could offer us stable, consistent workers, or if they would try to. So we culled some that we didn't believe were providing the service that we needed and we have a list of agencies that the villages are allowed to engage with if they - yes.

PN3710

If I can just understand that, there's a list of preferred agencies and those are the ones that people have to use?---Yes.

PN3711

You said in your evidence - you were asked about who you use from agencies and I think your exact words were, 'Mostly registered nurses.' Do you remember that?---That's correct. Because of our IQN program with the Fijian staff, we have been able to reduce the number of carers we need from agencies.

PN3712

What proportion of agency employees would be registered nurses?---I'd have to have a look at the statistics, but it's certainly more than half.

*** LOUANNE RIBALDI

RXN MR WARD

PN3713

Is there any particular reason why you're struggling to get registered nurses?---It's in particular regional areas we're struggling, the remoter areas, West Wyalong, Leeton and Glen Innes.

PN3714

Just lastly, if I can, you were asked some questions about what you called co-location between your home care business and your residential care business. Is co-location another phrase for saying people share an office site?---Yes.

PN3715

Nothing further.

PN3716

JUSTICE HATCHER: All right, thank you for your evidence, Ms Ribaldi, you are excused and you are free to go, which means you can disconnect?---Thank you very much.

<THE WITNESS WITHDREW

[12.34 PM]

PN3717

JUSTICE HATCHER: We will resume at 2 pm.

PN3718

MR WARD: If the Commission pleases.

PN3719

JUSTICE HATCHER: We are now adjourned.

LUNCHEON ADJOURNMENT

[12.34 PM]

RESUMED

[2.02 PM]

PN3720

JUSTICE HATCHER: Mr McKenna.

PN3721

MR McKENNA: If the Commission pleases, I call Penny Butler.

PN3722

JUSTICE HATCHER: Yes, can we swear her in?

PN3723

THE ASSOCIATE: Ms Butler, can you please state your full name and address?

PN3724

MS BUTLER: Annie Butler, (address supplied).

<ANNIE BUTLER, AFFIRMED

[2.02 PM]

EXAMINATION-IN-CHIEF BY MR MCKENNA

[2.02 PM]

*** ANNIE BUTLER

XN MR MCKENNA

PN3725

MR MCKENNA: No, sorry, (indistinct) I'm sorry.

PN3726

Ms Butler, can I just ask you to again please state your full name?---Annie Butler.

PN3727

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

PN3728

And your occupation?---I'm the federal secretary of the Australian Nursing and Midwifery Federation.

PN3729

Thank you. And you prepared a witness statement in this matter for stage 1 dated October 2022. Further to that statement have you also prepared a statement for stage 3 dated 1 November 2023?---Yes.

PN3730

Do you have a copy of that witness statement in the witness box with you?---The one from 1st of November 2023.

PN3731

Yes. And can you just confirm - and if the Full Bench pleases, that's at tab 59, page 1088 and helpfully, no matter book we're working off, it's still 1088.

PN3732

Can you confirm that that is a statement relating to 161 paragraphs?---Yes.

PN3733

And there are two annexures to it?---Yes.

PN3734

AB9 and AB10?---Yes.

PN3735

Have you had a chance to read that statement recently?---Yes.

PN3736

Are there any changes, corrections or clarifications you'd like to make?---No, thank you.

PN3737

And have you had a chance to review the annexures recently as well?---Yes.

PN3738

And the contents of your statement are true and correct?---Yes.

*** ANNIE BUTLER

XN MR MCKENNA

PN3739

And the two annexures that you refer to in your statement - sorry, the two annexures AB9 and AB10 are true copies of the documents you refer to in your statement?---Yes.

PN3740

Thank you. If the Full Bench pleases.

PN3741

JUSTICE HATCHER: The further witness statement of Annie Butler including annexures dated 1 November 2023 will be marked exhibit ANMF37.

EXHIBIT #ANMF37 THE FURTHER WITNESS STATEMENT OF ANNIE BUTLER INCLUDING ANNEXURES DATED 01/11/2023

PN3742

MR McKENNA: Thank you, your Honour.

PN3743

JUSTICE HATCHER: Mr Ward?

CROSS-EXAMINATION BY MR WARD

[2.04 PM]

PN3744

MR WARD: Yes, thank you, your Honour.

PN3745

Ms Butler, it's nice to see you again?---Hello.

PN3746

Just to remind you, my name's Nigel Ward and I act for the Joint Employers in the proceedings. Can I do - just to be fair to you, I just want to ask you some general questions about the statement and then I want to take you to your proposed classification structure. I'll do it in that order if I can. Do you have the statement in front of you?---I do.

PN3747

Can I ask you to go to paragraph 9? Between paragraph 9 and 13 you talk about the introduction of what we might colloquially describe as 'Care minutes'. Can I just take you to AB9 which is the first annexure, page 26 in the court book. My reference for the Bench is 1139. If I take you to that page, there's a table that appears down the bottom and I take it that that is what is represented by care minutes in AB9 at page 26?---Sorry, 26, yes.

PN3748

Sorry, my apologies?---No, no, no. You're right. Yes, that's the actual allocation of the minutes for the class.

*** ANNIE BUTLER

XXN MR WARD

PN3749

And if I can just understand this, there's - the middle column is the total allocation, that's, be it care worker or registered nurse. In the far-right column is

what we might describe as the minutes that must be delivered by registered nurse?---That's right.

PN3750

Okay. And can I also just make sure I understand this, later on in your statement, which I want to go to, you refer to these AN-ACC classes here in the first column and it's column - in that column it goes classes 1 through to 13 and then there's some respite classifications. I'll come to those in a minute, but my understanding, very simply, is that the minutes, be they total or registered nurse, refer back to a class, is that - that's correct?---That's right. That's right.

PN3751

And can I just take you to - just very briefly, the page 18 of AN9. I apologise, for the Bench's benefit, it's at 1131. Where the minutes provide for care workers or assistance in nursing, that is, not registered nurses, am I right that what is contained in 2.3 at page 18, that description of that activity is allowable for the purposes of the minutes and please take a read of it if you need to?---That's right. Yes.

PN3752

So where in that page it says:

PN3753

Activities of a PCWA can be reported as care (indistinct) include assisting residents with -

PN3754

- that's what constitutes care work for the purposes of the minute?---Yes. It's not entirely exhaustive that paragraph but that's right because there are - it's important to know what activities are excluded. Yes.

PN3755

And when I read that, and I'm happy for you to read it if you need to, there's no reference there to medications, is that because that's something included elsewhere?---That's right. Medications - there's a number of layers of how the care minutes work and medication is not excluded from the care minutes in total.

PN3756

Which we'll come to. All right. So it's the fact I can't find it there, that doesn't mean it's an exclusion?---From the total care minutes, no.

PN3757

No. All right. So from the personal care workers part of the care minutes, it's not excluded from that?---It's not officially excluded anywhere.

*** ANNIE BUTLER

XXN MR WARD

PN3758

All right. Thank you. Now, earlier today, I provided you with an additional document and if I can hand copies of that to the Bench. I think the parties have already got it. This is the Australian National Aged Care Classification (AN-ACC) funding guide. If I could just ask you to - when the Bench have it, I'm

just going to take you to this and I'm going to put some propositions to you to make sure that I understand what is going on with this. it might be convenient to have that marked.

PN3759

JUSTICE HATCHER: The Australian National Aged Care Classification funding guide will be marked exhibit JE18.

EXHIBIT #JE18 AUSTRALIAN NATIONAL AGED CARE CLASSIFICATION (AN-ACC) FUNDING GUIDE

PN3760

MR WARD: If the Commission please.

PN3761

Then, Ms Butler, at paragraph 14 of your statement, at the top of page 4, you talk there about:

PN3762

The care recipient classified at class 1 of 13.

PN3763

Do you want to just go there? Have you got that?---Yes.

PN3764

Two questions. Those classes are the classes that are in AB9 and can I just ask you to go to page 23 of the document I've just handed up, do you see a table at page 23, it's got:

PN3765

Class 1, 2, 3.

PN3766

?---Yes.

PN3767

Am I right in saying they're the - when you say, 'Classes 1 of 13', these are the classes?---That's right.

PN3768

These are the classes. And then can I just make sure I understand this, so the classes, as I understand it, are how the resident is assessed as they might enter a care facility, is that correct?---That's correct.

PN3769

And who does that assessment? Is that the registered nurse?---It will be done by an independent assessor. Typically they're a registered nurse.

PN3770

But independent of the facility?---Yes.

*** ANNIE BUTLER

XXN MR WARD

PN3771

And I'm right then, aren't I, that classes are relevant for the allocation of minutes?---Yes.

PN3772

And I'm right then, based on the document I've just shown you, that classes are relevant for the allocation of funding?---Yes.

PN3773

All right. So I'm doing well. Am I right also then in saying this though, that if you take personal care work as part of the minutes, so put the registered nurse aside for a minute, all the other stuff, the minutes and the funding don't concern whether or not the personal care workers got a Certificate IV, a Certificate III, they're below a Certificate III, they don't relate to the qualification or the experience of the care worker, it's just care work?---That's right. And actually the portion that's not registered nurses can apply to ENs, RNs, PCWs, those classifications across the activities that contribute to meeting the care needs of a resident as they fall in whichever class. The bit that's stipulated is the registered nurse piece.

PN3774

So the registered nurse - you can't get away from that, must be a registered nurse?---Yes.

PN3775

But in relation to all the others, it could be AIN, PCW and it could be one of those people at any level in the structure?---According to AN-ACC, the AN-ACC system and because AN-ACC is a classification and funding tool, the element that must - and it's referenced in the documents that must be - must occur next to that is care planning. That's when the more nuanced approach into who, what skills are needed to meet a particular resident's needs, that's where that's determined.

PN3776

You're ahead of me?---All right.

PN3777

I was about to say to you there - - -?---All right.

PN3778

So it's not the AN-ACC process that deals with that at all, that's minutes and funding. The care plan is what deals with the nature of the care that the resident gets and as, I think we've discussed in the first part of this case, that care plan is structured and determined by the registered nurse at the facility?---That's right.

