



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

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

**AM2020/99**

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

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

**Sydney**

**10.00 AM, FRIDAY, 8 DECEMBER 2023**

**Continued from 07/12/2023**

PN4148

JUSTICE HATCHER: All right, can we swear Mr Brockhaus.

PN4149

MR McKENNA: Just before we do, your Honour, could I just raise by way of apology my improper attire. I'm somewhat embarrassed, but I have misplaced my jacket. I had hoped that I had left it up here, but it appears that I haven't, so please forgive the lack of jacket. Mr Ward has offered his, very kindly, but I think it suits him.

PN4150

JUSTICE HATCHER: Yes, all right. Go ahead.

PN4151

THE ASSOCIATE: Mr Brockhaus, can you please state your full name for the record.

PN4152

MR BROCKHAUS: Johannes Heinrich Brockhaus, (address supplied).

**<JOHANNES HEINRICH BROCKHAUS, AFFIRMED [10.02 AM]**

**EXAMINATION-IN-CHIEF BY MR WARD [10.02 AM]**

PN4153

JUSTICE HATCHER: Mr Ward.

PN4154

MR WARD: Thank you, your Honour.

PN4155

Mr Brockhaus, could I ask you to restate your name and address?---Johannes Heinrich Brockhaus, (address supplied).

PN4156

You have prepared a statement for these proceedings?---Yes, I have.

PN4157

Do you have a copy in front of you?---Yes, I do.

PN4158

That is a statement that is 77 paragraphs, including four annexures, totalling 148 pages in total?---I believe that is correct.

PN4159

For the Bench's benefit, it appears in the digital court book at pages 2633 to 2780.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XN MR WARD

PN4160

Mr Johannes, is that statement true and correct to the best of your knowledge and belief?---Yes, it is.

PN4161

I tender that statement.

PN4162

JUSTICE HATCHER: The witness statement of Johannes Brockhaus dated 31 October 2023 will be marked exhibit JE21.

**EXHIBIT #JE21 WITNESS STATEMENT OF JOHANNES HEINRICH BROCKHAUS DATED 31/10/2023**

PN4163

MR WARD: If the Commission pleases.

PN4164

JUSTICE HATCHER: Who is going to cross-examine this witness? Mr McKenna?

PN4165

MR MCKENNA: If the Full Bench pleases.

**CROSS-EXAMINATION BY MR MCKENNA**

**[10.03 AM]**

PN4166

Mr Brockhaus, I should firstly say we have met previously in stage 1 of the proceedings. My name's Jim McKenna and I appear on behalf of the ANMF. Referring back to your earlier evidence, I understand that Buckland is a purpose-built facility located in the Blue Mountains?---That is correct, yes.

PN4167

It is a 144 bed purpose-built facility with two villages; is that correct?---I have to amend that. It is now 149 beds.

PN4168

Is it at capacity?---We are at full capacity, yes.

PN4169

Terrific. Buckland also provides home care services?---That is correct, yes.

PN4170

And employs staff specifically for the delivery of home care services?---That is correct, yes.

PN4171

You have your statement with you in the witness box?---Yes.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4172

I am going to ask you some questions about COVID-19 infection prevention control. You refer in your statement at paragraph 49, which is on page 8, to the fact that prior to COVID-19, Buckland was required to have and maintain an outbreak management plan. And so, I take it not only were you required to, but Buckland did maintain an outbreak management plan?---That is correct, yes.

PN4173

I understand that you have been asked to make some inquiries as to whether you could find an outbreak management plan that predated the pandemic; that's right?--That is correct, yes.

PN4174

And you have been unable to do so?---In the short time frame, I am unable to do so, yes.

PN4175

Certainly. But you have some recollection of that plan, I take it?---Yes.

PN4176

You were familiar with it in your role prior to the pandemic?---Yes.

PN4177

And I think you say in your evidence that that outbreak management plan was triggered by three or more residents being diagnosed with influenza?---Well, it's one of the examples, but, yes, different scenarios, you know, and different triggers.

PN4178

Was there any trigger that was less than three or more residents showing signs of infection or being infected?---No, not to my recollection.

PN4179

You recall that it involved some requirements for wearing masks in some circumstances?---Yes, that's correct.

PN4180

I take it that the outbreak management plan and, indeed, the infection prevention control procedures that Buckland has evolved rapidly during the COVID pandemic?---Yes, there have been changes, yes.

PN4181

The result of those changes, as I understand it, is the current COVID-19 and Acute Respiratory Infection Response and Preparedness Plan with Buckland Aged Care Services?---That is correct, yes.

PN4182

That's the document that you annex to your witness statement as JB4?---I believe that is correct, yes.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4183

If it assists the Full Bench, that is at court book page 2690 of the current court book. If anyone happens to be on the old court book, it's 2701.

PN4184

I understand that this is more than just an outbreak management plan, isn't it?---In what context?

PN4185

Well, it deals with prevention?---Yes, correct, yes.

PN4186

Preparedness?---Yes.

PN4187

And the response that would follow management of an outbreak?---Yes, that's correct.

PN4188

With respect to preparedness, could I ask you to turn to - I'll get you the internal page number, I'm sorry. Can I ask you this: if you're working through the document, is it going to be easiest for me to refer to the red numbering in the bottom right-hand corner or the - - -?---Yes, that's fine, yes.

PN4189

Page 66; do you have that?---Yes.

PN4190

Is this an example of the preparedness aspects of the plan that I was just referring to?---If you don't mind, I just have to - quickly fly over it, yes.

PN4191

Of course?---Yes, that is correct, yes.

PN4192

Looking at those dot points, the first dot point:

PN4193

*Promote vaccinations to all staff, visitors, contractors for seasonal influenza and COVID-19 vaccinations as per ATAGI advice.*

PN4194

Would I be right in an assumption that that is something that has been added to the plan throughout the pandemic or as a result of the pandemic?---So let me say it this way. So, there was always to promote vaccinations where applicable, for whatever was acute at the time, but certainly that particular wording is new, yes.

PN4195

Perhaps if I can deal with it this way. Is this entire part of the plan new?---This entire plan is new, correct, yes.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4196

So, when you say 'entire plan', all 90-odd pages is completely new, replaced during the pandemic?---Well, we have rewritten the whole document, yes, but only really to bring it more up to date, and this version that you're looking at, at the moment had some government influence, so we've actually given it to a government contractor - there were grants available for free to look over the plans - and that really helped us to adapt it to the best practice standards.

PN4197

On this page, we see an example of the plan as it related to the preparedness aspect for COVID-19 and other respiratory outbreaks?---Yes, correct.

PN4198

As I understand it, you say that there has always been some activity with respect to vaccinations. The third dot point is referring to maintaining systems for monitoring and recording of vaccinations as conducted by IPC leads; you see that?---Yes.

PN4199

I take it that's entirely new?---No. So, we have always recorded the number of vaccinations if, you know, the residents give their consent and share that with us. The reason why you would see this in here, it's become a requirement, so the government issued notice that we needed to record it and then report it on a monthly basis.

PN4200

In addition to these preparedness matters, separately, I understand that Buckland carries out screening for COVID-19 now?---Yes and no. So, it's a fluid situation. So, we have ceased screening, but we are following best practice and community advice, so we are really lucky to be guided by the Ministry of Health, and the current position from the Ministry of Health is that there is increased community activity and therefore we are monitoring once again, yes.

PN4201

So you are currently screening?---We are currently screening, yes, but only staff, not visitors.

PN4202

Can you explain to the Full Bench what it is you are doing with screening currently?---So staff members, prior to attending the workplace, as they arrive at work, and they undergo a rapid antigen test on the site. It takes 15 minutes. Once they have completed the test, they walk inside to show it to one of the supervisors that they're clear and, once they are clear, they commence their duties.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4203

In addition to that, I understand that you would now expect staff at Buckland to monitor residents for respiratory symptoms?---Yes and no. We always monitor our residents for respiratory symptoms, so, again - but COVID, it's a heightened

awareness again, but, you know, we always had influenza or other illnesses that were prevalent, yes.

PN4204

Does Buckland now maintain records of respiratory symptoms that may present in residents?---Yes, but no different to as we have done previously.

PN4205

You mentioned earlier that the previous outbreak management plan had a trigger of three influenza infections, and I think you said that that was, from your recollection, the least number of infections that would trigger it?---Yes.

PN4206

Can I ask you to turn to - I think it's red page 64, hearing book 2696. So this is the commencement of the plan, providing an introduction. Do you have the page that starts:

PN4207

*The trigger event to activate a response plan is 1 x confirmed case of respiratory or influenza (resident) within the facility.*

PN4208

?---Yes, correct.

PN4209

And then:

PN4210

*An outbreak is declared if two or more residents test positive to COVID-19 or influenza within a 72-hour period.*

PN4211

?---That is also correct.

PN4212

So I understand that the trigger for the plan has been reduced?---Well, if I may add, this is an internal decision. So, the guideline from the Ministry of Health actually still stipulates three people, where it doesn't matter if it's a mix of residents and staff members, but we opted to bring it down to two. We have a heightened awareness.

PN4213

Yes?---And we have - we consult with all stakeholders and the stakeholders said, 'We want a risk mitigation as much as possible', so that's why this plan has evolved to all this, yes.

PN4214

So, a decision has been made at a management level to implement something that is stricter than the government requirement?---In consultation with the residents and the relatives or legal representatives of the families, yes.

PN4215

Then that policy is implemented by staff?---That is correct, yes.

PN4216

You have an expectation that staff have the skill to implement that policy?---Well, yes, absolutely, management - it's management's responsibility, yes.

PN4217

Well, it's management's responsibility, but it is staff who are observing residents?--The staff - well, there's a reporting line, naturally.

PN4218

Yes?---We want decisions to be made by the person that's qualified for the job. So there might be an observation done by - I'm not sure which staff you are referring to, but it could be anybody really, that someone is unwell, it gets to the team leader, the registered nurse, and then they make an assessment, you know, based on their skills and knowledge, yes, and that triggers then the policy.

PN4219

So if a direct care staff member, if an AIN or PCW, observed respiratory symptoms, you would expect them to document that?---Yes, I would expect them to report it to the team leader and then the team leader take some action. I wouldn't expect them to report it before we have any confirmation, you know, from somebody that is better skilled to re-make that assessment.

PN4220

What steps would you expect the team leader to take?---The team leader - so, currently, if there are respiratory symptoms, they would carry out a PCR test, possibly isolate the person, if the symptoms are really dominant, for the short time until PCR results are available and, based on the PCR results, it would then trigger other parts of the outbreak management plan.

