

Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Supplementary Submission

*Social, Community, Home Care and
Disability Services Industry Award 2010
(AM2018/26)*

5 August 2021

Ai
GROUP

**AM2018/26 SOCIAL, COMMUNITY, HOME CARE AND DISABILITY
SERVICES INDUSTRY AWARD 2010**

	Section	Page
1	Introduction	2
2	The Broken Shift Allowance & Shift Loadings	4
3	Part-time Employment – Review of Hours	10
4	Part-time Employment – Voluntary Additional Hours	12
5	Minimum Payments & Part-time Employees	14
6	Ai Group's Evidence	15

1. INTRODUCTION

1. Ai Group files this supplementary submission ahead of the hearing listed before the Commission on 6 August 2021. It primarily responds to some of the key contentions advanced by the following parties in their written submissions of 3 August 2021:
 - (a) The Australian Services Union (**ASU**).
 - (b) The United Workers' Union (**UWU**).
 - (c) The Health Services Union (**HSU**).
 - (d) National Disability Services (**NDS**).
 - (e) Australian Business Industrial, Business NSW, Leading Age Services Australia and Aged and Community Services Australia (**ABI**).
2. The submission deals with the following issues falling from the aforementioned parties' submissions:
 - (a) The payment of the proposed broken shift allowances and shift loadings to employees performing work on a broken shift.
 - (b) The proposed clause concerning a mechanism for reviewing part-time employees' hours of work.
 - (c) The proposed clause concerning additional hours voluntarily worked by part-time employees.
 - (d) The intersection between the new minimum payment provisions and provisions applying to part-time employees.
3. Ai Group also seeks to deal with two supplementary issues regarding the evidence it filed on 3 August 2021.
4. We use the same abbreviations in this submission as those that were used in our submission of 3 August 2021.

2. THE BROKEN SHIFT ALLOWANCE & SHIFT LOADINGS

5. The unions' submissions and the submissions filed by NDS reveal a controversy as to the Full Bench's intention in relation to the resolution of the claims previously advanced by the unions in respect of broken shift claims.
6. In short, the controversy relates to the Full Bench's intentions as to the interaction between the proposed new broken shift provisions and clause 29.3, which sets shift allowances and penalties. The crux of the matter appears to be a contention from the unions that the draft determination essentially removes (or may potentially remove) an employee entitlement to any shift allowance calculated by reference to clause 29 of the Award and instead replace such an entitlement with a '*broken shift allowance*'.
7. The thrust of the unions' submissions appears to be that, if the draft determination would remove the separate entitlement to such shift allowances and public holiday penalty rates, this was either not unintended or is not, as a matter of merit, an outcome that should not eventuate.
8. The unions propose the following amendment to the draft determination in light of their concern:

Payment for a broken shift will be at ordinary pay with shift, weekend, public holiday, and overtime, penalty rates to be paid in accordance with clauses 26, and 28, 29 and 34.¹
9. The effect of the unions' proposed variation would be, firstly, to make shift allowances and public holiday penalties payable in addition to the new broken shift allowance.
10. The proposal would also change the way that the applicable shift allowance is determined, when compared to the current terms of the Award. In the context of broken shifts, the Award currently requires that shift allowances are determined based on the finishing time of the relevant shift.²

¹ UWU submission dated 3 August 2021 at [12].

² Clause 25.6(b) of the Award.

11. Significantly, the unions' proposal would result in a requirement to determine shift loadings in a manner which is different to any of the claims originally proposed by the unions. As such, it should properly be regarded as new substantive claim, rather than a matter that is capable of being addressed through the settling of the draft determination.
12. The NDS appear to submit, in effect, that the combined effect of the proposed amendments to the broken shift clause and other existing provisions would be that an employee who is engaged on shiftwork would not be able to undertake a broken shift. Relevantly, they submit that:

... Clause 29.4 prevents an employee who works broken shifts being classified as a shiftworker, because a shifts under clause 29 are to be worked in "...one continuous block of hours that may include meal breaks and sleepover".³

13. They consequently submit that the proposed amendments to clause 25.6 should be varied to provide as follows:

This clause only applies to day workers, who are social and community services employees when undertaking disability services work and home care employees.⁴

Ai Group's Position

14. Ai Group opposes the amendments advanced by the unions and, at this stage, is not supportive of the proposals advanced by NDS.
15. The submissions of the unions and NDS do not appear to accord with the Commission's Decision. We can address this matter in more detail in the course of the hearing, as necessary.
16. It seems apparent, based on paragraphs [514] to [556] of the Decision that the Full Bench had intended that the proposed broken shift allowance would replace any requirement to pay shift allowances. There does not appear to have been any contemplation by the Full Bench that an employer would need to be required to pay *both* the significant new broken shift allowance and the other shift allowances in the Award. There certainly was no consideration of the need, in

³ NDS submission dated 3 August 2021 at paragraph [11].

⁴ NDS submission dated 3 August 2021 at paragraph [13].

the context of employees performing shiftwork, to determine the shift allowance based on the application of clause 29.

17. In relation to the NDS' submission, we have not identified any element of the reasoning of the Full Bench or wording of the draft determination that would suggest an intent to remove an ability for shiftworkers to undertake broken shifts. Moreover, it appears that such a variation would be outside the scope of matters being considered in these proceedings.
18. We draw the Full Bench's attention to the following pertinent paragraphs of the Decision: (emphasis added)

[553] It is our *provisional* view that an employee working a broken shift under clause 25.6 receive a broken shift allowance of 1.7% of the standard rate, per broken shift. At present this amounts to \$17.10 per broken shift. This is the amount payable to any employee who works a 'one break' broken shift.

[554] As mentioned earlier, a 2 break shift would be subject to a higher payment. It is our *provisional* view that the broken shift allowance payable for a 2 break broken shift be set at 2.5% of the standard rate (or \$25.15 per broken shift). This new broken shift allowance will replace the current entitlement in clause 25.6(b).

[555] In addition, there is currently a lack of clarity in the SCHADS Award as to when overtime is payable in respect of work performed by day workers outside the ordinary span of hours; however it would seem as a matter of logic that overtime is payable for such work.

[556] It is our *provisional* view that the SCHADS Award should be varied to make clear that where an employee who is a day worker (including part-time and casual employees) performs work outside of the ordinary span of hours (including as part of a period of work in a broken shift), the employee is entitled to overtime for such work.⁵

19. We have not had an opportunity to properly consider all the implications that may fall from the unions' and NDS' submissions and proposal. Nor have we had an opportunity to properly engage with our membership in relation to such claims. Nonetheless, we observe that the proposals, if they were to be considered by the Full Bench, potentially give rise to the following important considerations:

⁵ Decision at [553] – [556].

