

ROYAL COMMISSION INTO AGED CARE QUALITY AND SAFETY
MUDGE HEARING
PIONEER HOUSE CASE STUDY
SUBMISSIONS OF COUNSEL ASSISTING

INTRODUCTION

1. During the hearing in Mudgee, on 4 November 2019, the Royal Commission received evidence about the circumstances of a local residential aged care service (Pioneer House Aged Care) in the period January 2018 - September 2019. Counsel Assisting presented this case study in order to test a series of propositions relating to challenges faced by not-for-profit, rural community-based standalone aged care providers.
2. The propositions raised during the case study were to the following effect:
 - (a) First, a proposition to the effect that the Australian Government should ensure targeted advisory and practical assistance is available in certain circumstances for standalone, not-for-profit aged care service providers in rural settings to improve their business expertise, governance and managerial capacity, and to assist the providers with identifying potential problems and intervening before they become a risk to care recipients or a threat to the viability of the service. One of the criteria on which such assistance would be granted would be a local shortage of equivalent aged care services.¹ The assistance should be made available at government expense.² The assistance should be custom-designed in each case to improve the capability and sustainability of the aged care service provider. (The **support program proposition**.)
 - (b) Secondly, a proposition to the effect that the Australian Government should establish mechanisms aimed at increasing the number of qualified aged care workers in rural areas experiencing workforce shortages, such as:

¹ It could be available via application, or otherwise where there is an identified need (such as a sanction process). It would be necessary to formulate additional limiting criteria such as: the estimated cost of funding the assistance, and the business model of the provider.

² The program could resemble an expansion of the current Remote Aboriginal and Torres Strait Islander Service Development Assistance Panel (SDAP) program.

- (i) a targeted scholarship program for people living in rural areas to undertake Certificates III-V in Aged Care, or to upskill from their existing certificate;
- (ii) a conditional scholarship program for relevant tertiary nursing qualifications (including nurse practitioners) where the recipient undertakes work in particular rural areas for a period in exchange for their cost of education, and some living expenses during their education, being borne by government;
- (iii) larger approved providers in rural areas could be assisted to become Registered Training Organisations to deliver accredited training and education courses,

(The **rural training program proposition**.)

- (c) Thirdly, a proposition to the effect that the Department of Health have a discretionary power to intervene to assist a care recipient, their family, and approved provider, in a rural location, where it has been established to the Secretary's satisfaction that the provider can no longer safely meet the care needs of a care recipient. This would include a power of direction where the care recipient may need to be transferred to a different facility to receive safe and appropriate care, or where specialist expertise is required to ensure that person can receive safe and appropriate care in their existing facility, and a discretion to fund the costs of such interventions.

(The **increased dementia support proposition**.)

- (d) Fourthly, a proposition that a review be conducted of the costs faced by rural aged care providers and a commensurate increase in their funding (the **rural funding proposition**).

3. We note that these propositions address issues that arose in the specific context of the present case study. In any future aged care system, it would be necessary for potential reforms of the kind addressed in this case study to be supported by complementary approaches.

4. The following documents were tendered:
- (a) the Pioneer House Tender Bundle (Exhibit 12-3), consisting of 41 tabs of documents drawn from the records of Pioneer House, and of the Department of Health and the Aged Care Quality and Safety Commission;
 - (b) a statement of nurse advisor Michelle Harcourt dated 24 October 2019 (Exhibit 12-4, WIT.0524.0001.0001);
 - (c) a statement of Pioneer House's acting CEO and Director of Nursing (**DON**) from 9 September 2019 to 14 October 2019, Robyn Daskein, dated 11 October 2019 (Exhibit 12-5, WIT.0469.0001.0001),
 - (d) a statement of a Nurse Practitioner, Catherine Brown, dated 3 October 2019 (Exhibit 12-6, WIT.0523.0001.0001);
 - (e) a statement of the Chair of the board of directors of Pioneer House, Allan Codrington, dated 11 October 2019 (Exhibit 12-7, WIT.0522.0001.0001);
 - (f) a statement of Deputy DON, Tania Sargent, dated 28 October 2019 (Exhibit 12-8, WIT.0598.0001.0001); and
 - (g) a statement of Prudence Margaret Dear dated 11 October 2019 (Exhibit 12-9, WIT.0525.0001.0001).
5. Mr Codrington, Ms Sargent and Ms Dear also gave oral evidence. Ms Harcourt was not available to give oral evidence and her statement was partly disputed by Mr Codrington, affecting the weight that can be placed on it.

RELEVANT FACTS

6. Counsel Assisting submit that the evidence in the case study generally supports each of the four propositions outlined in paragraph 2 above. Pioneer House Living Ltd (**Pioneer House**) encountered difficulties in the period January 2018 to September 2019 which may have been avoided or ameliorated if interventions of the kinds outlined in the propositions had been available.