PN4221

Could I ask you to turn to red page 67?---Yes.

PN4222

Which is page 699 of the court book. And hopefully you see there:

PN4223

*First 24 Hours Checklist - Managing COVID-19 in a Residential Aged Care Home.*

PN4224

Are we on the same page?---Yes, please. Yes, yes.

PN4225

I take it that this entire part of the plan has arisen from the COVID-19 pandemic?--Do you mind if I just have a very quick look?

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4226



Yes, of course?---Sorry. Yes, yes.

PN4227

Is it correct that this entire part of the plan did not exist in the pre-pandemic outbreak management plan that Buckland maintained?---Yes. If I may say, this way, so I think the steps and actions taken documented within, they always existed, but I think the difference certainly is that we added response times to it. You know this all evolved when the pandemic was just about to start and there was a lot of uncertainty and we wanted to be - have clear timelines of how quickly we can be responsive to action everything, if that makes sense.

PN4228

So the immediate steps identified here within 30 minutes to six hours, and again please feel free to look through it, but, as I count, there would be 14 steps to be taken in that period of under six hours?---Yes, that's correct.

PN4229

Up to six hours, I should say?---Yes.

PN4230

JUSTICE HATCHER: Can I just intervene. Mr Brockhaus, the requirement for staff to, if they are infected, not to attend for work for at least seven days, what's their payment entitlement situation during that period of isolation?---So they have two ways of the choice for the staff member. Sick leave is available to them, but also there is currently a government grant available that specifically deals with absence due to COVID and our staff actually applies for the grant on their behalf and then, yes, this would be the money so that the sick leave entitlements are returned to the employee.

PN4231

All right. Thank you.

PN4232

MR WARD: Thank you, your Honour.

PN4233

Turning to these steps, the first of them really involves isolation and communication; is that correct?---That is correct.

PN4234

And to the extent that the residents are being informed of their diagnosis, who would be informing them of that?---The registered nurse would inform them, or the care manager, whoever is available.

PN4235

Similarly, there is a requirement to inform the resident's family?---Yes, in most cases, but only if the resident has given their consent.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4236

And discussions with residents and their families about the use of oral antiviral treatments?---Sorry, can you rephrase that question?

PN4237

Yes. And just to be clear, I am referring to the sixth dot point down, referring to speaking to residents, their families and representatives about the use of oral antiviral treatments and arrange and record their consent for treatment?---Yes.

PN4238

So that's another lot of communication that would happen?---That is another lot of communication, but it is happening, even though, with a disclaimer, I have to say part of that is not applicable. We have opted now to actually seek the consent outside of an outbreak event, so that if an outbreak would occur, we can act much quicker, rather than having to, you know, have a meeting again, then seek the consent form.

PN4239

So that's a part of the preparedness steps that apply?---Yes, and again it came from the Ministry of Health, who encouraged us, or all providers really, to be proactive about the issue and have some discussion before the event occurs.

PN4240

And so that would be - - -

PN4241

JUSTICE HATCHER: Sorry, can I just ask a question. Mr Brockhaus, who conducts the initial testing of a resident where they are suspected of having COVID symptoms?---The registered nurse will start with a RAT test and if there is a suspicion of any outbreak event with other positive cases, usually a RAT test and a PCR test are conducted at the same time. So, the RAT test will give an initial result in the first 15 minutes and then we seek the clarification within 24 hours from a laboratory test.

PN4242

And who administers the PCR test?---We have good relationships at Buckland with our local health network, so they actually leave us a couple of PCR tests always for a quicker response, so we collect them, bag them and they come and collect them from us.

PN4243

Is the RAT test, is that an oral test now or is it still nasal?---Excuse me, sorry, your Honour?

PN4244

The initial RAT test, is that an oral test now or is it still nasal?---No, we're still opting for nasal, yes.

PN4245

Yes. Thank you.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4246

MR WARD: Thank you, your Honour.

PN4247

And in addition to these communications, I presume that, if there were residents who were not showing symptoms but might have been exposed to a positive case, it would be necessary to communicate that to them as well?---Sorry, I got really side-tracked there. So, they have a test?

PN4248

If there is a resident who has been in contact with a resident who is positive, there would need to be a discussion with that resident as well?---Yes, absolutely, yes. So, contact tracing is still part of it, yes.

PN4249

And you would be encouraging those residents to try and minimise their risk of spreading any infection they may have?---That's right. So we tell them that they might have been a close contact. Previously, during the height of the pandemic, we would ask them to isolate actually, but that is no longer the case, so we really, you know, leave it up to the resident then to do the right thing, yes.

PN4250

In terms of doing the right thing, you mean that resident taking steps to minimise a risk of passing an infection on to others?---That's right. So we assist the resident in terms of education, so we tell him all the steps that he could be taking and what would be the ideal outcome, you know, if he chooses to ideally isolate and if he interacts, to keep his distance or wear a mask and so on, but the residents are free to, you know, take on board what they want. So, some people are not very compliant, so to speak.

PN4251

Some people are not very compliant, but it will depend upon how that is communicated to them, no doubt?---I suppose, yes.

PN4252

Who is having that discussion with residents?---The IPC lead.

PN4253

You would suggest that would happen within the six hours?---Yes, or certainly if - yes, that would happen right away, yes.

PN4254

I take it that, in having those discussions, you would expect whoever it is speaking to the residents or family to tailor their discussions to what they understand about that particular person?---Yes, correct.

PN4255

And you would expect them to be sensitive in the way they communicated the information?---Yes, absolutely.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4256

If the resident or family are culturally or linguistically diverse, they would bring additional skills to that communication as well, wouldn't they?---Well, yes, we would probably look for an employee that actually has that skill, or we would source externally, a translator or - yes.

PN4257

Now, I take it that you would have confidence in your staff to be able to implement these immediate steps within the six hours?---Yes, yes.

PN4258

Can I suggest that that's a confidence - your ability to have that confidence is a result of learnings and developments that have arisen through the pandemic?---Only partially. I think what really, in our case, happened is that we significantly invested in having additional registered nurses on in new roles that previously didn't exist, you know. Like, an example would be that we now have two care managers instead of one, we have got a registered nurse quality controller, we have got two IPC leads on site, you know, so we have the capacity to actually action all these initial steps quite rapidly, yes.

PN4259

So that's led by the additional registered nurses, but I take it that some of the grunt work is carried out by direct care staff?---What work are you referring to?

PN4260

Well, having regard to these 14 steps, you accept that all the 14 steps couldn't be carried out by the registered nurses or IPC leads?---Generally, I would disagree with your statement, but, truly, in the six hours, we trust in all our staff, and everybody is well educated and acts within the best interests, you know, and the scope of practice, so when it comes to step 5, for example, 'Continue to monitor residents', of course, you know, all levels of employees and volunteers are engaged.

PN4261

And then if one moves to the second part of the outbreak management plan, that within six to 14 hours it appears from red page 70 of your document, again do I take it that these steps didn't appear in your pre-pandemic outbreak management plan?---One minute, or half a minute, or a few seconds?

PN4262

Yes, of course?---Yes, well, certainly the infection control lead didn't exist at the time. Yes, and the zoning, the zoning is also something that is fairly new to us, yes.

PN4263

And the zoning, is that - later in the plan, there's reference to red, amber, green signs and so forth; is that what you mean by 'zoning'?---Yes, that's right, yes.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4264

So that would involve sometimes moving residents?---No, we wouldn't move residents, not at all, but, as the pandemic progressed, you know, and these permanent closures, all these lockdowns that happened that nobody liked - - -

PN4265

No?--- - - - and they were terrible for the residents, and for the staff, and for everybody really, we came up with – we said, 'Look, we have a large facility and a very large footprint so on multiple levels as well', so we said, 'Look, if there is one isolated case happening upstairs' - for example - 'we shouldn't be punishing anybody else in the other areas.' So, we would label that area as a red zone, for example, but the residents within wouldn't be moved because there would be still a risk of them having already been exposed.

PN4266

You would rely upon your staff to maintain that zoning?---Yes, absolutely, yes.

PN4267

And by 'staff', that would involve registered nurses?---Registered nurses - - -

PN4268

IPC leads?--- - - - IPC leads, again, everybody. Yes.

PN4269

Direct care staff and all staff, including - - -?---Yes, all staff, absolutely, yes.

PN4270

- - - administrative, kitchen staff - everybody?---Well, yes, different levels - again I have to highlight those. So there would be some employees that actually would give direction and supervision, you know, and get staff cohorted, while other employees would only need to follow the directions that they were given, if that makes sense.

PN4271

Yes?---Yes.

PN4272

But you have faith in all of your staff to be able to carry out their part of the plan?--One hundred per cent.

PN4273

And I take it you would accept that a great deal of this plan is COVID specific?---Yes. I would say 'Yes' specifically because COVID is mentioned so many times.

PN4274

And specific to COVID because it arose directly from the pandemic?---Yes, a very evolving document that, at the height of it, was changed on a weekly basis, yes.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4275

And notwithstanding the fact that the implementation of the outbreak aspect of the plan might be less frequent now, I take it that there are no plans at Buckland to scale back this plan?---We want to scale it back as much as we are legally allowed to, to be honest, so you will find that the majority of things that are in here are in here because of the regulatory requirement, yes, but we had, from the beginning, a different view on outbreak management and what it means isolating residents, yes, but I don't - sorry, I'm getting carried away.

PN4276

No, no - - -?---But the point being is really that the emotional wellbeing, you know, we operate in the Blue Mountains, we are not for profit in a charity. It's really about the residents, you know, and it feels like we are at a point now, and already have been a year ago, where we are overprotecting our residents and would much rather prefer to survey our residents behaviour. Yes, definitely.

PN4277

As things stand now, you are not in a position - Buckland is not in a position to scale it back?---Yes.

PN4278

Is that a fair assessment?---I believe so, yes.

PN4279

So you agree with the proposition, sorry?---Repeat the proposition?

PN4280

As things stand now, Buckland is not in a position to scale back the requirements of this plan?---No, we are not, I believe.

PN4281

You will continue to monitor whatever the regulations are that come from government and the requirements?---That's right, yes.

PN4282

JUSTICE HATCHER: Mr Brockhaus, is there any prospect that the regulatory regime may be altered in the future, or do you see it as going forward indefinitely?---Your Honour, it would be - I can only offer my personal opinion. I was hoping that we're already at that point, but, only last Friday, the Ministry released festive guidelines and, again, they are mentioning the cautioning and everything else and the preparedness, so I don't see it happening in the near future, but we are certainly hoping so.