- (a) Whether the quantum of the broken shift allowances is appropriate or whether they should be significantly reduced (either in the context of shiftworkers alone or both shiftworkers and day workers).
- (b) Whether and the extent to which the variation proposed by the unions would increase employment costs by entitling employees to a shift allowance, in addition to the broken shift allowance, in circumstances where they would not currently receive it.
- (c) Whether it would be fair or necessary⁶ for the shift allowance to apply to the entirety of a broken shift or whether, consistent with the approach adopted in some modern awards and predecessor instruments to the Award, it may be appropriate for the shift allowance to only apply to that part of the shift that could be said to correspond with the definition of ‘*afternoon shift*’ and ‘*night shift*’ (i.e. should the night shift or afternoon allowances only apply during the ‘*night*’ or ‘*afternoon*’?)
- (d) Whether, as a matter of fact properly established through evidence, the variation proposed by the Commission would result in any reduction in the remuneration of an employee.
- (e) The manner in which the proposed (and current) broken shift provisions interact with clause 29.4 of the Award.
- (f) The treatment of the issue under other awards, including the extent to which the payment of such significant broken shift allowances, combined with an obligation to provide separate shift allowances, might be so out of step with the treatment of such matters in other awards that it is not, *prima facie*, a necessary element of a safety net, as contemplated by s.138 of the Act.
- (g) The implications for employers and employees if shiftwork is not able to be undertaken through an arrangement involving broken shifts.

⁶ As contemplated by s.138 of the Act.

20. Given the controversies that have been revealed, the Full Bench should refrain from finalising the claims relating to broken shifts and afford the parties a proper opportunity to consider the serious and complex matters raised at this late stage by the unions and NDS, and to advance further submissions and evidence in relation to this matter. The changes proposed *could* foreseeably have a very substantial financial impact upon employers, but this is not a matter about which we can be certain until we have been afforded an opportunity to engage with industry.
21. The proposals are not matters that the parties should, as a matter of procedural fairness, be expected to deal with to finality during the hearing scheduled for 6 August 2021; nor are they matters that the Full Bench should determine without the benefit of such matters being properly ventilated before it by the parties.
22. We suggest that, in the interests of advancing this matter in a timely and efficient way, it may be appropriate that the issues raised by the unions and NDS also be dealt with in the soon-to-be convened conference and the associated subsequent hearing contemplated in the Full Bench's statement⁷ of 3 August 2021.
23. We raise this issue in written submissions today so that the parties and Full Bench may be able to consider it prior to the commencement of the hearing.

The Operative Date

24. We also note that the newly revealed controversy relating to the broken shift allowance and shift allowances highlights the appropriateness of not proceeding with an operative date of 1 October 2021 for any of the proposed variations.
25. Potential changes to the Award's treatment of remuneration for broken shifts (and remote response work) will have an impact on decisions that employers may make regarding restructuring the way work is arranged and the composition of their workforce. They will also impact upon the changes that employers

⁷ *4 yearly review of modern awards – Social, Community, Home Care and Disability Services Industry Award 2010* [2021] FWCFB 4716.

implement to rostering and payroll systems. It would not be fair to require employers to commence the implementation of such systems in circumstances where it has been determined that there will be changes to the Award relating to such matters but there is still significant uncertainty as to the substantive effect of such changes. This matter reinforces our submission that an appropriate operative date for the suite of changes being contemplated in these proceedings would be 12 months from the date of any variation.

3. PART-TIME EMPLOYMENT – REVIEW OF HOURS

26. The submissions that follow relate to the proposed clause 10.3(g).

Refusal of a Request

27. In accordance with the proposed clause 10.3(g)(iii), an employer may refuse a request made in accordance with clause 10.3(g) ‘*only on reasonable business grounds*’. The HSU takes issue with one aspect of the example provided immediately following the proposed subclause.
28. The HSU’s submission appears to be misguided. An employer cannot ‘*always cite reasonable grounds in relation to home care employees*’⁸ by virtue of the example. The example is, necessarily, only an example. It does not affect the substantive operation of clause 10.3(g)(iii) and more specifically, it does not permit an employer to cite reasonable business grounds of the nature contemplated by the example in all home care scenarios.
29. Ultimately, whether a ‘*lack of continuity of funding, changes in client numbers and client preferences*’⁹ constitute reasonable business grounds for declining a request will turn on the facts and circumstances of a particular matter. It does not follow that, in all cases, employers of home care employees could rely on those grounds for refusing the request.
30. If the union is in fact taking issue with the inclusion of the proposed clause 10.3(g)(iii); Ai Group would strongly oppose its removal. Such an approach would alter the operation of the clause in a way that would clearly be very unfair to employers¹⁰ and would have a significant adverse impact on business¹¹.

⁸ HSU submission dated 3 August 2021 at [49].

⁹ HSU submission dated 3 August 2021 at [48].

¹⁰ Section 134(1) of the Act.

¹¹ Section 134(1)(f) of the Act.

A Review of the Proposed Clause

31. The ASU submits that the proposed clause 10.3(g) should be *'reviewed after a year of operation'*¹². The unions' submission is based on the premise that it *'doubts [that the proposed clause] will do very much to ensure that an employee's contracted hours reflect their actual weekly working hours'*¹³.
32. Ai Group submits that it is unnecessary to schedule a review of the proposed new clause at this time.
33. The concerns voiced by the ASU are, in our view, premature and without proper foundation. The proposed clause constitutes a significant development in the manner in which the Award regulates the hours of work of part-time employees. Under the proposed clause, employers would be able to refuse a request from an employee only where there are reasonable business grounds for doing so. Disputes arising from the operation of the clause can be dealt with in accordance with the dispute settlement procedure found in the Award and the introduction of an Award-derived right to make the relevant request will also attract the protections afforded by Part 3-1 of the Act.
34. Further, as a consequence of the Decision, various other changes are to be made to the Award which, collectively, may to some extent serve to reduce the level of variability in the hours worked by part-time employees. When coupled with the proposed right under clause 10.3(g), the doubts expressed by the ASU about the efficacy of the clause may be unsubstantiated.
35. Moreover, any party with the requisite standing can make an application to vary the Award at any time. If the ASU or any other relevant party forms the view that the proposed provision is deficient, it can make an application for a variation to the Award that seeks to address this. A review of the provision is not necessary in this context.

¹² ASU submission dated 3 August 2021 at [69].

¹³ ASU submission dated 3 August 2021 at [65].

