

IN THE FAIR WORK COMMISSION

REPLY SUBMISSIONS TO THE COMMONWEALTH

WORK VALUE CASE - AGED CARE INDUSTRY

(AM2020/99; AM2021/63; AM2021/65)

FILED ON BEHALF OF:

AGED & COMMUNITY SERVICES AUSTRALIA

LEADING AGE SERVICES AUSTRALIA

AUSTRALIAN BUSINESS INDUSTRIAL

17 AUGUST 2022

1. INTRODUCTION

1.1 This submission is made on behalf of:

- (a) Aged & Community Services Australia (**ACSA**);
 - (b) Leading Age Services Australia (**LASA**); and
 - (c) Australian Business Industrial (**ABI**),
- (collectively, **the employer interests**).

1.1 On 6 June 2022, the Fair Work Commission (**the Commission**) issued a Statement giving effect to the amended timetable (**the amended directions**). The amended directions included the following direction:

4. The parties will file submissions in reply to the Commonwealth's written submissions by 4pm on Wednesday 17 August 2022."

1.2 Pursuant to the directions, the employer interests make the following submissions in reply to the Commonwealth.

2. RESPONSE TO THE COMMONWEALTHS POSITION

2.1 Broadly, the submission of the Commonwealth makes a number of generalised propositions which outline its position. These are:

- (a) a general support that the increased regulatory demands have increased expectations of the workforce to *“have the skills and attributes to deliver a higher standard of quality and safe care while also placing additional administrative requirements on many workers. This is particularly the case for the roles of personal care workers (PCWs), enrolled nurses (ENs) and registered nurses (RNs) in residential aged care and in-home aged care settings. It is also relevant to categories of ancillary workers including cooks, cleaners and administrative workers”*.¹
- (b) that there a *“range of skills and other factors relating to the work value of aged care workers have not previously been recognised when setting the modern award minimum wages for the overwhelmingly female employees in the aged care sector”*².
- (c) that the *“average care requirements for aged care recipients in both residential and in-home care have increased in acuity and complexity over time, and that this further contributes to the work value of aged care workers being significantly higher than the modern awards currently reflect”*³.
- (d) a recognition of the need to ensure that the *“wages and conditions of the aged care sector support the attraction and retention of sufficient workers to meet the expected growth in demand for aged care services over the next 30 years.”*⁴

2.2 With regards to its position, the Commonwealth:

- (a) generally, does not raise any new information or evidence that will further assist the Commission in its consideration of the Applications; and
- (b) do not give any proper consideration to the work performed by ‘non care roles’, despite their generalised support of a wage increase for all workers in aged care (entirely excluding any reference to laundry, gardening, recreation and maintenance staff).

¹ Submissions Of the Commonwealth, 8 August 2022 [6]

²Submissions Of the Commonwealth, 8 August 2022 [7]

³ Submissions Of the Commonwealth, 8 August 2022 [8]

⁴ Submissions Of the Commonwealth, 8 August 2022 [9]

2.3 It is pleasing to see that the Commonwealth welcomes the opportunity to work with the Commission and the parties regarding the timing of the implementation of any increases, should any increase be granted. This is a prudent course of action which is supported by the employer interests and previous work value precedence⁵.

3. MODERN AWARD OBJECTIVE CONSIDERATIONS

3.1 The employer interests rely upon its closing submissions in respect to the modern awards objective⁶. However, provide the following, additional, response to the Commonwealth submissions.

134(1)(b)

3.2 The Commonwealth states that increasing minimum wages will provide “*further encouragement*” for the sector to engage in collective bargaining. The Commonwealth also note that the DoHAC modelling show approximately 76 per cent of those covered by the Aged Care Award, 86 per cent for the Nurses Award, and 32 per cent for the SCHADS Award are currently covered by Enterprise Agreements (**EAs**)⁷.

3.3 The Commonwealth also state the number of nominally expired EAs suggests that the bargaining power for the sector is low compared to previous years. However, this does not take into consideration that the sector, and in turn bargaining, is entirely constrained by funding. It is not due to bargaining power (as can be seen from above, collective bargaining is widespread), but due to the industry not being able to afford increases due to the limited funding available to it.

3.4 The Commonwealth support an increase in minimum wages and support engagement in collective bargaining. On any logical basis, increasing minimum award rates in a price constrained sector must reduce the likelihood, or create a disincentive of collective bargaining, not increase it. In this respect, the employer interests disagree that increasing minimum wages would create incentives for employers to engage in collective bargaining as suggested by some of the Applicant Parties⁸.

3.5 With regards to the EA coverage data which the DoHAC has prepared for the Commonwealth’s submission, it does not appear to be fulsome. In this respect we note the:

- (a) data that has been relied upon has not been provided to the parties or the Commission;

⁵ *Independent Education Union of Australia* [2021] FWCFB 2051 [665]

⁶ Employer Interests Closing Submissions, 22 July 2022 [23] - [24]

⁷ Submissions Of the Commonwealth, 8 August 2022 [20]

⁸ Submissions Of the Commonwealth, 8 August 2022 [172]

- (b) data cannot accurately portray whether administrative increases have been awarded for nominally expired EAs; and
- (c) figures provided are based on a sample of operational EAs only - there is no indication of the sample size used.

