IN THE FAIR WORK COMMISSION

FWC Matter No: AM2020/99

Application vary or revoke the Aged Care Award 2010

WITNESS STATEMENT OF SUSAN ELIZABETH KURRLE

I, Dr Susan Elizabeth Kurrle, [redacted] in the state of New South Wales, say as follows:

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

[redacted]

…………………………

Susan Kurrle

Date: 25th April 2021

Annexure SK-1

THE UNIVERSITY OF SYDNEY

Professor Susan Kurrle
Curran Chair in Health Care of Older People

25th April 2021

Maurice Blackburn

Lawyers

Your reference: ALG/5506404 (650)

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

I note that I have been asked to provide a Report in relation to the Application based on my experience and expertise in the area of aged care, particularly aged care provided in the residential setting. I have read the Harmonised Expert Witness Code of Conduct and agree to be bound by it. My report is based on my specialised knowledge, training and experience in geriatric medicine.

I hold the degrees of MBBS (USyd) and PhD Medicine (USyd) and a Diploma in Geriatric Medicine (Vic Postgraduate Medical Foundation). I have worked as a specialist in geriatric medicine since 1987 in both urban and rural settings within NSW Health.

I hold the position of Senior Staff Specialist Geriatrician within the Hornsby Ku-ring-gai and Eurobodalla Health Services in NSW. I am also Clinical Director of the Rehabilitation and Aged Care Network for Northern Sydney Local Health District, and I hold the Curran Chair in Health Care of Older People in the Faculty of Medicine and Health at the University of Sydney. As part of my clinical work I have led a nursing home outreach team since 2005 providing health services to residents in aged care, and hence have spent a considerable part of my practice visiting residential aged care facilities to provide health services to residents, and education and training to staff. From March 2019 to February 2021 I was the Medical Adviser to the Royal Commission into Aged Care Quality and Safety providing information and advice as requested to Counsels Assisting and to the Policy and Research Directors.

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My report is also based on observations and knowledge gained from my role on the board of HammondCare from 1998 to 2014. This is a not for profit aged care organisation providing residential and community care services across New South Wales and in Victoria.

My report also includes observations in my role as the main visitor and carer for my mother who has been in three aged care facilities over the past five years.

My answers to your questions as set out in your letter of 11th February 2021 appear below.

(a) details of the regulation of the aged care system and any changes to the regulation of the aged care system that have occurred over time

The Royal Commission into Aged Care Quality and Safety noted in its Background Paper 1 that the aged care system "is complex and fragmented". From the commencement of the current Aged Care Act 1997 to the present time there have been a number of enquiries and recommendations (see ACRC Background Paper 8) which have added to this complexity for both providers and for the recipients of aged care.

The ACRC Final Report has attempted to address much of this complexity (see ACRC Final Report).

One of the most important changes relevant to the Application is that the Aged Care Act 1997 removed the requirement that aged care providers acquit a portion of their funding for expenditure on care. This gave aged providers the ability to choose how they would staff their residential aged care facilities in terms of numbers of staff and mix of skills amongst staff. There was no requirement for certain levels of staffing or that skilled and trained nursing staff would continue to be employed. It should be noted that the term 'nursing home' was changed to 'aged care home' at around this time.

(b) whether there has been a change in the composition of the workforce in residential aged care

Over the 23 years since the Aged Care Act 1997 was introduced there have been significant changes to staffing and skill mix of the staff providing care within residential aged care facilities. During the last 10 years there has been a deskilling of care staff,

meaning the level of nursing and care skills has been diminished due to the reduction in number of registered nurses (RNs) and enrolled nurses (ENs) within the residential aged care work force, with an increased reliance on personal care workers.

Duties traditionally performed by nurses are now being performed by personal care workers, and these include medication administration, wound dressings, assistance with feeding, and performing vital observations. Registered nurses have fallen from 21% of the workforce to 14.5% of the workforce, and enrolled nurses have fallen from 13% to 10% whilst personal care workers have increased from 58% to 70% of the work force. This is at a time when the complexity and acuity of residents in terms of health conditions has increased significantly, with an increased need for skilled nursing to be available.

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

As mentioned in my answer to (b) there has been a significant change in the duties performed by personal care workers with duties formerly performed by nursing staff now being performed by personal care workers. There is also resident related documentation that is required to be completed on a daily basis for each resident in their nursing care records. Whereas once this was a nursing duty, this is now performed by personal care staff.

Since July 2019 there has been the introduction of the requirement to report a number of National Aged Care Mandatory Quality Indicators which are required to be collected quarterly in all aged care facilities. These Quality Indicators currently record the use of restraints, the occurrence of pressure injuries, and the presence of unexplained weight loss. In July 2021, two further Mandatory Quality Indicators of falls and medication management will be added. It will be the personal care workers who will be required to regularly monitor weight, and report presence of pressure injuries in the residents they provide care for. Whilst personal care workers are likely to have some support from RNS

or ENs in these tasks, they will still have a high level of responsibility for data accuracy and recording.

(d) the nature of the work performed (being care work) in the aged care sector (including in the Personal Care worker, General and Administrative Services, and Food Services streams covered by the Award)

Currently personal care workers in residential aged care have a very wide range of duties. They are required to assist a resident in showering and bathing, in toileting, in dressing and grooming, in cleaning of teeth and mouth care, and in providing medication (such as from a prepackaged medication blister pack).

There is often manual handling involved in these tasks with use of different specialised equipment such as a standing lifter, a sling and hoist lifter, a forearm support frame or a stability belt. There is often assistance required with meals, and food and fluids may need to be prepared in a form that the resident is able to swallow. There may need to be use of specialised cutlery, or administration of fluids through a naso-gastric tube (a tube through the nose into the stomach) or through a PEG (percutaneous endoscopic gastroscopy) tube through the abdominal wall directly into the stomach.

Assisting a resident with swallowing problems to eat requires a high degree of skill and patience, knowledge about risks associated with swallowing (such as aspiration of food into the lungs), and good communication skills. They need to be able to manage different types of hearing aids, and understand the importance of having correct spectacles, or properly fitting dental plates or dentures.

Personal care staff are required to assist allied health staff such as physiotherapists with mobilisation where assistance is required and with preparation of hot packs. They need to understand the use of different types of mobility aids such as walking frames, and canes, and be familiar with the use of transporter commodes and wheelchairs.

Most importantly personal care staff need to have a good knowledge and understanding of the physical conditions that the resident may experience such as pain or constipation, and the emotional and mental conditions that a resident may have. In residents with dementia it is very important that care staff understand the meaning of a particular

behaviour and can meet the needs that the resident is expressing. Having a good relationship with a resident is key to this, and is the basis of relationship centred care. Personal care staff are often the only people that the resident is having any interaction with. Many older people in residential care receive no visitors (this has been estimated at up to 40% of residents by former Minister for Ageing Ken Wyatt). For these residents almost the only human contact that they receive is with the care staff, and occasionally with volunteers, pastoral care workers, and their general practitioner. The emotional support that these personal care workers provide to residents is very important.

(e) the skills required to perform work in residential aged care (including in the Personal Care worker, General and Administrative Services, and Food Services streams covered by the Award)

The level of skills and knowledge required by personal care workers has increased significantly since 1997. From my observation prior to 1997, much personal care was performed by enrolled nurses and all medication management and assistance with feeding was performed by registered nurses. All documentation was performed by registered or enrolled nurses. This is no longer the case as noted in my answer to (d) above.

I do not have the specialised knowledge to comment in detail on the General and Administrative Services stream but do note that there are high levels of documentation required in residential care, and that the electronic systems now in use for documentation require further training. Ability to process and upload the new Mandatory Quality Indicators will be necessary.

In terms of the Food Services stream, I note the importance of tasty and nutritious food for older people generally and the requirement that food is presented attractively and in a form that the older resident is able to manage. As noted in my answer to questions (h), (k), and (l), older residents are more frail and unwell today than they were ten years ago, and there is a need to the preparation and presentation of food to adapt to these changes.

(f) whether there has been a change in the nature, level of skill and responsibility involved in doing work in residential aged care over time (including in the Personal Care worker, General and Administrative Services, and Food Services streams covered by the Award)

As will be shown below, the care requirements of older people in residential care have increased significantly over the past ten years. The population is older and has more complex health and care needs, and personal care workers have required an increase in knowledge in the health conditions of older people, particularly frailty and dementia, and they need to have good communication skills as well as having the ability to provide care to this increasingly frail and cognitively impaired population.

(g) if you are of the view that there have been changes in the nature of work, responsibility and/or skills required in residential aged care over time, please provide a description and explanation of, the reasons for and nature of, those changes

As mentioned above, there are increases in the care requirements for older people in residential care and this has been driven by the increase in average age of the residents, and the higher degree of health care complexity. There have been changes in the demographics of older people seeking residential aged care. Life expectancy in Australia continues to increase with more older people surviving past their average life expectancy (81 years for men and 85 years for women in 2019 according to the Australian Bureau of Statistics 2020). The average age of aged care residents has increased over the past 10 years from 50% of residents being 85 years and over in 2000, to 59% being 85 years and over in 2018.

(h) whether there has been an increase in the frailty of residents and acuity of the needs of residents in residential aged care

(i) if so, please describe the increase

There is a strong desire on the part of most older people to stay at home for as long as possible with assistance from home care services as needed. This has meant that when older people need to go into residential aged care they are older (as noted in answer to

question (g)), and have high levels of disability most often due to frailty. The occurrence of frailty increases with age and at least 50% of nursing home residents are considered to be frail, and as a result have a high level of physical care needs. This is shown by the increase in high care needs on the Aged Care Funding Instrument (ACFI) with an increase all three assessed areas of 1) activities of daily living, 2) cognition and behaviour, and 3) complex health care, in the period from 2009 to 2019.

This is clearly illustrated in the graph below showing the increase in the level of care needs for the domain of complex health care (Australian Institute of Health and Welfare 2020. GEN fact sheet 2018–19: People's care needs in aged care. Canberra: AIHW. ISBN 978-1-76054-312-9.)

Figure 2: Care need ratings of people in permanent residential care for complex health care, 30 June 2009–2019

With the increase in both the age and the complexity of aged care residents there is a need for staff with skills to manage older people with significant physical frailty, cognitive impairment and dementia (more than half of all aged care residents have dementia), and high health care needs (such as diabetes, chronic heart failure, hypertension, lung disease, and stroke). Residents with frailty will require extra assistance with activities of daily living including personal care and mobility, and will

often require two care staff to assist with showering and toileting. Residents will also be slower in their ability to dress and groom themselves and will often require assistance with this, as well as assistance in transfers (for instance getting up from a chair) and in mobility. These tasks may require use of a lifter or mobility frame. There is a high level of responsibility associated with these tasks as injury or falls can occur with use of these pieces of equipment.