7. Pioneer House is the approved provider of a not-for-profit residential aged care service originally established in 1964, after concerned citizens in the Mudgee area identified the need for an aged care facility in the district.³
8. After a major refurbishment in June 2007, Pioneer House’s residential aged care facility was reopened in 2008 with services available for 81 residents, divided by general and dementia care areas.⁴
9. In the relevant period of January 2018 to September 2019, the directors of Pioneer House were all volunteers.⁵ The board included a physiotherapist and an honorary solicitor.⁶
10. It is difficult to recruit and retain volunteers to act as directors of community-based not-for-profit aged care service providers in light of pressures on their financial viability.⁷
11. In Mudgee it is difficult to recruit and retain staff qualified to provide aged care, especially nurses. Staff shortages are liable to occur over the Christmas and New Year holiday period in particular.⁸ Mr Codrington explained Pioneer House’s difficulties in obtaining qualified nurses during his oral evidence:⁹

“we’ve just had a lot of difficulty getting registered nurses, enrolled nurses with particular experience in aged care with good clinical knowledge. It’s very difficult. ... [A]ny incentive to bring people to the country areas might be an advantage. We, obviously, pay to the standard, but aged care – aged care nursing is a lot more demanding, with incontinent people, people with dementia, people with very serious – and vulnerable people.”

12. During the relevant period, Pioneer House experienced difficulties filling its staff roster for the three shifts required to provide care to its residents. This problem related to filling rostered positions for both Assistants-in-Nursing (AINs) and Registered Nurses

³ Exhibit 12-7, Mudgee Hearing, Statement of Allan Codrington, 11 October 2019, WIT.0522.0001.0001 at .0002 [11].

⁴ Exhibit 12-7, Mudgee Hearing, Statement of Allan Codrington, 11 October 2019, WIT.0522.0001.0001 at .0002 [14].

⁵ Exhibit 12-7, Mudgee Hearing, Statement of Allan Codrington, 11 October 2019, WIT.0522.0001.0001 at .0002 [8].

⁶ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6365.37-46.

⁷ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6366.28-6367.7.

⁸ Transcript, Prudence Dear, Mudgee Hearing, 4 November 2019 at T6391.37-6392.2.

⁹ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6353.12-25.

- (RNs).¹⁰ Ms Sargent frequently raised concerns about staff levels and staff skills with the DON/CEO.¹¹ Mr Codrington gave evidence that the board of directors was aware of the problem of unfilled shifts¹², and Pioneer House's difficulty in filling its shifts was recognised by the board, but the board had always been given to understand that the base roster was adequately filled.¹³
13. From about January 2018, Mr Codrington spoke at length with the then CEO/DON about his view that there was a disconnect between her and the staff, and the CEO/DON said that there was no such disconnect.¹⁴
 14. In about late 2017, Pioneer House's finance manager and board of directors considered that Pioneer House was under-claiming its entitlement to the care subsidy available through ACFI, causing depressed income and poor financial results. Pioneer House decided to retain a consulting firm it had retained previously, MIRUS, to assist it to raise its ACFI levels toward industry benchmark levels.¹⁵
 15. On 29 January 2018, the finance manager reported to the board that MIRUS had been engaged from late November to assist Pioneer House to fully claim its ACFI entitlement, and that MIRUS had identified the potential to increase Pioneer House's ACFI revenue by over \$700,000 per annum, representing a \$25 per resident average increase, achievable in about 12 months.¹⁶
 16. On 30 January 2018, assessors from the Australian Aged Care Quality Agency (the **Agency**) carried out a reaccreditation audit at Pioneer House. They found that standard 1.6 (human resource management) was not met.¹⁷
 17. In about January 2018, Pioneer House increased its roster by 1 AIN on the evening shift, and in about February 2018, there was an increase of 1 AIN in each of the

¹⁰ Transcript, Tania Sargent, Mudgee Hearing, 4 November 2019 at T6372.17-22.

¹¹ Exhibit 12-8, Mudgee Hearing, Statement of Tania Sargent, 28 October 2019, WIT.0598.0001.0001 at .0008 [43] – [46].

¹² Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6338.41-6339.6.

¹³ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6338.8-9.

¹⁴ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6339.33-34.

¹⁵ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6342.1-42.

¹⁶ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 4, PAC.0002.0001.0593 at 0594.

¹⁷ Exhibit 12-7, Mudgee Hearing, Statement of Allan Codrington, 11 October 2019, WIT.0522.0001.0001 at 0010-0011 [59]-[61]; Exhibit 12-8, Mudgee Hearing, Statement of Tania Sargent, 28 October 2019, WIT.0598.0001.0001 at 0012 [68].

morning and night shifts.¹⁸ These increases were partly in response to the Agency's reaccreditation audit and partly in response to staff suggestions.¹⁹

18. At the board meeting on 26 February 2018, the DON/CEO submitted a report which referred to the accreditation audit and the finding that standard 1.6 was not met and reported that a response had been made that Pioneer House has approved an increase in the base staffing levels for the master roster of 1 additional AIN on both morning and night shift.²⁰ The DON/CEO also reported to the board of directors that surveys using a form used by the quality agency would be conducted.²¹
19. Staff surveys were conducted in March 2018 for Pioneer House, apparently by Insync Surveys Research Consulting (**Insync**) (the surveys are mentioned in a report by Insync in May 2019).²² Mr Codrington gave evidence that this was part of the board's response to the non-compliance reported by the Agency, and because Pioneer House appeared to Mr Codrington to have ongoing shifts not filled and an apparent disconnect with staff.²³
20. On 13 March 2018, the Agency decided to reaccredit Pioneer House for a truncated period of 2 rather than 3 years on the basis of non-compliance with outcomes 1.1 (continuous improvement) and 1.6 (human resource management). Pioneer House was required to submit a revised plan for continuous improvement by 28 March 2018.²⁴
21. The board of directors was aware that the accreditation of Pioneer House had been reduced from 3 to 2 years. Mr Codrington gave evidence that in hindsight, in "all probability" this should have raised greater awareness of a potential problem, but that Pioneer House's accreditation was "in pretty good condition prior to that".²⁵ Mr Codrington said that Pioneer House had met all 44 expected outcomes for the first four

¹⁸ Exhibit 12-8, Mudgee Hearing, Statement of Tania Sargent, 28 October 2019, WIT.0598.0001.0001 at 0007 [37(b)]; Transcript, Tania Sargent, Mudgee Hearing, 4 November 2019 at T6374.37-6375.1.