*** ANNIE BUTLER

XXN MR WARD

PN3779

Yes, thank you. Can I take you then to your proposed changes to the structure and just for the Bench's benefit in the court book, the draft determination of the ANMF is at 975 or at least it's at my 975, but it might just be easier if you turn to, I think it's one of your annexures, isn't it, your draft determination?---Yes. Well, it's not one of my annexures.

PN3780

My apologies, then I need to provide it to you. I'm sorry?---I do have them with me if that's needed.

PN3781

Do you? That's made my life considerably easier. I apologise. I had assumed it was annexed to your statement. So I'm referring to the draft determination advanced by, I think you say you're the advocate for this structure based on your academic and union working group. That would be the right way to put it?---Yes. So following, like, considerable discussion around our executive group then a targeted consultation process with academics, union employed officials and the fourth group was from directors of nursing care managers from actual facilities. Yes.

PN3782

Can I just ask a general question and I want to take you to a couple of parts of the structure. It's my understanding that you're proposing a change in definitions to effectively - so these are my words, to effectively replace the reference to 'Personal care', with 'Nursing care', is that a reasonable characterisation?---It's - what we're trying to do is in terms - which class, which determination are you looking at specifically?

PN3783

So I'm looking at your determination for the Aged Care Award?---Aged Care Award, yes.

PN3784

And you talk there about in your statement that you're introducing a new definition and that definition, as I read it, indicates that you're adopting language about nursing care rather than personal care or personal care and support?---What we're doing is adopting the definition that a personal care worker is subject to the supervision, delegation and direction of a registered nurse.

PN3785

So it's not the recharacterisation of the work per se, it's nursing work, it's more a reference to the fact it operates under the registered nurse?---That's exactly right but as I make the argument in the statement and have made it before, personal care is the core component of a broader nursing care and nursing practice so a registered nurse also can do personal care. You can't distinguish the two there but personal care is an element that has had various titles over time from a nursing perspective, essential care, foundational care, but personal care workers would still do that element of personal care but as is practiced under the supervision, direction and delegation of a registered nurse.

PN3786

So it's not that I should read too much into it, it's just that this is looking through the lens of the registered nurse as the person who ultimately has authority and delegation for this?---Well, yes, but it's also sort of reflecting contemporary practice in aged care facilities.

*** ANNIE BUTLER

XXN MR WARD

PN3787

JUSTICE HATCHER: But, Ms Butler, that phrase, 'Subject to the supervision, delegation and direction of a registered nurse', appears in all of your proposed classifications, I'm just - I don't understand what purpose it serves in the context of a classification structure which is to differentiate persons in terms of pay?---Well, that's because it's to give a definition of both the personal care worker and the assistant in nursing and the framework in which they work and to distinguish them from other roles also providing aspects of nursing care in an aged care facility.

PN3788

Well, are there persons who are not subject to the supervision, delegation and direction of a registered nurse?---There would be other registered nurses, there would be, you know, peripheral workers who aren't involved in direct care activities.

PN3789

So in effect, it's not a discriminator between classifications, it's a way of describing what personal care work is?---Yes.

PN3790

Is that right?---Yes.

PN3791

All right. Thank you.

PN3792

MR WARD: That just saved me doing it. Thank you, your Honour. Thank you.

PN3793

Can I come to personal - sorry, I withdraw that. Can I come to grade 3 personal care worker qualified. Could you go to that in the structure and your - can you find a reference? We'll find the court the reference in a minute, your Honour. 976 in the court book.

PN3794

As I understand it, how you advocated for this structure, grade 3 is somebody who holds a Certificate III which I assume is going to be in aged care, you accept that as a proposition?---Yes.

PN3795

And I think also like earlier on in your statement, you talk about the fact that you were advocating more broadly for this to be a minimum standard of registration. I think you say that?---Yes.

*** ANNIE BUTLER

XXN MR WARD

PN3796

Now, I provided you earlier with some documents about Certificate III competency, I'll just turn to deal with some of those now. One of the documents that I provided you is Australian Government CHC33021, Certificate III in Individual Support, do you still have a copy there?---Mm hmm.

PN3797

I'll give it to the Bench in a moment. And the second one I want to go to, first of all, is Australian Government HLTHPS006, Assist Clients with Medication, Ms Butler, do you still have that?---I do.

PN3798

I'll just provide those to the Bench. I don't think - I think we used this one though, I don't think we used - we mark these ones. I might seek to have these marked.

PN3799

JUSTICE HATCHER: Yes. So JE14 was Assist Clients with Medication.

PN3800

MR WARD: I'm going to come back to - I'm going to show the witness that one (indistinct) yes.

PN3801

JUSTICE HATCHER: All right. So document entitled Australian Government HLTHPS006, Assist Clients with Medication will be marked exhibit JE19.

EXHIBIT #JE19 DOCUMENT ENTITLED AUSTRALIAN GOVERNMENT HLTHPS006, ASSIST CLIENTS WITH MEDICATION

PN3802

And CHC33021, Certificate III in Individual Support will be marked exhibit JE20.

EXHIBIT #JE20 DOCUMENT ENTITLED AUSTRALIAN GOVERNMENT CHC33021, CERTIFICATE III IN INDIVIDUAL SUPPORT WILL BE MARKED EXHIBIT JE20

PN3803

MR WARD: And if I could just have a moment.

PN3804

Ms Butler, you might accept this proposition, I think you will. CHC33021, Certificate III in Individual Support is the current Cert III list of electives and mandatory provisions. You don't cavil with me with that, you would accept that as a proposition?---No, and recently reviewed.

PN3805

Recent, yes?---It's definitely the current version, yes.

PN3806

Thank you. So I've done well. Can I ask you to go to page 4 of 5 of that and then you'll see almost at the bottom there is the reference to HLTHPS006, Assist Clients with Medication?---Yes.

*** ANNIE BUTLER

XXN MR WARD

PN3807

And I've provided you with Assist Client with Medication and this is the unit. I'm going to (indistinct) though this is - and I might add this is an elective unit, it's not one of the mandatory units?---Yes.

PN3808

It's an elective unit and my understanding of Assist Clients with Medication - now, I might do this badly, but I'll try. We had evidence in the proceedings about what was described as prompting residents to take medications. We had separate evidence in the proceedings where sometimes the care worker would mix the medication with a custard or a jelly and I think there was some evidence where they provided a spoon to the resident but the resident themselves consumed it.

PN3809

There was then evidence in the proceedings where they might mix it with a custard or jelly and the care worker might feed the resident that. I might just keep those three propositions in mind as I go through this. Do you accept that Assist Clients with Medications competency, at the very least, covers the first one, the prompting?---Yes.

PN3810

Would you accept it covers the second?---Yes.

PN3811

But I suspect you're going to say you don't accept it covers the third?---It's dependent on something.

PN3812

Can you help me?---So the issue is that when you're assisting somebody with medication or self-medication, is that the person is aware and can make a decision. They might not be physically able to even take the crushed medication mixed in the jelly and put it in their mouth but they know exactly what they're - a person with advanced Parkinson's, for example, might not be able to have that physical capacity but has the cognitive capacity. So you might come in and say, 'Mrs Smith, this is your L-dopa or whatever it is', and they'll say, 'Yes', or they might say, 'No.'

PN3813

Yes?---That's a good example Parkinson's actually because that medication is it must be given at very set times and so if you're rushed or whatever and then a person who has cognitive capacity are going to say, 'No, in another hour.' You know, they probably couldn't do that with their hand but - so that can fall within that assist with self-medication where the person has the cognitive capacity.

*** ANNIE BUTLER

XXN MR WARD

PN3814

So my first question then is essentially this; if you accept that some form of medication activity, perhaps not all of them, but some form of it, can be comprehended within the Cert III, can you explain to me why you don't introduce medication until you get to grade 4 rather than grade 3?---Precisely because as you said earlier, it's not the prescribed suite of units that you need to get a Cert III

in Individual Support Specialised Aging. So you could have done three other different electives. It's not required to meet that - to be issued the Cert III qualification. So you could have had your Cert III, be working and the facility might say, 'We'd like to have you upskilled', and so you add that on at a later stage. You may have it in the beginning but it's not required.

PN3815

All right?---So it's an additional one.

PN3816

I could be - in one of these situations, I could have done it as an elective and be competent to do it and under your proposal you're advocating for, I take it that would make me a grade 4 straightaway once I've done my Cert III?---It could do and depending on experience and skills but yes. It could be that you do that as an elective and the facility doesn't let you use it.

PN3817

And could it be the case that I might not have a Cert III but that my employer asked me to go and do that unit, the registered nurse signs me off as being competent in that unit and that would make me a grade 4 as well?---Not the way we're currently in - well, it could in the fact that if you are assessed as already possessing equivalent knowledge and skills, so there could be circumstances in facilities where - while the majority of people do hold a Cert III qualification, there's a number who don't but have worked for many years. They could have had targeted experience in certain areas. Many providers also have provided their own training, so you could assess as equivalent to those skills, then go and ask for additional medication competency and then meet the grade.

PN3818

So I could - and I'm not trying to be antagonistic about this, but in simple terms under this proposal I could work in a facility for a year, be assessed by my employer and the registered nurse as being competent to do medications and under your proposal, that would make me a grade 4?---If you are assessed as competent at the equivalent level, yes.

PN3819

Yes, you accept it's possible?---Yes, yes.

PN3820

Can I then just take you to grade 4 and I appreciate that you've written what was there rather than wrote it from scratch, so I'm just very concerned?---Yes.

*** ANNIE BUTLER

XXN MR WARD

PN3821

But you've maintained in grade 4 the reference to digital technology. I think you've contemporised it by moving away from computers to digital technology but you'd accept, wouldn't you, that a Certificate III person at a grade 3 more likely than not, is going to be using digital technology?---They will be using some digital technology but we're mindful that this is going to continue to advance, greater skills are going to be required. An example is My Health Record at the

moment, which is undergoing a review and we're trying to work with government about getting that into - properly used into aged care facilities. Currently the AIN/PCW level doesn't have access to that so it's looking at, you know, development as well.