PN4283

Thank you.

PN4284

MR WARD: You identify one permanent change arising from the pandemic as the two new IPC leads?---Yes.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4285

Is that two positions for each - two positions across the facility?---Yes, that's correct.

PN4286

I take it that they are both registered nurses?---Yes, correct.

PN4287

And they have additional training in infection prevention control as well?---That is correct, yes.

PN4288

That training is kept up to date?---Yes, correct.

PN4289

And they are responsible for the delivery of infection prevention control education within the facility?---It's collaborative as a whole team, but, yes, they take the lead, as the name suggests, yes.

PN4290

You refer at 17(g) of your statement, if you want to return to that, to some IPC modules that are undertaken as a part of the standard training?---Yes.

PN4291

Mandatory online modules?---Yes.

PN4292

I take it that the education or training provided by the IPC leads is in addition to that?---That is correct, yes.

PN4293

And I presume that - well, you say, in fact, IPC leads are also responsible for on-the-spot training and education?---Yes.

PN4294

So if an IPC lead saw something that didn't meet the strict requirements of the Buckland outbreak management plan, you would expect them to bring that to the attention of the staff?---Yes, that is correct, yes.

PN4295

You would expect them to provide training on how staff would properly comply with the requirements?---That is correct, yes.

PN4296

For example, if PPE is not being used properly, you would expect the IPC lead to bring that to the staffs' attention?---Yes.

PN4297

And provide training in the proper use?---That's correct.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4298

On PPE, have you observed better compliance with the proper use of PPE as a result of or following the start of the pandemic?---It's a bit of a subjective statement. There's always a level of noncompliance, regardless of how much training is provided. Yes, I couldn't qualify it - no.

PN4299

If staff had failed to record respiratory symptoms in a resident, you would expect the IPC lead to bring that to the staffs' attention?---I would expect it, but it would be hard to substantiate it if an event like this happened because it's subjective, because the IPC couldn't say, 'Well, you've been there two hours ago, why didn't you report the symptoms?' We don't know if the symptoms were already present two hours ago, as an example.

PN4300

If an IPC lead themselves became aware of a resident with symptoms, you might expect them to talk to the care staff directly involved with that person and ask if they had observed it and so forth?---Yes, absolutely, yes.

PN4301

And if it hadn't been recorded, you might expect the IPC lead to bring to the staffs' attention the recording process?---I'm struggling a bit with that example, but, yes, if it would have been, you know, in a very short time frame, you know, a staff -member attended 10 minutes ago, now there are symptoms, then certainly, but, I mean, we wouldn't want to put any blame on anybody if we really couldn't say that this is the case.

PN4302

You refer at paragraph 59, and you mentioned in our discussion today that the move away from locking down entire facilities?---Yes.

PN4303

I take it that your view is that locking down entire facilities had immediate impact all round?---Yes.

PN4304

And what that has been replaced with is this concept of zoning or cohorting?---That's correct, yes.

PN4305

Is it fair to say that the implementation of zoning or cohorting, well, would you agree with the proposition that that is actually, in many ways, harder to implement than just a straight simple lockdown?---It is more difficult for management to implement it, but the benefits, you know, outweigh the work for the residents and family members, yes.

PN4306

So it's harder for management to implement?---Yes.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4307



And you accept that it's harder for staff on the ground to implement?---I don't - again, I am really not arguing, but I really think, talking to all the staff, it's actually is the opposite. It's much easier for the staff and the cleaners because they arrive at work and they will be told, 'You are working in this area today and there is no need for you to interact with the laundry, kitchen, or anything else', so they've really got an isolated area where they spend their entire day.

PN4308

I take it that it's a key objective of Buckland and of you, as CEO, to provide this homelike environment for staff and residents?---Yes.

PN4309

Sorry, for residents?---Yes.

PN4310

As a general proposition, would you accept that implementing IPC measures, PPE, zoning, lockdowns, those things can be antithetical to a homelike environment?---I don't understand the words that you just used, and I apologise, but - - -

PN4311

No, no, I'm sorry. Those matters are inconsistent with the existence of a homelike environment?---Yes, they are, yes.

PN4312

I take it that you would expect staff implementing those IPC measures, again PPE, zoning, other hygiene control measures, you would expect them to do so in a way that minimised the disruption of the homelike environment?---That's right.

PN4313

And you would expect staff to be drawing upon skills and techniques to do that?--  
-Well, it is common infection control practices, certainly, yes.

PN4314

What I am putting to you is that you expect more than just a robotic application of IPC requirements, don't you?---If I can clarify that. So, first of all, I think that's a given. Whatever I tell you is subjective and only applicable to our facility, but if you refer back, we have two IPC leads, for example, we are not required to have two. The reason why we have two is so that there is no interruption for any of the other staff, so we've got twice the work volume, basically, or- two fulltime staff that then would carry everything out. It's not just about - it's not disrupting the residents. Care staff are really at the frontline of everything, so we don't want their day to be disrupted as well, so we carry on and providing them with supply all around, so that they just can go about their day as normal, as normal as possible.

PN4315

And you also want to minimise the disruption of COVID-19 on the lives of residents?---Yes.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4316

So to the extent that staff might be wearing PPE, you would expect staff to be explaining why that's the case to residents?---Yes, absolutely, yes.

PN4317

And you would expect that ongoing communication to be occurring at every level with the IPC procedures?---That is correct.

PN4318

At 54, you describe - sorry, I withdraw that. Yes, you say at 54:

PN4319

*The increased levels and frequency of both information and training in relation to COVID-19 was a learning curve for all staff at Buckland.*

PN4320

I presume that, not only has it been a learning curve, but it's been a steep learning curve?---Yes, yes.

PN4321

And lessons have been learnt along that learning curve?---Yes.

PN4322

Lessons both by Buckland management?---Yes.

PN4323

And individual staff members?---Yes.

PN4324

Would you accept that, as a consequence of those, Buckland is now in a better position to respond to a COVID outbreak, if one were to occur?---Yes, we are, yes.

PN4325

And also in a much better position to prevent a COVID outbreak?---Yes.

PN4326

That is because of better protocols?---Yes.

PN4327

Better skills?---Yes.

PN4328

Better staff skills?---Yes, it is, yes.

PN4329

And better staff training?---Yes.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4330

I take it that what flows from that is that Buckland is also in a better position to prevent an influenza outbreak?---Yes.

PN4331

Or gastro?---That is correct, yes.

PN4332

To the extent that staff have acquired additional skills, I take it that, in your role as CEO, you would be very keen to maintain those skills?---Yes, that's correct.

PN4333

And to continue to cultivate new skills in the area?---Yes, well, if there's evidence-based new skills available, then we would love to implement it, yes.

PN4334

You accept that COVID outbreaks are still happening?---Yes, we recently had one again, yes.

PN4335

You did?---Yes.

PN4336

When it occurred, the - I'll call it the outbreak management plan, although it's slightly more complicated than that - that was implemented?---Yes, yes.

PN4337

It was implemented effectively?---Yes.

PN4338

That involved action taken by all levels of staff?---By all levels of staff.

PN4339

Management - sorry, if you could say 'Yes' for the transcript, if you agree with the proposition. So it involved steps by management?---Yes.

PN4340

IPC leads?---Yes, absolutely.

PN4341

Registered nurses across the facility?---Yes.

PN4342

Direct carers, AINs and PCWs?---Yes.

PN4343

In fact, all staff?---Yes.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4344

All right, thank you. Would you accept as well that there is an expectation from families that Buckland will maintain the higher standards of IPC that currently

exist?---They are divided about how to proceed, but, yes, some really - some want us to go all the way. We've got some that would like us to lock up the place indefinitely to protect Mum and Dad, and there's others that just believe that's nonsense, I suppose, it's just society, you know, different opinions, so, hard to manage.

PN4345

You address the issue of staffing shortage from paragraph 61 of your statement, and you there identify that Buckland is experiencing a staffing shortage with respect to permanent employees. I understand that, in order to meet that, you are using large amounts of agency staff; that's correct?---Yes, yes.

PN4346

You say, despite that, Buckland has managed to meet and exceed its care minute targets?---That is correct.

PN4347

And I presume that, as a large facility, even before the RN 24/7 requirements were introduced, there was always a registered nurse on site at Buckland?---That is correct.

PN4348

So is it the case that the RN 24/7 requirement really has no impact upon your operation?---That is correct, it has no impact on us.

PN4349

Similarly, given the care minutes that have currently been provided, the changes to minimum care minutes will make little difference?---Sorry, can you rephrase that?

PN4350

Yes, no, of course, I'm sorry, that wasn't properly put. You are aware of the increased minimum care minute requirements, or introduced minimum care minute requirements?---Yes.

PN4351

And I understand from your evidence that you are meeting those already, such that the requirement itself will have little impact upon your facility?---Well, we adjusted it at the time when it was implemented and we have now, for four quarters, consistently actually exceeded our requirements.

PN4352

Your statement was made in October and, so when you say there that Buckland is experiencing staffing shortages with respect to permanent employees, that is continuing as at 8 December?---The situation has improved, but we are still engaging agency staff, yes.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR MCKENNA

PN4353

So you applied the 15 per cent increase for direct care staff on 30 June?---Sorry, can you - - -

PN4354

Yes, I'm sorry. As at 30 June, did Buckland grant a 15 per cent increase to the pay of direct care staff?---Yes, whatever was the legal requirement to be implemented, I think we did, and beyond that, yes.

PN4355

Notwithstanding that, the staffing shortages continue?---The staffing shortages, well, yes, but we've seen a shift, certainly, but I don't want to say that it's actually related to the increase. It could be a number of factors that happened, but it has slowed down.

PN4356

JUSTICE HATCHER: Mr Brockhaus, in terms of the categories of employees set out in paragraph 6 of your statement, can you identify in which categories the staffing shortages are more or less acute?---So primarily - and again this only applies to Buckland.

PN4357

Yes?---I know that it's different in the sector, but, for us, it's primarily (a), the assistant in nursing or personal care worker, and the general support officers.

PN4358

All right?---That is the most difficult to source. Yes.

PN4359

MR WARD: I'm so sorry, Mr Brockhaus, I, through my own fault, missed that. Would you mind, just for my benefit, repeating - I'm sorry?---Yes, that's fine. So I'm - the most difficulty we experiencing in recruitment or obtaining to staff numbers that we require is, (a), assistant in nursing or personal care workers and, (f), general support officers.