¹⁹ Transcript, Tania Sargent, Mudgee Hearing, 4 November 2019 at T6374.37-6375.1.

²⁰ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 5, PAC.0002.0001.0262 at 0263.

²¹ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 1, PAC.0002.0001.0176 at 0263.

²² Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 8, PAC.0001.0001.0678 at 0678.

²³ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6339.40-6340.5.

²⁴ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 6, PAC.0001.0001.0975 at 0975.

²⁵ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6339.4-12.

years of the CEO/DON's tenure, and that boards of "these types of facilities" rely heavily on their CEO/DONs to make sure that accreditation standards are met.²⁶

22. On 3 and 4 May 2018, a series of focus groups and interviews were conducted by Insync in which staff of Pioneer House identified areas for improvement in relation to the clarity of staff roles, values for actions and behaviour, staffing levels and training, communication between management and staff, and respect and recognition. A report of these matters was provided to Pioneer House in about May 2018, in which staff are reported as having said (amongst other things):

- "We are all just rushing, there is no acknowledgement that we are in this situation, everyone is under pressure – resentment, frustration, rudeness, accusing other shifts of not doing such and such",²⁷
- "Staff are so wound up, snapping at each other, told to prioritise but we already are, you come in an you're short and you know that it's going to be a terrible shift",²⁸
- "Staff get abuse from residents because they are waiting for the toilet etc. because short staffed".²⁹

23. All members of the board of directors received and read the Insync report, and were quite concerned about a lot of the comments made in it.³⁰ Insync recommended six actions, which included planning workshops to agree on actions and initiatives to deal with the issues in the report, and implementation in accordance with agreed timelines and a governance process for monitoring implementation with regular updates to be provided to staff and a re-run of the survey in six months.³¹ In response, the board put in place workshops and staff meetings, which were run by Deputy DONs.³²

²⁶ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6338.1-4.

²⁷ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 8, PAC.0001.0001.0678 at 0686.

²⁸ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 8, PAC.0001.0001.0678 at 0686.

²⁹ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 8, PAC.0001.0001.0678 at 0694.

³⁰ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6341.24-46.

³¹ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 8, PAC.0001.0001.0678 at 0678-0679.

³² Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6341.15-22.

24. By May 2018 Pioneer House was regarded as compliant again by the Agency.³³
25. On 16 July 2018, a person living with dementia, Mr UI, commenced as a respite resident at Pioneer House.³⁴ Mr UI was unsettled after his admission and had some challenging, aggressive behaviours, some of which impacted other residents.³⁵
26. On 27 August 2018, Dementia Support Australia (**DSA**) received a referral from Pioneer House about Mr UI. DSA visited Pioneer House on 30 August 2018 and gave a report, including suggested strategies for managing UI's behaviours.³⁶
27. By late 2018, it appeared from financial reports to the board of directors that the financial performance of Pioneer House was not tracking as well as MIRUS has planned.³⁷ At the board meeting on 27 August 2018, the financial manager reported that occupancy and ACFI claims were below the planned level.³⁸
28. On 1 September 2018, Pioneer House and Mr UI's wife signed a permanent residency agreement.³⁹
29. At the board meeting on 24 September 2018, the CEO/DON presented a report indicating that occupancy was below the planned level and that there was a resident (Mr UI) in the B wing (the dementia wing) who was presenting behavioural challenges.⁴⁰ At the same board meeting, the financial manager submitted a finance report which was minuted as containing an "incisive look at ongoing budgetary options / forecasts". It was also noted that there was a need "to continue to monitor Liquidity".⁴¹
30. It is submitted that the reference to monitoring liquidity was a reference to Pioneer House's liquidity ratio, a concept explained in more detail in two later financial reports,

³³ Transcript, Tania Sargent, Mudgee Hearing, 4 November 2019 at T6375.16-20.

³⁴ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 73, PAC.000.0001.0043.

³⁵ Transcript, Tania Sargent, Mudgee Hearing, 4 November 2019 at T6379.1-13.

³⁶ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab PAC.0002.0001.2482_E; Transcript, Tania Sargent, Mudgee Hearing, 4 November 2019 at T6379.14-21.

³⁷ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6342.1-9 and T6347.11-6348.17.

³⁸ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 1, PAC.0002.0001.0176 at 0205.

³⁹ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 74, PAC.9999.0001.0001.

⁴⁰ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 1, PAC.0002.0001.0176 at 0208-0209.