In 2019, 53% of residents had dementia on the Aged Care Funding Instrument and it is likely that the figure is higher. People with dementia require assistance with activities of daily living because of their inability to know how to use a toilet, or shower themselves, or dress themselves. There may often be resistive behaviours with people with dementia reluctant to shower or use the toilet, and this requires particular skill and time and communication to manage the aggression and agitation that may occur. They are likely to need assistance at meal times to know what to do with cutlery, and with their food, and they may have significant antisocial behaviours which need to be managed.

As the graph in (h) indicates, there is an increase in residents with complex health needs. These commonly include diabetes which requires regular monitoring of blood sugar levels through testing, attention to diet, appropriate use of medication particularly insulin injections, and awareness of symptoms and signs of very low or very high blood sugar levels. Whilst RNs may be available it is usually the personal care workers who are responsible for performing the blood sugar level testing and recording, and who monitor for symptoms. Hypertension is also common and may require regular measurements of blood pressure. Chronic heart failure patients may need to be weighed daily, and patients with lung disease require monitoring of their oxygen saturation levels.

(j) if so, please detail the drivers for any such increase

(k) If so, please describe the effect of any increased frailty and acuity of residents on the nature of care provided in aged care facilities

Over the past ten years there has been a strong push to manage medically unwell residents within the aged care facility using hospital outreach team models of care. These are multidisciplinary teams with geriatricians, nurses, physiotherapist and speech

pathologists who together with the general practitioner provide care to the resident in their facility rather than admitting them to hospital.

This approach has been encouraged by the Royal Commission into Aged Care Quality and Safety (Aged Care Royal Commission) in its Final report (Recommendation 58). This will further increase the responsibility of staff in residential aged care to provide high level nursing care and monitoring for their residents. Whilst this would traditionally be the role of the registered nurse within a facility, with the decrease in registered nursing hours, this role is likely to fall to the personal care workers. For instance, a resident with a severe bladder infection may require regular antibiotics administered through an intravenous cannula. The outreach team will insert the cannula and give the first dose of antibiotics. After this it is up to care staff to continue the care. Whilst the RN would actually inject the medication, it is the personal care worker who needs to ensure that the cannula is not pulled out by the resident, and ensures that they are drinking plenty of fluids, and that the delirium (acute confusional state) that often accompanies a urinary tract infection is well managed with one to one reassurance and care.

(l) If so, please describe the effect of any increased frailty and acuity of residents on the nature of work and skills and responsibility required in residential aged care (including in the Personal Care worker, General and Administrative Services, and Food Services streams covered by the Award)

See responses above.

I am not able to comment on the effect on General and Administrative Services or Food Services other than my answers to question (e).

(m) what health benefits, if any, arise from the provision of high level care in the aged care industry

The provision of high level care in residential care means that highly disabled and dependent people can be managed in a residential care environment when previously they are likely to have been managed in an acute or subacute hospital due to their very high care needs.

For older people moving into high level residential care, there may be improvements in their health and in their function following the move due to good nutrition, timely medication, regular physical and mental activity and social interaction, and regular personal care.

It is clear that personal care workers need specialised skills and knowledge to be able to deliver this level of care which will benefit their older residents.

(n) whether there has been a shift in the model of care in the aged care industry and if so, the effect of shifting norms of care towards more individualised, less institutionalised models on the nature of work, responsibility and skills required in residential aged care

There is increasing evidence that the domestic or small home model of care (up to 14 residents) is better for older people requiring residential care, particularly those with dementia, than the standard institutional model. There is higher perceived quality of life, less use of psychotropic medications, and a higher degree of satisfaction with care from both residents and their families.

This model of care requires personal care workers to be very flexible in their duties as they will be both providing personal care and assistance to their older residents, and also providing housekeeping services particularly cooking and meal provision, as meals are prepared within each home.
Personal care workers will also do the laundry of the residents, and some cleaning tasks. All the tasks mentioned in answer to question (d) continue to apply in this different model of care.

(o) whether there have been changes to regulatory arrangements, quality standards and monitoring of the operation of residential aged care facilities that have affected the work, responsibilities and skills required in residential aged care

The introduction of the new National Aged Care Mandatory Quality Indicator Program on July 1st 2019 meant that there are now a number of indicators that are to be reported quarterly. The work that underpins the collection of data for this reporting will mainly need to be done by personal care workers. This has been further described in the answer to question (c).

(p) whether the work performed by workers in residential aged care is currently undervalued

This is not an area in which I have specialised knowledge.

(q) whether the COVID-19 pandemic has changed, or demonstrated changes that have occurred, in the expectations, responsibilities and requirements for employees working in residential aged care and, if so, please provide a description and explanation of, the reasons for and nature of, those changes

The onset in 2020 of the COVID-19 pandemic has led to an increased emphasis in infection prevention and control within aged care facilities. This requires an increase in knowledge and skill such as understanding basic infection prevention methods and knowing how to use and dispose of personal protective equipment.

Care of an older person with any acute illness requires familiarity with use of vital signs monitoring equipment such as a pulse oximeter to measure oxygen saturation levels or a sphygmomanometer to monitor blood pressure. Whilst ideally these tasks would be performed by a registered or enrolled nurse, personal care workers will be expected to use personal protective equipment correctly when attending to residents with suspected or known infection, and may be expected to perform vital signs monitoring.

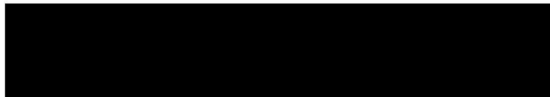
(r) any other information that you consider relevant.

Managing care at the end of life for residents is also extremely important as most older residents die in the facility rather than in hospital. This is a particularly specialised area of care and requires a degree of skill and knowledge. However in many cases the care of a dying resident falls to the personal care workers with occasional input from a registered or enrolled nurse. Using and monitoring syringe drivers to administer symptom relieving medication requires training and skills to understand the effects of the various medications. Whilst this may be supervised by a registered nurse, it is the personal care worker who is most likely to be sitting with the dying patient providing reassurance and support.

The Aged Care Royal Commission has noted that there is a need for personal care workers to understand the health risks associated with their care of frail unwell older people. It has been recommended by the Aged Care Royal Commission (Recommendation 77) that all personal care workers should have a minimum of a Certificate III qualification to work in aged care, reflecting the views of the Commission that a higher level of skill and knowledge is now necessary to work in aged care services because of the increased responsibility in providing care for this group of older people.

Conclusion

Over the past ten years the role of personal care workers has changed significantly. They have taken on roles that were previously performed by registered and enrolled nurses, and this should be recognised as they provide care to the most vulnerable people in our community.



Susan Kurrle

Annexure SK-2

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11 February 2021

Professor Susan Kurrle
Curran Professor in Health Care of Older People
Faculty of Medicine and Health
University of Sydney
By email: susan.kurrle@sydney.edu.au

Dear Professor Susan Kurrle

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

1. We act for the Health Services Union NSW/ACT/Qld and various employees covered by the *Aged Care Award 2010* (**the Award**).

2. On 12 November 2020 we filed a work value case in the Fair Work Commission seeking an increase in wages and enhancing the career paths for workers who are covered by the Award (**the Application**).

3. We **enclose** a copy of the most recent iteration of the Application for your perusal. The Application is supported by (without limitation) the United Workers Union and the Australian Nursing and Midwifery Federation.

4. By way of background:

   (a) The employment conditions, classifications and wages of a significant portion of employees working in residential aged care facilities in Australia are governed by the Award.

   (b) The Award came into effect on 1 January 2010 after proceedings before the Fair Work Commission (**Award Modernisation**).

   (c) The Applicants contend that the current Award wage rates do not recognise the nature of work, the level of skill and responsibility involved in performing the work or the conditions under which work is performed by employees covered by the Award and working in personal care services, general and administrative services and food services.

   (d) The Award rates were not evaluated during the Award Modernisation process which led up to the making of the Award. No consideration of the minimum wages (other than by annual minimum wage adjustments) or the work value of the work performed by employees covered by the Award has been conducted since the Award commenced to operate in 2010.

   (e) The Applicants contend that the current Award minimum wage undervalues the work of employees covered by the Award by more than 25%. The Applicants, being employees covered by the Award, seek an increase to

wages of 25% for all classification levels in the Award to rectify the undervaluation.

(f) The Applicants also seek a variation to the classification structure in Schedule B of the Award to provide for an additional pay level for personal care workers who have undertaken specialised training in a specific area of care and use those skills.

(g) The Applicants contend that the claimed increase would address the historic undervaluation of Award wages, the gendered undervaluation of work performed in what is considered a feminised industry, and recognise significant increases in work value of employees covered by the Award.

(h) The Applicants also contend that the rates in the Award do not reflect any recent (or possibly any) assessment of the wages by reference to the:

(i) Nature of the work;

(ii) Level of skill and responsibility involved in doing the work; and

(iii) The conditions under which work is performed.

(i) We are instructed that various employers and employer associations will oppose the Application.

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

(a) details of the regulation of the aged care system and any changes to the regulation of the aged care system that have occurred over time;

(b) whether there has been a change in the composition of the workforce in residential aged care;

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

(d) the nature of the work performed (being care work) in the aged care sector (including in the Personal Care worker, General and Administrative Services, and Food Services streams covered by the Award);

(e) the skills required to perform work in residential aged care (including in the Personal Care worker, General and Administrative Services, and Food Services streams covered by the Award);

(f) whether there has been a change in the nature, level of skill and responsibility involved in doing work in residential aged care over time (including in the Personal Care worker, General and Administrative Services, and Food Services streams covered by the Award);

(g) if you are of the view that there have been changes in the nature of work, responsibility and/or skills required in residential aged care over time, please provide a description and explanation of, the reasons for and nature of, those changes;

(h) whether there has been an increase in the frailty of residents and acuity of the needs of residents in residential aged care;

(i) if so, please describe the increase;

(j) if so, please detail the drivers for any such increase;

(k) If so, please describe the effect of any increased frailty and acuity of residents on the nature of care provided in aged care facilities;

(l) If so, please describe the effect of any increased frailty and acuity of residents on the nature of work and skills and responsibility required in residential aged care (including in the Personal Care worker, General and Administrative Services, and Food Services streams covered by the Award);

(m) what health benefits, if any, arise from the provision of high level care in the aged care industry;

(n) whether there has been a shift in the model of care in the aged care industry and if so, the effect of shifting norms of care towards more individualised, less institutionalised models on the nature of work, responsibility and skills required in residential aged care;

(o) whether there have been changes to regulatory arrangements, quality standards and monitoring of the operation of residential aged care facilities that have affected the work, responsibilities and skills required in residential aged care;

(p) whether the work performed by workers in residential aged care is currently undervalued;

(q) whether the COVID-19 pandemic has changed, or demonstrated changes that have occurred, in the expectations, responsibilities and requirements for employees working in residential aged care and, if so, please provide a description and explanation of, the reasons for and nature of, those changes; and

(r) any other information that you consider relevant.