PN4360

JUSTICE HATCHER: While we are on that paragraph, Mr Brockhaus, you said a little earlier that you have currently had to reintroduce screening measures?---Yes.

PN4361

Can I just confirm that that applies to all the employees in those categories?---That is correct, every employee, yes.

PN4362

Yes, thank you.

PN4363

MR WARD: Thank you, your Honour.

PN4364

Mr Brockhaus, if you stay there, a representative of the HSU will have some questions for you.

**CROSS-EXAMINATION BY MR GIBIAN**

**[10.45 AM]**

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR GIBIAN

PN4365

Thank you, Mr Brockhaus. I think there were two matters I wanted to raise with you. Right at the start of the cross-examination today, and I think you just discussed this briefly in your evidence on a previous occasion as well, you indicated that Buckland operates both the single residential facility and provides home care services as well?---That is correct, yes.

PN4366

But they both operate out of the same physical premises?---It's the same lot number, but there is some distance. We operate on 124 acres, so it's home care.

PN4367

So what facilities at that location do you have that are dedicated to the home care service?---So, primarily, the offices and the parking spaces and there's a separate office for employees, yes.

PN4368

And you, as the CEO, are responsible for both aspects of the services?-----Yes.

PN4369

I think the President just directed your attention to paragraph 6, where you list the categories of staff, and particularly subparagraph (a) where you refer to the assistants for nursing, personal carers and home care workers which is the bulk of the workforce, as I understand it?---Yes, that's correct.

PN4370

On the following page, from paragraph 8, you describe training and induction processes. I don't need to go directly to all of them, but that evidence is referable to both the staff in the residential facility and those performing home care work?--  
-That is correct, yes.

PN4371

So far as the personal care workers in the residential facility and the home care workers doing the - sorry, I will go back a step. The home care work is - I think I have a recollection - in part, or maybe in substantial part, providing services to people in a retirement village; is that right?---It has changed since we last spoke, so it really is now in the community as well, yes.

PN4372

All right. So when you started the home care service, it was primarily intended to be or primarily directed at persons who were living in a retirement village operated by Buckland?---Yes, that's correct.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR GIBIAN

PN4373

That has changed in the last year or two; is that what you are saying?---The home care service has grown by a hundred per cent over that period. If I may - so we started it up because we wanted to support our existing residents. It was never seen as a stream, as a revenue stream and it was really just support, but the uptake has been so large and people inquired, and really, so we, reluctantly, said, yes, we start servicing people outside of Buckland, too.

PN4374

What proportion of your clients are now outside of Buckland's original - - ?---  
Fifty/fifty, probably, yes.

PN4375

And how many workers do you have doing the home care work?---I would - I  
have to guess right now. I really don't have the number, but I would think at least  
10 to 12 employees.

PN4376

Is there any overlap, that is, do some people do work in the residential facility and  
do home care work?---Some staff do. Both of them receive the same training,  
irrespective. Some staff do, when they have, you know, a gap in their services,  
but we don't want to force the staff to actually go and work there because it is  
completely different, in a way.

PN4377

Is it something you would like to achieve, in the sense that you talk later in your  
statement, and you just gave some evidence earlier in relation to staffing shortages  
particularly affecting the personal care worker category?---Yes.

PN4378

Is it something you would like to encourage staff to be involved in, in the sense  
that it would permit a greater flexibility in meeting staffing needs?---Yes. I mean  
we are a three-tier service, which refers to, you know, we are providing care on all  
levels, you know, from very little, or none, if you don't need it. We want a  
holistic approach, yes, of course.

PN4379

I understand. The second matter I just wanted to ask you to clarify, if you go  
forward in your statement to paragraph 61 on page 10 of the statement itself, there  
is a heading 'Staffing Shortages' and you refer there to the need that's been  
experienced to engage agency workers. I assume, from the evidence that you  
gave in answer to a question that the President asked, that that is primarily in the  
personal care worker category?---Yes, that is correct.

PN4380

At paragraph 66, you say that, in most cases, agency workers are paid higher  
rates; do you see that?---Yes.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR GIBIAN

PN4381

I just want to ask whether that was just a reference to the fact that Buckland has to  
pay more because the agency - you have to pay whatever the agency charges, and  
obviously it includes an administration or fee, or an additional fee that the agency  
charges, or is it your understanding that the individual worker receives a higher  
rate when they are working in the agency as opposed to what you pay directly?---  
Yes, I believe what I did is make an objective statement. So what happens very  
frequently is, if we encounter good agency staff, we obviously try to, you know,  
get them on board with us and tell and explain the benefits, and, in that, they tell

us, you know, what - you always have the discussion about money, so they always tell us, yes, they receive a higher rate, but they get less securities, of course, often employed on a casual basis, but earning double what we could pay our employees, yes.

PN4382

I understand?---Yes.

PN4383

Obviously, I infer from what you have said in your statement that the engagement of agency staff from your perspective, not only on the basis of cost but also on the basis of the care or work able to be performed, is not an ideal scenario?---No, it's absolutely not, no. It's the quality of those employees and, again, I can't say everybody, you know, but the quality often is not, you know, so good, and also they are not familiar with our mission and values and everything else, so, yes.

PN4384

So there are issues, or your perception is there are issues with both the quality of the staff in terms of their skills and training that you obtain through an agency?---Yes.

PN4385

And I took the second part of your answer to be, whatever the quality of the staff - so even if you are lucky enough to source what you perceive to be good quality staff through an agency, they are necessarily not familiar with the particular policies and procedures and practices within Buckland?---That is correct, yes.

PN4386

And, necessarily, are not familiar with the residents, which is obviously an important part, as you have described otherwise in your statement, of the work of all staff in being able to provide a person-centred care to the residents?---That's correct.

PN4387

The consequence of that is, to the extent that, particularly in the personal care worker category you are relying upon, or need to rely upon, agency staff, there is a burden which then falls upon the other staff that are rostered at the same time to assist in guiding and instructing the agency staff in terms of the Buckland's own procedures and policies and the residents and their needs and references?---Yes. Well, if I may be frank, there's a requirement, as we established, that we need to maintain the minimum level of direct care minutes. We engage with those people so we are compliant and, in most cases, I actually believe, and so do all the staff, they will be better off just working by themselves in a group that they are familiar with, but it is what it is.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR GIBIAN

PN4388

I understand. But you agreed with the proposition I suggested, that is a burden falls upon the other staff to guide, mentor, educate the agency staff in the particular work at Buckland and the processes and procedures?---I wouldn't be



comfortable calling it a burden because, at the end of the day, they are having an extra pair of hands that makes life easier, so, no, I wouldn't agree with that.

PN4389

Sorry, I didn't mean an overall burden, necessarily, but that there is an additional role that the existing staff need to perform in guiding or instructing the agency staff in the work at Buckland?---I think it depends - - -

PN4390

Which wouldn't exist if you had the full complement of directly employed staff?--  
-That is true, yes. In that case, it wouldn't exist, yes. It's a change, it's a temporary change for employees, yes.

PN4391

All right. Thank you, there's no further questions.

PN4392

VICE PRESIDENT ASBURY: Mr Brockhaus, can I just ask, with the enrolled nurses, what do you employ them - what do they do, what are their duties?---  
Again, only subjectively what we are doing, so prior - before the care minutes came in, and I have to quickly say that's all - the direct care minutes actually don't see a place for enrolled nurses, which, if I may say, that is quite sad because they have a vital role. In our case, we are engaging them because they are a little bit better educated, so they act on behalf of the registered nurse or the team leader, so they are able to give medications, you know, they are able to make basic assessments or basic wound dressings, so they will be able to support the team leader to be more effective.

PN4393

Okay?---Yes.

PN4394

Do you have personal care workers administering medications? Do they have that medication competency?---Yes, some of our staff have. We encourage all of them to obtain the qualification. It's a wish. Not everybody is comfortable. I would say maybe 25 per cent of our care staff do.

PN4395

Thank you.

PN4396

JUSTICE HATCHER: You refer to team leaders. Are they registered nurses, are they?---Yes. Yes.

PN4397

Sorry, I missed part of that answer. What did you say was sad?---Really that wasn't the question and I shouldn't have brought it up but - - -

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR GIBIAN

PN4398

No, no, I'm interested?--- - - - enrolled nurses are listed - the way that it's working at the moment, there were some direct care minutes and enrolled nurses are not recognised. So they are higher qualified, but they only count towards the AIN direct care minutes given. And when, really, there should be a place for them. So there's a lot of enrolled nurses on the market at the moment because a lot of operators have let go of them, so, yes, that's the sad part, I suppose.

PN4399

All right.

PN4400

DEPUTY PRESIDENT O'NEILL: Mr Brockhaus, can I just clarify your evidence a minute ago about whether PCWs administer medication at Buckland. I think, in your first statement, you made the point that that's a task that you have the enrolled nurses do over the PCWs?---Yes.

PN4401

Has that changed?---Well, so, as I said, we are encouraging always the staff, especially long-term staff that have been with us that are direct care workers, to actually obtain the qualification. It's a long, tedious process, you know, over a couple of weeks, but, once they have passed it, yes, we are quite comfortable for them to administer that medication.

PN4402

Okay?---Yes.

PN4403

And when you say 'that qualification', are you talking about the - I forget the name of it - but the administering medication competency?---Yes. --Competency, yes, that's correct, yes.

PN4404

Right. And could you have a look at paragraph 34 of your statement?---Certainly, your Honour. Yes.

PN4405

And you are talking about GSOs?---Yes.

PN4406

In the last sentence, you say:

PN4407

*They lack the foundational training that a care worker is expected to hold.*

PN4408

?---That is correct.

\*\*\* JOHANNES HEINRICH BROCKHAUS

XXN MR GIBIAN

PN4409

Can you just expand on what you mean by 'foundational training'?---So in the context of what we call a GSO, so you know, the cleaner or catering or laundry

person, so we really - there is no specified training for any of these in these categories, so anybody could really come and then we do all the job training for a week and then you understand how to, you know, plate up or do the laundry, but, of course, care staff, we only employ minimum Certificate III, so those staff have had at least one year of training, including on-site training at some point in some facility. So really there is a knowledge base fundamentally, you know, which is just higher than what the cleaner would simply not understand. So in recognising in his mobility issues, or whatever it may be.