PN3822

But you would accept that using things like iPhones and tablets is almost common fare in modern society?---Yes.

PN3823

And they're very common in workplaces in aged care?---Yes.

PN3824

And do I take it then that if I'm using digital technology, your intention was I'd be a grade 4?---Well, it would be assessed at that level. There is a higher level of - - -

PN3825

There's no reference to digital technology below grade 4, that's all?---No, but there's a standard of just - well, technology isn't just an iPad either, there's lots of other forms of technology being used but you can have an iPad and use it for a very simple thing but there is also - like medication charts are used on, there's a whole lot of different recordkeeping that is done and documentation that it's not just as simple as everybody uses a phone but there's a step up to providing to a contributing to the greater documentation needs as well because that's also about not just the tool that you're using but what you have to input.

PN3826

No, but you - maybe it's in the way it's been drafted but you would accept that people below grade 4 are going to use digital technology?---To a degree, yes.

PN3827

Yes. And then can I come onto the bottom bit of grade 4 which is the medications part, I just - I want to be clear on this. This uses this language:

PN3828

May be required to assist aged persons with self-administration of medication and hold the relevant unit of competency.

PN3829

And in this point, can I just provide you with a copy of - we provided you earlier with a copy of exhibit JE14 in the proceedings, HTLHPS007, Administer and Monitor Medications. To try and do this simply and quickly, my understanding is that this is the Certificate IV module on medications and the Assist Clients with Medication is the Certificate III module. Is that your understanding?---Yes.

*** ANNIE BUTLER

XXN MR WARD

PN3830

So can I just understand straightaway the reference to self-administration, is that a reference to the Certificate III module activity and does it exclude the Certificate IV activity or is it less or more complicated than I've just put it?---It is more

complicated. The lines along medication administration in aged care are currently very blurred. The ANMF position is that we believe that an AIN/PCW is best placed with assisting with self-administration though and there are examples out - and it's very variable across the country - where people with Cert IV, and even with Cert III qualifications, are participating in what they would describe as medication administration. You said earlier - we would put it into prompting, assisting, administering and managing, which is not really covered in how you see these units outlined here, and the registered nurse just remains ultimately responsible for the entire administration - sorry, management.

PN3831

People in these proceedings have described themselves as administering medications where often they are - a pharmacist has supplied the medication, so the pharmacist takes responsibility for the supply, then they are possessed by the individual, and they are often putting them out of a Webster pack. The level IV unit that you're talking about does have some underpinning knowledge to it.

PN3832

MR WARD: Yes?---In terms of some legal responsibilities around medication administration, checking that you know the five rites of administration of medication, but it is clearly described as delegated by a relevant health professional and can only occur as delegated by a relevant health professional, which is typically a registered nurse.

PN3833

When you look at the different pieces of the poisons and therapeutic goods legislation around the country, as they are called, it's, in a number of states, described as 'a person may administer medications if' - and then there's sets of criteria and one of those is it must be delegated by a registered nurse and under the supervision of a registered nurse, but it's variable across the sector, and one of the issues is that the Cert IV qualification, and therefore all those electives, is currently undergoing review, but it hasn't been - so we're looking at the current, not what's - not the future.

PN3834

MR WARD: Can I put these propositions to you and you can tell me if I'm right or wrong in relation to the structure the ANMF is advocating for. Do you agree with this proposition that, as drafted, grade 4 does not require a Certificate III?---As drafted, provided that they would be able to - they would have to demonstrate the equivalent knowledge, skills and experience.

PN3835

To what?---To a Certificate III.

PN3836

Where does it say it has to be equivalent to a Certificate III?---It doesn't say that, but that would be what would be expected in terms of - - -

*** ANNIE BUTLER

XXN MR WARD

PN3837

So what - - -?---May require formal qualifications or equivalent skills - assessed as equivalent skills, knowledge, experience.

PN3838

Putting aside perhaps how it's drafted, the intention was that a grade 4 has a Certificate III or sufficient experience to equal a Certificate III?---Yes.

PN3839

Okay?---Yes.

PN3840

JUSTICE HATCHER: I'm confused. Isn't that grade 3?

PN3841

MR WARD: I'm just asking questions, your Honour.

PN3842

JUSTICE HATCHER: I'm just looking at the document. Isn't it grade 3 that has the Certificate III?---It does, but then what we're saying, it would be an extension for grade 4.

PN3843

An extension of what?---From having the Cert III, or, in the grade 3, we do say that grade 3 or assessed as the equivalent experience, skills, knowledge, et cetera.

PN3844

That's grade 3?---That's grade 3.

PN3845

What's the grade 4 point?---So the grade 4 is that base level, but then extension of skills, knowledge and experience.

PN3846

Extension in what way?---Some of the things that are outlined here in terms of a higher level of being able to prioritise and function, things that you might be able to do, higher level problem-solving skills, administrative, you know, just taking a step up in terms of the skills and experience and knowledge that you're using, and you may have higher responsibilities.

PN3847

May have what, sorry?---Higher responsibilities, sorry.

PN3848

Higher responsibilities.

PN3849

VICE PRESIDENT ASBURY: Such as the self-administration of medication?---Such as, yes.

*** ANNIE BUTLER

XXN MR WARD

PN3850

And holding the relevant competency?---Yes.

PN3851

Yes.

PN3852

JUSTICE HATCHER: But couldn't a Certificate III person do that? Isn't that part of a Certificate III?---It's not a required part of the Certificate III, it's an elective. It doesn't have to be part - it doesn't - it's not part of the - so there's core units and then there's mandatory electives - sounds crazy, but mandatory electives - to get your Certificate III Individual Support (Ageing). You don't have to do this. It doesn't include the medication, but it is there as an elective.

PN3853

DEPUTY PRESIDENT O'NEILL: So, essentially, if you are doing a Certificate III and you happen to choose the Assisting Clients with Medication elective, then you will come out as a grade 4, and if you choose other electives, you're a grade 3?---You could do.

PN3854

JUSTICE HATCHER: I thought, from your earlier answer, that wouldn't be sufficient, there would have to be something else that involves you operating at a higher level?---Well, just to come straight out, like you've just first started and you've just got your Certificate III - - -

PN3855

And you've done the elective?---And you've done the elective, you would still have to demonstrate to the facility and to the registered nurses that, just because you've done the elective, that you are competent and you have got the skill to perform at that capacity and, if you do, then you would go to grade 4.

PN3856

VICE PRESIDENT ASBURY: But if you did that elective as a post qualification elective, so you've already got the Cert III and then you do it post the Cert III, that's probably of itself going to get you to the next level, whereas if you do it as part of your Cert III, it's not necessarily?---Yes.

PN3857

That would follow, wouldn't it?---Potentially, yes.

PN3858

JUSTICE HATCHER: This would all require some evaluative judgment to be made by somebody as to whether - - -?---That has to be done constantly really. It's part of - it's sort of - the way this structure looks is very much in a nursing model and a nursing practice framework. The way the practice standards work are sort of broader principle levels and then judgments and assessments are made on obviously what people - where people fall instantly by qualification or by time, and those sorts of things, but assessments are made frequently.

*** ANNIE BUTLER

XXN MR WARD

PN3859

VICE PRESIDENT ASBURY: Can I just take you back to the questioning about inserting the words 'subject to the supervision, delegation and direction of an RN' because my recollection is that that's the key distinction between the definition of an AIN in the Nurses Award and the definition of a PCW or a carer in the Aged Care Award. One of them specifically says 'subject to the direction'. I accept your point that they both, in reality, are, but, typically, that was the key distinction between an AIN and a PCW?---That's right, and we are proposing alignment of the two structures in each of the awards.

PN3860

JUSTICE HATCHER: It would imply that if we included those words in the Aged Care Award, there would be no need for assistant in nursing classifications in Aged Care to be included in the Nurses Award?---We would still argue that, to maintain the system with the least disruption possible, we would mirror the two classification structures, one in the Aged Care Award and one in the Nurses Award.

PN3861

But which award covers them then?---Well, both awards cover them currently.

PN3862

One of the principles in the Act is not to have overlapping coverage, it has to be a single award, and I don't understand how you can have a situation where a person is simultaneously covered by two awards with the same classification and the same pay rate. It doesn't make sense, does it?---Yes, our argument is that we currently have this situation which has evolved continuously over the sort of last decade, and particularly now with the suite of government reforms that we have, that, in a residential aged care facility, there is increasingly an overall nursing model of care delivery, with a registered nurse leading that team, and everybody else - well, the direct care workers - not everybody else - direct care workers contributing to part of those teams, and currently, in different states, different classification titles are used, but we are having the same nursing model of care and nursing team approach.

PN3863

I think, with respect, it is not the function of awards to dictate the model of care. That's something that employers do in the context of the regulatory regime, but their purpose is to set pay and conditions?---Mm.

PN3864

And it doesn't seem to me to make a lot of sense to have a single employee who has simultaneously got pay and conditions coming from two different awards, particularly when there's differences in conditions, which means that there may be compliance issues if you are covered by two awards.

*** ANNIE BUTLER

XXN MR WARD

PN3865

VICE PRESIDENT ASBURY: Which is sort of where I was heading with my question because, sadly, I go back too many years and I recall the issues arising when there was an argument about whether someone was subject to the direct

supervision of an RN, which changed the coverage of the underpinning award when you were, for example, making an enterprise agreement, or you were trying to determine which award properly covered, but there was always an argument that, well, the PCWs are actually AINs and, in those days, there were different pay rates, but also different conditions when it came to shift work and other provisions, and it could actually be quite a significant issue for employers who were having the arguments about which award properly covers these people that we thought were personal care workers or personal care attendants, or whatever you want to call them, and were confronted with, well, no, they're not?---That's right. I understand the points - I understand what you are saying, and we have - obviously, with our branches across the country, there's different arrangements and we've been through all of that evolution, and actually this attempt is to simplify, to try and, by just mirroring - by aligning the two, to simplify and avoid those problems.