3.6 The employer interests invite the Commonwealth to provide this DoHAC modelling to the parties for consideration.

134(1)(c)

3.7 The Commonwealth makes a number of statements on how an increase in wages will promote social inclusion through workforce participation⁹. These are largely speculative statements without evidence to support this position.

3.8 These submissions do not assist the Commission.

134(e) and assessing undervalued gendered skills

3.9 The Commonwealth states that the Commission will be assisted by the Gender-inclusive job evaluation and grading Australian Standards.

3.10 The Gender-inclusive job evaluation and grading Australian Standards, which are a voluntary standard, were created to assist *business* to develop gender-equitable remuneration and pay equity as it has 'business benefits'.

3.11 The Gender-inclusive job evaluation and grading Australian Standards were not made to assist a regulatory industrial body, such as the Commission, in establishing minimum rates in awards or for assisting in the assessment of work value. It is made to assist individual businesses to evaluate and grade jobs free of any effect of gender.

3.12 We rely upon our closing submissions as to why the Commission should adopt a cautious approach to determining work value cases¹⁰.

Funding and s134(1)(f)

3.13 It is encouraging to see that the Commonwealth is prepared to fund 'any increase to award wages'¹¹. Later in their submissions, the Commonwealth go on to state "*the impact on business of significant increases to award minimum rates will not be material*"¹² as it will be funded by the Commonwealth.

⁹ Submissions Of the Commonwealth, 8 August 2022 [175] - [186]

¹⁰ Employer Interests Closing Submissions, 22 July 2022 [4], [7], [23] - [24]

¹¹ Submissions Of the Commonwealth, 8 August 2022 [5]

¹² Submissions Of the Commonwealth, 8 August 2022 [201]

3.14 However, it is unclear whether this support will extend to the on-costs associated with any increase to minimum award rates, including the increased costs associated:

- (a) Superannuation;
- (b) Payroll tax;
- (c) Workers compensation;
- (d) Allowances and entitlements which are based on a percentage of the standard rate and may be subject to an increase; and
- (e) any possible new entitlements arising out of this matter.

These are all factors which are relevant to considerations under s 134(1)(f) of the Fair Work Act. These are especially relevant considerations given the current financial viability of the sector¹³.

3.15 The employer interests invite the Commonwealth to provide its position regarding whether its support extends to funding the associated on-costs of any minimum rate increase.

C 10

3.16 The position of the Commonwealth regarding the C10 framework, and its utility in this matter, appears to be more aligned to our view than that of the ANMF¹⁴.

4. AN-ACC

4.1 It is important to note that approved providers will no longer undertake their own assessments under the new AN-ACC model. This will inevitably involve a change to the work performed by RNs, ENs and PCWs as they will no longer be involved in the ACFI assessment process.

4.2 At this point in time, given that the future processes are still unclear, the actual extent/impact of this change cannot be determined.

4.3 There is also a level of concern among the industry regarding whether the new AN-ACC model will actually provide sufficient funding (regardless of the outcome of this case) for the care that is to be provided given the new funding model and external assessment process.

5. DATA RELIED UPON

5.1 The employer interests note that the Commonwealth makes a number of statements based upon data which it notes has limitations.

¹³ See StewartBrown Aged Care Sector Report for the 9 months ended 31 March 2022.

¹⁴ Submissions Of the Commonwealth, 8 August 2022 [202] - [204]

5.2 The Commonwealth then makes assumptions on this data, without explaining the reasoning behind these assumptions. For example, the headline headcount from the 2020 Workforce Census shows that there are 420,000 employees in the industry, however, the Commonwealth give an approximate figure of 365,000. Assumedly, they have done this as some employees hold dual roles but have not provided the reasoning as to why they have come to this position.

5.3 As such, caution should be given to the application of this material.

6. ATTRACTION AND RETENTION

6.1 The Commonwealth supports wages and conditions of the aged care sector promoting the attraction and retention of sufficient workers to meet the expected growth.

6.2 In this respect, the Commonwealth notes that modelling undertaken by Treasury shows a *potential* workforce increase of between 5% to 10% after 5 years if minimum rates were to be increased by 25%¹⁵.

6.3 The employer interests invite the Commonwealth to provide this modelling to the parties and the Commission in order to appropriately respond.

6.4 Given the widespread skills shortages in Australia currently across a number of industries, if this assertion was true, the workers would simply be taken from other industries so the weight in terms of the modern awards objective seems limited. As our submission already state, this notion should not be considered within a work value case.

6.5 The notion of attraction and retention may be a relevant consideration to the Modern Awards Objective, but it would not be a relevant consideration to the assessment of work value and the determination of the quantum arising.

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¹⁵ [207]

17 August 2022