PN4410

All right. Thank you?---Thank you.

PN4411

VICE PRESIDENT ASBURY: And sorry, Mr Brockhaus, did you say that you have the enrolled nurses doing some supervisory work?---The enrolled nurses wouldn't do the supervisory, but they certainly would attend as delegated by the registered nurse, yes, so medication administration, non-complex wound dressings, yes, observations taken.

PN4412

Okay, thanks.

PN4413

DR RISSE: I have a question too, please. You drew the distinction between your permanent staff and your agency staff and the higher rate of pay that could be traded off, so to speak, with job security. With your permanent staff, are they on continuing ongoing contracts or do you have any who are on fixed-term arrangements?---So I believe at the moment we have 214 employees and only one of them has a term contract and all other employees are either full time or permanent part time unlimited contracts.

PN4414

Thank you.

PN4415

JUSTICE HATCHER: Are there any questions arising out of that? No. Mr Ward?

PN4416

MR WARD: Thank you, your Honour.

**RE-EXAMINATION BY MR WARD**

**[10.58 AM]**

PN4417

Mr Brockhaus, do you recall Mr McKenna, when he was taking you to the Buckland infection control plan, I think at the end of his questions, he was asking you about I think what he described as COVID learnings and asking you about learnings related to prevention of or management of outbreaks, and one of the things he put to you was he said, 'You agree that there are better staff skills?' and you said 'Yes' to that. Do you recall that evidence?---I do.

\*\*\*

JOHANNES HEINRICH BROCKHAUS

RXN MR WARD

PN4418

Can you tell me which staff were you thinking about and which skills were you thinking about when you said 'Yes'?---Yes, sorry for not qualifying earlier. So the IPC leads, as I noted before, something that didn't exist before, so training received through government grant funding. You know, they are now really specialists in their area, yes.

PN4419

Is that what you were thinking about when you said 'Yes'?---Yes.

PN4420

No further questions, your Honour.

PN4421

JUSTICE HATCHER: Thank you for your evidence, Mr Brockhaus, you are excused and you are free to leave?---Thank you, your Honour.

**<THE WITNESS WITHDREW**

**[10.59 AM]**

PN4422

JUSTICE HATCHER: All right, are we going to wait until 11.15 for the next witness, Mr Ward?

PN4423

MR WARD: We have got him here now. Could we just take a - I just need a two minute break, if we could.

PN4424

JUSTICE HATCHER: All right. We will adjourn until 11.15.

PN4425

MR WARD: If the Commission pleases.

**SHORT ADJOURNMENT**

**[10.59 AM]**

**RESUMED**

**[11.16 AM]**

PN4426

JUSTICE HATCHER: All right, can we swear in Mr Mamarelis, please.

PN4427

THE ASSOCIATE: Mr Mamarelis, please state your full name and address.

PN4428

MR MAMARELIS: Chris Mamarelis, (address supplied).

**<CHRIS MAMARELIS, SWORN**

**[11.17 AM]**

**EXAMINATION-IN-CHIEF BY MR WARD**

**[11.17 AM]**

\*\*\* CHRIS MAMARELIS

XN MR WARD

PN4429

Mr Mamarelis, can you restate your name and address for the record?---  
Sure. Chris Mamarelis, (address supplied).

PN4430

You have prepared a statement for these proceedings?---Yes.

PN4431

Do you have a copy in front of you?---Yes.

PN4432

Am I correct that that statement is of 94 paragraphs, including four annexures, totalling 38 pages in all?---Yes.

PN4433

For the benefit of the Bench, it's in the digital court book at pages 2913 to 2950.

PN4434

Mr Mamarelis, is that statement true and correct to the best of your knowledge and belief?---Yes.

PN4435

I seek to tender that.

PN4436

JUSTICE HATCHER: The witness statement of Chris Mamarelis dated 1 November 2023 will be marked exhibit JE22.

**EXHIBIT #JE22 WITNESS STATEMENT OF CHRIS MAMARELIS  
DATED 01/11/2023**

PN4437

Mr Mamarelis, you can stay there and some of the gentlemen acting for the unions will want to ask you some questions.

PN4438

MR GIBIAN: Thank you.

PN4439

JUSTICE HATCHER: Mr Gibian.

**CROSS-EXAMINATION BY MR GIBIAN**

**[11.18 AM]**

PN4440

Mr Mamarelis, my name's Mark Gibian, I appear for the HSU in these proceedings. Can I just first of all - just in relation to Whiddon's operations, you describe how you have both residential aged care retirement village type facilities and provide what you call community care services. I take it that's home care services?---Correct.

\*\*\* CHRIS MAMARELIS

XXN MR GIBIAN

PN4441

To aged persons?---Correct.

PN4442

Under home care packages or do you do the Commonwealth Home Support programs?---We do both.

PN4443

Both?---Yes.

PN4444

Your responsibility as the CEO cover all of those three elements?---That's correct.

PN4445

I looked up on your website - I think the home care services are listed as operating from the same address as the residential facilities; is that right?---That's correct.

PN4446

So the home care workers, obviously they go out into the community to do the bulk of their work, but to the extent they have a base, it's at one of the residential facilities?---With the exception of a couple of locations that have standalone offices, but the majority are co-located.

PN4447

I understand. If you just go through your statement to paragraph 66 - this is for the purposes of addressing infection control - you set out at paragraph 66 a hierarchy of positions. I just want to ask you, in relation to the – so below you there is also a chief operating officer and then there are general managers and regional managers, which are referred to at level (c); correct?---Yes.

PN4448

They are responsible for both the home care and residential care and residential facilities in whatever general areas they are responsible for?---The general manager group is broken between residential aged care and home and community care, so there are dedicated general managers for each division, if you like.

PN4449

I understand. Where there is a colocation, are there different administrative staff responsible for home care or involved in the home care service and the residential care service or do they overlap?---They are separate.

PN4450

If you go back to page 3 in your statement at paragraph 16, there you indicate that there are something like 2800 employees of Whiddon, and you have separately referred to AINs and the home care employees. Do you have any overlap, that is, do you have some who are doing both work within a residential facility and part of the home care services?---Where qualifications allow, there is some overlap.

PN4451

Is that something that Whiddon would like to encourage generally to allow flexibility in terms of deployment of its staff?---Yes.

\*\*\* CHRIS MAMARELIS

XXN MR GIBIAN

PN4452

Could I then just ask you some questions in relation to what you say about training. You deal with that from paragraph 22 of your statement. There you indicate that there's consistent training across all residential aged care facilities ensuring that all staff receive training that is consistent and in line with Whiddon's standards. Is that also the case so far as the home care services are concerned?--- That's correct.

PN4453

Without trying to break it down, is the type of training that's referred to from paragraph 22 onwards, is that generally applicable to home care and to residential care?--- Yes, it is.

PN4454

As I understand it, generally speaking, there is common mandatory training for all classes of employees, that is, whether they be direct care workers or those that are involved in cleaning, laundry, administration and the like?---That's correct.

PN4455

I think there are some distinctions that you refer to. For example, at paragraph 28, there's a difference in the manual handling, that is, the direct care workers have an additional element of dealing with the movement of residents?---That's correct.

PN4456

Over the page at paragraph 30, you refer to infection control training. Again, that's training undertaken by all categories of staff?---Yes, that's right. There may be more intensive training for some groups of employees as well.

PN4457

Yes, that's what I was going to ask you about. Is there additional specific training for cleaning and laundry and catering staff particularly on infection control?--- There are variations, yes.

PN4458

In that respect, can I ask you to turn to the first annexure to your statement CM1 to make sure I've just understood what it says correctly. It's page number 19 within the statement. I think within the court book it should be 12953. That's a document headed 'Whiddon Training Matrix'. The second line in the table that appears reads, 'All employees need to complete the following' and then there's a list which runs down to fire safety and emergency evacuation; do you see that?--- Yes.

PN4459

Then there's a shaded heading which reads, 'Additional training requirements based on role'; do you see that?---Yes.

PN4460

Then there's a reference to business unit, being residential care, selected role AIN and questions asked about NDIS residents; do you see that?---Yes.

\*\*\* CHRIS MAMARELIS

XXN MR GIBIAN

PN4461

Then there's a list of module names below that. I'm just wondering how we read that. Are those relevant to different particular roles or - - -?---So, to the best of my knowledge, where it says AIN, which is obviously the role, it's a pop down and you can select from different roles.

PN4462

Okay?---And when that role changes, the education changes to meet - it's customised for the role. That's to the best of my knowledge.

PN4463

That is, there will be a different list if you put in a different category?---Correct.

PN4464

So this is included by way of example of what you understand the dropdown is for an AIN?---Exactly.

PN4465

There may be some of the same training, but maybe some different if you put in - - -?---?---Hospitality.

PN4466

A catering worker or whatever?---Exactly.

PN4467

And you just haven't included that particular list?---That's right.

PN4468

I understand. Because some of them seem obviously relevant to other classes of - to food handling, et cetera?Yes.

PN4469

Are obviously relevant to other classes of employees?---Exactly.

PN4470

I understand. If I could then get you to turn back to the text of your statement starting at paragraph 45. Before paragraph 45, there's a heading 'Responding to Resident Preferences' and you then describe how all employees are intended to work in a manner which accommodates and responds to the preferences of residents in terms of both direct care and generally their experience in the facility. I take it that that approach and the various measures that you address from paragraph 45 and onwards are intended to address and comply with the requirements of the Aged Care Quality and Safety Standards?---Yes.

\*\*\* CHRIS MAMARELIS

XXN MR GIBIAN

PN4471

Can I just in that respect provide you with an extract from the Aged Care Quality and Safety Commission guidance. Just to be clear, this is a document that was otherwise in evidence earlier in the proceedings. It's an extract from it only because it's a significantly large document. You will see it's, on the first, headed - has 'Australian Government Aged Care Quality and Safety Commission' title at



the top and it is headed 'Guidance and Resources for Providers to the Support Aged Care Quality Standards'. Is this a document you are familiar with?---I'm familiar with the contents of the document.

PN4472

You will see in the third page of the Contents there's a list of the eight Aged Care Quality Standards. I have provided you just with the text dealing with Standard 1, which deals with consumer choice, dignity and choice, just so you are clear what you've got. And that standard is - I think there should be page numbers in the bottom in the left or righthand corner. Page 6 lists the Standard 1 headed 'Consumer Dignity and Choice' and the requirements in the righthand column on page 6 include, at 1(3)(a):

PN4473

*Each consumer is treated with dignity and respect with their identity, culture...*

PN4474

*(b) Care and services are culturally safe.*

PN4475

*(c) Each consumer is supported to exercise choice and independence...*

PN4476

including making their own decisions about care, interactions and the like.