PN3866

Without trying - I understand what you're saying, but coming through the lens we've come through is, while maintaining the workforce that we have currently got with the least disruption possible, both from an industrial sense in some of the things you just mentioned, but also in a professional identity sense, we have some aged care providers who exclusively - many use exclusively one or the other - some just say AIN/PCW, some do that, some national providers, of course, go across different states and prefer different titles in different states.

PN3867

One of the things is that some providers, who use just the classification AIN, then use it as a marketing tool for their particular facilities as they have - they will often use words like 'full model of nursing care approach' in their facilities. We have tried to simplify as much as possible and to keep that alignment for those reasons, and because of concerns that many of our AIN members hang on to that as a strong professional identity.

PN3868

VICE PRESIDENT ASBURY: Speaking for my part, the Nursing Award or the Nurses Award is an occupational award and the Aged Care Award is an industry award, and having two awards, one being occupational and the other one being industry, that both say a position that looks a lot the same in both cases is under the direct supervision and control of an AIN could actually increase confusion because if AINs feel that occupational pool, then, arguably, they might say, 'Well, the Nurses Award is an occupational award, I am directly under the supervision of an AIN, or the RN, therefore I am an AIN, not an AIN/PCW, not a PCW'. Is it going to cause more confusion to have two awards with the same essential classification?---Well, I don't think so for our members because we've been operating on that basis currently.

*** ANNIE BUTLER

XXN MR WARD

PN3869

MR WARD: I might just try and ramp up grade 3 - sorry, grade 4 - then we'll decline. Is the fact that the only inclusion in the structure you are advocating for to medications is limited to self-administration of medication, as appearing in

grade 4, means that any other form of administration of medications is prohibited for personal care workers?---It doesn't. Our preference - the ANMF position is that medication administration, in its fullest form, is performed by regulated health professionals.

PN3870

Again - I am not trying to be difficult here - if you take exhibit JE14, which is the Cert IV Administer and Monitor Medications, you would accept that if you had a Certificate IV and you had that competency, you could do more than the Certificate III medication competency?---You can, as delegated by the registered nurse, and only as delegated by the registered nurse.

PN3871

If I was mashing up a tablet, putting it in the custard and feeding it to somebody, that's an administer and monitor medication competency, it's not an assist client with medication competency?---If the person is cognitively impaired.

PN3872

At what level?---Level 4.

PN3873

No, no, what level of cognitive impairment?---When they don't know why they're taking the medication and what for.

PN3874

So, if they are at that level, that's what you believe the Certificate IV competency is for?---Yes.

PN3875

Everything below that could fit into self-administration of medication?---Yes.

PN3876

So, again, it's about the acuity of the resident determining that demarcation?---Yes.

PN3877

Can I take you on to grade 4A. Again, I am not trying to be petty with this, but I don't see anywhere here that it says you have got to have a Certificate III, but, based on your last answer for grade 4, were you presuming that you have to be Certificate III?---Yes.

PN3878

Okay. Can I take you down to the very last point, which is:

PN3879

May require relevant skills, training or experience in dementia care or palliative care.

*** ANNIE BUTLER

XXN MR WARD

PN3880

We have heard a lot of witnesses in this case talk about the fact that they do an in-house training program on dementia. Would that be sufficient, if I did that and I had my Cert III, to be a 4A?---That would depend on the quality of that in-house training.

PN3881

Who will determine that?---We have to - - -

PN3882

You tell me the registered nurse?---No, potentially look at the qualifications that are offered. I mean, ideally, we would like the qualification to be taken from, you know, the training package qualifications.

PN3883

So if I go back to the very first one I gave you, which was the Certificate III one, which I have now miraculously put down, my understanding is - I will give you an example. Ageing specialisation includes deliver care services using a palliative approach, CHCPAL003. CHCAGE011 provides for people with dementia. So, if I had those units in my Certificate III, that would be enough for me to be a grade 4A?---If you had - it could depend - if you had - we would say that potentially more advanced units are needed.

PN3884

Which ones?---I'm looking at Cert III.

PN3885

Yes?---Yes, so that's just the mandatory entry-level qualification.

PN3886

Yes?---So we're saying a higher degree for 4A.

PN3887

So to be 4A, you would want me to do the Certificate IV dementia units?---Yes, potentially, yes.

PN3888

It doesn't say that, though, does it?---It doesn't say that explicitly, no.

PN3889

I think your evidence at the beginning of the case was that the majority of residents in aged care suffer from some form of dementia?---Yes. It's more than 50 per cent.

PN3890

Yes, it's certainly a very large number. You would agree with me that the challenge of the way this is worded is that somebody who does some training on dementia more likely than not is going to claim they're a 4A?---Yes, potentially, and if they could demonstrate, you know, specific experience as well because - - -

*** ANNIE BUTLER

XXN MR WARD

PN3891

How much experience?---Well, it would have to be more - - -

PN3892

A year, two years?---Well, it would depend what type of experience they had as well.

PN3893

So it's entirely - - -?---Because dementia's not a single - it's not a single condition. So there's about 50 conditions of dementia and associated conditions of dementia. Palliative care also - right - occurs on a spectrum, and so pretty much most people going into - just the hard cold fact of it that most people going into a nursing home are going to approach end of life at some point in their time there, and at some time, very likely, almost a hundred per cent likely, they are going to need some form of end of life care, otherwise they would not be in a facility.

PN3894

Yes?---So one of the things that has been incredibly lacking is enough skills and knowledge around dementia care and palliative care. From its end of life care to rapidly metastasising cancer, that's what we're talking along the spectrum of palliative care. That has been very sorely missing. It's been in volumes of evidence from the Royal Commission recommending higher level skills. We need everybody - you know, obviously we have to start at the very beginning, but if you're having a minimum qualification, everybody needs a basic level of understanding and knowledge and some skills to be able to deal - confront those conditions and deal with them, but we need higher order skills and we need to - one of the things that we've heard many times is that because it's not rewarded going and doing qualifications or doing extra training, it hasn't been rewarded, so people don't take that pathway.

PN3895

Not everybody might want to go on to be a nurse or to be a physio or to be an OT, but to have some progression that not only equips the staff with the skills needed to deal with the increasingly complex care needs, but also rewards that person and allows them a pathway for progression.

PN3896

MR WARD: I think you said then - tell me if I'm wrong - I think you said that there are many forms of dementia. You might have said there were 50?---It is - like it's extraordinary.

PN3897

I take it what you are telling me is some forms of dementia you didn't intend to include for 4A?---No, we've used it as a coverall term.

PN3898

So it would cover all forms of dementia?---But what I'm trying to explain is that the entry level unit is just a basic sort of introduction, but in 4A we do expect a higher order understanding and knowledge and being able to deal with a wider range.

PN3899

Let me put that back to you again then. Your reference to dementia in 4A covers all forms of dementia and all persons with dementia?---Yes, not to a palliative - you know, a dementia care specialist.

PN3900

I will come to - - -?---But, yes, it would assume that you would have a broader understanding.

PN3901

I will come to this in a minute, but in terms of the actual word 'dementia', your inclusion of it in grade 4A, it encompasses all forms of dementia, be they of a particular clinical description, or be they relatively mild, relatively severe, it covers all forms?---Having a much better understanding, yes.

PN3902

So the answer to my question is 'Yes'?---Yes.

PN3903

JUSTICE HATCHER: So how is that determined? I mean, at the end of the day, there's going to have to be a payroll manager or equivalent of an aged care employee who will have to apply these rates of pay and they need some certainty as to what they are doing so they don't find themselves in breach of the law. How does one determine an entitlement to a rate of pay at this level?---Well, it would be best determined by being able to work out how long somebody has spent focused in the area, whether they have the additional units of qualification.

PN3904

So what are the units?---The units can be drawn from the Certificate IV, or other training is available from other organisations.

PN3905

PROF BAIRD: May I ask, in Certificate III, the group A electives, ageing specialisation, include provide support to people living with dementia, deliver care services using a palliative approach, and working effectively in aged care. Would they cover what is needed to be done in an aged care facility by a PCW or an AIN?---At the most basic level, yes. Well, at a - I don't mean the most basic level in terms of the structure.

PN3906

No?---But in terms of a knowledge and understanding, yes.

PN3907

So would a Certificate III with group A electives taken, would that be sufficient qualification, if we're looking for a qualification marker?---It has to be taken at Cert III level.

PN3908

Well, no, it doesn't, it can be group A or group B, reading the structures?---If you want to be an ageing - if you want to have an ageing specialisation?

PN3909

Yes, if you want to be an ageing - - -?---Yes.

PN3910

But you could go into a facility with a Cert III without those specialisations?---Ideally, you'd go with the ageing specialisation if you were - - -

PN3911

I know you would, but could you go into a facility with a Cert III without the ageing specialisation?---Well, our structure's aiming to support with the ageing specialisation, not with the disability specialisation working in a nursing home.

PN3912

JUSTICE HATCHER: No, but in the regulatory environment, can you do that?---In a regulatory environment, currently, you can, but until registration might come for personal care workers and AINs, which would most likely, or the current thinking is about mandating the minimum qualification.

PN3913

PROF BAIRD: Yes, but it hasn't happened yet?---Not at this stage, not yet. So you could go in - - -

PN3914

JUSTICE HATCHER: Your position is that you do that and that's just Cert III basic and that's level 3?---Yes.

PN3915

PROF BAIRD: Right.

PN3916

JUSTICE HATCHER: Cert IV is at grade 5?---Yes.

PN3917

So when we're talking about 4A, we're not talking about a Certificate IV person?---No, we've more aimed that at grade 5, to take a more supervisory role.

PN3918

All right. I'm still struggling to understand what is this additional training that one does to get into 4A?---We haven't prescribed it in the classification structure, so we haven't, you know - I appreciate it's not clearly prescribed. We have assumed that it would be at the higher level, you know, taking a couple of units, not completing an entire qualification, or accessing accredited training from other sources focused on dementia or palliative care appropriate for that level of worker.