⁴¹ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 1, PAC.0002.0001.0176 at 0209.

the November/December 2018 financial report dated 16 January 2019,⁴² and the January 2019 financial report dated 14 February 2019.⁴³ Each of these reports includes a table titled “Pioneer House – Liquidity” setting out deposited funds in various categories of bank account and also setting out “Refundable Deposits”, and expressing a ratio of deposited funds to refundable deposits as a percentage. It is submitted that “Refundable Deposits” are the sum at the end of the relevant month of Pioneer House’s liability to repay bonds and refundable accommodation deposits, as itemised on two further pages of the report.⁴⁴

31. By 9 January 2019 the management of Pioneer House had decided to reduce staff levels in the morning and evening shifts by one AIN to save costs. Mr Codrington gave evidence that it was most likely that the board was consulted and approved this.⁴⁵
32. On 9 January 2019, an “all staff” meeting was held.⁴⁶ The finance manager and the CEO/DON spoke to staff about the financial pressures that Pioneer House was facing. Minutes of the meeting record that the CEO/DON “spoke to the inability to sustain the rosters as they are”.⁴⁷ The minutes record that staff were informed that it was proposed to make changes to the roster to: reduce one AIN on the morning and evening shift (from 9 AINs to 8), have two EENs on the morning shift (6.30 – 3pm) and “1 x B shift either 10 – 6.30pm or 11 – 5.30pm”, with only one EEN on all afternoon shifts. The minutes record that staff were told that “No-one will lose hours as we believe in our commitment to staff, however we will not be recruiting to positions that are no longer on the roster”, and that the “aim of the efficiencies will decrease the wages expenses of the facility by a forecasted \$350,000pa”.⁴⁸
33. In January 2019, Pioneer House reduced the number of AINs by one on both the morning and evening shifts, and also reduced the number of EENs by one on both the morning and evening shift. A “B stream EEN shift” was introduced, which

⁴² Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 14, PAC.0001.0001.0586 at 0597.

⁴³ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 19, PAC.0002.0001.0350 at 0361.

⁴⁴ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 14, PAC.0001.0001.0586 at 0598-0599; Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 19, PAC.0002.0001.0350 at 0362-0363; Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6348.25-6349.2.

⁴⁵ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6349.4-44.

⁴⁶ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 11, PAC.0001.0001.0028.

⁴⁷ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 11, PAC.0001.0001.0028 at 0029.

⁴⁸ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 11, PAC.0001.0001.0028 at 0029.

commenced later in the day to try to manage workflow. The “B stream” EEN shift ceased in May 2019, when the roster was changed again to three EENs on the morning shift and two EENs on the evening shift.⁴⁹

34. After the roster change in January 2019, Pioneer House’s roster of care staff provided for:
- (a) Morning shift: 2 RNs, 2 EENs and 8 AINs (plus 1 EEN from 10am to 4.30pm);
 - (b) Evening shift: 1 RN, 1 EN and 8 AINs;
 - (c) Night shift: 1 RN and 5 AINs.
35. On 16 January 2019, the finance manager submitted the financial report for November/December 2018 to the board.⁵⁰ The report referred to lower than planned occupancy (average 72), lower than planned ACFI averages and higher than planned monthly losses.⁵¹ The finance manager referred to reductions in the care roster as a “good start” in returning to profitability, but said that care hours per bed per day were still well above industry average and ACFI was below industry average.⁵² The Liquidity table in the November/December 2018 financial report specified a liquidity of 67% (and noted that minimum liquidity was 50%).⁵³
36. Also at the 16 January 2019 board meeting, the CEO/DON reported that “since the announcement of the roster efficiencies the care stream representatives have both resigned from the Focus Group process. Although they did not give the roster changes as reasons for resignation it is highly likely that this is the reasoning”.⁵⁴ The CEO/DON also reported that:

“The Board is by now well aware of the need to find efficiencies within the care stream rosters to address the concerns of wages vs income. After consideration of a number of

⁴⁹ Exhibit 12-8, Mudgee Hearing, Statement of Tania Sargent, 28 October 2019, WIT.0598.0001.0001 at 0007 [37(c)] – [37(f)]; Transcript, Tania Sargent, Mudgee Hearing, 4 November 2019 at T6376.43-6377.16.

⁵⁰ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 14, PAC.0001.0001.0586.

⁵¹ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 14, PAC.0001.0001.0586 at 0587-0589.

⁵² Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 14, PAC.0001.0001.0586 at 0589.

⁵³ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 14, PAC.0001.0001.0586 at 0597.

⁵⁴ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 15, PAC.0002.0001.0279 at 0280.

different strategies the management team have settled on a plan [that] is costed to deliver savings of approximately \$360,000 per annum.

The selected model is preferred as it provides opportunity to make these savings without impacting any current permanent staff members positions or hours. It also delivers minimal changes to roster shifts. There will be a reduction of one AIN for both evening and morning shift and an adjustment of the shift times. The changes are possible through not filling vacant hours and by way of natural attrition. The main changes to shifts will come within the EN stream and after consultation with the EN's they have all provided positive responses to the proposed shift change."⁵⁵

37. On 14 February 2019, the finance manager submitted the January 2019 finance report. It stated:

“Nursing wages are 50K below Plan for the rest of the year. This is based on the new Care rosters introduced on 1st February which had a reduction of 2 AINs and 1EN from the previous rosters.”⁵⁶

38. The report stated that Pioneer House was providing 3.37 care hours per resident per day, which was “very close” to the benchmark “mean care hours per day per resident” for not-for-profits of 3.30. The main issue identified was that ACFI remained at \$163.92 “versus a \$173.45 mean for NFPs”.⁵⁷ The Liquidity table in the January 2019 financial report specified a liquidity of 62%,⁵⁸ and stated by way of summary:

“We need to make a profit before depreciation in order to have the likelihood of positive cash flow. Without this we will eventually run below our policy 50% Liquidity Ratio.”⁵⁹

39. The use by aged care providers of money received by way of refundable accommodation deposits is lawful and permissible under the statutory framework. However, the evidence in the two financial reports and the CEO/DON report referred to above indicates that use of such funds can lead to pressure to reduce costs to maintain liquidity. In light of the above evidence, and Pioneer House's relatively low ACFI

⁵⁵ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 15, PAC.0002.0001.0279 at 0281.