4. PART-TIME EMPLOYMENT – VOLUNTARY ADDITIONAL HOURS

36. At paragraph [987](i) of the Decision, the Commission expressed the provisional view that the Award be varied to *'make it clear that working additional hours is voluntary'* for part-time employees. In response, the ASU and UWU submit that the Award should require agreement *in writing* to work additional hours and that if such agreement is not reached, part-time employees will be paid at overtime rates for such work.¹⁴
37. It is trite to observe that the proposal advanced by the unions amounts to a new substantive proposal, that has not previously been the subject of submissions or evidence.
38. The ASU has not identified any evidence in support of the assertions advanced at paragraph [59] of its submission. In addition, having heard the evidence in this matter, the Commission has found that *'part-time employees are not being forced to work additional hours'*¹⁵ and it did not find that part-time employees are *'concerned that refusing a request would jeopardise their employment'*¹⁶.
39. In respect of the last proposition cited above, to the extent that the unions assert that agreement by a part-time employee to work additional hours may not amount to *genuine* agreement for fear of any adverse action being taken against them by their employer; we refer to a decision issued by a Full Bench last year concerning an application made by Ai Group to vary the *Fast Food Industry Award 2020*, to introduce a new part-time provision that would have applied to an employee only if they agreed. The Commission observed as follows in relation to a similar argument made in those proceedings:

[128] As to the requirement for 'consent' RAFFWU submits that 'consent' is 'illusory' in an industry where more than 50% of the affected workers are children and where the pressure to be 'flexible' in order to secure casual hours is 'well known', and submits:

¹⁴ ASU submission dated 3 August 2021 at [61] – [62] and UWU submission dated 3 August 2021 at [57].

¹⁵ Decision at [944] and [950].

¹⁶ ASU submission dated 3 August 2021 at [59].

...

[133] As to RAFFWU's submissions regarding the 'illusory' nature of the required consent in respect of clause H.7, there are statutory provisions directed at proscribing action taken to coerce an employee into exercising or not exercising a workplace right.¹⁷

40. The Commission went on to refer to ss.340 – 343 of the Act and decided that references to those provisions of the Act would also be inserted in the award.
41. It is axiomatic that the approach proposed by the unions would substantially increase the regulatory burden facing employers¹⁸, by requiring written agreement with their employees in respect of the performance of additional hours. It would also create a structural incentive for employees to not agree to perform additional hours of work and it may result in increased employment costs¹⁹.
42. Ai Group's primary position is that the material before the Commission does not establish that the proposal advanced by the unions is *necessary* to ensure that the Award achieves the modern awards objective and accordingly, it should be rejected. In particular, for the reasons advanced, the Award would not provide a *fair* safety net (as it applies to for employers)²⁰ if the proposal was adopted, it would not encourage flexible modern work practices or the efficient and productive performance of work²¹ and it would have an adverse impact on employers²².
43. If the Commission is not minded to adopt the above course of action, parties opposing the proposal should be allowed an opportunity to lead evidence in relation to the matter and to make further detailed submissions. In the limited window available between the filing of the unions' material and the proceedings listed on 6 August 2021, we have not had a sufficient opportunity to do so.

¹⁷ *Re Application by Australian Industry Group* [2020] FWCFB 2316 at [128] and [133].

¹⁸ Section 134(1)(f) of the Act.

¹⁹ Section 134(1)(f) of the Act.

²⁰ Section 134(1) of the Act.

²¹ Section 134(1)(d) of the Act.

²² Section 134(1)(f) of the Act.

5. MINIMUM PAYMENTS & PART-TIME EMPLOYEES

44. At paragraphs [107] – [109] of ABI’s submission, ABI addresses the same issue that was raised by Ai Group in its written submission of 3 August 2021 at paragraphs [189] – [198]. ABI then propose a new clause 10.3(h) at paragraphs [110] – [111] of its submission.
45. Ai Group submits that the Award variations it proposed at paragraphs [199] – [200] of its submissions should be adopted in preference for ABI’s proposed solution.
46. It is very common for employers and part-time employees to agree on their hours of work, for the purposes of clause 10.3(c), in the context of a contract of employment. The provision proposed by ABI would not address the difficulties that flow from this. Employers would remain bound by their contractual obligations and the suggested clause would not give an employer a right to vary a part-time employee’s hours notwithstanding their contractual obligations.
47. It is also somewhat unclear whether the ‘*new pattern of work*’ contemplated by the clause would ‘*become the employee’s agreed regular pattern of work within the meaning of clause 10.3(c)*’²³ during the period of 1 July 2022 – 30 June 2023; or whether it would continue as the employee’s agreed pattern of work beyond that timeframe.
48. Unless it is the latter, rather than address the key issue identified by Ai Group and ABI in their respective submissions, the proposed clause would simply delay the point in time at which an employer would be faced with the implications of the minimum payment obligations applying to existing part-time employees.

²³ ABI submission dated 3 August 2021 at [111].

6. AI GROUP'S EVIDENCE

49. Ai Group seeks to advance the following supplementary submissions in relation to its witness evidence.

The Nature of Ai Group's Evidence

50. The evidence called by Ai Group deals in large part with the potential implications of the proposed Award variations that were considered in the Decision. The evidence is primarily relied upon by Ai Group in support of its contention that the operative date of the variations should be delayed.
51. Elements of the evidence called by Ai Group is, to that extent, somewhat speculative in nature. However, evidence concerning potential or upcoming regulatory reform will necessarily be speculative. This should not undermine the weight that is attributed to it.
52. We note that in the Decision, the Commission said as follows in respect of criticism made by the unions of employer evidence that was called in relation to its claims concerning part-time employment: (emphasis added)

[970] The Unions criticised this evidence on the basis that it was vague and uncertain. We accept that there is some substance to this criticism. But, of necessity, evidence as to the likely consequences of a particular regulatory change will often be speculative. Despite the limitations in the evidence we accept that the variation proposed by the HSU is likely to change the organisation of work in the industry and that the imposition of overtime rates will act as a deterrent to employers offering additional hours to parttime employees. ...²⁴

53. Similar observations were made by the Commission in the context of its decision about claims to reduce penalty rates and evidence that was led from employers about the potential impact if those claims were successful:

[771] ... In light of the concessions made, we accept that much of the evidence of the lay witnesses may be regarded as speculative in nature. But this is necessarily the case. Evidence about intentions in light of proposed changes is necessarily hypothetical and speculative. Hospitality is a dynamic sector, subject to constant change, in response to

²⁴ Decision at [970].

changes in consumer preferences. It would be difficult to predict, with certainty, what precise actions would be taken in response to a particular change.²⁵

54. Ai Group's evidence should be viewed through the same lens that was adopted by the Commission in the aforementioned decisions.