PN3919

JUSTICE HATCHER: And - - -

PN3920

VICE PRESIDENT ASBURY: So who would be - - -

PN3921

JUSTICE HATCHER: Sorry. To be clear, grade 4A doesn't actually require you to be working in dementia care or palliative care, does it?---It doesn't.

PN3922

Thank you.

PN3923

VICE PRESIDENT ASBURY: Could you specify so much towards a Cert IV from the Cert III?---Beg your pardon, sorry?

PN3924

Could you specify that to get from one level to the next, you could have a percentage of the Certificate IV? So you've got a Certificate III?---Right, yes.

PN3925

And you've got relevant study towards a certain percentage of the modules or units of a Certificate IV or equivalent?---Yes, and some of our thinking is coloured by - and I know it's not what's there right now and I understand, but much of the work that's being done in terms of looking at particular skillsets to try and address particular work needs in certain areas, and I mean this is happening not just in aged care but across the board, where we would hope you might be able to package up skillsets for dementia or palliative care - let's take that example - but there could be a range of other things that then form building blocks to be able to step to, if you wanted to, higher level, different qualifications, different careers, those sorts of things.

PN3926

But an employer would be able to say, 'In this particular facility, we need' - - - ?---'This', yes.

PN3927

- - - 'this in addition to the Cert III and we'll nominate these units or equivalent as being the step for us to the next level', whereas for another workplace or another facility it might be different'?---Yes. As many employers do currently.

PN3928

Yes. I understand.

PN3929

MR WARD: Can I just come back to something you said before the members of the Bench? I think you had said to me that in relation to dementia the intention was that the employee would have done specialised dementia units from the Cert IV or its equivalent?---Yes.

PN3930

But you said that didn't you? Yes?---Yes.

PN3931

And then you also said 'sufficient time' which I assume was a reference to a sufficient period of time to gain experience working with residents with dementia. Do you recall you used the word 'time'?---Yes.

PN3932

How much time?---Again we haven't prescribed that. But if you could make an assessment of time working in – there's a range of experiences where you do encounter dementia and some are very specific. Very high level dementia units where people do work and or just across facilities or in a different range of environments. And so I would think that you'd need at least a minimum of a year.

PN3933

Just a year?---You may need – you know – it depends on the types of experience that you've had.

PN3934

So I could do the dementia unit in Cert IV, spend a year in a facility with variety of people with dementia and I would be a Grade 4A?---If you had had – if you had had an appropriate experience throughout that time.

PN3935

What would be an appropriate experience?---Where somebody is also guiding you through the process. So you have got the base – you're already at the certain level, the level before. And then when you have an experience of because much of – not everything is just a qualification, particularly across these sectors. And much of the experience that – what we're – one of the things we're trying to do is address the sort of years of much of the skills and experience that people have from and their environments not being recognised. And so where you're able to have on the job training that's guidance from other professionals around you. Like there might be other people coming – you know? There will be other people. Not just registered nurses but to help develop your knowledge and skills while you're on the actual job.

PN3936

So let me try and be fair to you, if I can, with the propositions to see if I understand what you've just put to me. Let's say I am a personal care worker and I have a Certificate III and I have got those base competencies in dementia care and listed for – I think you called them base level. And let's say I have been working in the industry for two or three years and I go and do my Certificate IV units in dementia and then I spend a year in a secure dementia ward. And I mean a secure one. You can't – you have to swipe in and swipe out, where I am exposed to people with a variety of high level forms of dementia, that would be sufficient to get into Grade 4A, but it could be many shades of grey below that as well?---Yes.

*** ANNIE BUTLER

XXN MR WARD

PN3937

Yes. And does the same apply then to palliative care? Is it anybody who is involved in any stage in – I'm not trying to demean it. I've lost somebody very recently in my family but is it anybody who is involved in palliating a resident is a

Grade 4A? Or how do you become a 4A in terms of palliative care?---It's along a similar line that you would need some higher level knowledge skills and experience than the basis first exposure. You know, the basic level unit that you get, and you're giving it a range – and it's not well enough understood currently.

PN3938

I'm a little worried that it's not well enough to find in here?---Yes.

PN3939

Yes?---Yes. And I understand that we have not been prescriptive. We haven't prescribed what's needed to meet those requirements but we're thinking in terms of a progression along from where you would be – have been at the Certificate III level – as we have discussed with the dementia.

PN3940

So I think where we have ended up, if I can just put it this way, is that at one level you see 4A as requiring somebody to already have Certificate III. Do you agree with that?---Yes.

PN3941

I take it that they have to have some level of experience operating at Certificate III level?---Yes.

PN3942

You are now suggesting they have to have some formal accredited qualification in dementia or palliative care, at least at Certificate IV level and while it might be a little vague and I don't mean no disrespect for you?---No. I know.

PN3943

Some appropriate period of experience dealing particularly with dementia or palliative care?---Yes.

PN3944

It seems that's really what 4A is aimed at?---That is. And because those people currently exist, they're just not rewarded.

PN3945

But you're not aiming this - - -?---Recognised.

PN3946

But you're not aiming at somebody who doesn't have a Certificate III and doesn't have formal Certificate IV accreditation and doesn't have extensive experience?---Aiming at – sorry, could you repeat the question?

PN3947

You're not suggesting this is for somebody who just comes out - - -?---Oh, yes. No.

PN3948

No?---No, we're not suggesting. No, no, no.

*** ANNIE BUTLER

XXN MR WARD

PN3949

No. And I've gone a little longer than I promised Mr McKenna I would go so I'm going to speed up a little bit. Can I just take you to Grade 5 then? Now, as I read Grade 5, Grade 5 seems to have two distinctions. And I'm not – there's a variety of little changes in the words. I accept that in terms of accountability and the like. But the two primary distinction in Grade 5 is simply supervision. You'd agree with that?---Yes.

PN3950

And the other one seems to be not that you're required to have a Certificate IV but you may have a Certificate IV. But you'd accept, wouldn't you, that it's highly desirable and perhaps better that somebody at this level has a Certificate IV?---Yes.

PN3951

Yes. And, obviously, if it was a requirement they had a Certificate IV it would be a lot easier to understand who is in this grade. You'd accept that?---I appreciate we haven't been descriptive.

PN3952

No. But you accept that proposition that would be easier?---I accept that.

PN3953

Yes. Yes. And can I just understand better? I didn't get this out of your report with any clarity. And we have done the same thing in our parts of it. But you decided that in terms of the care worker, the Certificate IV is the top of the benchmark and you have removed the reference to associate diploma. Can you just, for my benefit, explain to me a little bit more your thinking behind that?---Yes. Because our thinking is that you – there are already qualifications exist at those levels to go along the other streams of work that you might want to progress to from this level.

PN3954

Okay. And is it your contemplation, even though it's not perhaps worded that to be at this level, not only did you have to have a certificate IV – preferable to have a certificate IV but that, again, you'd have some extensive period of experience in the industry?---That you would have some experience.

PN3955

That's not written in here?---It's not prescribed.

PN3956

No. Right. And I'm presuming that to be at this level one would have to have considerably more experience than the people below in the other levels?---Yes. One would expect.

PN3957

Yes. Excuse me, ma'am. Thank you, Ms Butler. I think Mr Gibian is up next.

*** ANNIE BUTLER

XXN MR WARD

CROSS-EXAMINATION BY MR GIBIAN

[3.10 PM]

PN3958

MR GIBIAN: Thank you, Ms Butler. I just needed to ask you some questions primarily directed at the proposal to insert a definition in the Nurses Award of the Aged Care Nursing Assistant, some of which has perhaps already been raised. So I can endeavour to abbreviate it somewhat.

PN3959

Just so we're clear, the present position in the Nursing Award is there's a single nursing assistant definition which applies to persons occurring such a role where they're in aged care or in other contexts. Correct?---Yes.

PN3960

And what are the other contexts that you would ordinarily see those employees?---Assistants in nursing - - -

PN3961

Yes?---- - -not in aged care?

PN3962

Yes?---They may be in acute facilities. There's not many out in like places like general practices or those sorts of areas, more typically in acute facilities.

PN3963

All right. I was thinking there would be something in a general context but you don't think that's generally very common?---Not really at all.

PN3964

I understand. And the present arrangement is that at least since July of this year there's a different set of rates for aged care nursing assistants. Or assistants in nursing who work in aged care as opposed to others but other than the 15 per cent it will increase the classifications and wage structures are the same?---That's right.

PN3965

And what's proposed to be done is to amend the current definition to exempt aged care employees and otherwise insert the definition that you proposed of an aged care nursing assistant?---To confine it to aged care employees.

PN3966

Yes. I'm sorry. Maybe just to be clear?---Yes. Sorry.

PN3967

If you go – the current definition – if you go to your – I thought it sufficient to go to your statement. You've set out the proposed and current definitions at paragraphs 95 and 96 of your statement?---Yes. That's right. Keeping the aged persons.

PN3968

The current definition is that in italics - - -?---Yes.

*** ANNIE BUTLER

XXN MR GIBIAN

PN3969

- - - indented and in paragraph 96?---Yes.

PN3970

I think in that respect, just for the purposes of clarity, you're proposing to insert after the word 'employee' (except an aged care employee)?---Yes.

PN3971

But otherwise that definition will remain?---Sorry. Yes. I didn't have that in front of me.

PN3972

Sorry, I wasn't clear?---Yes. Yes.

PN3973

Otherwise that definition would continue to apply to those in acute care contexts at least?---Yes.

PN3974

All right. And then the new definition that you're proposing to put in at paragraph 95 is that set out in paragraph 95, I should say, for an aged care nursing assistant?---Yes.

PN3975

Can I just make sure I have understood the major changes that are being proposed for that definition completed to the general definition that now applies generally? I think there it perhaps it fall into the three categories. The first is that you're proposing to change the reference in the definition at paragraph 95 to 'an employee being one other than one registered within nursing and in midwifery board or a successor or in training for such' to a reference to 'a person other than an employee should say other than an RNE and student EN or nurse practitioner'. Is that right?---Yes.