⁵⁶ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 19, PAC.0002.0001.0350 at 0352.

⁵⁷ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 19, PAC.0002.0001.0350 at 0353.

⁵⁸ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 19, PAC.0002.0001.0350 at 0361.

⁵⁹ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 19, PAC.0002.0001.0350 at 0353.

levels and occupancy rate, it is clear that in about January and February 2019 Pioneer House's board of directors were under significant pressure to reduce costs. It is submitted that the perceived need to make cost savings clearly contributed to the decision to reduce staff levels on the roster, based on the written record.

40. Ms Sargent gave evidence that by reason of unfilled positions on the shifts in December 2018, the reductions in staffing on the roster announced in January 2019 may not have substantially changed, because Pioneer House had already been working short-staffed.⁶⁰ This point was also reflected in the January 2019 financial report which relevantly stated:

“This is not a reduction of three staff from the actual December staffing, as some shifts were not filled in December due to lack of staff, but this will ensure that staffing does not increase back to the previous peak levels.”⁶¹

41. So much may be accepted, but the fact remains that the pressure to reduce costs was also a significant factor in the decision to reduce staffing levels.
42. On 20 to 21 February 2019, the Aged Care Quality and Safety Commission (**Quality Commission**) conducted an assessment contact, which found that at least 5 expected outcomes were not met, including 1.6 (human resources management) and 2.13 (behavioural management).⁶² The Quality Commission's report includes a list of unfilled AIN shifts on nearly every day from 15 January 2019 to 21 February 2019, and also unfilled EN shifts.⁶³ It should be accepted that even the reduced roster was not filled during this period. In giving her evidence, Ms Sargent accepted that the list was consistent with the short-staffing Pioneer House was experiencing in this period, and the difficulties Pioneer House was having in filling even its reduced roster.⁶⁴

⁶⁰ Transcript, Tania Sargent, Mudgee Hearing, 4 November 2019 at T6376.20-30.

⁶¹ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 19, PAC.0002.0001.0350 at 0588.

⁶² Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 21, PAC.0001.0001.0082.

⁶³ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 21, PAC.0001.0001.0082 at 0093-0094.

⁶⁴ Transcript, Tania Sargent, Mudgee Hearing, 4 November 2019 at T6378.17-31.

43. The CEO/DON prepared a report for the board apparently dated 25 February 2019 which referred to continuing behavioural management challenges, and assistance from DSA, together with attempts to transfer the resident concerned (Mr UI).⁶⁵

44. If a residential aged care provider considers that it can no longer provide safe and appropriate care to a resident, but the resident or his representative refuses to relinquish tenure, the *User Rights Principles 2014* section 6 may apply,⁶⁶ which is reflected in the Permanent Resident Agreement between Pioneer House and Mr UI.⁶⁷ Section 6 of the *User Rights Principles 2014* (**section 6**) relevantly provides:

- (2) The approved provider may ask the care recipient to leave the residential care service only if:
- ...
- (b) the residential care service no longer provides accommodation and care suitable for the care recipient, having regard to the care recipient's long-term needs as assessed in accordance with subsection (4), and the approved provider has not agreed to provide care of the kind that the care recipient presently needs; or
- ...
- (ca) the care recipient has been receiving care under a specialist dementia care agreement and a clinical advisory committee constituted in accordance with the agreement has determined that the care recipient is not suitable to continue receiving that care; or
- ...

Suitable accommodation to be available before care recipient can be required to leave residential care service

- (3) The approved provider must not take action to make the care recipient leave the residential care service, or imply that the care recipient must leave the service, before suitable alternative accommodation is available that:
- (a) meets the care recipient's long-term needs as assessed in accordance with subsection (4); and
- (b) is affordable by the care recipient.

Assessing the care recipient's long-term needs

- (4) For paragraphs (2)(b) and (3)(a), the long-term needs of the care recipient must be assessed by:
- (a) an aged care assessment team; or
- (b) at least 2 medical or other health practitioners who meet the following criteria:

⁶⁵ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 23, PAC.0002.0001.0255.

⁶⁶ Exhibit 1-23, Adelaide Hearing 1, Statement of Glenys Beauchamp PSM, 4 February 2019, CTH.0001.1000.4726 at 4735.

⁶⁷ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 74, PAC.9999.0001.0001 at 0019 [3(g)].