Amended Witness Statement – Aleysia Leonard

55. Attached to this submission is an amended witness statement of Aleysia Leonard, dated 5 August 2021. It contains a small number of corrections.

56. The statement is filed ahead of the hearing so as to avoid the need to have the witness identify each of the corrections during the course of the hearing.

²⁵ *4 yearly review of modern awards – Penalty Rates* [2017] FWCFB 1001 at [771].

IN THE FAIR WORK COMMISSION

Matter No: AM2018/26

Matter: 4 yearly review of the *Social, Community, Home Care and Disability Services Industry Award 2010*

WITNESS STATEMENT OF ALEYSIA LEONARD

I, Alesia Leonard, of Level 1, 333 Collins Street, Melbourne, Victoria, say as follows:

1. I am employed by Programmed Health Professionals Pty Ltd (**PHP**), in the role of National Human Resources Business Partner. PHP is a wholly owned subsidiary of Programmed Maintenance Services Limited (ACN 054 742 264) (**Programmed**).
2. I have been employed in this role since March 2021. Prior to that, I was employed in the role of Employee Relations Adviser since August 2019.
3. My day-to-day duties and responsibilities include but are not limited to the following:
 - (a) management of industrial relations matters;
 - (b) development & review of internal policies and procedures;
 - (c) recruitment and retention of employees;
 - (d) reporting of people related metrics; and
 - (e) liaison with management on all people related matters.
4. Prior to my employment by PHP, I was employed as an organiser by Professionals Australia and United Voice.

Operations and Services

5. Programmed offers a range of services including:
 - (a) staffing solutions;
 - (b) facilities management services;
 - (c) maintenance services; and
 - (d) health services.
6. PHP is a provider of healthcare recruitment and labour hire services to the nursing and healthcare industries. Its services are provided in the following ways:
 - (a) PHP is a provider of labour to the client; being an organisation such as a hospital, residential aged care facility, correctional facility, government agency or allied health centre.
 - (b) Some organisations in the disability and home aged care sectors broker certain services from PHP. In such situations, PHP and the relevant organisation agree that PHP will provide services to certain clients of that organisation.
7. In the contexts described at paragraph 6, a commercial arrangement exists between PHP and those organisations. The organisations pay a fee to PHP for the provision of its employees' labour and PHP's services.
8. Separately, PHP provides a range of aged care and disability support services under its '*Programmed Care*' branding. In this context, its clients are generally the individuals to whom the support and care are being provided. For ease of reference, I will refer to these services as being provided by *Programmed Care* going forward.
9. The aged care services described in paragraph 8 provided include the provision of personal care, home and garden maintenance, assistance with preparing and consuming meals, grocery shopping, banking, taking and managing medications and managing ongoing health conditions. The provision of this support is largely

funded by the Commonwealth Government, through schemes such as Home Care Packages and Veterans Home Care Packages.

10. Programmed Care also offers disability support. This includes the provision of support and assistance to persons with disabilities in their respective private residences. The nature of the assistance provided is similar to the aged care services described in paragraph 9 above. These services are primarily funded by the National Disability Insurance Scheme (**NDIS**).
11. In addition, some disability and aged care services are provided on a fee-for-service basis and in other instances, the disability services are funded by traffic accident or workers' compensation schemes.
12. It is my understanding that the *Social, Community, Home Care and Disability Services Industry Award 2010 (Award)* applies to employees who perform the aged and disability care work described at paragraphs 6 and 9 - 11. No enterprise agreement applies to them.

The Workforce

13. As at 2 August 2021, there are approximately 2000 employees providing PHP's services. In June 2021, approximately 1000 employees worked at least one shift. The majority of these employees are employed on a casual basis and less than 30 of these employees are employed on a part-time or full-time basis.
14. It is my understanding that the Award applies to all frontline employees delivering Programmed Care's services. There is no enterprise agreement that applies to them. I refer to these employees as PC Employees.
15. The PC Employees perform work in New South Wales, Victoria, South Australia, Western Australia and Queensland. They support over 500 clients.
16. It is my understanding that the Award applies to some frontline staff delivering PHP's services. I refer to these employees as PHP Employees. Other PHP frontline employees are covered by other modern awards.

The Fair Work Commission's Decision Relating to Broken Shifts and Minimum Engagement Periods

17. It is my understanding that the Fair Work Commission (**Commission**) has decided that the Award will be varied in the following respects in relation to broken shifts and minimum engagement periods:
 - (a) All part-time and casual employees must be paid for at least two hours, in respect of each shift and for each portion of a broken shift.
 - (b) A shift can only be broken once. A shift may be broken twice if the employee agrees. Such an agreement will need to be made on each occasion.
 - (c) A broken shift allowance may be payable for each broken shift that an employee is required to work. The quantum of the allowance would depend on the number of times the shift is broken.
18. It is my understanding that the Commission has provisionally decided that the above changes will commence operation from 1 October 2021.
19. Whilst PHP is willing to comply with the variations to be made to the Award, it is concerned that it will not be able to make the requisite changes to its business by 1 October 2021. I set out below the activities that PHP needs to complete before the changes commence so it can ensure it meets its compliance obligations and continuity of outstanding services to its clients:
 - (a) changes to current operating procedures;
 - (b) systems upgrades and changes;
 - (c) re-negotiation of agreements with clients; and
 - (d) conversion of casual employees to permanent employment.
20. I set out some further evidence about each of these activities in the subsequent paragraphs.

Changes to current operating procedures

21. In this statement, when I refer to a *'roster'* in respect of casual employees, I am referring to their schedule of work. It is my understanding that the Award does not require the preparation and provision of a *roster* to casual employees.
22. When I refer to *'rostering'* in respect of casual employees, I am referring to the process of allocating work to casual employees.
23. PC Employees who are casual workers are not required to accept work offered to them. Even after they accept work, in some circumstances, they subsequently decline to undertake that work. This means that Programmed Care needs to have systems in place to manage the rostering of the PC Employees.
24. Programmed Care currently uses a rostering system called *'HR Link'*. Programmed Care also utilises a system called *'Saturn'* for rostering a group of approximately 100 employees in SA, QLD and Victoria.
25. HR Link and Saturn do not have the capability to produce data that automatically identifies the number of shifts worked over a defined period of time that were of a specific duration (e.g. all shifts worked during the 2020 calendar year that were less than two hours in duration). Similarly, the systems cannot produce reports that reveal the number of times shifts were broken. Rather, such material can only be derived manually, by downloading data from HR Link and Saturn (as relevant) into Microsoft Excel spreadsheets and then manipulating that data to obtain the relevant results.
26. As a result, I have been unable to produce and prepare data for the purposes of this witness statement that sets out the specific number or proportion of shifts worked of a particular nature. Nonetheless, I am aware of the working patterns that are implemented by Programmed Care as a result of the extensive day-to-day engagement that I have with various parts of the organisation, including staff who are responsible for Programmed Care's operations, rosters, payroll and liaising with clients.