PN3976

And I'm right in understanding the rationale for that is the proposal of the ANMF that a registration arrangement, if it is implemented for personal care workers should be done through the Nursing and Midwifery Board?---That is the ANMF position.

PN3977

Yes. And that's the reason for that part of the proposed change to the definition in what you're proposing in paragraph 95 of your statement?---Yes. One that they may, in time, be registered. But also that RN, EN, it's unnecessary to say that they're registered with the NMBA because that's evident.

PN3978

All right. Okay, I understand. The proposal for registration for a person of fair work has arose obviously and up from the Royal Commission?---Yes.

*** ANNIE BUTLER

XXN MR GIBIAN

PN3979

And as I understand it the Commonwealth has accepted that recommendation in principle?---Yes.

PN3980

But how that is to be done, or by what mechanism, is still in the process of being determined?---That's exactly right.

PN3981

The proposal out of the Royal Commission, I think, was to either that – I think – the majority was proposing that it be done through the Health Practitioners' Regulatory Authority?---Yes.

PN3982

Or agency – sorry, I should say?---AHPRA – yes.

PN3983

And I think Commissioner Briggs was proposing a stand alone new board to be known as the Personal Care Workers Board. They were the two proposals out of the Royal Commission?---That's right. That they asked AHPRA – the government to investigate the feasibility of it. And one PWC they'll be used AINs.

PN3984

I'm sorry?---Oh, yes. And that it would be PWC's AINs, yes.

PN3985

All right. In aged care?---Yes.

PN3986

Yes. Now, the second aspect of the change is that you are proposing to remove the reference in the existing definition to working under direct control and supervision of a registered nurse. That's right?---That's right.

PN3987

And, as I understand it, that's a proposal which is being made to reflect what you understand is the reality of how personal care workers or AINs work in aged care facilities, at least?---It is. But it's to reflect the reality of how collaborative nursing practise and nursing care delivery is done.

PN3988

All right. Perhaps just taking it one step at a time you agree it is to reflect the reality of how work is customarily performed in aged care facilities, that is that personal care workers or persons referred to as AINs don't generally work subject to direct supervision or direct control in their day to day work – sorry, direct supervision or direct control of an RN in their day to day work?---No. So we're changing it for – to supervision. Or our proposal - - -

PN3989

Yes?---- - - is to change it to supervision delegation and direction which may be direct or indirect.

*** ANNIE BUTLER

XXN MR GIBIAN

PN3990

Yes. And one of the reasons for that proposal is that, as you understand it, to reflect the reality of the way in which work is arranged then performed in aged care facilities?---One of the reasons.

PN3991

Yes. And I think, I assume you are familiar to some extent, at least, with some of the evidence in these proceedings and the findings of the Commission made in the stage one proceedings on that point. Particularly, that is that there is little direct supervision as a matter of fact of the work of a personal care workers, in the sense of – in which you describe direct.

PN3992

MR McKENNA: If it's to be put to this witness that there was a finding made on that point I think it would assist to specify it or perhaps remove the reference to the findings made.

PN3993

MR GIBIAN: I'm not sure Ms Butler was having any difficulty understanding. I was really wanting to avoid going to the findings directly. I didn't think that was really necessary.

PN3994

JUSTICE PRESIDENT HATCHER: Just proceed with the question, Mr Gibian.

PN3995

MR GIBIAN: I had assumed that you have some familiarity with the evidence in these proceedings, perhaps not all of it, there was a great volume. But also the findings that the Commission made in the first stage of these proceedings. Am I right in that?---Yes.

PN3996

And you're aware that there was a substantial amount of evidence and, indeed, findings made in relation to the limited opportunity for direct supervision by registered nurses of the work of personal care workers or AINs in aged care facilities?---Yes. When the reference is what is being meant is that someone's not standing right there beside them doing it. Yes.

PN3997

Yes?---They may need to, on occasion, for certain things of course.

PN3998

Of course. Of course?---But supervision can be – you know – more broad.

PN3999

Yes. And you're aware that the evidence and the findings of the Commission went to both the changes in the composition of the workforce, that is, there has been over the last two or three decades a significant reduction in the proportion of registered nurses as a proportion of the care workforce. Correct?---Yes.

*** ANNIE BUTLER

XXN MR GIBIAN

PN4000

And that now, or more recently, over that period of time registered nurses are more occupied with administrative and regulatory obligations. It's not their fault. That's just the way in which the regulations have changed than being able to directly provide or supervise the care work that's being undertaken in aged care facilities?---That has occurred over time which is why the Royal Commission into aged care, so clearly advice that those things needed to be redressed and changed. Hence the RN 24-7 requirement and the care minutes.

PN4001

Yes?---Yes.

PN4002

Yes, I understand. And the care minutes – yes, the care minutes requirement is endeavoured to ensure that, in fact, the RN will be providing direct care to a greater degree than has been at least often the practise in recent – in the last decade or two?---Most definitely.

PN4003

Yes?---Because it's sorely needed.

PN4004

Yes, I understand. All right. Then you also, in this context, refer to or you referred in an earlier answer to the fact that you are endeavouring to insert reference to supervision, delegation or direction of an EN. Sorry – and direction I should say of an RN, I should say, into the definition. As I understand what you say in that respect, particularly at paragraph 103 and following is that those concepts are derived from the decision making framework and standards of practise for registered nurses?---Yes. It's the contemporary view. And contemporary language of what's referred to the professional practise framework.

PN4005

All right. Can I just provide the standards of practice document? I think this is in evidence in the earlier stage of the proceedings. But to avoid having to mine through that material.

PN4006

DEPUTY PRESIDENT O'NEILL: I think from memory it was page 10,007.

PN4007

MR GIBIAN: I think 110.

PN4008

DEPUTY PRESIDENT O'NEILL: I should perhaps have them committed to memory but I don't.

PN4009

THE WITNESS: Thank you.

*** ANNIE BUTLER

XXN MR GIBIAN

PN4010

MR GIBIAN: I think in your statement you say this was marked as ANMF23 in the first stage of the proceedings for the record. Can I just note what it says at page six where there's a glossary of terms? And I think, particularly, you refer to the – sorry, perhaps I'll start again. This is dated 1 June 2016. That's the current standards or practice?---Yes. Again, I'd have to double-check.

PN4011

I understand it is but if I'm wrong about that - - -?---I know – I will know – yes, the one with – I do know.

PN4012

That is correct?---Yes.

PN4013

Yes. Right. Then if I could ask you to turn to page six? There's a glossary on that that commences on that page?---Yes.

PN4014

And in the left-hand column, the third term that is defined is 'delegation'?---M'mm.

PN4015

And it is defined as referring to a relationship that exists between an RN – sorry, when an RN delegates an aspect of recent practice to another person, such as an enrolled nurse, student nurse or a person who is not a nurse. Do you see that?---Yes.

PN4016

And there's a reference to accountability and the like in that context. And then right at the end of the definition there's a reference to a 2013 document entitled, National Framework for the Development of Decision making Tools for Nursing and Midwifery Practice. Do I assume that that is a former version of what is annexed to Ms Bryce's statement as the current decision making framework document?---Yes. Yes.

PN4017

All right. Now do you have access to that document?---The decision making framework?

PN4018

Yes?---I don't.

PN4019

All right. It's annexure JB4. I didn't actually bring hard copies. It is otherwise in the evidence?---I can probably - - -

PN4020

And I'd assumed – sorry, if I just have a moment?---Do you mean the current one?

*** ANNIE BUTLER

XXN MR GIBIAN

PN4021

Yes?---Yes. I'm okay to talk to it.

PN4022

It's probably better if - - -?---Oh, sorry - - -

PN4023

- - -you have it in front of you.

PN4024

MR WARD: Which page is it at? Because I'm happy to share my computer with the witness.

PN4025

MR GIBIAN: I think we can also do that if that's the convenient course. I think it's page 1280. It's JB4. I should say it's page 1269 of the - - -

PN4026

JUSTICE PRESIDENT HATCHER: So is it just that page?

PN4027

MR GIBIAN: That document.

PN4028

JUSTICE PRESIDENT HATCHER: That document. Maybe that's why.

PN4029

MR WARD: Is it JB4?

PN4030

MR GIBIAN: Yes.

PN4031

MR WARD: Can I approach the witness and provide my computer if that assists?

PN4032

JUSTICE PRESIDENT HATCHER: Yes. If that's convenient.

PN4033

MR WARD: If the witness just goes down the witness – just presses the down arrow.

PN4034

JUSTICE PRESIDENT HATCHER: Yes, 1269?---Thank you.

PN4035

MR GIBIAN: Where did the additional – all of the pages come in? Yes, sorry - - -

PN4036

JUSTICE PRESIDENT HATCHER: Do you have those pages at JB4?---I do.

*** ANNIE BUTLER

XXN MR GIBIAN

PN4037

Yes. Right.

PN4038

MR GIBIAN: It has 'framework' written at the top and have the effective date 3 February 2020 with an update in brackets August 2022. That's the document?---Yes.

PN4039

Now, if you could then go to page 12, internally within that document – page 12 of 15 I should say. I think that's page 1280 I should say?---Would you – sorry. Can you tell me – I can't see the page numbers on here. Can you tell me what's at the top?

PN4040

Yes.

PN4041

JUSTICE PRESIDENT HATCHER: So the internal page number is at the bottom right-hand corner of each page?---Sorry - - -

PN4042

MR WARD: Can I approach to find it - - -

PN4043

JUSTICE PRESIDENT HATCHER: You don't have the mouse.

PN4044

MR WARD: I'm happy to – just one second.

PN4045

THE WITNESS: Hang on. No, there you go. No, no, no. It's here.

PN4046

MR WARD: You've got it?

PN4047

THE WITNESS: Sorry.

PN4048

MR GIBIAN: You'd probably have one that can be touch screen?---Thank you. Yes. Context of practice.

PN4049

You're able to navigate that document?---Yes. I've just – on the right page. Yes.