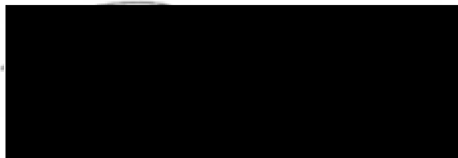
6. At the hearing of this matter (currently provisionally set down for **10 – 26 November 2021**) our clients intend to lead evidence (including the Report and any reply to evidence filed by parties who oppose the Application) in support of the Application. You may be required to attend the hearing as a witness to provide your evidence to the Fair Work Commission.

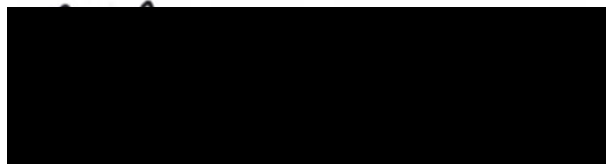
7. As mentioned above, evidence is due to be filed on 1 April 2021 and our preference would be to receive a draft of the Report on or before **15 March 2021.**

8. In addition to the Report and to facilitate your giving of evidence in the Fair Work Commission, we request that read the **attached** Expert Witness Code of Conduct and **attached** Rule 23.02 of the Federal Court Rules and ensure that the report complies with Rule 23.02. We will also ask you to affirm or swear an affidavit that includes a statement that you have read the Expert Witness Code of Conduct and agree to be bound by its terms. Please also identify your training, study/qualifications and experience relied upon that provide you with the specialised knowledge to provide the Report and an acknowledgement that this has been relied upon to provide the opinions contained in the Report.

9. Please do not hesitate to contact us if you would like to discuss the matter further.

Yours faithfully





Alex Grayson
Principal Lawyer
MAURICE BLACKBURN LAWYERS
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(Enquiries: Ilijana Radonic - 02 8267 0948)

Penny Parker
Lawyer
MAURICE BLACKBURN LAWYERS
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Coronavirus Update
We are doing everything possible to ensure claims continue to progress and legal rights are not affected by the coronavirus pandemic. If any impact is identified we will advise clients as soon as possible.

Form F46 Amended Application to vary a modern award

Fair Work Act 2009, ss.157–160

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

The Applicant

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

Title	[ ] Mr [ ] Mrs [ ] Ms [ ] Other please specify: (see below)		
First name(s) and Surname (s)	1. Ms Virginia Ellis, 2. Mr Mark Castieau, 3. Ms Sanu Ghimire, 4. Mr Paul Jones, and 5. Health Services Union		
Postal address	C/O Health Services Union NSW/ACT/QLD Branch Level 2, 109 Pitt Street		
Suburb	Sydney		
State or territory	NSW	Postcode	2000
Phone number	1300 478 679	Fax number	1300 329 478
Email address	james.fox@hsu.asn.au; lauren.hutchins@hsu.asn.au; ayshe.lewis@hsu.asn.au		

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

Legal name of business	Health Services Union
Trading name of business	As Above
ABN/ACN	68 243 768 561
Contact person	james.fox@hsu.asn.au; lauren.hutchins@hsu.asn.au; ayshe.lewis@hsu.asn.au

Does the Applicant need an interpreter?

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

[ ] Yes—Specify language

[x] No

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

[ ] Yes— Please specify the assistance required

[x] No

Does the Applicant have a representative?

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

[X] Yes—Provide representative's details

below [ ] No

Applicant's representative

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

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

1. Coverage

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

Aged Care Award 2010 (MA18)

1.2 What industry is the employer in?

Aged care

2. Application

2.1 What are you seeking?

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

[x] a determination varying a modern award

[ ] a modern award

[ ] a determination revoking a modern award

2.2 What are the details of your application?

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

14.1 Minimum wages – Aged Care Employee

Classification	**Per Week**
	$
Aged care employee – level 1	~~801.40~~ $1001.75
Aged care employee – level 2	~~834.60~~ $1043.25
Aged care employee – level 3	~~867.30~~ $1084.13
Aged care employee – level 4	~~877.60~~ $1097.00
Aged care employee – level 5	~~907.30~~ $1134.13
Aged care employee – level 6	~~956.20~~ $1195.25
Aged care employee – level 7	~~973.40~~ $1216.75

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

Attach additional pages, if necessary.

2.3 What are the grounds being relied on?

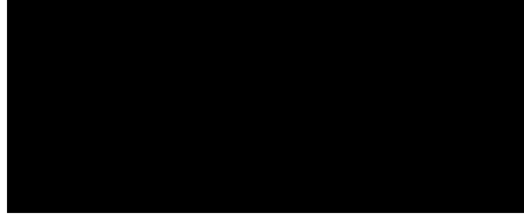
Using numbered paragraphs, specify the grounds on which you are seeking the proposed variations.

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

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

Attach additional pages, if necessary.

Signature



Name Alexandra Grayson, Maurice Blackburn Lawyers

Date 17 November 2020

Capacity/Position: Solicitor for the Applicants

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

Annexure A

(with additions in underline and deletions in strikethrough)

General and Administrative Services	Food Services	Care Services

Entry level: An employee who has less than three months' work experience in the industry and performs basic duties.

An employee at this level:

- works within established routines, methods and procedures;
- has minimal responsibility, accountability or discretion;
- works under direct or routine supervision, either individually or in a team; and
- requires no previous experience or training.

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

General and Administrative Services:	**Food Services:**	
General clerk Laundry hand Cleaner Assistant gardener	Food services assistant	

Aged care employee—level 2

An employee who has more than three months' work experience in the industry or is an entry level employee (up to 6 months) in the case of a Personal Care Worker.

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a limited level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

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

General and Administrative Services:	**Food Services:**	**Personal Care:**
General clerk/Typist (between 3 months' and less than 1 year's service) Laundry hand Cleaner Gardener (non-trade) Maintenance/Handyperson (unqualified) Driver (less than 3 ton)	Food services assistant	Personal Care Worker ~~Grade 1~~ (entry- up to 6 months)

Aged care employee—level 3

An employee at this level:

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

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

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

Aged care employee—level 4

An employee at this level:

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

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

General and Administrative Services:	Food Services:	Personal Care:
Senior clerk Senior receptionist Maintenance/Handyperson (qualified) Driver (3 ton and over) Gardener (trade or TAFE Certificate III or above)	Senior cook (trade)	Personal Care Worker (qualified) ~~Grade 3~~ Recreational/Lifestyle activities officer (from 6 months)

Aged care employee—level 5

An employee at this level:

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

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

General and Administrative Services:	Food Services:	Personal Care:
Secretary interpreter (unqualified)	Chef	Senior Personal Care Worker ~~Grade 4~~ Recreational/Lifestyle activities officer (qualified)

Aged care employee—level 6

An employee at this level:

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

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

General and Administrative Services:	Food Services:	Personal Care:
	Senior chef	

Maintenance tradesperson (advanced) Gardener (advanced)		Specialist Personal Care Worker Senior Recreational/Lifestyle activities officer

Aged care employee—level 7

An employee at this level:

- is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- may supervise the work of others, including work allocation, rostering and guidance;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses developed administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

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

General and Administrative Services:	**Food Services:**	**Personal Care:**
Clerical supervisor Interpreter (qualified) Gardener superintendent General services supervisor	Chef /Food services supervisor	~~Personal care worker grade 5~~ Personal Care Supervisor

Annexure B

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

INTRODUCTION

1. The current Award wage rates do not recognise the nature of work, the level of skill and responsibility involved in performing the work or the conditions under which work is performed by employees covered by the Award and working in personal care services, general and administrative services and food services.

2. The Award should be varied so as to achieve the modern award objective and the minimum wages objective.

3. The Award rates were not evaluated during the award modernisation process which led up to the making of the Award. No consideration of the minimum wages (other than by annual minimum wage adjustments) or the work value of the work performed by employees covered by the Award has been conducted since the Award commenced to operate in 2010.

4. The current Award minimum wage undervalues the work of employees covered by the Award by more than 25%. The Applicants, being employees covered by the Award, seek an increase to wages of 25% for all classification levels in the Award to rectify the undervaluation. The Applicants also seek a variation to the classification structure in Schedule B of the Award to provide for an additional pay level for personal care workers who have undertaken specialised training in a specific area of care and use those skills.

5. The claimed increase would address the historic establishment of Award wages and recognise significant increases in work value of employees covered by the Award.

CURRENT WAGE RATES

6. The rates in the Award were not subject to any work value assessment at the time of the making of the Award or subsequently and the precise origin of the rates remains unclear.

7. The rates in the Award do not reflect any recent (or possibly any) assessment of the wages by reference to the:

   a. Nature of the work;

   b. Level of skill and responsibility involved in doing the work; and

   c. The conditions under which work is performed.

8. The award rates that apply in New South Wales for similar roles and in other modern awards where a work value or equal remuneration assessment has been conducted are substantially higher than those in the Award.

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

9. S 157(2) (a) requires the Commission to establish whether it is satisfied that a variation to minimum wages is justified by work value reasons. This satisfaction will be dependent on a consideration of the "work value reasons" defined at s 157(2)(2A) of the Act.

10. Whilst no specific datum point is required for an analysis of work value the Commission should have regard to changes in the nature of the work, the skills required to perform that work; the responsibility involved in doing the work and the conditions under which work is performed which have occurred over time.

11. Any consideration by the Commission should readily ascertain that the variation is justified based on the following work value reasons:

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

Personal Care Stream

12. The nature of the work of workers in the Personal Care Stream justifies the variation to award minimum wages sought by the Applicants. The work performed includes a broad range of duties and requires a broad range of knowledge, skills and sound judgement in order to:

    a. Understand and assess the needs of an aging population with an increased level of frailty, vulnerability and or behavioural and psychological symptoms of dementia or equivalent;

    b. Provide high quality physical, social and emotional care that is appropriate to the needs of people who require it;

    c. Provide care that protects the safety, health and wellbeing of aged care residents;

    d. Provide care that supports psychological, cultural and emotional wellbeing of aged care residents;

    e. Provide restoration and rehabilitation to the aged;

    f. Provide specialist care in key areas of need, such as palliative care or dementia care.

    g. Provide care in an increasingly diverse aged care population;

    h. Allow the aged to be able to exercise choice and be treated as individuals;

    i. Liaise with clinical and health professional staff to ensure the changing care needs of aged care residents are met;

    j. Facilitate the engagement, social participation and independence of aged care residents in an aging population; and/or

    k. Communicate effectively with a range of stakeholders, from family members to clinical and health professionals, on issues which are often of a sensitive nature.