Current Working Arrangements – Shifts that are less than two hours

27. PC Employees regularly perform work for less than two hours at a time.
28. PC Employees are rostered to work as described by paragraph 27 because of the nature of the services provided by Programmed Care and by extension, the type of work that they are required to perform.
29. In some instances, Programmed Care's clients request the provision of a service that necessarily takes less than one or two hours to deliver.
30. By way of example, clients request:
 - (a) Assistance with household cleaning;
 - (b) Personal assistance services in the morning to assist them to shower and get ready for the day; or
 - (c) Assistance with getting ready for bed.
31. The clients typically only require one of these services and are not prepared to pay for or require additional services.
32. Whilst Programmed Care would like to be able to schedule other services for PC Employees to complete over a period of two hours, there is limited demand for Programmed Care's services early in the day and in the evening when these short delivery services are required. Additionally, as these services are provided in the home of the client, it is difficult to find additional clients nearby that can also receive services within that two hour shift. Other constraints are set out in paragraphs 35 to 44 below.

Current Working Arrangements – Broken Shifts

33. Broken shifts are most commonly worked by employees performing disability services. Except where PC Employees are supporting clients with complex needs, I estimate that approximately 60% of all broken shifts worked by PC Employees performing disability services are broken more than twice.

34. It is common for shifts to be broken as a result of clients cancelling a scheduled support session because, for instance, their availability changes or an unforeseen medical issue causes them to seek medical care (including hospitalisation). Shifts may also be broken because a client who is typically serviced by a certain employee temporarily or permanently ceases accessing Programmed Care's services.

Rostering Challenges

35. Although Programmed Care endeavours to arrange work in a way that results in an employee working with multiple clients consecutively, there are numerous constraints on Programmed Care's ability to do so.
36. First, clients Clients very commonly request to be supported by specific employees. In some instances, clients have advised Programmed Care that if the support worker of their choice is unable to assist them, they do not wish to access Programmed Care's services.
37. Second, clients Clients very commonly make other special requests. For instance, it is common for clients to request a support worker of a specific gender or cultural background.
38. Third, clients Clients commonly ask to receive their services at a particular time of the day and/or day of the week. This is particularly true in circumstances where a client seeks support with tasks such as making and consuming a meal or going to bed at the end of the day.
39. Fourth, clients Clients determine which services they wish to receive, which necessarily has a bearing on the period of time required for the provision of the service.
40. Fifth, Programmed Care is required by law to respect the choice and control of its aged care clients. Further, the provision of disability services funded by the NDIS is also premised on the principle of choice and control. As a result, although Programmed Care endeavours to influence the scheduling of clients' support sessions by speaking with the clients about when and by whom they will be

serviced; ultimately, Programmed Care cannot dictate these matters. The notion of choice and control is paramount to the way in which Programmed Care delivers its services. Further, if Programmed Care were to insist on providing a two hour service to a client where they only required a one hour service, this would erode the amount of funding available to the client to receive the care that they need and wish to receive, in the way in which they wish to receive it.

41. Sixth, the ~~The~~ location of the clients' homes and the period of time potentially required to travel from one clients' home to another clients' home.
42. Seventh, the ~~The~~ availability of the PC Employees and their willingness to accept the relevant type of work, with the relevant clients and in the relevant locations. The PC Employees are predominantly casual employees and Programmed Care cannot direct or require them to attend work ~~at particular clients or locations~~.
43. Eighth, some ~~Some~~ PC Employees are employed by other employers, which limits their availability to accept work offered by Programmed Care.
44. Ninth, the ~~The~~ skills, experience and capability of available employees. For instance, some employees are able to provide basic personal care, however they do not have the skills necessary to support a person with complex needs.

Changes to Current Working Arrangements

45. The changes to be made to the Award will require Programmed Care to reassess the way in which it schedules services provided to clients as well as its rostering practices.
46. I explain each of the steps that Programmed Care intends to take below, in no particular order. The purpose of taking those steps is to:
 - (a) As far as reasonably practicable, provide employees with a minimum of two hours of work for each shift and portion of a broken shift.

It is my understanding that the Award, once varied, will require that employees must be paid for at least two hours of work per engagement and portion of a broken shift, rather than require that employees must be

engaged for at least two hours. However, Programmed Care considers that in order to moderate the impact of the decision on Programmed Care, it will be necessary, as far as reasonably practicable, to roster employees to work for at least two hours at a time.

- (b) Eliminate broken shifts that are broken more than twice.
 - (c) As far as reasonably practicable, avoid breaking shifts twice, in order to circumvent the regulatory burden and uncertainty associated with having to obtain employee agreement to work each such shift.
 - (d) Minimise the disruption caused to the delivery of services to clients.
47. *First*, Programmed Care intends to assess whether rosters can be constructed in a way that results in employees being allocated multiple clients to support consecutively, such that they are afforded at least two hours of work and are not required to work a broken shift that is broken more than once. This will in turn depend on whether such work is available and whether the employee has the skills, experience and competencies required to perform that work. It will also depend on the employee's availability and willingness to undertake that work.
48. There are State-based nuances associated with how rosters are currently prepared and in addition, rosters are not the same week to week. There are weekly variances as to how much work is undertaken by individual employees; what services are provided to certain clients; and when those services are provided to clients. These factors further compound the complexity of the exercise that is required to be undertaken and therefore, the period of time that will be required to complete it.
49. *Second*, Programmed Care intends to consult clients in order to understand whether they are prepared to receive their services at different times; from different employees; and/or in conjunction with other services. This consultation process will take place through one-on-one discussions with the clients.
50. Programmed Care's clients are typically vulnerable individuals. In some cases, they do not have access to a broader support network of family and friends.

Programmed Care is particularly concerned to ensure that any changes made to its service delivery as a consequence of the Commission's decision minimises any disruption to the services provided to its clients.

51. *Third*, Programmed Care intends to assess how clients will be serviced in circumstances where they are typically supported by an employee who is performing a broken shift that is broken more than once. This will require an assessment of whether another employee can be allocated such work.
52. *Fourth*, Programmed Care intends to assess whether any of its existing casual employees wish to convert to permanent employment. I deal with this matter further later in this statement. A greater proportion of part-time employees will give Programmed Care more certainty as to when its employees are available to undertake work, which would mitigate some of the consequences it is facing as a result of the proposed variations to the Award.
53. *Fifth*, Programmed Care will train relevant employees regarding the changes to the Award. This will include:

- (a) Operational managers.