PN4050

Okay. This is within, again, a definition section. It's the second page I think which again has that – a reference to it – in the middle of the page to a definition of 'delegation'. Do you see that?---Yes.

*** ANNIE BUTLER

XXN MR GIBIAN

PN4051

And it again refers to a relationship that exists when one member of a multi-disciplinary health care team delegates and aspects of care which they are competent or in which they normally call themselves to another health professional or health care worker. Do you see that?---Yes.

PN4052

And it makes clear in the following paragraph that the activity delegated by the registered nurse cannot be delegated by the person to whom they had delegated unless they'd obtained authority themselves to perform that activity. And if there is to be changes that necessitate redelegation of the person without the authority must consult with the registered nurse or midwife, that is, essentially obtain their approval to delegate?---That's right.

PN4053

Or a new delegation, perhaps - - -?---Yes.

PN4054

- - - is a more accurate way of putting it to a different person?---That's right. Yes.

PN4055

All right. So what we're talking about in the context of this decision making framework is a delegation of a specific task or function to a particular individual and other employee?---Yes.

PN4056

And not a general allocation – perhaps if I could go – if you go back to page nine within that document?---Yes.

PN4057

You'll see that at the top of that page in blue text, there's a heading, 'Guide to Delegation Decisions'. Do you see that?---I do.

PN4058

And, again, it describes where a delegation relationship exists in the second paragraph?---Yes.

PN4059

That is a delegation of an aspect of a nursing practice to another person, either by a registered nurse or midwife?---Yes.

PN4060

And underneath the two dot points it makes clear that delegation is different to allocation or assignment of tasks?---That's right.

PN4061

That is, it's delegation to do something particular on a particular occasion to a particular person?---That's right.

*** ANNIE BUTLER

XXN MR GIBIAN

PN4062

All right. Now, in the context of residential aged care work, as I understand at least, the general day to day direct care work undertaken by personal care workers or persons referred to as AINs in that context is not subject to specific delegation from an RN, be it showering or dressing or feeding residents?---Not things that were in the normal scope, which is PD – position description scope for an AIN or PCW that a day to day activities, they would come from the care plan.

PN4063

Yes. And the care plan sets out the needs and both personal and clinical of the particular resident. Not delegating the provision of that care to any particular person or on any particular occasion. It's a general framework for which – under which the care is provided?---Yes and no. So in a care plan, yes, care needs, residents are assessed, and you will note in the care minutes requirements a care plan must be developed by a registered nurse or a nurse practitioner. And so there may be just regular, fairly routine for a particular resident, you know, activities of daily living, you know, interventions, activity supports are needed. There may be tasks in there that may require a delegation from a registered nurse, but there will be a volume of work that is just regular work from the care plan.

PN4064

So the bulk of the work, the day to day direct care work, is of the former type; that is it's able to be assigned - - -?---Yes.

PN4065

- - - and performed by care workers as is convenient, and no doubt changeable based upon the exigencies of any particular day?---Yes.

PN4066

The point you were making is within the care plan there may be reference to - I think medication is probably the one that - or wound care - - -?---Other activities.

PN4067

- - - or whatever it might be, which are specific tasks which separate to the care plan would need to be either undertaken by the registered nurse themselves or subject to specific delegation?---Yes.

PN4068

Or at least if things are happening as you understand they should?---(No audible reply)

PN4069

All right. And that may involve a specific delegation to a personal care worker on a particular occasion if the nurse is satisfied that that is the appropriate course?---It could do.

PN4070

Now, if I can go back to the text of your statement. You can probably - - -?---Are we finished with this one?

*** ANNIE BUTLER

XXN MR GIBIAN

PN4071

- - - give Mr Ward his computer back. The other word that you've added in, or propose to add in, sorry, is the word 'direction.' You refer to that at paragraph 114 of your statement. It's page 19 of your statement, page 1106 I think of the court book?---Yes.

PN4072

And I think if you go back to paragraph 113 immediately above that the source of that, the reference to direction is also the registered nurse standards of practice?---Yes.

PN4073

Do you still have that with you?---Yes.

PN4074

I think the aspect of that you refer to appears on page 5. I understand it's 6, which is headed 'Provide safe, appropriate and responsive quality nursing practice.' And relevantly at 6.3 indicates:

PN4075

The RN appropriately delegates aspects of practice to enrolled nurses and others according to enrolled nurses scope of practices or others clinical or non-clinical roles.

PN4076

You see that?---That's right.

PN4077

And then I think 6.4, which is the aspect you refer to at paragraph 113 of your statement, refers back to that or is read with 6.3, that:

PN4078

The registered nurse provides effective timely direction and supervision to ensure the delegated practice is safe and correct.

PN4079

That is that that aspect of the nurses standard of practice is dealing with the specific delegation circumstance?---So the direction can be used in - yes, that's the reference we're talking about delegation and direction. You can't just delegate something and then just walk away and abandon it.

PN4080

Yes. And the importance of direction is that the nurse - where there is a specific task which normally and otherwise would be required to be done by the RN, which is subject of delegation, the RN retains the direction with respect to that particular type of task that is delegated in order to acquit their accountability obligations?---There is that. There is also general direction that it has more aligned with the reference to allocation and assignment of tasks.

*** ANNIE BUTLER

XXN MR GIBIAN

PN4081

Does that appear in the nurses standard of practice?---It's more in the supervision guidelines for nursing and midwifery, which used to be called the guidelines for supervision, direction and supervision.

PN4082

All right. Sorry, where is that document?---I don't have that document on me.

PN4083

All right. Do you refer to that in your statement?---I don't refer to it in my statement, but the standards of practice refer to it.

PN4084

Where do they refer to it?---Under the - under supervision. It directs you for further details.

PN4085

I'm sorry, could you point me to where - - -?---I'm sorry. In the glossary, page 7, 'Supervision', it directs you to another document.

PN4086

Then the final, or the third aspect in which you propose to change the definition is to remove the reference in the current nursing assistant definition, which confines it to:

PN4087

A person whose employment is solely to assist an RN or enrolled nurse in the provision of nursing care to persons.

PN4088

And you're proposing as I understand it to replace that with a reference to an aged care nursing assistant being a person whose employment is to assist in the provision of nursing care to aged persons; is that right?---Yes.

PN4089

Are we right in understanding there that the intention is to remove any reference to assisting an RN or EN at all?---No, not at all, but to make the language more contemporary and how nursing care is delivered. So to use that description of supervision delegation and direction, and to assist in the provision of nursing care. We are aware that there are some providers still whose own position descriptions are much more prescriptive and say that an AIN or PCW must report directly to an RN and must - must - some use the word 'must' follow the instructions of the registered nurse. But this is trying to bring the definitions to the contemporary framework that encourages and facilitates a collaborative nursing team approach.

*** ANNIE BUTLER

XXN MR GIBIAN

PN4090

Are we right in understanding that the intention of removing the word 'solely' is that the definition could encompass any person who assists to any extent in the provision of what you regard as nursing care?---So could assist other people providing nursing care?

PN4091

I'm reading the definition that the ANMF has proposed. If it extends to a person who is to assist in the provision of nursing care to aged persons rather than a person whose employment is solely to assist an RN, is the intention that it extends to a person who assists in any respect in the provision of nursing care?---Yes.

PN4092

No matter what part of their employment that that entails?---I'm not sure I fully understand, sorry.

PN4093

Whether it's a small or a large part of their employment, if it's any part of their employment to assist in the provision of nursing care then the person would fall within that definition; is that right?---Yes.

PN4094

Can I just go back one step, because I think that was my understanding as well. You referred me when I was asking about the concept of direction to the supervision guidelines for nursing and midwifery. My understanding was, and correct me if I'm wrong, that those are concerned with supervising another registered person, that is another person who has registration with the Nursing and Midwifery Board, because there's the need for some restriction on their practice. Is that - -?---No. I may have referred you to the wrong document. There is - there is a thing that's known as supervised practice, which is when people have conditions on their registration or are re-entering practice.

PN4095

And have provisional registration for some reason or other?---Yes. That's a separate - that's taken you to the wrong link. That's a separate element, a separate area entirely.

PN4096

Yes. But that is that document that's referred to there?---That's where that link takes you. Well, that's not - yes, that's not what I'm intending. That's not where I'm intending you to go.

PN4097

So the reference to direction what document did you say that was contained in? It's not this document?---Yes. I'm sorry, off the top of my head I'd have to go and just pull it out for you, and it may have been superseded now by another document, but it was called Guidelines for Direction and Supervision.

PN4098

I take it that's not a document you've referred to in your statement?---I have not.

*** ANNIE BUTLER

XXN MR GIBIAN

PN4099

Can I just ask you about two further matters. I think we brought to the attention of your representatives yesterday the definition that was proposed for nursing or assistants in nursing by the ANMF at the time of the award modernisation

proceedings. Has that been a matter that was brought to your attention?---It was, yes.

PN4100

Can I just provide you with that document. If you go to page 54 of that document in the top right-hand corner. Firstly, do you recognise that as the ANMF proposal at the time of the award modernisation?---I got this yesterday. I was not engaged in this space at this time. This is nothing to do with me.

PN4101

Yes, I understand. And then if you go to page 54 there's a heading 'Schedule A classification definitions.' Do you see that?---Yes.

PN4102

And you will see what was proposed at that time. The first definition was 'Assistant in nursing.' It was proposed that:

PN4103

The assistant in nursing (however titled) shall mean an employee engaged to assist in the performance of nursing duties, together with such other duties as may be required by the employer, being duties incidental and related to the provision of nursing care services. The assistant in the nursing at all times assists in the provision of nursing care under the direct or indirect supervision of a registered nurse.

PN4104

Do you see that?---I do.

PN4105

And then there was a proposal to define what will be meant by direct and indirect supervision?---Mm-hm.

PN4106

And in particular indirect supervision, without reading it, was intended to extend to functions delegated by a registered nurse. Again if you can't answer just tell me given your involvement, but it's right to say the position of the ANMF has been for many years that the assistant in nursing definition ought extend to indirect supervision; is that right?---Sorry, could you just say it's right to - I missed the first part.

