

Summary of Decision

15 March 2024



Work value case – Aged care industry – Stage 3

(AM2020/99, AM2021/63 and AM2021/65)

[\[2024\] FWCFB 150](#)

Justice Hatcher, President, Vice President Asbury, Deputy President O’Neill, Professor Baird, Dr Risse

Background

[1] These proceedings deal with three applications to vary modern awards to increase the minimum wages of aged care sector workers covered by the *Aged Care Award 2010* (Aged Care Award), *Nurses Award 2020* (Nurses Award) and the *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADS Award).

[2] The applications have been dealt with by the Fair Work Commission in three stages. Stages 1 and 2 are complete. On 15 March 2024, the Expert Panel now hearing the three applications issued a further decision [2024] FWCFB 150 (Decision). The Decision substantively concludes Stage 3 of the proceedings. It deals with further wage adjustments for direct care employees,¹ wage adjustments for indirect care employees and a detailed consideration of the classification definitions and structures in the three awards.

Gender undervaluation

[3] Part 2 of the Decision provides an overview of the statutory framework set out in the *Fair Work Act 2009* (Cth) (FW Act) as amended by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth). The amendment to s 157, to include new subsection (2B), is of particular relevance to the applications. New s 157(2B) requires that the Commission’s consideration of work value reasons must be free of assumptions based on gender and include consideration of whether historically the work has been undervalued because of assumptions based on gender.

¹ ‘Direct care employees’ are comprised of personal care workers (PCWs) under the Aged Care Award, home care workers (HCWs) who work in the aged care sector under the SCHADS Award, and registered nurses (RNs), enrolled nurses (ENs), assistants in nursing (AINs) and nurse practitioners who work in the aged care sector under the Nurses Award: Decision at [3].

[4] At paragraph [24] of the Decision, the Expert Panel finds that that the work of aged care sector employees has historically been undervalued because of assumptions based on gender. This finding is based on the following:

- an examination of historical gender assumptions in wage fixation in awards (paragraphs [25]–[53]),
- a conclusion that the *1972 Equal Pay Case* was never fully implemented (paragraphs [54]–[75]),
- a conclusion that the C10 Metals Framework for award wage fixation was based on the training and skill levels of male-dominated industries and occupations and that the C10 Metals Framework Alignment Approach, as historically applied in practice, has operated to inhibit the proper valuation of women’s work across awards (paragraphs [76]–[92]),
- the failure to properly implement the C1 classification rate as part of the C10 Metals Framework Alignment Approach particularly disadvantaged women (paragraphs [93]–[94]),
- a conclusion that these issues were generally migrated across to the modern awards system during the award modernisation process (paragraph [95]).

[5] The Decision sets out the conclusions that minimum wage rates in the Aged Care Award (paragraphs [96]–[108]) and the SCHADS Award (paragraphs [109]–[110]) were fixed based on the gendered assumptions embedded in the C10 Metals Framework Alignment Approach, as applied in practice.

[6] In relation to the rates of pay for degree-qualified nurses in the Nurses Award, the Expert Panel finds that these are not properly fixed minimum rates because the federal award system has failed to set minimum award rates of pay which properly recognise the addition to work value effected by the transformation of nursing into a profession. In the context of nursing being a female-dominated occupation, the Expert Panel characterises this as historic gender undervaluation (paragraphs [111]–[135]).

Final assessment of work value – direct care employees

[7] In respect of the direct care employees covered by all three awards, the Expert Panel was satisfied, for the purpose of s 157(2)(a) of the FW Act, that there are ‘work value reasons’ (as defined in s 157(2A)) for the minimum award rates of pay for such employees to be increased substantially beyond the 15 per cent interim increase determined in the Stage 1 decision. The reasons for this decision are set out at paragraphs [136]–[157].

[8] Having reached this conclusion, the Expert Panel identifies that the appropriate course is to set a benchmark pay rate for a key classification and then construct a new and uniform classification structure on the basis of that benchmark rate. The Expert Panel concludes that the benchmark rate which is set must be one which is justified by work value reasons, as required by s 157(2)(a), and that their determination of this rate must be free of assumptions based on gender in accordance with s 157(2B)(a). Within these statutory constraints, they note that they also consider it desirable to establish a rate which is consistent with minimum rates for like work and which will be conducive to a stable award system which, while free of gender bias, does not encourage leapfrogging.

[9] The key classifications for which a benchmark rate should be fixed are those applying to Certificate III-qualified PCWs, AINs and HCWs. In concluding that a rate of \$1223.90 per week for Certificate III-qualified employees is an appropriate benchmark, the Expert Panel had regard to previous decisions of the Commission granting an equal remuneration order for social and community service employees.²

[10] Although the Expert Panel identifies a proposed benchmark rate for 4-year degree qualified registered nurses and for enrolled nurses acting as supervisors under the Nurses Award at paragraphs [204] and [205] of the decision, these rates and classification structures in these awards will be settled in conjunction with a [separate application made by the ANMF](#) (matter AM2024/11) relating to all employees covered by the Nurses Award.