PN4477

If you go forward then to page 19 within that document, there is an indication of the - or examples are provided of actions and evidence that are able to be provided to satisfy that standard, and particularly in the lefthand column on page 19, halfway down, there's a heading 'Workforce and others'. Do you see that?---Yes.

PN4478

It indicates that the workforce is expected to be able to describe how they achieve the level of skills and knowledge that they need to support consumers to exercise choice and to give examples of how they help consumers to make day to day choices and to access support they need to communicate decisions. I am right in understanding that those are obligations directed at all categories of staff within a residential aged care facility?---That's correct.

PN4479

And what you've described, or are endeavouring to describe, from paragraph 45 onwards is at least part of, I infer, what Whiddon is trying to do to satisfy the requirements of these standards?---I'd say we go beyond satisfying, yes.

PN4480

You want to go further, yes?---And remembering that this was implemented, we started this journey back in 2014, before these standards came into play, so the whole relationship-based care ethos and approach, it seeks to go beyond the standards.

\*\*\* CHRIS MAMARELIS

XXN MR GIBIAN

PN4481

Yes, I understand. So it is both something you do in order to comply with the standards, but you're saying that Whiddon was in a sense a precursor or had already – was already getting this direction before it became a generally applicable standard across residential aged care?---That's correct.

PN4482

And you'd try and go further than just satisfying the minimum if that's the correct?---in line with who we are as an organisation, yes.

PN4483

And I take it you do that by ensuring that all staff are educated as to how to communicate with residents in a manner which allows them to exercise their independence and autonomy?---Yes, in terms of education, but it's also about culture and giving license to the team to do that and go over and above.

PN4484

That is staff are encouraged take time to communicate with the resident rather than being on too strict a time frame to get the cleaning done or to get the laundry done as it may be?---We'd love to see more people sitting around having a cup of tea and doing those sorts of things a lot more often. Yes.

PN4485

All right. I understand. Now, you refer at paragraph 45 to the care plan. And I think you indicate that not all staff have access to the full care plan, but to the extent that individual information is, or information about an individual is relevant to that person's work, whether it's contained in the care plan or otherwise, that that is communicated to the staff member involved?---Exactly. Yes.

PN4486

And I think you have otherwise referred to the fact that you endeavour to roster staff in a way that provides the continuity of relationships with the particular residents?---Most certainly. Just noting the disruption that COVID has had on that process, but that is the full intention of relationship-based care.

PN4487

Yes. That is you have the same cleaning staff or the same laundry staff or the same catering staff dealing with the same residents?---Yes. The whole group care staff and non-care, the whole group, the approach is to have dedicated rostering so they can become familiar and get to know the people they're caring for.

PN4488

So they can demonstrate – well, they can develop a relationship over time?---Develop a relationship which ultimately leads to better outcomes, not only for the resident but for the employee as well. And there's research with Sydney Uni that was conducted when we started this process to substantiate some of those outcomes.

\*\*\* CHRIS MAMARELIS

XXN MR GIBIAN

PN4489

What was that research?---Well, we partnered with Sydney University, I can't tell you the exact name but we partnered them so when we commenced with relationship-based care, it was an evidenced based approach, so it is available and its not been provided as evidence.

PN4490

Yes, I understand. And when you say better outcomes for staff, you mean able, rewarding interactions in the course of their work or more successful outcomes?---I think that my recollection is that it had positive impact on performance and one of the outcomes from memory was at handover, because there was more familiarisation with the residents that people were caring for. It made the handover, which is a complex and can be a stressful process, it made the handover between shifts a little easier so that was just one element. There were others, but that's the one that comes to mind.

PN4491

All right. And part of that relationship is what you described as the dignity of risk policy?---A part of it. Yes.

PN4492

Or part of that approach I should say?---Yes.

PN4493

The relationship - - ?---Yes.

PN4494

Care approach. Which is that, to respect the capacity of or the freedom of residents to make their own decisions about what they want to do with their lives, even if it involves a degree of risk?---Yes, and aspire and develop their own goals as well, beyond the realms of the care-sitting as well, yes.

PN4495

And as it's implemented in practice, an individual staff member, be it a care worker or a catering or laundry employee as the case may be, the expectation is that they will have an interaction with the resident in which a preference or choice will be communicated?---That's exactly right. There's a recent case of people having a – celebrating a wedding anniversary. They knew that they liked seafood and they put the whole seafood buffet on for them for their wedding anniversary. That comes with knowledge in the relationship.

PN4496

Yes. And the individual staff member who's engaged in that interaction will have to make an assessment about whether the choice or preference being expressed is one that may encounter risk for the resident?---Yes, a nutritional and dietary requirements obviously have to be taken into account and then beyond that, if it's out of scope, they may need to seek some additional or supporter advice.

\*\*\* CHRIS MAMARELIS

XXN MR GIBIAN

PN4497

So they make an initial assess - estimate about whether that can just be done or if there is some potential duty of care issue, then it's a matter to be discussed with well, presumably, that is, is the catering manager or the nursing staff?---Correct.

PN4498

I understand. All right. Can I just have a moment. There was one thing, can you just go to paragraph 54 of your statement. You refer there to the – what you describe as the foodies group?---Yes.

PN4499

Or foodies groups, I should say. Can you just tell me how they operate or who's involved in that process?---So the foodies groups are about choices and the choices for residents and it basically involves a group of residents coming together with a senior catering member of the catering team. At times, other members will join, optional, it's an optional thing and it's really about designing the menu, providing feedback about meal choices and obviously within the care setting, food is a really – food and dieting is a critical component. And they're well-attended. Every time I visit a home, I get feedback from residents about that as well.

PN4500

All right. I understand. Then from paragraph 56, you deal with responding to incidents. And paragraph 56, you set out the training, so that's training done by all staff including what you'd describe as non-direct care staff in paragraph 56?---Yes.

PN4501

And then you refer to at the bottom of that page 158, you describe and over the page, the established procedure. Do you see that?---Yes.

PN4502

So I take it if there's – if a resident – sorry – if a staff member counts an incident, whether it be a fall or some health incident or a – it might be an interaction between residents, they make an assessment as to what's the – the important thing to do first, that is whether you endeavour to administer first aid or to call for assistance. They'd make that assessment?---Yes.

PN4503

And then would provide immediate first aid or comfort if that's required whilst other staff members may be attending to deal with the incident?---That's correct.

PN4504

I take it that they're also required to comply with the reporting obligations in SIRS scheme?---Yes, definitely.

PN4505

So if that is the individual staff members have been trained to identify what is a reportable incident for the purposes of that scheme?---That's right. And there's an escalation process attached to that.

\*\*\* CHRIS MAMARELIS

XXN MR GIBIAN

PN4506

Yes?---Yes.

PN4507

So if they identify what a – that it is a reportable incident, they're required to escalate in a particular way?---Correct.

PN4508

And who's that to?---Eventually, it will go to the care manager. It will go to a registered nurse and progress from there.

PN4509

All right. And then there's a – an incident management process which is required to be implemented?---That's correct.

PN4510

And the individual staff member would participate in that process?---Yes. Yes. Most certainly in terms of documenting the incident and things like that.

PN4511

Required to document the report in order with your own risk management processes?---Yes.

PN4512

All right. Now, I think then, can you go forward to paragraph 78. You then deal with from paragraph 78, with staffing shortages?---M'mm.

PN4513

You say there that you particularly encounter that in the nursing positions. Is it also a problem in care worker positions as well?---Yes. Yes, it is.

PN4514

And I think you say particularly in regional areas. From paragraph 80, you refer to the engagement of agency staff?---Correct.

PN4515

And that's something that might occur on an ad hoc basis, that is if there was some temporary absence for some reason?---That's correct. Agency staff is not intended to be a planned structural process.

PN4516

Yes, that is well, perhaps if you go to paragraph 82, you say in the first sentence of that paragraph that in regional locations, you'd block or agencies block – or I should say, agency staff or periods of time, I think you say two to 12 weeks?---Correct.

\*\*\* CHRIS MAMARELIS

XXN MR GIBIAN

PN4517

So are there occasions where just because of ongoing shortages or staff that you need to have agency staff on an ongoing basis?---Yes. Locations like Moree and

Wee Waa and those you know, regional locations, it can take months to hire and recruit a permanent replacement. So you have a good idea about your needs.

PN4518

All right. I understand. So that is agency staff are both sought to ad hoc coverage but on occasions, at least, particularly in regional areas might be ongoing for a period of time?---Correct.

PN4519

All right. So far as the agency staff are concerned, I take it it's not considered an ideal solution to have agency staff in the facilities?---Not at all.

PN4520

And I take it that's both because there's an initial cost to the organisation but also because they are the staff which are – who are familiar with Whiddon's own processes and procedures?---Cost procedures and also the whole continuum of care is totally disrupted.

PN4521

That is the agency staff aren't within the system which has been set up to develop relationship-based care and don't have the familiarity with the residents, their needs and their preferences?---That's correct.

PN4522

Do you have an induction process for agency staff when they come to a particular facility?---Yes, we do.

PN4523

And who's involved in that?---The local team would be involved in that induction. There is some centralisation in terms of our central system, I think they need to log into and use as well, from memory.

PN4524

All right. I take it then that also when you have an agency staff member there will be an additional burden on the existing staff in terms of guiding and instructing the agency staff as to Whiddon's own processes, but also as you have pointed out the needs and preferences of the residents?---Yes, that's correct.

PN4525

And is that something that's likely to fall on the more experienced - - -?---Correct.

PN4526

- - - fall more regularly on the more experienced staff?---Yes, it would be. Yes.

PN4527

In that respect, you also earlier on, refer to the provision of on the job training and the buddy system?---Yes.

\*\*\* CHRIS MAMARELIS

XXN MR GIBIAN

PN4528

That's obviously for new direct hire staff that have been engaged?---Yes, so I think the buddy system, and there's two different references to it from memory. In terms of new employees coming on, you know, it's a buddy approach to learn the ropes, so to speak. And there's a buddy system from relationship-based care perspective where we buddy certain employees with residents so they get to know them as well.

PN4529

All right. Yes. All right. I understand. So I think I intended to refer to the first type. That is the bringing on of new staff?---Yes.