Operational managers are responsible for making day-to-day as well as medium and long-term strategic decisions about Programmed Care's operations. This includes making immediate decisions about how Programmed Care will alter its operations in response to the Award variations.

- (b) Care Managers and Care Coordinators.

Care Managers and Care Coordinators are responsible for engaging directly with clients about the nature of support they need and when they need it, with reference to the applicable funding arrangements. These conversations between Care Managers / Coordinators and clients typically take place when clients are onboarded as well as subsequently, particularly where the clients' needs change. Care Managers and Care Coordinators

often have established relationships with clients, particularly long-term clients.

(c) Care Consultants and Allocations Consultants.

These employees work in a call centre environment. They make and receive phone calls from clients about when they wish to be serviced and which services they wish to receive. They also make and receive phone calls from employees about the allocation of work. This includes phone calls to employees, offering them work and phone calls from employees about whether they accept or decline work offered to them.

Based on these various communications, Care Consultants create and amend rosters.

In addition, Allocations Consultants, who perform comparable work in respect of PHP Employees and PHP's services will also be provided similar training.

(d) Payroll staff. The payroll staff process the pay of the majority of the PC Employees.

(e) The information technology team and / or any other members of staff who will be involved in implementing changes to Programmed Care's payroll and rostering systems as a consequence of the Award variations. I deal with this issue later in this statement.

54. I will be responsible for the development and roll-out of this training. The content, focus and nature of the training will be different for each group of employees. This is because:

(a) Their pre-existing understanding and knowledge of the Award is varied; and

(b) The extent to which they need to understand the changes to the Award and the purpose for which they need to understand them varies.

55. As a result, the same training program cannot be rolled out to each group of employees. This was my experience when I recently developed and conducted

training sessions for multiple groups of employees across the Programmed Care business in relation to the Award. The purpose of that training was to reiterate various relevant Award obligations.

Systems Upgrades and Changes

56. The payroll function in respect of the PC Employees who are rostered through the Saturn system is outsourced to an organisation called Integrated Payroll. The payroll function for the remaining PC Employees is administered internally by PHP using a payroll system called '*HR Pay Solutions*'. Programmed Care has purchased a new payroll system called '*FastTrack360*'.
57. As already indicated, the rostering systems used in respect of the PC Employees is the Saturn system and HR Link. Programmed Care has purchased a new rostering system called '*Procura*'. Procura is marketed as a system that has been designed specifically for organisations that operate in the home care, health and disability sectors.
58. The new payroll and rostering systems were purchased in response to significant growth and projected growth in demand for Programmed Care's services. It was determined that the current systems do not enable Programmed Care to manage its payroll and the scheduling of client and employee shifts with sufficient efficiency.
59. A project management team was set up to plan the implementation of the systems, engage with relevant internal and external stakeholders, as well as manage and oversee the various phases of the implementation of the systems.
60. A significant amount of work has been undertaken internally and with the vendors of the systems in order to ensure that they are set up in a way that reflects the terms and conditions prescribed by the awards that cover the relevant employees (including the Award). Neither system, when purchased, was set up such that it already conformed with the awards. The systems have since been tailored by the vendors, on the project team's instructions, in a way that is designed to ensure that they administer the payment of wages to employees in accordance with the relevant obligations prescribed by the awards and any applicable

legislative requirements. In addition, Procura has been set up to facilitate the preparation of rosters in a way that is consistent with the Award (and other relevant awards).

61. Although the systems were contracted in 2019, their implementation is not yet complete. Multiple attempts have been made to launch the new systems since the end of 2020. As at the time of signing this statement, Programmed Care intends to launch the new systems by 31 August 2021.
62. After the new systems are launched, for approximately two months, two payroll systems will operate concurrently. The current system will serve as a 'back up' in case the new one fails or processes employees' pay incorrectly.
63. Over \$1 million has been incurred to date in respect of the procurement and implementation of FastTrack360 and Procura. This includes amounts paid or payable to third parties. It does not include costs associated with the dedication of internal resources to the project.
64. The systems do not reflect the changes determined or provisionally determined by the Commission in its decision of 4 May 2021 and they will not automatically update to reflect those changes. Accordingly, it will be necessary for Programmed Care to revisit the systems and make further modifications to them, such that they reflect the new Award provisions.
65. This will involve:
 - (a) Closely considering the variations to be made to the Award and identifying the specific changes that need to be made to the systems as a result.
 - (b) Potentially engaging an industrial association, law firm or other such provider that can provide advice in relation to the interpretation of the new Award provisions, how they apply to Programmed Care's operations and / or how they interact with existing Award provisions. Programmed Care anticipates that it will incur fees for obtaining that advice.
 - (c) Instructing the systems' vendors to make the necessary changes. The vendors charge fees for the provision of such services. In addition, it would

be necessary to understand how long this process might take from the vendors.

It is not practicable to obtain an estimate of the vendors' fees or the time that will be required to make the relevant changes at this stage. I refer to paragraph 73 of my statement in this regard.

(d) Changes made to the systems will subsequently need to be tested by Programmed Care. The testing phase of implementing changes to the system is anticipated to include the following steps, which would be undertaken by Programmed Care:

(i) Programmed Care will attempt to implement rosters that reflect the arrangements that it intends to implement in light of the Award variations, using Procura and FastTrack360.

(ii) Programmed Care will test whether Procura and FastTrack360 correctly identifies the rostering arrangements that can and cannot be implemented in accordance with the Award. For instance, if Programmed Care attempts to roster a shift that is broken 3 times, it is expected that Procura would alert the user that such a shift should not be implemented.

This phase of the testing process requires inputting various permutations and combinations of working hours arrangements that might conceivably be implemented (or that Programmed Care staff responsible for rostering might try to implement).

(iii) Creating and inputting mock data that reflects the arrangements that Programmed Care intends to implement in light of the Award variations into FastTrack360 for the purposes of testing payroll accuracy.