[11] In determining the new classification structures for direct care employees, the Expert Panel concludes:

- There is a fundamental difference between the work value of direct care workers and other employees engaged in residential aged care. This means that it is not possible to have a single integrated classification structure in the Aged Care Award (paragraph [181]).
- The purpose of the classification descriptors in modern awards is to identify which categories of employees are entitled to the minimum rates, not to serve as comprehensive ‘position descriptions’ (paragraphs [182]–[184]).
- The coverage of HCWs should remain in the SCHADS Award and should not be moved to the Aged Care Award, but their classification structure and rates of pay should be aligned with those of PCWs under the Aged Care Award as far as possible (paragraphs [185]–[186]).
- PCWs and AINs in aged care are functionally indistinguishable and there is no justification for them to be covered by two different awards. Accordingly, the coverage of AINs in aged care will be moved from the Nurses Award to the Aged Care Award so that the latter will solely cover the work of PCWs and AINs in aged care (paragraphs [187]–[191]).
- The classification structure should include a supervisory level (paragraph [192]).

[12] The wage increases determined for direct care employees, inclusive of the interim 15 per cent increase already awarded, are as follows:

² [2011] FWAFFB 2700 and [2012] FWAFFB 1000.

Aged Care Award – PCWs

Existing PCW classification – Aged Care Award	New DCE classification – Aged Care Award	Pay increase (inclusive of interim increase)
Level 1	Level 1	20.9%
Level 2	Level 2	22.8%
Level 3		18.2%
Level 4	Level 3	23%
Level 5 (without Certificate IV)	Level 4	23.7%
Level 5 (with Certificate IV)	Level 5	28.5%
Level 6		21.9%
Level 7	Level 6	24.2%

Aged Care Award – AINs

Existing AIN classification – Nurses Award	New classification – Aged Care Award	Pay increase (inclusive of interim increase)
1 st year if less than 3 months’ experience	Level 1	17.9%
1 st year, after 3 months’ experience	Level 2	24.5%
2 nd year		22.6%
3 rd year		20.6%
Experienced	Level 3	23%
-	Level 4	-
-	Level 5	-
-	Level 6	-

SCHADS Award – HCWs

Existing HCW classification – SCHADS Award	New HCW classification – SCHADS Award	Pay increase (inclusive of interim increase)
Level 1		
Less than 3 months’ experience	Level 1	19.5%
After 3 months’ experience	Level 2	26.1%
Level 2		
Pay point 1	Level 2	19.3%
Pay point 2	Level 2	18.4%
Level 3		
Pay point 1	Level 3	23%
Pay point 2	Level 3	19.3%
Level 4 (without Certificate IV)		
Pay point 1	Level 4	17.3%
Pay point 2	Level 4	15.0%
Level 4 (with Certificate IV)		
Pay point 1	Level 5	21.8%
Pay point 2	Level 5	19.4%

Existing HCW classification – SCHADS Award	New HCW classification – SCHADS Award	Pay increase (inclusive of interim increase)
Level 5		
Pay point 1	Level 6	17.8%
Pay point 2	Level 6	13.3%

[13] A range of technical and grandparenting provisions are necessary to give effect to the decisions on wage increases. These are set out at paragraphs [196] to [201] of the decision.

Assessment of work value – indirect care employees

[14] Broadly, indirect care employees in the Aged Care Award are engaged in the ‘General and administrative services’ stream³ or the ‘food services’ stream.⁴ Without diminishing the importance of the work of indirect care for the proper functioning of residential aged care facilities, the Expert Panel concludes that the above workers do not perform work of equivalent value to direct care workers justifying equal rates of pay (paragraphs [237]–[240]).

[15] However, the Expert Panel did identify two areas in which there have been work value changes of general applicability to indirect care employees covered by the Aged Care Award, being infection prevention and control measures, and dementia, Aged Care Quality Standards and other training requirements. The Expert Panel concludes that the rates of pay set out in clause 14.1 of the Aged Care Award should therefore be increased by three per cent for indirect care workers (paragraphs [243]–[251]).

[16] Further conclusions for indirect care workers are:

- HCWs covered by the SCHADS Award who perform non-personal care work will be covered by the general wage applicable to personal care HCWs (paragraphs [241]–[242]).
- Laundry hands, cleaners and food services assistants interact with residents significantly more regularly than other indirect care employees and this constitutes a work value reason for an additional adjustment to their rates of pay.
- Accordingly, laundry hands, cleaners and food services assistants will be moved from Level 2 to Level 3 in the Aged Care Award classification structure for indirect care employees. This will result in a total pay increase for workers in these roles of 6.96 per cent, inclusive of the three per cent increase awarded to indirect care employees generally (paragraphs [252]–[267] and [275]–[276]).
- There will be no further increase for Head Chefs/Cooks (paragraphs [268]–[274]).

³ Employees engaged at varying levels in laundry, cleaning, clerical and administrative, driving, maintenance/handyperson and gardening work.

⁴ Employees engaged at varying levels as food services assistants, cooks and chefs.

Next steps

[17] Draft determinations varying the Aged Care Award, the Nurses Award and the SCHADS Award (exclusive of any issues of operative date and phasing in) have been published with the Decision. The parties have until **4:00 pm (AEST) on Friday, 26 April 2024**, to file any written submissions commenting upon the draft determinations.

[18] The Commonwealth has until **4:00 pm (AEST) on Friday, 12 April 2024**, to file submissions concerning operative date and phasing in. Other parties may file any submissions in response to the Commonwealth's submissions by **4:00 pm (AEST) on Friday, 10 May 2024**.

[19] Once all submissions are filed, the Expert Panel will determine whether any further hearing is required to finalise the variation determinations, including in relation to operative date and any phasing in.

[20] Outstanding issues in relation to registered and enrolled nurses will be dealt with in conjunction with the ANMF application in AM2024/11. A conference of interested parties has been listed before Justice Hatcher at **2:00 pm on Thursday, 4 April 2024** in person in Melbourne.