13. There have been significant changes in the nature of the work performed by employees in the Personal Care stream resulting from:

    a. Changes in the acuity levels of aged care residents (with an increase in those with higher needs requiring a higher degree of responsibility from personal care workers, a higher level of care and a greater breadth of care and assistance);

    b. Changes in theories and models of care provision (including a move to the household model of care);

c. Increased requirements to assess the medical needs of residents and to assist residents with medication and medical needs;

d. Increases in the need to devise and provide individualised and complex physical, social and emotional care for each resident;

e. Increased skills required in providing resident choice-centred care and assessing, planning and implementing same;

f. Industry implementation of a requirement for minimum qualifications and training;

g. Introduction of additional duties not previously performed including (without limitation) cleaning, kitchen duty, food preparation, food service, personal shopping, meal planning, physical therapy, recreational activity support and provision;

h. Increased interaction with other health professionals with a focus on individual treatment and rehabilitation of residents;

i. Assessment, planning and implementation arising from increased community engagement and external attendances for residents;

j. Changes to infection control procedures;

k. Changes to requirements when preparing residential care documentation arising from (without limitation) altered governmental regulation, increased governance and accreditation requirements;

l. Increased use and implementation of technology in aged care facilities and instruction of residents on same;

m. Increased mentoring, supervisory and performance management responsibilities at a senior level, and/or

n. Other related productivity measures.

The level of skill and responsibility in doing the work

Personal Care Stream

14. The work of employees in the Personal Care stream increasingly requires Certificate III or IV qualifications and additional formal specialised training (for example, in dementia care or medication dispensation).

15. Personal Care Workers have a high level of responsibility in a broad range of areas arising from their role as carers of the uniquely vulnerable, highly dependent aged people of Australia. This responsibility is to provide care in all aspects for the aged and extends to responsibility for the physical, emotional and mental wellbeing of one of the most acutely ill and highly dependent cohorts in Australian society.

16. Personal Care Worker roles have become increasingly complex with the necessary attainment and exercise of a higher level of skill arising from (without limitation):

    a. New duties being introduced such as cleaning, kitchen duty, food preparation, food service, personal shopping, meal planning, physical therapy, recreational activity support and provision;

    b. Changes in qualification requirements;

    c. Increased accreditation requirements for employers;

    d. Changes in technology utilised in aged care homes;

    e. Changes in the model of care (including the household model, specialist dementia care

and palliative care);

f. Increased responsibility for assessing the medical needs of residents and assisting residents with medication and medical needs;

g. Increased skills required in providing resident choice-centred care and assessing, planning and implementing same; and

h. Evolution of a more complex regulatory environment resulting in increased responsibility for care workers and a greater emphasis on regulatory compliance.

17. The level of responsibility of workers in the Personal Care stream has increased arising from (without limitation):

a. Increased reliance on workers to assess the medical needs of residents, to assist residents with medication and medical needs (rather than reliance on Allied Health Professionals, nurses and doctors) and liaise with medical practitioners;

b. Increased prevalence of high acuity residents with more varied and more high needs and a consequential need to assess, plan around and treat increasingly complex, physical, social and emotional needs of residents;

c. Increased responsibilities arising from the shift to the provision of resident choice-centred care and assessing, planning and implementing same;

d. More responsibility for the provision of physical, social and emotional care of residents;

e. The move to the household model of care has required workers to take responsibility for all needs of residents including (without limitation) cleaning, kitchen duty, food preparation, food service, personal shopping, meal planning, physical therapy, recreational activity support and provision; and/or

f. Increasing ongoing quality assessment and accreditation requirements.

The conditions under which the work is done

Personal Care Stream

18. Workers in the Personal Care stream perform work in a diverse range of environments (including specialised dementia care, palliative care, household cottages and traditional nursing homes).

19. The provision of aged care has changed markedly since the Award was made or since the work was last evaluated arising from (without limitation):

a. Changes in the model of care (including the household model, specialist dementia care and palliative care);

b. Changes in the philosophy of care (including the shift to the provision of resident choice-centred care and the decreased role of clinical staff in the residential aged care environment);

c. Increased prevalence of high acuity residents with more varied and more high needs;

d. Changes arising from COVID-19 that will likely continue including-

- Changes in infection control procedures;
- Changes in use of technology; and
- Changes in emotional needs of residents arising from increased isolation.

20. In addition, it is anticipated that further changes to the conditions under which work is performed will result from the Royal Commission into Aged Care Quality and Safety (legislated to hand

down its report on 26 February 2021).

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

Food Services Stream

21. The nature of the work of employees in the Food Services stream of the Award justifies the variation to award minimum wages sought by the Applicants. The work performed includes a broad range of duties and requires a broad range of knowledge, skills and sound judgement in order to:

    a. Understand and assess the dietary needs of an aging population with an increased level of frailty, vulnerability and ill health and often compromised capacity to communicate dietary needs or preferences;

    b. Provide high quality nutritional food that is appropriate to the needs of people who require it;

    c. Provide food tailored to meet the needs of an increasingly diverse aged care population;

    d. Allow the aged to be able to exercise choice and be treated as individuals; and

    e. Integrate food services into the overall provision of quality care, to enhance the physical, social and emotional wellbeing of aged care residents.

22. There have been significant changes in the nature of the work performed by employees in the Food Services stream resulting from:

    a. Changes required to meet stricter and increased regulatory compliance requirements including food safety standards, accreditations and aged care quality standards (including dealing with auditors and food safety authorities);

    b. Changes required in order to service a 24 hour/seven day a week food service environment;

    c. Introduction of additional duties not previously performed including (without limitation) managing stock levels, ordering food, dealing with suppliers, designing many and varied menus as opposed to a simple, universal menu for all residents, understanding and assessing allergies and intolerances, budget management (at a senior level);

    d. Increased skills required in liaising with residents and personal care staff and providing resident choice-centred meals and assessing, planning and implementing same;

    e. Increased requirements to assess the dietary needs of residents;

    f. Increases in the need to devise and provide individualised and complex meal solutions for residents rather than deliver a standardised menu;

    g. Increased expectations of residents with regard to the quality and variety of meals offered;

    h. Increases in the need to liaise with dieticians and understand diet and nutritional theories to provide best practice care to residents;

    i. Changes to infection control procedures;

    j. Increased use and implementation of technology in aged care facilities (including food preference/dietary need databases, complex ordering systems, online food safety records and online computer programs) and instruction of more junior colleagues on same;

k. Changes in the acuity levels of aged care residents (with an increase in those with higher needs requiring a higher degree of responsibility from food services staff to deliver food that residents are physically capable of eating including modified texture foods and food that is tailored to meet the physical, social and emotional needs of residents);

l. Industry implementation of a requirement for minimum qualifications and training;

m. Increased mentoring/training, supervisory and performance management responsibilities at a senior level (including work allocation and quality control), and/or

n. Other related productivity measures.

The level of skill and responsibility in doing the work

Food Services Stream

23. The work of employees in the Food Services stream increasingly requires Certificate III or IV qualifications and/or formal specialised training (dependent on classification).

24. Food Services workers have a high level of responsibility in a broad range of areas arising from their role as custodians of the nutritional and emotional needs of the uniquely vulnerable, highly dependent aged people of Australia. This responsibility is to ensure that nutritional food, tailored to the emotional and physical needs of residents is provided. The provision of appropriate food has a profound effect on the physical and emotional wellbeing of residents (leading to less medical issues requiring intervention and more dignity in dependence).

25. Food Services roles have become increasingly complex with the necessary attainment and exercise of a higher level of skill arising from (without limitation):

    a. New duties being introduced including (without limitation) managing stock levels, ordering food, dealing with suppliers, designing many and various menus as opposed to a simple, universal menu for all residents, understanding and assessing allergies and intolerances and budget management (at a senior level);

    b. Changes in qualification requirements;

    c. Increased minimum standards, accreditation and regulatory requirements for employers;

    d. Changes in technology utilised in food service, planning and delivery in aged care homes;

    e. Increased responsibility for assessing the nutritional and hydration needs of residents;

    f. Increased skills required in providing resident choice-centred meals and assessing, planning and implementing same rather than delivering a standard menu;

    g. The requirement to deliver nutritious food on demand, often in a 24/7 environment; and

    h. Increased expectations of residents with regard to the quality and variety of meals offered.

26. The level of responsibility of workers in the Food Services stream has increased arising from (without limitation):

    a. Increased reliance on workers to assess the dietary needs of residents, to assist residents with meals and liaise with dieticians;

    b. Increased prevalence of high acuity residents with more varied and more high needs and a consequential need to assess, plan around and deliver food to a cohort of residents with increasingly complex physical, social and emotional needs;

c. Increased responsibilities arising from the shift to the provision of resident choice-centred resident care and assessing, planning and implementing same;

d. More emphasis on the provision of nutritious food as a fundamental element of the care of residents; and

e. Increasing ongoing quality assessment and accreditation requirements.

The conditions under which the work is done

Food Services Stream

27. Food Services workers perform work in a diverse range of environments with a diverse range of resident needs. Whilst operationally distinct from care or clinical roles Food Services employees are environmentally integrated. This means that they need to be sensitive to and responsive to the particular circumstances that they operate in. Food Services employees will interact with residents in the course of their duties directly and casually, they need to conduct themselves with awareness of resident's emotional, social and physical needs.

28. The provision of aged care has changed markedly since the Award was made or since the work was last evaluated arising from (without limitation):

    a. Changes in the philosophy of food provision to residents (including the shift to the provision of resident choice-centred care);

    b. Increased prevalence of high acuity residents with more varied and more high needs;

    c. Changes arising from COVID-19 that will likely continue including-

        - Changes in infection control procedures;
        - Changes in use of technology;
        - Changes in food preparation; and
        - Changes in emotional needs of residents arising from increased isolation.

29. In addition, it is anticipated that further changes to the conditions under which food preparation and provision work is performed will result from the Royal Commission into Aged Care Quality and Safety (legislated to hand down its report on 26 February 2021).

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

General and Administrative Services Stream

30. The nature of the work of employees in the General and Administrative Services stream justifies the variation to award minimum wages sought by the Applicants. The work performed includes a broad range of duties and requires a broad range of knowledge, skills and sound judgement in order to:

    a. Deal with regulators and accrediting authorities;

    b. Liaise with visitors to facilities including families, guests and external contractors;

    c. Manage day to day compliance with an increasingly complex regulatory regime (including quality and safety standards) and Aged Care industry policies and guidelines;

    d. Manage an increasingly complex accreditations process;

    e. Perform a broad range of administrative and human resource related duties including recruitment processes, rostering, induction, orientation, staff liaison and event organisation;

f. Perform sales and promotional functions, targeted at prospective residents;

g. Manage and assess new or respite residents including (without limitation) responding to enquiries from potential new clients, reviewing their Aged Care Assessment (**ACAT**s) and government funding, considering resident suitability for care, making arrangements with potential residents, preparing paperwork for new residents including contracts, reconciling payments for care, admitting new residents and discharging residents;

h. deal with external auditors and compliance officers;

i. deal with resident, family and staff complaints and enquiries;

j. oversight of outsourced providers (including cleaning and catering) and internal providers including gardening and maintenance;

k. manage the financial affairs of an aged care facility (including accounts payable and receivable, payment of invoices, checking of invoices, purchasing, managing petty cash, banking, receiving residents' payments); and

l. operate in an increasingly sophisticated care environment.