- (iv) Administering pay runs for multiple pay cycles based on the information described at paragraph (iii) and reviewing the way in which the system calculates pay in order to ensure that it complies with the Award. This requires inputting various permutations and combinations of working hours arrangements that may be implemented in light of the Award variations.
 - (v) Identifying any errors or problems arising from the above processes and working with the systems' vendors in order to rectify them.
 - (vi) Undertaking further testing after undertaking the step described at paragraph (v), in order to ensure that the relevant concerns have been addressed and that no other problems have inadvertently resulted from the making of any changes to the configuration of the systems.
- (e) Delivering user access training. This training will focus on modifications made to the systems; how they have been modified; and why they have been modified. A number of employees will require training, because they will be required to use the new systems once they have been amended. This includes employees who are responsible for creating and amending rosters as well as employees who are responsible for the administration of payroll.
- (f) Closely monitoring the operation of the systems after they have been implemented to identify, diagnose and rectify any problems that are identified, including by working with the systems' vendors and undertaking further testing, as required.
66. Programmed Care and PHP consider that it is necessary to update FastTrack360 and Procura in light of the Award changes before they commence operation because:
- (a) There is a risk that employees will be rostered in a way that is inconsistent with the new Award obligations if the systems do not reflect the amended Award provisions.

- (b) There is a significant risk that employees will not be paid in accordance with the revised Award obligations.
 - (c) If the systems are not amended, staff members may be required to perform additional tasks or to perform their usual tasks in a different way and this will result in inefficient outcomes that cannot be sustained.
67. For example, FastTrack360 is not set up to pay employees the broken shift allowances that the Commission has provisionally decided to introduce to the Award.
68. Unless the payroll system is configured to introduce a new payroll rule in relation to the broken shift allowances, eligible staff will be paid the allowances only if the staff members responsible for the administration of payroll:
- (a) Manually identify the instances in which an employee is eligible for the allowance. They would need to review ~~the rosters~~ employees' timesheets relating to each pay period and identify circumstances in which employees worked a shift that was broken once and where employees worked a shift that was broken twice.
 - (b) Manually administer the payment of the allowances, where relevant.
69. There are generally four employees who administer the payroll function for up to approximately 1000 PC Employees and PHP Employees on a weekly basis. However, from time to time there are fewer than four employees undertaking the relevant work, because, for example, one or more of the employees are on long or short term leave or have resigned but have not been replaced.
70. The payroll team does not have capacity to undertake the additional tasks described in paragraph 68 of this statement on a weekly basis in a way that ensures that any broken shift allowances owing are paid on the next pay day. It is simply not practicable for them to undertake this additional work.

71. In addition, the manual identification of circumstances in which the allowances are payable, the calculation of those allowances and the subsequent processing of the amounts owing to them is more likely to result in errors than the automation of those functions.
72. By way of another example, consideration will be given to whether Procura or FastTrack360 should be modified to reflect the new minimum payment requirements. This may necessitate the creation of new 'rules' that have to be 'written' for FastTrack360 that ensure that employees are paid for at least two hours each time they are engaged. Similarly, Procura may need to be modified to alert staff who prepare rosters or client schedules that employees should, as far as possible, be given at least two continuous hours of work.
73. It is not feasible to assess precisely what changes will need to be made to the systems at this stage for reasons that include the following:
 - (a) Operational decisions as to how the proposed changes will be implemented have not yet been made.
 - (b) The systems are in the process of being implemented. Without having used the systems, Programmed Care is not in a position to be able to assess what or how they should be modified.
74. The system implementation is posing a significant strain on Programmed Care's resources. As a result, Programmed Care does not have capacity to undertake the necessary steps at this time.
75. Indeed, Programmed Care ~~has recently been~~ was, until recently, declining to take on additional clients because the various changes associated with the implementation of its systems ~~is~~ has been significantly draining its resources and as a result, it does not have the capacity to onboard and set up new clients. Programmed Care has only recently been able to lift that suspension as the go-live date for all new systems is imminent, however our time frame to onboard new clients has stretched to up to 12 weeks.

76. Therefore, Programmed Care has been unable to substantially advance its assessment of how the Award variations will be implemented. Its ability to do so will be significantly constrained until the new systems have been successfully implemented and their operation has stabilised.
77. An upgraded rostering system in respect of PHP Employees was implemented in June 2021. As at the time of signing this statement, PHP is still endeavouring to rectify faults and bugs that have become apparent since the system was launched.

Renegotiation of Arrangements with Clients

78. PHP's commercial arrangements with its clients are typically reviewed every 12 months. As a result, some of these contracts will be reviewed before 1 October 2021, however most will not be.
79. PHP will incur additional employment costs as a product of the changes to be made to the Award. As a result, PHP will seek to renegotiate the terms of its arrangements with its clients.
80. In order to be able to commence the discussions foreshadowed in this part of my statement, it is necessary for PHP and Programmed Care, respectively, to understand what additional costs it will face as a consequence of the Award variations. At this stage, it has not been able to do so, for the various reasons set out in my statement.

Casual Employment Changes

81. It is my understanding that:
- (a) The *Fair Work Act 2009 (Act)* was recently amended in relation to casual employment.
 - (b) As a result, the National Employment Standards contain new casual conversion provisions.

- (c) By 27 September 2021, employers must assess their casual employees against the eligibility criteria contained in the Act for casual conversion and:
 - (i) Offer conversion to permanent employment to eligible casual employees; or
 - (ii) If an eligible casual employee is not to be offered permanent employment because there are reasonable grounds – provide the employee with written reasons for not offering permanent employment.
 - (d) In order to assess whether a casual employee is eligible for an offer of conversion to permanent employment, it is necessary to review and assess the specific hours that the employee worked during the last six months.
82. As at the time of signing this statement, the majority of casual PC Employees and PHP Employees have been employed for 12 months or more.
83. The payroll and rostering systems used by Programmed Care and PHP do not have the capability to prepare reports or other analysis that automatically identifies circumstances in which casual employees meet the eligibility criteria prescribed by the NES for casual conversion. For example, the systems cannot automatically identify circumstances in which casual employees have worked a *'regular pattern of hours'* which, as I understand it, is a key component of the eligibility criteria prescribed by the Act.
84. Rather, the eligibility of PC Employees and PHP Employees will be assessed by undertaking a manual review and assessment of the hours worked by the relevant casual employees. This task will be undertaken by myself and other members of staff.
85. Once the eligibility of the relevant casual employees has been determined, it will be necessary to determine whether they can be offered conversion to permanent employment or whether, due to reasonable grounds, such an offer will not be made. This assessment will be undertaken on a case-by-case basis. The decision-making process will involve managers of Programmed Care and PHP's

operations because it will be necessary to determine, for example, whether Programmed Care and / or PHP will be able to provide ongoing work to those employees, if they are converted.