PN4530

In that respect, that is the new staff member works with another staff member on a dedicated basis for a period of time?---Correct.

PN4531

What is that period of time?---Look, to the best of my knowledge, it's weeks and if you have someone who's more experienced in operational facets of aged care, it may even be a reduced period of time, just becoming familiar with the local nuances of the home.

PN4532

That is if the new staff member already has a lot of experience it may be a shorter period of time?---Yes.

PN4533

All right. And in terms of the buddy, the existing staff member who undertakes that role, again, is that something that you'd try and rely upon your more experienced and skilled staff to undertake that function?---That's correct. Yes.

PN4534

Is that also the case with on the job training?---Yes. It would be.

PN4535

All right. And sorry, the buddy system with the resident that you also refer to. Can you describe how that works?---So in terms of relationship-based care, where there's dedicated rostering, there would also be people selected to get to know that resident even more closely. And it could be a care – it could be a care staff, it could be another employee and that's, you know, we refer to the All About Me document and it's all about getting to know them, so we try to even drill down further to have individual connections as well.

PN4536

So in addition to just having common rostering within an area of this facility, there's a particular staff member who's allocated to particular residents to have more detailed interactions with them?---Yes.

\*\*\* CHRIS MAMARELIS

XXN MR GIBIAN

PN4537

And to endeavour to learn the information about their life, their preferences, et cetera?---And then help the Organisation Act to support what those preferences will be.

PN4538

And record those and communicate them to other staff who made interactions with those residents?---Yes.

PN4539

So that they can also improve the relationship, basically?---That's right.

PN4540

All right. I understand. And the staff members that are allocated, that I think you said could be the personal care staff or it could be other staff?---That's right. Yes.

PN4541

So it could be cleaning or laundry or catering staff?---To the best of my knowledge yes, and particularly in some of our smaller regional homes, where, you know, you don't have the luxury of choice, it gets even further.

PN4542

Yes, I understand. All right. Finally, right at the end of your statement, there's – on the final – sorry, page 17, from paragraph 88, you referred to funding. And right at the bottom of that page at paragraph 94, you say that you – while you appreciate the work value process is complicated, you support a significant of material funded increase to the rates for team members across – and those across the sector you work in. These critical roles in particular are a positive outcome for non-caring employees will assist in unifying the team?---Mm-hm.

PN4543

What did you mean by that last part?---Essentially, the – and I speak to a lot of our team members across the group. The process – so the first thing is that your rates of pay are low. And we're very reliant on Government Funding to support that, we're a not-for-profit. We don't have to worry about our shareholders. So rewarding and recognising their work are the true value is extremely important. The fact that we have had a – again, appreciating the complications involved, a pause of about six months between the decision for care workers and non-care, it's been very damaging based on my experiences. And when you talk to non-care employees and you talk to even the care employees, they talk about the division, the tension and you know, it's one team. They all operate as one team. I have spoken about the continuity of care and how important that is. So there are a lot of people waiting there for this decision and in the interim, it has a – it fragments the team and they work closely and care for each other. So that's what I have – the message I was trying to convey in that statement.

PN4544

I understand. Thank you, Mr Mamarelis?---Thanks.

\*\*\* CHRIS MAMARELIS

XXN MR GIBIAN

PN4545

DEPUTY PRESIDENT O'NEILL: Mr McKenna?



PN4546

MR MCKENNA: Thank you, Your Honour.

**CROSS-EXAMINATION BY MR MCKENNA**

**[11.48 AM]**

PN4547

MR MCKENNA: Mr Mamarelis, my name is Jim McKenna, I appear on behalf of the ANMF. You still have your statement in front of you?---Yes.

PN4548

Could I ask you to turn up page 3, paragraph 16 where you refer to staff, do you have that. You say 'At Whiddon we employ around 2800 people. We employ in the following roles?---Yes.

PN4549

Sorry, I will wait for you to get there?---Yes, that's correct. Yes.

PN4550

Can I ask you. The staff that you refer to there after that. That, I take it covers both the residential aged care part of your enterprise and the home care as well?---That's correct.

PN4551

And where you refer to enrolled nurses, the 70 enrolled nurses employed, do they work across home care and residential care?---Predominantly residential aged care.

PN4552

All right. But some in home care?---I couldn't – I couldn't answer that.

PN4553

Sure. And to the extent that you're aware of the work that they're doing in residential aged care, I take it they work as part of the direct care team?---Yes.

PN4554

And they will be from time to time performing work delegated to them by registered nurses?---That's correct.

PN4555

They will be performing things like wound care?---Within the scope – they will perform functions within the scope of their role, yes.

PN4556

And so they would perform well, wound care within the scope of their role?---I couldn't answer that, I am sorry.

PN4557

You're aware of their performing the administration of medication within the scope of their role?---Yes.

\*\*\* CHRIS MAMARELIS

XXN MR MCKENNA

PN4558

And performing particular observations as well?---Yes.

PN4559

And is it the case that it's considered they are performing work within the direct care team at a higher level than those with the Certificate III or Certificate IV AIN?---Yes.

PN4560

DEPUTY PRESIDENT O'NEILL: So what is their role in the direct care plan?---I guess they are providing support to the registered nurses which enables the – it frees the registered nurses because of the demands and the shortages we have with our registered nurses, so they're able to delegate functions within their scope and relieve some of that work load. That's the predominant function.

PN4561

I just want to get the numbers of them. They're relatively low compared to the AIN's and registered nurses. Is there a reason for that?---I think that one of the reasons is that there is a higher concentration in our one Queensland home that we have and I think the rules are a little bit different in Queensland, so there's a little more flexibility. So that's probably weighted a little more towards our Queensland home.

PN4562

So is there more there or less?---More.

PN4563

All right?---Yes, it's disproportionate to the rest of the group and there are EN's in other pockets, but they are not relied on and used that extensively. That's correct.

PN4564

And leaving aside the Queensland exception, do you actively seek to recruit enrolled nurses?---I think enrolled nurses play – to the best of my knowledge, play a role in managing the delivery of care with some of the restraints and the workforce challenges we have. I think that's kind of the strategy that we have with our enrolled nurses.

PN4565

And that is to deal with the shortage of registered nurses?---Yes. To support the shortages, yes. To support the shortages of registered nurses.

PN4566

Thank you.

PN4567

MR McKENNA: Thank you, Your Honour. Mr Mamarelis. Page 13 of your statement, you address a topic of immediate impact of COVID-19?---Yes.

\*\*\* CHRIS MAMARELIS

XXN MR MCKENNA

PN4568

And you identify there that the onset of COVID had a profound impact on our infection control measures and you set out a number of ways in which that occurred. And one of the things that you identify at sub-paragraph (b) is the requirement to train and appoint IPC leads at each home. And I take it that that has occurred, you have appointed and trained IPC leads for each home?---Correct.

PN4569

And they are – they're all registered nurses?---Correct.

PN4570

And they have some additional training and skills as well, in infection prevention control?---Correct.

PN4571

And they – part of their role is to ensure that the IPC protocols that Whiddon has are carried out properly by other staff?---That's correct.

PN4572

And they conduct training for other staff in that role?---Yes.

PN4573

Do they conduct both formal and informal training?---Yes.

PN4574

So they will conduct seminars on a particular topic to staff?---We would provide material that they would relay and use, yes.

PN4575

And is that beyond the infection control training that you identify at paragraph 30 as a part of the mandatory training? So paragraph 30 you talk about infection control and you set out there, the infection control mandatory training modules, page 6?---So we would provide that mandatory training to them and there would be additional training over and above that as well, yes.

PN4576

And so when you say to them that training is provided to, and I think (indistinct) if this is all staff or if this is direct care staff. Perhaps could you answer that, is this training provided to all staff?---Yes. Mandatory infection controlled training is provided to all staff.

PN4577

And so in addition to this IPC leads would be providing further infection prevention control training?---Yes.

PN4578

By way of material that you distribute to them and the sort of updates that would be coming out as the environment involved to keep them up to speed and to make sure that messaging was getting across and in addition to that, they'd be carrying out on the spot training to staff if they observed something that needed to be addressed?---Definitely.

\*\*\* CHRIS MAMARELIS

XXN MR MCKENNA

PN4579

So if PPE wasn't being worn properly, you'd expect your IPC leads to be providing training on how that could be addressed?---Definitely.

PN4580

And similarly, is it the case that you anticipate that the role of IPC leads Whiddon will continue?---I think it's generally been a positive thing. So yes, I do.

PN4581

Now, I have taken you away from it, but if I can ask you to turn to paragraph 7, page 13. You talk at paragraph (c) about a COVID steering committee being established to meet regularly as a critical response team to address, communicate and provide solutions to the organisation as they emerge and as proactively as possible. So was the COVID steering committee involved in developing further infection prevention control measures as the pandemic carried out?---The COVID steering committee would identify potential gaps and would probably then involve senior clinicians in our clinical governance committee to use their experience and skill to develop those protocols in detail.

PN4582

So where a gap was identified Whiddon would take steps to fill that gap?---Yes. Yes.

PN4583

And then provide training to the staff on the updated protocols?---Exactly.

PN4584

And part of that, I presume involved the developments of the evolution of the outbreak management plan?---Correct.

PN4585

And I presume that Whiddon now has a sophisticated outbreak management plan?---Yes.

PN4586

And that has – that is something that is a document that has evolved substantially through the COVID pandemic?---Yes.

PN4587

And I have referred to it as an outbreak management plan, but I presume the formal protocols that Whiddon has in place involve prevention as well?---Correct.

PN4588

They involve preparedness for an outbreak?---Correct.

PN4589

And following an outbreak, they would involve recovery?---Yes.

\*\*\* CHRIS MAMARELIS

XXN MR MCKENNA

PN4590

And to the extent that that – those protocols have evolved, I presume that they're here to stay?---Yes.

PN4591

Yes.

PN4592

And throughout that process, well, you say at 70(f) all staff underwent a continuous cycle of education, so you have updated guidelines as often as the situation demanded. I take it that's – that that training reflected the development of those protocols?---Yes.

PN4593

And so now I would assume Whiddon enjoys a staffing cohort that have improved training skills in infection prevention and (indistinct)?---Definitely.

PN4594

I think you perhaps in summarising the impact of a pandemic, you say at 74 that whilst the intensification of the training information in infection control protocol has now subsided, with staff making it through the learning curve that was the pandemic, you identify certain protocols remain. Just on that point, you talk about it being a learning curve. Those learnings I presume have been retained by Whiddon?---Yes.