31. There have been significant changes in the nature of the work performed by employees in the General and Administrative Services stream resulting from:

a. Changes in the acuity levels of aged care residents (with an increase in those with higher needs requiring a higher and more diverse range of paperwork and assessments to be performed prior to joining a facility, whilst in care or while maintenance, driving and other functions are being performed);

b. Increased skills required in the administering of resident choice-centred care and assessing, planning and implementing same;

c. Introduction of additional duties not previously performed including (without limitation – financial management, oversight of outsourced providers, dealing with external auditors and compliance officers, human resource functions, managing accreditations and ensuring compliance, visitor, regulator and staff liaison);

d. Changes to infection control procedures;

e. Increased use and implementation of technology in aged care facilities (including Customer Relationship Management systems, Human Resources and payroll systems, file management systems, financial and billing software and systems, Health record management systems) and ensuring that policies and protocols regarding same are complied with such as data security and confidentiality requirements;

f. Increased delegation of more sophisticated work, once associated with specialist management roles, such as procurement, human resources/employee relations, finance, governance, regulatory and compliance and facilities management;

g. Increased mentoring, supervisory and performance management responsibilities at a senior level, and/or

h. Other related productivity measures.

The level of skill and responsibility in doing the work

General and Administrative Services Stream

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

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

33. A radical shift in duties, skills and responsibilities has been implemented in administrative roles in Aged Care. Traditionally administrative roles in Aged Care have been more narrow in focus and responsibility, for example, roles such as a 'typist' or a 'senior receptionist' with a job of greeting and providing directions to enquiries. Administrative stream employees are now engaged in the running of aged care facilities to a highly sophisticated degree and across a broad range of functions, requiring many and varied skills.

34. General and Administrative roles have become increasingly complex with the necessary attainment and exercise of a higher level of skill arising from (without limitation):

    a. New duties being introduced such as financial management, oversight of outsourced providers, dealing with external auditors and compliance officers, human resource functions, managing accreditations and ensuring compliance, visitor, regulator and staff liaison and more varied and more complicated maintenance and other functions;

    b. Increased responsibility for this cohort of employees to fulfil and/or manage the accreditation, regulatory and compliance requirements for employers;

    c. Changes in technology utilised in aged care homes;

    d. Increased responsibility for assessing the needs of residents when organising services and providing assistance and/or services;

    e. Increased skills required in administering a broad range of resident choice-centred care and assessing, planning and implementing same;

    f. Increased skills arising from financial management of a facilities affairs;

    g. More diverse skills required as a result of oversight of outsourced functions;

    h. Sales and promotion work, particularly in the arranging and facilitation of 'facility tours' and similar activities;

    i. The implementation and oversight of policies, protocols, etc. based on (without limitation);

        i. The Charter of Aged Care Rights,

        ii. Aged Care Quality Standards,

        iii. organisational policy,

        iv. facility policy,

        v. cultural or religious particulars relevant to organisation, facility or residential composition; and

    j. Complying with complex and evolving reporting, accreditation, assessment guidelines in all areas of the business.

35. The level of responsibility of workers in the General and Administrative Services stream has increased arising from (without limitation):

    a. Increased prevalence of high acuity residents with more varied and more high needs;

    b. the shift to the provision of resident choice-centred care and assessing, planning and implementing same;

    c. Devolution to administrative staff of financial management, oversight of outsourced providers, dealing with external auditors and compliance officers, human resource functions, visitor, regulator and staff liaison;

d. Delegation to manage and assess new or respite residents including (without limitation) responding to enquiries from potential new clients, reviewing their Aged Care Assessment (**ACAT**s) and government funding, considering resident suitability for care, making arrangements with potential residents, preparing paperwork for new residents including contracts, reconciling payments for care, admitting new residents and discharging residents;

e. an increasingly complex regulatory regime (including quality and safety standards) and Aged Care industry policies and guidelines; and

f. Increasing ongoing quality assessment and accreditation requirements.

The conditions under which the work is done

General and Administrative Services Stream

36. General and Administrative Services workers perform work in a diverse range of environments (including dementia facilities, household cottages and traditional nursing homes). Whilst operationally distinct from care or clinical roles General and Administrative stream employees are environmentally integrated. This means that they need to be sensitive to and responsive to the particular circumstances that they operate in. General and Administrative employees will interact with residents in the course of their duties directly and casually, they need to conduct themselves with awareness of resident's emotional, social and physical needs.

37. Dignity in care requires greater and greater direct interaction between employees and residents. It is no longer sufficient that a maintenance employee or driver (for example) takes directions and executes work. They must be responsive to residents, requiring heightened sophistication, adaptability and communication skills.

38. Similarly, an administrative employee will need to undertake their work, and duties that go above and beyond mere-administration type tasks, with care and emotional intelligence.

39. The provision of aged care has changed markedly since the Award was made or since the work was last evaluated arising from (without limitation):

a. Increased prevalence of high acuity residents with more varied and more high needs;

b. An increase in the sophistication of care and the regulatory framework that care operates in;

c. Changes arising from COVID-19 that will likely continue including-

- Changes in infection control procedures;
- Changes in use of technology; and
- Changes in emotional needs of residents arising from increased isolation.

40. In addition, it is anticipated that further changes to the conditions under which work is performed will result from the Royal Commission into Aged Care Quality and Safety (legislated to hand down its report on 26 February 2021).

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

A fair and relevant safety net of minimum wages

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

The need to encourage collective bargaining

42. There are significant and widespread difficulties associated with collective bargaining in the aged care sector with the result that the majority of employees are being paid minimum rates pursuant to the Award or rates set under enterprise agreements that are usually no higher than 5% above the minimum rates set under the Award.

43. Factors impeding enterprise bargaining include:

    a. the lack of incentive for employers to bargain with employees due to the existing low wage rates;

    b. the dispersed nature of the work;

    c. the undesirable interruptions to resident's care posed by industrial action; and

    d. the fact that the majority of funding for the sector comes from the Commonwealth Government.

44. The variations sought in this application would encourage employers to engage in collective bargaining by:

    a. increasing the relevance of the minimum rates applicable to the work performed;

    b. encouraging industrial parties to bargain for particular arrangements in workplaces to improve productivity and properly utilise a skilled workforce; and

    c. increasing the competitiveness of enterprises who currently engage in enterprise bargaining;

The need to promote social inclusion through increased workforce participation

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

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

46. The undervaluation of the work performed in the aged care sector is a significant obstacle to attracting and retaining skilled aged care workers. This presents a material risk to the efficient and productive performance of work in the sector given that it is estimated that in order to maintain adequate levels of care, three times the current numbers of aged care workers will be required to sustain the sector by 2050. This is largely due to the aging population, and the expectation that the number of residents in aged care is likely to increase significantly during that time.

47. The challenges in retaining and attracting staff as a result of disproportionately low wages is well documented. The inability to retain and attract staff is a contributing factor to understaffing, increased workloads and more challenging working conditions within the sector which necessarily has a negative impact on the quality of care provided to residents. As a result, the persistence of the undervaluation of aged care work is likely to dramatically decrease the efficient delivery of a high standard of care within the sector.

48. Further, granting the variation sought, is also likely to provide incentives for aged care workers to increase their qualifications and skills, which would necessarily translate into productivity gains.

Equal remuneration for work of equal or comparable value

49. As demonstrated comprehensively above, unlike other comparable professions, an increase in the qualifications, knowledge and skills required to perform work in the aged care sector, has not led to an increase in wages.

50. The workforce is female dominated. The undervaluation of aged care work has been contributed to significantly by the fact that the work has commonly been considered ‘women’s work’ and is therefore inherently undervalued. Granting the variation sought would address the inherent undervaluation of feminised work and would be an important step in closing the gender pay gap that currently exists and is concentrated in the caring sectors (including in aged care).

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

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

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

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

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

53. An aged care system which provides good quality and reliable care to the elderly is critical in permitting the working aged population to contribute to the economy, reducing pressures on the health care system and supporting economic activity, competitiveness and growth.

54. The setting of proper and fair rates of remuneration for employees in the aged care sector will foster an efficient, productive and skilled workforce and support an aged care system which is able to contribute to the maintenance of a sustainable, productive and competitive national economy.

Other discretionary reasons

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

Conclusion

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

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

    b. meet the minimum wages objective pursuant to Part 2-6 of the Act; and

    c. necessary to be varied as soon as possible in order to achieve the modern awards objective pursuant to s.157(2)(b).

Harmonised Expert Witness Code of Conduct

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

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

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

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

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

(a) the name and address of the expert;

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

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

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

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

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

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

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

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

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

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

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

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

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

Duty to Comply with the Court's Directions
6. If directed to do so by the Court, an expert witness shall:

(a) confer with any other expert witness;

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

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

Conference of Experts
7. Each expert witness shall:

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

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

23.02 Court expert's report

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

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

(2) The Court expert's report must:

(a) be signed by the Court expert; and

(b) contain particulars of the training, study or experience by which the Court expert has acquired specialised knowledge; and

(c) identify the questions that the Court expert was asked to address; and

(d) set out separately each of the factual findings or assumptions on which the Court expert's opinion is based; and

(e) set out separately from the factual findings or assumptions each of the Court expert's opinions; and

(f) set out the reasons for those opinions; and

(g) contain an acknowledgement that the opinions are based wholly or substantially on the specialised knowledge mentioned in paragraph (b).

Natasha Prasad

From: Penny Parker
Sent: Thursday, 18 March 2021 4:35 PM
To: susan.kurrle@sydney.edu.au
Cc: Alex Grayson; Elsie Jordan
Subject: Your report [MBC-VIC.FID5239939]
Attachments: Federal Court Rules 2011 (Cth), Rule 23.12..pdf; Federal Court of Australia Expert Evidence Practice Note (GPN-EXPT).pdf

Dear Professor Kurrle

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

Accordingly, please find the following documents attached;

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

(**Documents**)

Please review both Documents carefully when preparing your report.

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

Kind regards
Penny Parker | Lawyer
E: pparker@mauriceblackburn.com.au | **T:** (02) 8267 0940 | **F:** (02) 9261 3318

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

Federal Court Rules 2011

Select Legislative Instrument No. 134, 2011

made under the

Federal Court of Australia Act 1976

Compilation No. 7

Compilation date:	2 May 2019
Includes amendments up to:	F2019L00665
Registered:	21 May 2019

Prepared by the Office of Parliamentary Counsel, Canberra

Division 23.2—Parties' expert witnesses and expert reports

23.11 Calling expert evidence at trial

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

(a) delivered an expert report that complies with rule 23.13 to all other parties; and

(b) otherwise complied with this Division.