86. It is my understanding that eligible PC Employees and PHP Employees must be notified in writing:
 - (a) If they have been employed for 12 months but are not eligible to be offered permanent employment.
 - (b) If they are eligible for conversion but a permanent position is not being offered to them because there are reasonable grounds.
 - (c) If they are eligible for conversion and are being offered a permanent position.
87. It is my understanding that the Act prescribes specific requirements for what the aforementioned written communication must contain.
88. The written communication described above will need to be prepared in respect of each employee, on a case-by-case basis. The content of the communication will depend on that employee's circumstances. I will be responsible for the preparation of such correspondence. The content of the correspondence will be developed in consultation with the relevant operational managers, who are able to assess whether employees can be offered conversion and if not, the reasons for that.
89. It has been my experience that the vast majority casual employees employed by Programmed Care and PHP do not wish to convert to permanent employment. However, Programmed Care hopes to increase the proportion of its employees who are engaged on a part-time basis and to consequently reduce the proportion of its employees who are engaged on a casual basis. This is because it has determined that in order to accommodate the changes to be made to the Award, it requires greater certainty regarding the availability of its employees. It will also facilitate the continuity of care provided to vulnerable aged, disabled and veteran

clients. It considers that the steps required to be taken under the NES in respect of casual conversion are an opportunity to achieve this outcome.

90. It is Programmed Care's preference to convert existing casual employees to permanent employment, rather than employ new part-time employees. This is because existing casual employees already have relationships with certain clients; have been inducted and trained by Programmed Care; and are aware of the ways in which Programmed Care operates and its expectations, processes and procedures.
91. Accordingly, Programmed Care intends speak to eligible casual employees, on a one-on-one basis, about converting to permanent employment, for the purposes of discussing any concerns they might have about converting and encouraging them to consider the benefits of permanent employment.
92. Programmed Care also intends to speak to other casual employees who are not, as such, eligible to convert under the NES but to whom Programmed Care nonetheless wishes to make an offer of permanent employment.
93. These discussions will primarily occur between an employee and their direct manager.
94. In respect of any employees who are converted to permanent employment; changes will need to be made to the payroll system in order to ensure that they are paid and that leave accrues to them accordingly. In addition, the necessary paperwork will need to be prepared and issued, confirming the revised terms of their employment.
95. Due to the significant number of casual employees employed by Programmed Care and PHP, as well as Programmed Care's specific desire to see casual employees convert to permanent employment, both organisations anticipate that a significant amount of resources will need to be devoted to the execution of the body of work described above.

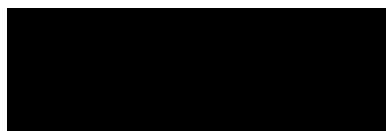
96. In addition, Programmed Care considers that once coupled with the workload associated with the implementation of the new systems, it will not have enough resources to be in a position to undertake the necessary work associated with the changes to the Award. Moreover, some of the work associated with the changes to the Award is contingent upon Programmed Care ascertaining the extent to which its casual employees are prepared to convert to permanent employment.

Overall Impact of the Decision

97. Programmed Care anticipates that the implementation of the variations to the Award which have been determined and provisionally determined by the Commission will result in an increase to its costs. These costs will be largely unrecoverable unless additional funding is released by the relevant Commonwealth bodies to cover those costs.
98. Programmed Care has not yet been able to assess the quantum of the uplift in costs that it will incur as a consequence of the Award variations, because it has not yet been able to determine the extent to which it will be able to implement measures (such as changes to its rostering arrangements and the conversion of casual employees to part-time employees) that will mitigate (or potentially mitigate) the impact of the Award variations on Programmed Care, its employees and its clients.
99. It will not be in a position to assess the precise cost impact that the Award variations will have on it until it has:
- (a) Determined the operational and rostering changes that it seeks to make in light of the Award variations.
 - (b) Assessed whether those changes will be plausible, after having consulted clients about their willingness to accommodate changes to when and how they receive their services as well as employees about their availability to potentially accept work at specific times. The latter assessment will also involve ascertaining the extent to which existing casual employees are willing to convert to part-time employment.

- (c) Prepared projected rosters based on the matters described at paragraphs (a) and (b).
 - (d) Prepared a cost analysis based on the projected rosters.
100. Nonetheless, Programmed Care anticipates that it will face at least some increased employment costs as a consequence of the Award variations that cannot be avoided, such as increased wages paid to employees by way of the broken shift allowances and the requirement to pay for at least two hours in respect of each shift or portion of a broken shift.
101. Programmed's annual budget operates each year from 1 January – 31 December. The budget for Programmed Care and PHP's operations for the period of 1 January – 31 December 2021 does not contemplate the additional costs that will be incurred as a consequence of the Award variations.
102. As at the time of signing this statement, Programmed Care has not received any communication from the National Disability Insurance Agency (**NDIA**) concerning the Award variations or any intention to adjust the NDIS funding in light of those changes. I am not aware of any public announcement made by the NDIA about the Award variations or funding changes in relation to the changes either.
103. Once Programmed Care has assessed the cost impact of the Award variations, it intends to write to the NDIA to enquire as to whether it intends to adjust the funding and it may consider asking the NDIA to do so. Programmed Care has not yet done so because it is not in a position to propose a specific quantum of increase to the funding or to properly describe the cost impact that the Award variations will have on Programmed Care.
104. If the payroll and rostering systems are not updated before the Award variations commence operation, manual processes such as the ones described earlier in my statement would need to be implemented to ensure that employees are paid in accordance with the Award. However, for the reasons explained above, those manual processes are not viable.

105. In addition, Programmed Care will need to direct additional time and resources to training its staff who are responsible for creating and amending rosters in relation to the Award variations, as well as the ways in which Programmed Care has decided to implement the decision. It will be essential that all staff with such responsibilities have a thorough understanding of Programmed Care's new obligations because the systems used will not automatically prevent employees from being paid or rostered in a way that does not comply with the Award.
106. It will not be practicable for all of the following requisite steps to be undertaken prior to July 2022:
- (a) The steps described at paragraphs 47 - 55 of my statement.
 - (b) The steps described at paragraphs 64 - 65 of my statement.
 - (c) The steps described at paragraphs 79 - 80 of my statement.
 - (d) The steps described at paragraph 99 of my statement.
 - (e) The steps described at paragraph 103 of my statement, as well as to consider any changes made by the NDIA to the pricing arrangements and whether as a consequence, Programmed Care seeks to make any operational changes as a consequence of the decisions made by the NDIA.
107. My evidence at paragraph 106 would be true even if the systems upgrade described at paragraphs 56 - 63 of my statement had not overlapped with the period of time that has lapsed since the Commission issued its decision.
108. Whilst some of the assessment and analysis described above can be undertaken concurrently, other activities will necessarily need to be undertaken sequentially. I refer to paragraphs 99 and 103 of my statement by way of example.



Aleysia Leonard

5 August 2021