- (i) one must be independent of the approved provider and the residential care service, and must be chosen by the care recipient;
 - (ii) both must be competent to assess the aged care needs of the care recipient.
- 45. Counsel Assisting submit that section 6 is not accompanied by a mechanism to resolve disagreement between a provider and a resident/family representative in circumstances where the provider considers that it can no longer provide accommodation and care suitable for the care recipient.
- 46. On 27 February 2019, the Secretary of the Department of Health imposed sanctions on Pioneer House.⁶⁸ Conditions imposed by the sanction required appointment of an advisor and training for officers, employees and agents.
- 47. To comply with the sanction conditions, on about 6 March 2019 Pioneer House appointed Harcourt Aged Care Advisors Pty Ltd (Michelle Harcourt, Director) as its nurse advisor. Ms Harcourt was engaged as nurse advisor until the sanctions expired on 27 August 2019. During the term of the engagement, Ms Harcourt spent about 27 days on site at Pioneer House.⁶⁹
- 48. Ms Harcourt retained Ms Prudence Dear RN as a Nurse Consultant, to assist her to perform the role of nurse advisor.⁷⁰ Both Ms Harcourt and Ms Dear lived interstate. Ms Dear commenced on site at Pioneer House on 11 March 2019. From that time until 26 June 2019, Ms Dear was generally present at Pioneer House four days per week.⁷¹
- 49. Ms Dear formed the following conclusions based on her time at Pioneer House:
 - (a) there were insufficient staff, vacancies in the roster and the roster needed to be completed and displayed a month in advance, the accuracy of the baseline roster needed rectification reflecting staff changes and the rostering system needed

⁶⁸ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 26, PAC.0001.0001.0723.

⁶⁹ Exhibit 12-4, Mudgee Hearing, Statement of Michelle Harcourt, 14 October 2019, WIT.0524.0001.0001 at 0007 [29].

⁷⁰ Exhibit 12-4, Mudgee Hearing, Statement of Michelle Harcourt, 14 October 2019, WIT.0524.0001.0001 at 0008 [33].

⁷¹ Exhibit 12-9, Mudgee Hearing, Statement of Prudence Dear, 11 October 2019, WIT.0525.0001.0001 at 0008 [108].

updating and staff needed training in how to use it, minimising unplanned leave at short notice;⁷²

- (b) there was a lack of clinical expertise and appropriately skilled staff, an AIN dominated culture, no proactive leadership, a need to overcome reactive management and a need for clinical supervisors to manage staff allocations and ensure sound skills mix and staff acceptance of this;⁷³
- (c) there were clinical issues including insufficient support with management of behavioural and psychological symptoms of dementia BPSD;⁷⁴
- (d) the challenges identified above would have been in existence at Pioneer House prior to March 2019 with a compounding effect of the previous year or two;⁷⁵
- (e) documents showed that Pioneer House previously had sound systems and processes in place up until 2017 however proactive management had become reactive and there had been a high turnover of staff in the previous 12 to 18 months due to a diminished clinical skill base;⁷⁶
- (f) there were reasonable staffing gaps occurring annually over the Christmas/New Year break when work at the mines slows and workers take holidays – their spouses then resign if not granted leave;⁷⁷
- (g) there were difficulties in accessing allied health services, particularly dietitians, podiatrists, and there were limited physio and Speech Therapy personnel available;⁷⁸
- (h) there was limited availability of AIN agency staff and no agency RNs;⁷⁹

⁷² Exhibit 12-9, Mudgee Hearing, Statement of Prudence Dear, 11 October 2019, WIT.0525.0001.0001 at 0008 [112]-[113], [118]-[121].

⁷³ Exhibit 12-9, Mudgee Hearing, Statement of Prudence Dear, 11 October 2019, WIT.0525.0001.0001 at 0008 [115]-[116], [122]-[126].

⁷⁴ Exhibit 12-9, Mudgee Hearing, Statement of Prudence Dear, 11 October 2019, WIT.0525.0001.0001 at 0009 [134].

⁷⁵ Exhibit 12-9, Mudgee Hearing, Statement of Prudence Dear, 11 October 2019, WIT.0525.0001.0001 at 0009 [139].

⁷⁶ Exhibit 12-9, Mudgee Hearing, Statement of Prudence Dear, 11 October 2019, WIT.0525.0001.0001 at 0009 [140].

⁷⁷ Exhibit 12-9, Mudgee Hearing, Statement of Prudence Dear, 11 October 2019, WIT.0525.0001.0001 at 0010 [155].

⁷⁸ Exhibit 12-9, Mudgee Hearing, Statement of Prudence Dear, 11 October 2019, WIT.0525.0001.0001 at 0010 [157].

⁷⁹ Exhibit 12-9, Mudgee Hearing, Statement of Prudence Dear, 11 October 2019, WIT.0525.0001.0001 at 0010 [158].

- (i) there were difficulties in accessing local support services including behaviour management services, with limited options for placement of residents with extreme behaviours either for permanent placement or assessment, and limited availability of specialists for onsite support for residents with extreme behavioural issues.⁸⁰
50. Ms Dear's conclusions should be accepted as accurately reflecting the issues affecting Pioneer House during the relevant period.
51. On 26 March 2019, the Quality Commission issued a notice of consideration of serious risk to Pioneer House in relation to the care and behaviour management of three residents living with dementia, including Mr UI. Pioneer House responded to the notice on 28 March 2019.⁸¹
52. On 27 March 2019, members of the board and management of Pioneer House commenced a series of weekly updates by telephone with an officer from the Department of Health.⁸²
53. On 8 April 2019, the Quality Commission decided not to revoke Pioneer House's accreditation following a review audit conducted on 4-6 March 2019, in which it found that only 23 of 44 expected outcomes had been met. The Quality Commission varied Pioneer House's period of accreditation to less than one year (from 8 April 2019 to 8 January 2020).⁸³
54. On 8 and 9 April 2019, a nurse practitioner consultant specialising in psychogeriatrics and cognition, Catherine Brown, attended Pioneer House and recommended strategies for improving dementia care and behaviour management.⁸⁴
55. Ms Brown attended Pioneer House two days per month from April to August 2019 (inclusive). During those visits, Ms Brown made dementia-specific recommendations in relation to the physical environment at Pioneer House, conducted staff resident reviews and made recommendations in relation to lifestyle support in the dementia

⁸⁰ Exhibit 12-9, Mudgee Hearing, Statement of Prudence Dear, 11 October 2019, WIT.0525.0001.0001 at 0010 [159]-[161].