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

23.12 Provision of guidelines to an expert

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

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

23.13 Contents of an expert report

(1) An expert report must:

(a) be signed by the expert who prepared the report; and

(b) contain an acknowledgement at the beginning of the report that the expert has read, understood and complied with the Practice Note; and

(c) contain particulars of the training, study or experience by which the expert has acquired specialised knowledge; and

(d) identify the questions that the expert was asked to address; and

(e) set out separately each of the factual findings or assumptions on which the expert's opinion is based; and

(f) set out separately from the factual findings or assumptions each of the expert's opinions; and

(g) set out the reasons for each of the expert's opinions; and

(ga) contain an acknowledgement that the expert's opinions are based wholly or substantially on the specialised knowledge mentioned in paragraph (c); and

(h) comply with the Practice Note.

(2) Any subsequent expert report of the same expert on the same question need not contain the information in paragraphs (1)(b) and (c).

23.14 Application for expert report

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

Rectified Authorised Version registered 21/06/2019 F2019C00426

FEDERAL COURT OF AUSTRALIA

EXPERT EVIDENCE PRACTICE NOTE (GPN-EXPT)

General Practice Note

1. INTRODUCTION

1.1 This practice note, including the *Harmonised Expert Witness Code of Conduct* ("**Code**") (see **Annexure A**) and the *Concurrent Expert Evidence Guidelines* ("**Concurrent Evidence Guidelines**") (see **Annexure B**), applies to any proceeding involving the use of expert evidence and must be read together with:

(a) the Central Practice Note (CPN-1), which sets out the fundamental principles concerning the National Court Framework ("**NCF**") of the Federal Court and key principles of case management procedure;

(b) the Federal Court of Australia Act 1976 (Cth) ("**Federal Court Act**");

(c) the *Evidence Act 1995* (Cth) ("**Evidence Act**"**),** including Part 3.3 of the Evidence Act;

(d) Part 23 of the *Federal Court Rules 2011* (Cth) ("**Federal Court Rules**"**)**; and

(e) where applicable, the Survey Evidence Practice Note (GPN-SURV).

1.2 This practice note takes effect from the date it is issued and, to the extent practicable, applies to proceedings whether filed before, or after, the date of issuing.

2. APPROACH TO EXPERT EVIDENCE

2.1 An expert witness may be retained to give opinion evidence in the proceeding, or, in certain circumstances, to express an opinion that may be relied upon in alternative dispute resolution procedures such as mediation or a conference of experts. In some circumstances an expert may be appointed as an independent adviser to the Court.

2.2 The purpose of the use of expert evidence in proceedings, often in relation to complex subject matter, is for the Court to receive the benefit of the objective and impartial assessment of an issue from a witness with specialised knowledge (based on training, study or experience - see generally s 79 of the Evidence Act).

2.3 However, the use or admissibility of expert evidence remains subject to the overriding requirements that:

(a) to be admissible in a proceeding, any such evidence must be relevant (s 56 of the Evidence Act); and

(b) even if relevant, any such evidence, may be refused to be admitted by the Court if its probative value is outweighed by other considerations such as the evidence

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

2.4 An expert witness' opinion evidence may have little or no value unless the assumptions adopted by the expert (ie. the facts or grounds relied upon) and his or her reasoning are expressly stated in any written report or oral evidence given.

2.5 The Court will ensure that, in the interests of justice, parties are given a reasonable opportunity to adduce and test relevant expert opinion evidence. However, the Court expects parties and any legal representatives acting on their behalf, when dealing with expert witnesses and expert evidence, to at all times comply with their duties associated with the overarching purpose in the Federal Court Act (see ss 37M and 37N).

3. INTERACTION WITH EXPERT WITNESSES

3.1 Parties and their legal representatives should never view an expert witness retained (or partly retained) by them as that party's advocate or “hired gun”. Equally, they should never attempt to pressure or influence an expert into conforming his or her views with the party's interests.

3.2 A party or legal representative should be cautious not to have inappropriate communications when retaining or instructing an independent expert, or assisting an independent expert in the preparation of his or her evidence. However, it is important to note that there is no principle of law or practice and there is nothing in this practice note that obliges a party to embark on the costly task of engaging a “consulting expert” in order to avoid “contamination” of the expert who will give evidence. Indeed the Court would generally discourage such costly duplication.

3.3 Any witness retained by a party for the purpose of preparing a report or giving evidence in a proceeding as to an opinion held by the witness that is wholly or substantially based in the specialised knowledge of the witness[1] should, at the earliest opportunity, be provided with:

(a) a copy of this practice note, including the Code (see Annexure A); and

(b) all relevant information (whether helpful or harmful to that party's case) so as to enable the expert to prepare a report of a truly independent nature.

3.4 Any questions or assumptions provided to an expert should be provided in an unbiased manner and in such a way that the expert is not confined to addressing selective, irrelevant or immaterial issues.

---

[1] Such a witness includes a “Court expert” as defined in r 23.01 of the Federal Court Rules. For the definition of "expert", "expert evidence" and "expert report" see the Dictionary, in Schedule 1 of the Federal Court Rules.

4. ROLE AND DUTIES OF THE EXPERT WITNESS

4.1 The role of the expert witness is to provide relevant and impartial evidence in his or her area of expertise. An expert should never mislead the Court or become an advocate for the cause of the party that has retained the expert.

4.2 It should be emphasised that there is nothing inherently wrong with experts disagreeing or failing to reach the same conclusion. The Court will, with the assistance of the evidence of the experts, reach its own conclusion.

4.3 However, experts should willingly be prepared to change their opinion or make concessions when it is necessary or appropriate to do so, even if doing so would be contrary to any previously held or expressed view of that expert.

Harmonised Expert Witness Code of Conduct

4.4 Every expert witness giving evidence in this Court must read the *Harmonised Expert Witness Code of Conduct* (attached in Annexure A) and agree to be bound by it.

4.5 The Code is not intended to address all aspects of an expert witness' duties, but is intended to facilitate the admission of opinion evidence, and to assist experts to understand in general terms what the Court expects of them. Additionally, it is expected that compliance with the Code will assist individual expert witnesses to avoid criticism (rightly or wrongly) that they lack objectivity or are partisan.

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

5.1 The contents of an expert's report must conform with the requirements set out in the Code (including clauses 3 to 5 of the Code).

5.2 In addition, the contents of such a report must also comply with r 23.13 of the Federal Court Rules. Given that the requirements of that rule significantly overlap with the requirements in the Code, an expert, unless otherwise directed by the Court, will be taken to have complied with the requirements of r 23.13 if that expert has complied with the requirements in the Code and has complied with the additional following requirements. The expert shall:

(a) acknowledge in the report that:

(i) the expert has read and complied with this practice note and agrees to be bound by it; and

(ii) the expert's opinions are based wholly or substantially on specialised knowledge arising from the expert's training, study or experience;

(b) identify in the report the questions that the expert was asked to address;

(c) sign the report and attach or exhibit to it copies of:

(i) documents that record any instructions given to the expert; and

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

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

6. CASE MANAGEMENT CONSIDERATIONS

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

(a) whether a party should adduce evidence from more than one expert in any single discipline;

(b) whether a common expert is appropriate for all or any part of the evidence;

(c) the nature and extent of expert reports, including any in reply;

(d) the identity of each expert witness that a party intends to call, their area(s) of expertise and availability during the proposed hearing;

(e) the issues that it is proposed each expert will address;

(f) the arrangements for a conference of experts to prepare a joint-report (see Part 7 of this practice note);

(g) whether the evidence is to be given concurrently and, if so, how (see Part 8 of this practice note); and

(h) whether any of the evidence in chief can be given orally.

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

7. CONFERENCE OF EXPERTS AND JOINT-REPORT

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

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

7.3 It is expected that where expert evidence may be relied on in any proceeding, at the earliest opportunity, parties will discuss and then inform the Court whether a conference of experts and/or a joint-report by the experts may be desirable to assist with or simplify the giving of expert evidence in the proceeding. The parties should discuss the necessary arrangements for any conference and/or joint-report. The arrangements discussed between the parties should address:

(a) who should prepare any joint-report;

(b) whether a list of issues is needed to assist the experts in the conference and, if so, whether the Court, the parties o r the experts should assist in preparing such a list;

(c) **t**he agenda for the conference of experts; and

(d) arrangements for the provision, to the parties and the Court, of any joint-report or any other report as to the outcomes of the conference ("**conference report**").

Conference of Experts

7.4 The purpose of the conference of experts is for the experts to have a comprehensive discussion of issues relating to their field of expertise, with a view to identifying matters and issues in a proceeding about which the experts agree, partly agree or disagree and why. For this reason the conference is attended only by the experts and any Conference Facilitator. Unless the Court orders otherwise, the parties' lawyers will not attend the conference but will be provided with a copy of any conference report.

7.5 The Court may order that a conference of experts occur in a variety of circumstances, depending on the views of the judge and the parties and the needs of the case, including:

(a) while a case is in mediation. When this occurs the Court may also order that the outcome of the conference or any document disclosing or summarising the experts' opinions be confidential to the parties while the mediation is occurring;

(b) before the experts have reached a final opinion on a relevant question or the facts involved in a case. When this occurs the Court may order that the parties exchange draft expert reports and that a conference report be prepared for the use of the experts in finalising their reports;

(c) after the experts' reports have been provided to the Court but before the hearing of the experts' evidence. When this occurs the Court may also order that a conference report be prepared (jointly or otherwise) to ensure the efficient hearing of the experts' evidence.

7.6 Subject to any other order or direction of the Court, the parties and their lawyers must not involve themselves in the conference of experts process. In particular, they must not seek to encourage an expert not to agree with another expert or otherwise seek to influence the outcome of the conference of experts. The experts should raise any queries they may have in relation to the process with the Conference Facilitator (if one has been appointed) or in

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

7.7 Any list of issues prepared for the consideration of the experts as part of the conference of experts process should be prepared using non-tendentious language.

7.8 The timing and location of the conference of experts will be decided by the judge or a registrar who will take into account the location and availability of the experts and the Court's case management timetable. The conference may take place at the Court and will usually be conducted in-person. However, if not considered a hindrance to the process, the conference may also be conducted with the assistance of visual or audio technology (such as via the internet, video link and/or by telephone).

7.9 Experts should prepare for a conference of experts by ensuring that they are familiar with all of the material upon which they base their opinions. Where expert reports in draft or final form have been exchanged prior to the conference, experts should attend the conference familiar with the reports of the other experts. Prior to the conference, experts should also consider where they believe the differences of opinion lie between them and what processes and discussions may assist to identify and refine those areas of difference.

Joint-report

7.10 At the conclusion of the conference of experts, unless the Court considers it unnecessary to do so, it is expected that the experts will have narrowed the issues in respect of which they agree, partly agree or disagree in a joint-report. The joint-report should be clear, plain and concise and should summarise the views of the experts on the identified issues, including a succinct explanation for any differences of opinion, and otherwise be structured in the manner requested by the judge or registrar.