PN4595

And those learnings have been retained by staff?---Correct.

PN4596

And as a result of those developments, I'd presume that Whiddon is now in a much better position to respond to a COVID-19 outbreak, should one occur?---Most definitely.

PN4597

And would be in a much better position to prevent an outbreak?---Correct.

PN4598

And that is in large part because the capacity of staff to implement your improved protocol?---Most definitely.

PN4599

And that's true of staff within residential aged care?---Yes.

PN4600

And also true of your staff working in home care?---Correct.

PN4601

And I anticipate then as CEO that is something that you will want to retain into the future?---Yes.

\*\*\* CHRIS MAMARELIS

XXN MR MCKENNA

PN4602

And you'd be well aware that COVID-19 outbreaks are still occurring?---Of course.

PN4603

Have any of your facilities experienced an outbreak in recent times?---Yes.

PN4604

And when that occurred, I take it that the protocols that exist within Whiddon were put into place?---Yes.

PN4605

And staff executed their requirements well?---That's correct.

PN4606

And not only is Whiddon in a better position to prevent COVID-19 outbreaks but by reason of the developments, it's also the better position to prevent influenza outbreaks?---Correct.

PN4607

Gastro outbreaks?---Correct.

PN4608

And if either of those things occurred, you'd be in a better position to deal with them?---Yes.

PN4609

And again, that is because in part, you have a more skilful staff?---Yes.

PN4610

You have been asked some questions on staffing by Mr Gibian. I will endeavour not to cover old ground, and I don't say this in a facetious way, but you give evidence about Whiddon being recognised as an innovative organisation?---Yes.

PN4611

I take it that you would bring that same innovation to address the difficulties that you are having with staffing?---Definitely.

PN4612

I take it that the 15 per cent interim wage increase has been passed on to staff?---Correct.

PN4613

Notwithstanding that, Whiddon remains in the position that you describe of having staffing shortages, especially in the roles of nurses?---Yes, and over and above that, we have made an additional appreciation payment to the non-care staff because of some of that feedback I explained earlier.

PN4614

Thank you, Mr Mamarelis?---Thanks.

\*\*\* CHRIS MAMARELIS

XXN MR MCKENNA

PN4615

JUSTICE HATCHER: Mr Ward?

PN4616

DEPUTY PRESIDENT O'NEILL: Mr Mamarelis, could you just describe the structure of the catering function across your services?---So in terms of catering, we have senior catering managers within our support services area. That breaks down to regional managers, who look after certain regions, and then, as you move into our homes, you'll have a head chef or a head cook, who has a catering team that will work underneath them.

PN4617

So the first couple of categories you described would all be management and not covered by the award? Would that be - - -?---Yes, that's correct.

PN4618

In terms of award employees, you've got a head chef, or equivalent, at each of the facilities?---That's correct. I believe that some of our - there may be a couple of regional managers that fall under the award, and I think we also have, because of some of the staff shortages, a floating catering person that goes to our regions and they would probably be covered by the award as well.

PN4619

And below the head chef at the facilities, who would come under them?---You would typically have your cooks, your kitchen hands, and then your hospitality staff generally.

PN4620

So there would be cooks? They wouldn't go straight to food service assistants or equivalent?---Depending on the size. You know, our campus at Glenfield, we look after 500 residents on that campus; our smallest home in Bourke is only 10 residents, where you have just got one person doing everything. So it will vary depending on the size of the home.

PN4621

Thank you.

PN4622

PROF BAIRD: Mr Mamarelis, I have a couple of questions about staffing as well. I note you have approximately 2800 people, a large organisation, and you have held roles across the industry as well as CEO of Whiddon?---Correct.

PN4623

So you've got a fairly good knowledge of staffing in the industry?---Yes, I'd say so, yes.

\*\*\* CHRIS MAMARELIS

XXN MR MCKENNA

PN4624

Thank you. Of your different categories of workers of the total of 2800, about what proportion are men and what proportion are women?---It's very female-centric. It's probably around the 70/75 per cent female to male.

PN4625

Where would the males be employed?---I think there's a spread of males across all categories. Anecdotally, I'd say perhaps less in the registered nurse field, but - yes.

PN4626

What about in the AIN and PCWs?---I couldn't give you a statistic based on - again, anecdotally, I'd say there would be more women in those roles.

PN4627

Okay. When you talk about staff shortages, apart from going to agency staff, do you have other ways of approaching a pool of potential labour?---Yes. To the point before about innovating in this place, there have been desperate times, so we have tried a lot of different things. We have brought in people from overseas through a number of programs. We have had to deal with really high costs, at least rental costs, in regional areas, so we have purchased homes because it was a better option for accommodation; incentives to bring people to the homes, you know, relocation costs, bonuses, sign-on bonuses, things like that. We have tried - there's a whole workforce strategy that we've implemented, and most recently we've gained access to the labour hire agreement as well because we see that overseas intake has to be an option at the current moment as well.

PN4628

Within Australia, do you target a particular group of people, like do you target females more than males, or have you tried different strategies to get more men in the sector?---The only - no, we haven't targeted a gender, we haven't done that. We did try to - we did have a strategy where we targeted an order demographic and we had limited success with that in one of the regions, so we tried going for the older workforce to bring them back. That's one thing we've done. Apart from that, it's been, you know, more generic.

PN4629

Thank you.

PN4630

JUSTICE HATCHER: Mr Ward?

PN4631

MR WARD: Thank you.

**RE-EXAMINATION BY MR WARD**

**[12.06 PM]**

PN4632

Just a few questions to take you back to if I can. Can I just, first of all, take you back to the discussion you had about the wedding. Do you remember the wedding anniversary, the 40 per cent seafood meal? One of the questions that you were asked was about the employee who decided to do that, did they take risk-based decisions, and you gave an answer, 'Unless it was out of scope.' Do you remember that answer?---Yes.

\*\*\* CHRIS MAMARELIS

RXN MR WARD



PN4633

Can you explain what you meant by 'out of scope'?---So I'll probably give you another example that's a little more out there because it's easier to use. We had a couple in our Maclean home who, for their wedding anniversary, decided they wanted to go sky diving. They were in their 80s. That required a whole risk management approach. So the leisure officer that identified that escalated it and it actually ended up with me as part of that process just because of the risk involved. An external doctor - their doctor - gave us an opinion and, after all those boxes were ticked and we were satisfied, it was their choice, they went for that sky dive and it was quite successful.

PN4634

I won't be doing that, even at this age. In terms of the food out of scope issue, is that about their understanding of dietary requirements?---Dietary requirements and the risks associated to those individuals, yes.

PN4635

Who would a food issue be escalated to?---The non-care employees would have access to some nutritional information. However, they would probably cross-check that with either their manager or one of the senior care people.

PN4636

Do you recall you were taken to paragraph 56 of your statement? You might just go back to it. I can't remember who took you to this. You were asked about the training there and then you were taken to paragraph 58, 'Subject to the nature of the incident, promptly attend', et cetera?---Yes.

PN4637

I just want to understand this first aid issue which is in there. It says there, 'Provide basic first aid.' I take it that first aid is only provided on the basis of first aid competency?---Sorry, in terms of the incident?

PN4638

If a person was providing first aid, do they have to be first aid competent to do that?---They would be. However, they would also need to respond to the incident as well. That may just be assessing and ensuring the immediate risk has been attended to before calling - - -

PN4639

Can you give an example of what you mean by that?---Well, I guess if they came across a resident who'd had a fall, for example, you know, it wouldn't make sense for them just to leave the scene; they would need to just check for a response and they would have had some basic first aid training and then call for assistance, you know, afterwards.

PN4640

That's what you meant by first aid?---Yes, yes.

\*\*\* CHRIS MAMARELIS

RXN MR WARD

PN4641

Mr McKenna took you to some questions about your infection control process and this is what he put to you. He said:

PN4642

*Do you accept that you now have a staffing cohort with improved training and skill in infection and prevention and control?*

PN4643

Do you remember that question?---Yes.

PN4644

Your answer was, 'Absolutely.' Could you just explain, when you said 'Absolutely', which staff and which skills were you thinking are improved?---I was thinking about the whole cohort. The whole cohort is the starting point. Care staff have gone through various - a lot of growth in terms of clinical development for infection control with all the different protocols as they have evolved, and non-care employees have obviously gone on that journey as well in terms of outbreak management, waste management, and all of those other issues. So the whole group have evolved as a result, and that's also the result of actual experience, not just training. All of our homes have been through numerous outbreaks, so they have, I guess if you want to call it the benefit, the benefit of that learning curve as well.

PN4645

So are you describing an awareness when you say that or - - -?---More than an awareness. It's the experience. There would be operational knowledge that's been gained, so general education, awareness, and experience as well.

PN4646

And that carries on?---Yes, yes. We're still having outbreaks today, so it's very - it's still active.

PN4647

Thank you. Very lastly, you talked at the end of your evidence about an appreciation payment. Could you just inform the Bench as to how much that was?---The maximum payment, from memory, was around \$900 per employee. Just for context, our messaging was to the team after the feedback we received, 'There's a six-month pause before a decision may be known about your pay and, in the interim, we will pay you - we are going to make this appreciation payment.' It was 900 and it was pro rata depending on hours of work and it was paid to all of those non-care employees and we said we would revisit it again in the new year, depending on when a decision was forthcoming.

PN4648

Do you have any sense in percentage terms what \$900 represents?---\$900 is probably the better part of maybe a week, a week and a few days' pay for the average part-timer or someone working there.

\*\*\* CHRIS MAMARELIS

RXN MR WARD

PN4649

Is my maths right in saying that's about 5 per cent?---In terms of an annual percentage, I'm not going to try to work that one out, but it was well received. The feedback was quite positive.

PN4650

Thank you very much.

PN4651

JUSTICE HATCHER: Thank you for your evidence, Mr Mamarelis, you are excused and you are free to go?---Thank you.

**<THE WITNESS WITHDREW**

**[12.12 PM]**

PN4652

JUSTICE HATCHER: All right, is that all the witnesses we have today?

PN4653

MR WARD: Yes, your Honour.

PN4654

JUSTICE HATCHER: All right, if there's nothing further, we will adjourn now and resume at 10 am next Tuesday morning.

**ADJOURNED UNTIL TUESDAY, 12 DECEMBER 2023**

**[12.12 PM]**

\*\*\* CHRIS MAMARELIS

RXN MR WARD

**LIST OF WITNESSES, EXHIBITS AND MFIs**

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