⁸¹ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 40, CTH.4011.1000.1794.

⁸² Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 39, PAC.0001.0001.1197.

⁸³ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 44, CTH.4011.1000.3271.

⁸⁴ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 45, PAC.0002.0002.0407; Exhibit 12-6, Mudgee Hearing, Statement of Catherine Brown, 3 October 2019, WIT.0523.0001.0001.

wing, reviewed the dementia and training action plans with members of the board and the nurse advisor team and conducted dementia-related training sessions and workshops for staff.⁸⁵

56. Aspects of the built environment of Pioneer House were inappropriate for caring for residents with very high behavioural needs, although certain improvements could have been made reasonably easily, such as converting available space into a space used for activities.⁸⁶
57. On 26 April 2019, the Quality Commission decided that Pioneer House had not complied with expected outcome 2.13 (behavioural management) in a way that placed the safety, health or wellbeing of Mr UI and one other resident at serious risk.⁸⁷
58. On 29 April 2019, the DON/CEO reported to the board about her attempts to follow DSA's recommendations for behaviour management of Mr UI and referred to an improvement plan in relation to the sanctions.⁸⁸
59. With effect from 4 June 2019, terms of reference for a Quality and Clinical Leadership team were established.⁸⁹ Members of the team included Ms Sargent (Acting CEO at the time), the Deputy DON, RN and AIN representatives, Board members (as available), Ms Harcourt and Ms Dear. The Terms of Reference provide that the Quality and Clinical Leadership team is responsible for, amongst other things:
 - (a) providing advice to the board "on improving quality systems, policies and processes and evaluating the levels of skill and care and support service staff required to achieve compliance with responsibilities";
 - (b) ensuring that "Consumers are at the epicentre of all decisions made at Pioneer House"; and

⁸⁵ Exhibit 12-6, Mudgee Hearing, Statement of Catherine Brown, 3 October 2019, WIT.0523.0001.0001 at 0005-0006 [28(a)] to [28(e)].

⁸⁶ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 16, PAC.0002.0002.0058.

⁸⁷ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 49, PAC.0001.0001.1122.

⁸⁸ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 50, PAC.0002.0001.0283.

⁸⁹ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 56, PAC.0001.0001.0972.

- (c) ensuring that “our Quality Indicator data is used effectively and efficiently to guide safe care”.⁹⁰
60. The Terms of Reference provide that the team would meet weekly until “comfortable with progression with meeting the requirements of the new Standards”.⁹¹
61. On 25 July 2019, after an assessment contact on 3 and 4 July 2019, the Quality Commission notified Pioneer House that it was not meeting outcome 2.13 (behavioural management) and other outcomes.⁹²
62. On 17 July 2019, a Deputy DON responded on behalf of Pioneer House, to the effect that Pioneer House believed that it had done “everything possible in relation to the care of [Mr UI] we have exhausted all our options of seeking alternative accommodation and assessment for [Mr UI].” Pioneer House contended that it should be found to have met expected outcome 2.13 because Mr UI’s “behaviours have substantially decreased, and the intensity of his episodes of reportable assaults has diminished”, although there had been “one minor discretion not to report incident involving [Mr UI] or any other resident at Pioneer House since 3 July 2019”.⁹³
63. On 18 July 2019, DSA provided a further report making recommendations and suggesting strategies for the care and management of Mr UI.⁹⁴
64. On 12 August 2019, the nurse advisor, Ms Harcourt, wrote to the board in relation to the likely status of Pioneer House when sanctions were due to expire on 27 August 2019, noting that two outcomes remained unmet.⁹⁵ Ms Harcourt reported that, with respect to key personnel and recruitment of a CEO/DON, “we have now had a recruitment company on board since mid-May without great outcomes”. Ms Harcourt expressed confidence that Pioneer House would be compliant with the old

⁹⁰ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 56, PAC.0001.0001.0972 at 0973.

⁹¹ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 56, PAC.0001.0001.0972 at 0974.

⁹² Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 63, PAC.0001.0001.0046.

⁹³ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 66, PAC.0001.0001.0582 at 0582-0583.

⁹⁴ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 69, PAC.0002.0001.0681.

⁹⁵ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 70, PAC.0002.0001.0715.