7.11 In some cases (and most particularly in some native title cases), depending on the nature, volume and complexity of the expert evidence a judge may direct a registrar to draft part, or all, of a conference report. If so, the registrar will usually provide the draft conference report to the relevant experts and seek their confirmation that the conference report accurately reflects the opinions of the experts expressed at the conference. Once that confirmation has been received the registrar will finalise the conference report and provide it to the intended recipient(s).

8. CONCURRENT EXPERT EVIDENCE

8.1 The Court may determine that it is appropriate, depending on the nature of the expert evidence and the proceeding generally, for experts to give some or all of their evidence concurrently at the final (or other) hearing.

8.2 Parties should familiarise themselves with the *Concurrent Expert Evidence Guidelines* (attached in Annexure B). The Concurrent Evidence Guidelines are not intended to be exhaustive but indicate the circumstances when the Court might consider it appropriate for

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

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

9. FURTHER PRACTICE INFORMATION AND RESOURCES

9.1 Further information regarding Expert Evidence and Expert Witnesses is available on the Court's website.

9.2 Further information to assist litigants, including a range of helpful guides, is also available on the Court’s website. This information may be particularly helpful for litigants who are representing themselves.

J L B ALLSOP
Chief Justice
25 October 2016

Annexure A

HARMONISED EXPERT WITNESS CODE OF CONDUCT[2]

APPLICATION OF CODE

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

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

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

GENERAL DUTIES TO THE COURT

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

CONTENT OF REPORT

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

   (a) the name and address of the expert;

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

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

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

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

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

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

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

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

[2] Approved by the Council of Chief Justices' Rules Harmonisation Committee

knowledge of the expert, been withheld from the Court;

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

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

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

SUPPLEMENTARY REPORT FOLLOWING CHANGE OF OPINION

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

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

DUTY TO COMPLY WITH THE COURT'S DIRECTIONS

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

(a) confer with any other expert witness;

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

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

CONFERENCE OF EXPERTS

7. Each expert witness shall:

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

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

ANNEXURE B

CONCURRENT EXPERT EVIDENCE GUIDELINES

APPLICATION OF THE COURT'S GUIDELINES

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

OBJECTIVES OF CONCURRENT EXPERT EVIDENCE TECHNIQUE

2. The use of concurrent evidence for the giving of expert evidence at hearings as a case management technique[3] will be utilised by the Court in appropriate circumstances (see r 23.15 of the *Federal Court Rules 2011* (Cth)). Not all cases will suit the process. For instance, in some patent cases, where the entire case revolves around conflicts within fields of expertise, concurrent evidence may not assist a judge. However, patent cases should not be excluded from concurrent expert evidence processes.

3. In many cases the use of concurrent expert evidence is a technique that can reduce the partisan or confrontational nature of conventional hearing processes and minimises the risk that experts become "opposing experts" rather than independent experts assisting the Court. It can elicit more precise and accurate expert evidence with greater input and assistance from the experts themselves.

4. When properly and flexibly applied, with efficiency and discipline during the hearing process, the technique may also allow the experts to more effectively focus on the critical points of disagreement between them, identify or resolve those issues more quickly, and narrow the issues in dispute. This can also allow for the key evidence to be given at the same time (rather than being spread across many days of hearing); permit the judge to assess an expert more readily, whilst allowing each party a genuine opportunity to put and test expert evidence. This can reduce the chance of the experts, lawyers and the judge misunderstanding the opinions being expressed by the experts.

5. It is essential that such a process has the full cooperation and support of all of the individuals involved, including the experts and counsel involved in the questioning process. Without that cooperation and support the process may fail in its objectives and even hinder the case management process.

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[3] Also known as the "hot tub" or as "expert panels".

CASE MANAGEMENT

6. Parties should expect that, the Court will give careful consideration to whether concurrent evidence is appropriate in circumstances where there is more than one expert witness having the same expertise who is to give evidence on the same or related topics. Whether experts should give evidence concurrently is a matter for the Court, and will depend on the circumstances of each individual case, including the character of the proceeding, the nature of the expert evidence, and the views of the parties.

7. Although this consideration may take place at any time, including the commencement of the hearing, if not raised earlier, parties should raise the issue of concurrent evidence at the first appropriate case management hearing, and no later than any pre-trial case management hearing, so that orders can be made in advance, if necessary. To that end, prior to the hearing at which expert evidence may be given concurrently, parties and their lawyers should confer and give general consideration as to:

   (a) the agenda;

   (b) the order and manner in which questions will be asked; and

   (c) whether cross-examination will take place within the context of the concurrent evidence or after its conclusion.

8. At the same time, and before any hearing date is fixed, the identity of all experts proposed to be called and their areas of expertise is to be notified to the Court by all parties.

9. The lack of any concurrent evidence orders does not mean that the Court will not consider using concurrent evidence without prior notice to the parties, if appropriate.

CONFERENCE OF EXPERTS & JOINT-REPORT OR LIST OF ISSUES

10. The process of giving concurrent evidence at hearings may be assisted by the preparation of a joint-report or list of issues prepared as part of a conference of experts.

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

PROCEDURE AT HEARING

12. Concurrent expert evidence may be taken at any convenient time during the hearing, although it will often occur at the conclusion of both parties' lay evidence.

13. At the hearing itself, the way in which concurrent expert evidence is taken must be applied flexibly and having regard to the characteristics of the case and the nature of the evidence to be given.

14. Without intending to be prescriptive of the procedure, parties should expect that, when evidence is given by experts in concurrent session:

(a) the judge will explain to the experts the procedure that will be followed and that the nature of the process may be different to their previous experiences of giving expert evidence;

(b) the experts will be grouped and called to give evidence together in their respective fields of expertise;

(c) the experts will take the oath or affirmation together, as appropriate;

(d) the experts will sit together with convenient access to their materials for their ease of reference, either in the witness box or in some other location in the courtroom, including (if necessary) at the bar table;

(e) each expert may be given the opportunity to provide a summary overview of their current opinions and explain what they consider to be the principal issues of disagreement between the experts, as they see them, in their own words;

(f) the judge will guide the process by which evidence is given, including, where appropriate:

  (i) using any joint-report or list of issues as a guide for all the experts to be asked questions by the judge and counsel, about each issue on an issue-by-issue basis;

  (ii) ensuring that each expert is given an adequate opportunity to deal with each issue and the exposition given by other experts including, where considered appropriate, each expert asking questions of other experts or supplementing the evidence given by other experts;

  (iii) inviting legal representatives to identify the topics upon which they will cross-examine;

  (iv) ensuring that legal representatives have an adequate opportunity to ask all experts questions about each issue. Legal representatives may also seek responses or contributions from one or more experts in response to the evidence given by a different expert; and

  (v) allowing the experts an opportunity to summarise their views at the end of the process where opinions may have been changed or clarifications are needed.

15. The fact that the experts may have been provided with a list of issues for consideration does not confine the scope of any cross-examination of any expert. The process of cross-examination remains subject to the overall control of the judge.

16. The concurrent session should allow for a sensible and orderly series of exchanges between expert and expert, and between expert and lawyer. Where appropriate, the judge may allow for more traditional cross-examination to be pursued by a legal representative on a particular issue exclusively with one expert. Where that occurs, other experts may be asked to comment on the evidence given.

17. Where any issue involves only one expert, the party wishing to ask questions about that issue should let the judge know in advance so that consideration can be given to whether

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

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

CURRICULUM VITAE

PROFESSOR SUSAN ELIZABETH KURRLE

Nationality: Australian
Medical Board of Australia Registration Number: MED0000940107/8

Academic Qualifications

i. M.B.B.S. University of Sydney, 1977
ii. Diploma of Geriatric Medicine, Victorian Medical Postgraduate Foundation, 1986
iii. PhD (Medicine) University of Sydney, 2003. Thesis topic: "Factors influencing adherence with the use of hip protectors".

Current Appointments (Academic)

2005 - 2021 Curran Professor in Health Care of Older People, Sydney Medical School - Northern, Faculty of Medicine and Health, University of Sydney

Current Appointments (Clinical)

1998 - 2021 Senior Staff Specialist Geriatrician, Rehabilitation and Aged Care Service, Hornsby Ku-ring-gai Health Service
2011 - 2021 Clinical Director, Aged Care and Rehabilitation Network, Northern Sydney Local Health District
2007 - 2021 Senior Staff Specialist Geriatrician, Eurobodalla Health Service, Southern NSW Local Health District
2011 - 2021 Member, Clinical Council, Northern Sydney Local Health District
2019 - 2021 Chair, Clinical Council, Northern Sydney Local Health District
2000 – 2021 Principal Investigator, Dementia Clinical Drug Trials Unit, Hornsby Ku-ring-gai Hospital

Current Appointments (Other)

2019 - 2021 Senior Advisor (Medical), Royal Commission into Aged Care Quality and Safety (Completed Feb 2021)
2019 - 2022 Member, MRFF Dementia, Ageing and Aged Care Research Mission Expert Advisory Panel
2019 - 2022 Member, Aged Care Quality and Safety Commission Advisory Council
2019 – 2021 Member, Medical Board of Australia Clinical Advice Committee on Health Checks for Doctors aged 70 years and over
2017 – 2021 Member, Sydney Health Partners Implementation Science Steering Committee
2016 – 2021 Member, Governing Council, Australian and New Zealand Society for Sarcopenia and Frailty Research
2014 – 2022 Chair, Cognitive Impairment Advisory Group, Australian Commission on Safety and Quality in Health Care
2018 - 2021 Member, StepUp for Dementia Research Project Advisory Board
1995 - 2021 Member, Policy and Planning Sub-committee, Australian and New Zealand Society for Geriatric Medicine
1995 - 2021 Director, CK Health and Aged Care Consulting (private company)
2018 – 2021 Media advisor and commentator ABC Series 'Old People's Home for 4 Year Olds'
2021 – 2024 Member, Aged Care Clinical Advisory Committee, Department of Health

Track Record Summary

Clinical Practice: Professor Susan Kurrle is a geriatrician at Hornsby Ku-ring-gai Hospital in Northern Sydney and at Batemans Bay and Moruya Hospitals in Southern NSW. She is the Clinical Director of Aged Care and Rehabilitation for Northern Sydney Local Health District, and also chairs the Clinical Council for the District. She has worked extensively in the area of dementia, and has developed a memory assessment and dementia program at Hornsby Ku-ring-gai Hospital where she also leads a Dementia Clinical Drug Trials Unit. She has developed rural memory clinics in Southern NSW and a telehealth dementia clinic in Armidale in northern NSW. Her clinical work involves visiting older people in residential care facilities on a regular basis as part of a hospital outreach service.