PN4107

The ANMF's position has been that the definition of an assistant in nursing should extend to indirect supervision, and it has been the ANMF's position for some time, at least since 2009?---Yes.

PN4108

All right. I tender that document.

EXHIBIT #HSU104 DOCUMENT HEADED 'EXEMPLAR NURSING OCCUPATIONAL AWARD'

*** ANNIE BUTLER

XXN MR GIBIAN

PN4109

MR GIBIAN: I'm sorry, your Honour, that was - - -

PN4110

JUSTICE HATCHER: 104.

PN4111

MR GIBIAN: Thank you. I think perhaps some of this has been covered in the questions that the Bench asked. Otherwise what the ANMF is proposing is to amend the classification structure and descriptors for what you are proposing to call aged care nursing assistants so it replicates what the ANMF is proposing should exist in the Aged Care Award for personal care workers?---Yes.

PN4112

And you were asked some questions about this, and I understood your answer to be that you understood some of your members have an attachment to the title assistant in nursing, and I think you said your perception at least that some providers want to advertise that they have assistants in nursing?---Yes.

PN4113

Do we infer from that that on the ANMF proposal the intention is that whether a person falls within - I think it is accepted by everyone the work is functionally the same. Whether the person falls under the Aged Care Award or the Nurses Award on your proposal would depend upon the title that is attached to their position by their employer?---Yes.

PN4114

JUSTICE HATCHER: Can you identify any condition in either award which would have been of some benefit or detriment to your members and being under one award or the other?---In certain states it would matter more, because coverage is - their membership is in one area.

PN4115

Sorry, I don't understand that answer. What do you mean the membership - - - ?---If I understand the question properly it would be in - so I can identify the professional identity issue for New South Wales.

PN4116

I'm not talking professional identity, I'm talking about in terms of the conditions prescribed by the Nurses Award as compared to the Aged Care Award can you identify any difference or significance in conditions which would cause a benefit or a detriment to your members by being placed in one award or the other?---I'm not going to be able to bring them to mind now, but there are differences that would make a difference from being in one award or the other, and they would lose some benefits, particularly from the Nurses Award, other conditions, if that transferred to the Aged Care Award. Yes. Sorry I didn't understand that.

PN4117

No, that's all right.

*** ANNIE BUTLER

XXN MR GIBIAN

PN4118

MR GIBIAN: I think you referred in the first answer to a question or coverage. What were you referring to there, and differences between different states?---I misunderstood the question, because I - - -

PN4119

But what were you referring to?---Because different - as everybody would different states cover different occupational titles. So even - like it just (indistinct) history.

PN4120

You're referring to union eligibility - - -?---Sorry, yes. Yes.

PN4121

That is in some states under your rules it depends upon title. Is that what you're referring to?---It's the way that it's been conducted, yes. Yes, the best way to describe it.

PN4122

JUSTICE HATCHER: So the question was does your coverage in any state or anywhere depend upon the title of the person concerned?---Our federal rules provide for both, but some states have used - from history have determined to cover just one.

PN4123

When you say some states you mean some state registered unions?---Yes.

PN4124

In terms of the federal union - - -?---Yes.

PN4125

- - - the description of somebody doesn't make any difference as to their coverage?---It doesn't, no.

PN4126

MR GIBIAN: Then finally in terms of the changes that are proposed to the Aged Care Award classification descriptors the major change that is proposed is to insert reference to the employee being subject to the supervision delegation and direction of a registered nurse at the commencement of each of the classifications?---Yes.

PN4127

Is that intended to be anything other than a statement that a registered nurse is intended to be a clinical lead at an aged care facility?---Is the person who is the care leader, yes.

*** ANNIE BUTLER

XXN MR GIBIAN

PN4128

All right. Otherwise subject to I think - I thought three, but I think maybe in the course of answering Mr Ward's questions it become four. Subject to a small number of changes otherwise the classification descriptions in terms of the

responsibilities and skills involved are more or less the same as the current award?---Yes.

PN4129

I think the changes seem to be, which were largely the matters that Mr Ward asked you about, the additional reference to digital technology in levels 4, 4A - I think just levels 4 and 4A. The second a reference to medication at level 4, and then thirdly the reference at 4A to a specialist personal care worker, including the reference to dementia care and palliative care?---Yes.

PN4130

I think the additional one was the removal of reference to the associate diploma at grade 5 level?---Yes.

PN4131

Can I just ask you about two of those. The reference to self administration of medication differs from the HSU proposal, which refers to administration of medication. I had understood that, and correct me if I'm wrong, the reason for that difference in the ANMF proposal is a perception that there is the possibility that in some jurisdictions it may not be permissible for administration as opposed to assisting self administration to occur by a person other than a registered nurse?---There is that, that there has to be a registered nurse, but there is also a preference that a person who is doing the full extent of medication administration, and that that would be done by a licenced health professional.

PN4132

So that is what the ANMF would like the position to be, rather than what actually happens in practice; is that right?---Yes.

PN4133

So far as grade 4A - I don't know whether you have this in front of you, or you need to, you may not - so far as the grade 4A specialist is concerned you were asked by Mr Ward about the additional reference to require or may require relevant skills, training and experience in dementia care or palliative care. I think in that respect it's intended to reflect more the HSU's original application in these proceedings which had a proposal for a specialist classification; is that right?---Yes.

PN4134

The HSU proposal included dementia care and palliative care as examples of specialist personal care practice, rather than as exhaustive. And also included a reference to what's referred to as a household model of care. Was the omission of the reference to the household model there deliberate and intended to be exhaustive, or not?---To be frank we didn't actually discuss that at length.

PN4135

That is it was not deliberate in the sense of a considered position?---No.

*** ANNIE BUTLER

XXN MR GIBIAN

PN4136

All right. I understand. Thanks, Ms Butler.

PN4137

JUSTICE HATCHER: Ms Butler, in your experience what is the typical role of the enrolled nurse in aged care?---So the enrolled nurse is very much the link between - often between, and the current situation particularly between registered nurses and the care work AIN team. They are very able to undertake, you know, a higher order of what people would typically understand as clinical tasks. So medication administration is something that can confidently be done by enrolled nurses; wound management, observations, and particularly around things like if a resident has a fall and they might need particular observations. And I mean particular you take - you measure certain things, not just look at them. So there's a range of those sorts of activities that - a registered nurse doesn't have to delegate, like an enrolled nurse can already do them. An enrolled nurse is an incredible support for a registered nurse, and who is able - as I said it's an appropriate link, and then forms part of the - in all the care activities that have to be done then the registered nurse can focus on the highest order level of activities that might have to be done, and in a practical on the floor clinical sense, because the enrolled nurse can take a greater weight of those activities. And the personal care workers can attend to those activities, what we would call activities of daily living.

PN4138

Does the role of enrolled nurse at some point align with the top level personal care worker who have a Certificate IV and has authority to administer medication?---They don't have authority to administer medications in the same way, a level 4 that does the unit that's been put before us. There's a very big difference between the unit administer and monitor medications, and then the unit that - what's included in an enrolled nurse course. While the personal care worker at level 4 does do - they do have some underpinning knowledge to just performing the task, which is about legal responsibilities. I mentioned those things earlier. They do not go into any of those matters of pharmacodynamics, pharmacokinetics, pharmacology, those sorts of things. They don't look at anaphylaxes, they don't look at precautions and contraindications. Those sorts of aspects of medication administration are not covered, because that falls into the greater part of medication management. They also don't - the scope of the actual ways that a Cert IV worker can give - that unit, can give medications, is confined as well. It doesn't go to the extent that an enrolled nurse can do, and then obviously a registered nurse. So there's also then - so the Certificate IV needs a lot of refinement. I know we've got what it is at the moment, but it can be sort of patchy, and so it doesn't also then take where - like nursing practice occurs across a spectrum, and so an enrolled nurse is therefore qualified with not just a greater breadth of tasks, but a greater depth of knowledge and understanding of why things happen and what needs to happen. The other thing with enrolled nurses of course is a much greater utility, because while many go on to work in aged care that's not the only place they can work, and it can be particularly useful in a rural setting where an enrolled nurse might be able to work in the GP practice, might also be able to work in the acute facility and also in the aged care facility. So they just have a much broader utility.

*** ANNIE BUTLER

XXN MR GIBIAN

PN4139

Thank you. Mr McKenna?

PN4140

MR MCKENNA: Thank you, your Honour. Just one - subject to instruction - just one point in the way of re-examination.

RE-EXAMINATION BY MR MCKENNA

[3.59 PM]

PN4141

Ms Butler, you recall questions from her Honour Vice President Asbury about the inclusion of the words 'provision, delegation and direction', and whether those words identified a difference between AINs and personal care workers. And in response to that question you referred on two occasions in accordance with my notes to AINs having - on one occasion you said AINs have professional identity issues that are relevant, and then another occasion you said AINs hang on to a strong professional identity. Can you explain what you mean by that?---Okay. So the way we work it works in residential aged care at the moment, but PCWs and AINs work under the supervision, direction and delegation of RNs. That's how the system functions at the moment. Over time and many AINs have - some of them have an attachment to the fact that that's their title, an AIN, an assistant in nursing, and that they have the nursing component in their title, which many of them feel that they are therefore more distinctly part of the actual nursing team, sometimes people call it nursing family, and they attach themselves to that identity. That's part of their own identity.

PN4142

And is part of that identity career progression as well?---It can be. It can be. Many AINs do go on to be enrolled nurses or do go on to be registered nurses. So it can.

PN4143

Unless there's anything else from the Full Bench might the witness be excused?

PN4144

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

<THE WITNESS WITHDREW

[4.01 PM]

PN4145

JUSTICE HATCHER: Anything else we can deal with today?

PN4146

MR GIBIAN: No, not for our part.

PN4147

JUSTICE HATCHER: All right. We will now adjourn and resume at 10 am tomorrow.

ADJOURNED UNTIL FRIDAY, 08 DECEMBER 2023

[4.02 PM]

*** ANNIE BUTLER

RXN MR MCKENNA

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