Accreditation Standards, but was less confident that it would be compliant if required to meet the new Quality Standards.⁹⁶

65. Ms Harcourt's engagement as nurse advisor ceased when the period of the sanctions expired. Ms Harcourt provided her last handover of information to the incoming interim CEO of Pioneer House on 8 September 2019.⁹⁷
66. Mr Codrington claimed Pioneer House could have avoided incurring losses of \$934,000, comprising "\$482,000 in lost revenue because of an inability to accept new residents and \$452,000 for the actual monies paid to the Advisor".⁹⁸

WITNESSES' SUPPORT FOR PROPOSITIONS

67. The witnesses in the case study gave evidence generally supporting the substance of the propositions outlined in paragraph 2 above, albeit that Ms Dear stressed that the increased dementia support proposition should be an option of last resort based on each individual situation, and any transfer should be accompanied by support for family or representatives to visit the transferred care recipient and for the care recipient to be able to transfer back once their behaviour has changed.⁹⁹
68. Mr Codrington's evidence supported the support program proposition. He supported the introduction of advisory and practical support for rural standalone aged care providers like Pioneer House. He referred to the need to have "flying squads" who would audit providers and intervene with advice and assistance before problems in management and care provision became serious.¹⁰⁰
69. Ms Dear also supported the support program proposition. Ms Dear observed that stand-alone providers in rural and regional areas do not have the same structure as larger organisations, which limits their ability to provide training about expectations of

⁹⁶ Exhibit 12-3, Mudgee Hearing, Pioneer House tender bundle, tab 70, PAC.0002.0001.0715 at 0715-0716.

⁹⁷ Exhibit 12-4, Mudgee Hearing, Statement of Michelle Harcourt, 14 October 2019, WIT.0524.0001.0001 at 0007 [30].

⁹⁸ Exhibit 12-7, Mudgee Hearing, Statement of Allan Codrington, 11 October 2019, WIT.0522.0001.0001 at 0014-0015 [77].

⁹⁹ Transcript, Prudence Dear, Mudgee Hearing, 4 November 2019 at T6397.1-33.

¹⁰⁰ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T.6355.22-29 and T6356.10-6358.3.

- responsibilities, including through orientation programs, for people recruited to leadership roles. Ms Dear considered there would be benefit in the Government providing support to regional providers to assist them to provide that support to staff in leadership roles.¹⁰¹
70. Mr Codrington supported the rural training program proposition and the subsidies proposition. He gave evidence of the workforce recruitment and retention difficulties Pioneer House had faced, and supported the concept of conditional rural scholarships.¹⁰²
71. Ms Dear also expressed support for the concept of rural scholarship programs, which she described as “an excellent idea”.¹⁰³ Ms Dear expressed cautious support for the concept of funding aged care providers to develop arrangements with registered training organisations, or to become registered training organisations themselves, to enable residents of the local area to obtain qualifications to work in aged care. Ms Dear cautioned that, having previously worked with providers that had associated registered training organisations, “they need to have really strong practices and best practices and currency of practices ... within those aged care organisations, and a staff mix that is prepared to be able to take that on as well”.¹⁰⁴
72. More generally, Ms Dear identified the need for specialist training for staff working in aged care in regional areas in relation to dementia, to build local capacity so that there is “expertise on the ground to be able to assist and support the staff and guide the staff” to deal with challenging behaviour when it arises.¹⁰⁵ Ms Dear identified a difficulty with “bringing in services” from external providers, which may then not be available after hours and on weekends when challenging behaviour occurs.¹⁰⁶
73. Mr Codrington supported the increased dementia support proposition.¹⁰⁷
74. In relation to the increased dementia support proposition, Ms Dear said:

¹⁰¹ Transcript, Prudence Dear, Mudgee Hearing, 4 November 2019 at T6396.11-21.

¹⁰² Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6361.43-6362.8.

¹⁰³ Transcript, Prudence Dear, Mudgee Hearing, 4 November 2019 at T6393.9-18.

¹⁰⁴ Transcript, Prudence Dear, Mudgee Hearing, 4 November 2019 at T6393.28-32.

¹⁰⁵ Transcript, Prudence Dear, Mudgee Hearing, 4 November 2019 at T6394.39-44.

¹⁰⁶ Transcript, Prudence Dear, Mudgee Hearing, 4 November 2019 at T6395.5-12.

¹⁰⁷ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T.6355.31-43 and T6356.21-24, and 6356.42-46.

“in an ideal situation, you would have an environment, you would have the training, you would have the support in place. But that’s not always the case even in a larger town or city, let alone in rural or remote. So it would be a last resort and I guess it would have to be specific each time. It would need to be specific on the individual situation.... An ... also with some support for the family and their – or their representatives to be able to compensate them or to visit their loved one, wherever that person may be, on a short-term basis, but all with flexibility for them to be able to return once the situation has settled or the person has – behaviour has changed.”¹⁰⁸

75. Mr Codrington’s evidence broadly supported the rural funding proposition. He gave evidence of the difficulty Pioneer House has encountered in recruiting registered nurses and enrolled nurses with particular experience in aged care and with good clinical knowledge.¹⁰⁹ Mr Codrington identified the need for a “regional loading”, to enable regional providers to offer potential nursing recruits “something more than where they want to be, if that be the city or near the beach or whatever”.¹¹⁰ Mr Codrington said that the introduction of “any incentive to bring people to the country areas might be an advantage”.¹¹¹

20 November 2019

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¹⁰⁸ Transcript, Prudence Dear, Mudgee Hearing, 4 November 2019 at T6397.18-33.

¹⁰⁹ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6353.20-23.

¹¹⁰ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6360.30-37.

¹¹¹ Transcript, Allan Codrington, Mudgee Hearing, 4 November 2019 at T6353.20-26.