Research: She has held the Curran Chair in Health Care of Older People in the Faculty of Medicine and Health at the University of Sydney since 2006. She has been involved in a number of different areas of research driven by unanswered questions that she has encountered in her day to day clinical practice. These areas include elder abuse, falls and hip fracture prevention, dementia and delirium diagnosis and management, and identification and management of frailty. With her questions answered by research she has then been able to translate those results into practice both locally and across Australia. In 2012 she was appointed to lead the $25 million NHMRC Partnership Centre on Dealing with Cognitive and Related Functional Decline in Older People (NHMRC 9100000), and she coordinated a team of consumers, clinicians, health and aged care providers, and researchers across Australia. The Partnership Centre focussed on research and implementation projects dealing particularly with the care aspect of dementia and related functional decline, and has completed 33 projects, including development and implementation of Clinical Practice Guidelines for Management of Dementia, and research into the best models of care for people with dementia in hospital and residential care settings. Her current research is targeting the recognition and management of frailty in the acute hospital setting and in the community through general practice involvement.

Teaching: Professor Kurrle teaches in the area of geriatric medicine in the Sydney Medical Programme in Stages II and III both at the University of Sydney Medical School Northern and at the Sydney University Department of Rural Health at Broken Hill, NSW. She currently supervises one PhD student and one Masters student at the University of Sydney, and is mentoring a Transitional Nurse Practitioner in her Masters degree.

Collaboration: She has worked closely with Sydney North Primary Health Network over the past five years in developing the Northern Sydney Dementia Collaborative which she chairs, and which has developed and implemented education and resources for general practitioners and the community to improve care for people with dementia. She also leads the Northern Sydney Frailty Initiative which has integrated frailty screening and management across both hospital and general practitioner settings.

Presentations and publications: In 2019 she gave 65 invited presentations and she was an invited speaker at conferences in the US, Viet Nam, the Netherlands, Hong Kong and Australia speaking on subjects related to elder abuse, frailty, and dementia. In 2020 she gave 27 invited presentations including 3 international presentations, with 22 of those as virtual presentations. In the past 5 years, she has published 51 peer-reviewed journal articles, and four book chapters. She is a member of the editorial boards of the Journal of the American Geriatrics Society, and Aging and Mental Health. She reviews approximately 70 manuscripts annually for a number of peer reviewed medical and ageing journals. From 2018 to the present she has been the medical advisor and commentator for the Emmy Award winning ABC series “Old People’s Home for 4 Year Olds” with Series 2 now available.

Grant funding: In the past 5 years, she has received grant funding for eight programs of research. This includes the $25 million Cognitive Decline Partnership Centre (NHMRC 9100000) which she led, $777,517 for Agents of Change (NHMRC 1135667), $1,295,006 for Prevention of Falls in Dementia (NHMRC 1060191), $850,705 for National Dementia Plan Development in Viet Nam (NHMRC 1154644), and $612,780 for Guided by Excellence: supporting older people living with dementia and behavioural symptoms (DACS). She is a CI on the Australian Dementia Network (ADNeT): Bringing together Australia’s dementia stakeholders, NHMRC Boosting Dementia Research Grant (NHMRC 1152623) with $18,000,000 in funding. She is CIA on a NHMRC TCR Frailty grant (NHMRC 1177847) for $1,470,000, and a Dementia Centre for Research Collaboration grant of $561,000 for developing and implementing a volunteer program for managing dementia and delirium in residential care.

Community and Professional role: She has a number of senior appointments enabling her to influence policy and practice in both government and non-government organisations. She has been the Medical Advisor to the Royal Commission into Aged Care Safety and Quality. She is a member of the Medical Research Future Fund Expert Advisory Panel for Dementia, Ageing and Aged Care, and was a member of the NHMRC National Institute for Dementia Research Expert Advisory Panel. She is a member of the Aged Care Quality and Safety Commission Advisory Council, and was recently appointed to the Medical Board of Australia Clinical Advice Committee for Health Checks for Doctors aged 70 years and over. She has chaired the Cognitive Impairment Advisory Group for the Australian Commission on Safety and Quality in Health Care for seven years. She has recently been appointed to the National Aged Care Clinical Advisory Group on Use of Restraints.

Relative to opportunity: she carries a 50% clinical and administrative load as geriatrician and Clinical Director for Northern Sydney Local Health District Rehabilitation and Aged Care Network, and Chair of the Local Health District Clinical Council.

Research Grant Awards 2015 to 2021

Kurrle S, Bateman C, Anderson K, Blair A. "Golden Angels" spreading their wings: Translating a volunteer dementia and delirium program from hospitals to residential care. Dementia Centre for Research Collaboration (DCRC) World Class Research Project Grant. 2020 – 2023. **$561,005**.

Kurrle S, Crotty M, Cameron I, Sherrington C, Pond D, Nguyen T, Laver K, Howard K. The FORTRESS Study (Frailty in Older People: Rehabilitation Treatment Research Examining Separate Settings). NHMRC Targeted Call for Research into Frailty (ID 1177847). 2020-2022. **$1,470,000.**

Rowe C, Sachdev P, Naismith S, Breakspear M, Brodaty H, Anstey K, Martins R, Ward S, Vickers J, Masters C, **Kurrle S,** Schofield P, Ahern S. The Australian Dementia Network (ADNeT): Bringing together Australia's dementia stakeholders. NHMRC Boosting Dementia Research Grant (Grant ID 1152623) 2018 – 2022. **$18,000,000**.

Nguyen TA, Kim BG, Brodaty H, Pham T, Roughead EE, Pham LT, Crotty M, **Kurrle S,** Hinton WL, Esterman A. Strengthening responses to dementia: Building an evidence platform for the development of a Vietnam National Dementia Plan. NHMRC-NAFOSTED Collaborative Research Projects (Grant ID 1154644) 2018 – 2020. **$850,705**.

Kurrle S, Cunningham C, Gresham M, DeBellis A, Macfarlane S, Knight P. Guided by Excellence: Improving the lives of people with dementia with complex behaviours. Dementia and Aged Care Services Fund. 2017 – 2019. **$612,780.**

Laver K, Fitzgerald J, Crotty M, **Kurrle S**, Cameron I, Whitehead C, Thompson J, Kaambwa B. Agents of Change: Improving post diagnosis care for people with dementia and their carers through the establishment of a National Quality Collaborative to implement guideline recommendations. NHMRC Boosting Dementia Research Grant (ID 1135667) 2017-2019. **$770,517**.

Close J, Clemson L, Sherrington C, **Kurrle S**, Hill K. Preventing falls in older people with dementia – a randomised controlled trial. NHMRC Project grant (Grant ID: 1060191). 2014 – 2017. **$1,295,006**.

Kurrle S, Biggs S, Cameron I, Crotty M, Field S, Gray L, Hilmer S, Pond D, Agar M, Bird M, Cumming A, Koch S, Fitzgerald A. National Health and Medical Research Council Partnership Centre on Dealing with Cognitive and Related Functional Decline. NHRMC Partnership Centres for Better Health (Grant ID: 9100000) 2013-2019. **$25,000,000**.

Publications in refereed journals 2015 to 2021

Walker P, Kifley A, **Kurrle S**, Cameron ID. Increasing the uptake of vitamin D supplement use in Australian residential aged care facilities: results from the vitamin D implementation (ViDAus) study. BMC Geriatr. 2020 Oct 6;20(1):383.

Laver K, Cations M, Radisic G, de la Perrelle L, Woodman R, Fitzgerald JA, **Kurrle S**, Cameron ID, Whitehead C, Thompson J, Kaambwa B, Hayes K, Crotty M. Improving adherence to guideline recommendations in dementia care through establishing a quality improvement collaborative of agents of change: an interrupted time series study. Implement Sci Commun. 2020 Sep 24;1:80.

Wilson M, Tran Y, Wilson I, **Kurrle SE**. Cross-sectional study of Australian medical student attitudes towards older people confirms a four-factor structure and psychometric properties of the Australian Ageing Semantic Differential. BMJ Open. 2020 Aug 16;10(8):e036108.

Clemson LM, Laver K, Rahja M, Culph J, Scanlan J, Day S, Comans T, Jeon YH, Low LF, Crotty M, **Kurrle S**, Cations M, Piersol C, Gitlin LN. Implementing a reablement intervention, 'Care of People with dementia in their Environments (COPE)': A hybrid implementation-effectiveness study. Gerontologist. 2020 Aug 17:gnaa105. doi: 10.1093/geront/gnaa105.

Taylor ME, Wesson J, Sherrington C, Hill KD, **Kurrle S**, Lord SR, Brodaty H, Howard K, O'Rourke SD, Clemson L, Payne N, Toson B, Webster L, Savage R, Zelma G, Koch C, John B, Lockwood K, Close JCT. Tailored exercise and home hazard reduction for fall prevention in older people with cognitive impairment: the i-FOCIS randomized controlled trial. J Gerontol A Biol Sci Med Sci. 2020 Sep 19:glaa241. doi: 10.1093/gerona/glaa241.

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Sinclair C, Gersbach K, Hogan M, Blake M, Bucks R, Auret K, Clayton J, Stewart C, Field S, Radoslovich H, Agar M, Martini A, Gresham M, Williams K, **Kurrle S**. "A Real Bucket of Worms": Views of People Living with Dementia and Family Members on Supported Decision-Making. *J Bioeth Inq*. 2019 Dec;16(4):587-608. doi: 10.1007/s11673-019-09945-x.

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Kurrle S, Bateman C, Cumming A, Pang G, Patterson S, Temple A. Implementation of a model of care for hospitalised older persons with cognitive impairment (the Confused Hospitalised Older Persons program) in six New South Wales hospitals. *Australasian Journal on Ageing*. 2019. doi: 10.1111/ajag.12690

Biggs S, Haapala I, **Kurrle S**. Organising care, practice and participative research: Papers from the cognitive decline partnership centre. *Australas J Ageing*. 2019 Sep;38 Suppl 2:3-5. doi: 10.1111/ajag.12679.

Walker P, Kifley A, **Kurrle S,** Cameron ID. Process outcomes of a multifaceted, interdisciplinary knowledge translation intervention in aged care: results from the vitamin D implementation (ViDAus) study. *BMC Geriatr.* 2019 Jun 25; 19(1):177. doi: 10.1186/s12877-019-1187-y

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Wilson M, Tran Y, Wilson I, **Kurrle S.** Development of the Australian Ageing Semantic Differential, a New Instrument for Measuring Australian Medical Student Attitudes Towards Older People. *Australasian Journal on Ageing*. 2019. 38 (3): e67-e74. http://dx.doi.org/10.1111/ajag.12627

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Nguyen K-H, Sellars M, Agar M, **Kurrle S**, Kelly A, Comans T. An economic model of advance care planning in Australia: a cost-effective way to respect patient choice. *BMC Health Serv Res.* 2017; 17: 797.
1. doi: 10.1186/s12913-017-2748-4.

Wilson MA, **Kurrle SE**, Wilson I. Understanding Australian medical student attitudes towards older people. *Australas J Ageing*. 2018 Jan 14. doi: 10.1111/ajag.12495.

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Janssens J, de Kort S, Achterberg W, **Kurrle S**, Kerse N, Cameron I, Touwen D. Medical and moral considerations regarding complex medical decisions in older patients with multimorbidity: a compact deliberation framework. *BMC Geriatrics* 2018; 818:25.

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