

BEFORE THE FAIR WORK COMMISSION

**AGED CARE AWARD 2010
(MA000018)**

Submission in relation to *draft variation determination* dated 26 August 2019.

**SUBMISSION BY
AGED CARE EMPLOYERS**

20 September 2019

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Parties to this Submission

[1] Aged Care Employers.¹

Response

[2] The Aged Care Employers makes this submission in response to the Fair Work Commission's (Commission) publication of the [Decision](#) (Decision) dated 26 August 2019 in relation to the *Aged Care Award 2010* (the Award) as part of the 4 Yearly Review of Modern Awards.

In accordance with the Commission's Directions in the Decision, Aged Care Employers provide the following comment to the provisional view expressed by the Commission with regard to proposed variations to the classification definition of Aged Care Worker Level 4 and the proposed transitional arrangements to weekend and public holiday penalty rates for casuals.

Submission

Response to the Commission's provisional view to amend Aged Care Employee (ACE) level 4 classification definition

[3] In the Decision, the Commission expressed the provisional view to amend the last dot point in B4 of the current definition of the classification ACE Level 4 from:

In the case of a Personal care worker, is required to hold a relevant Certificate III qualification.

to:

In the case of a personal care worker, holds a relevant Certificate 3 qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work.

[4] Aged Care Employers present that the provisional view expressed by the Commission is consistent with our position advanced at the Hearing on 10 April 2019 that the nature of the work or role that is performed by the employee dictates the requirement of a particular qualification, skill or type of experience, not employer discretion.

To this end, Aged Care Employers are supportive of the intent behind the Commission's provisional view.

[5] Aged Care Employers submit that the Commission's proposed amendment to the last dot point of B4 is ambiguous. That is, without further defining

¹ Aged Care Employers: Aged & Community Services Australia, Leading Age Services Australia Ltd

'..possesses equivalent knowledge and skills...', it is unclear whether an employee who does not hold a Certificate III but possesses some but not all of the equivalent skills and experience, would qualify for classification as an ACE 4.

- [6] To resolve this, Aged Care Employers propose the following amendment to the provisional view:

*In the case of a personal care worker, holds a relevant Certificate 3 qualification (or possesses equivalent knowledge and skills) and uses **all** the skills and knowledge gained from that qualification in the performance of their work.*

Response to proposed transitional provisions to weekend and public holiday penalty rates for casuals

- [7] In the Decision, the Commission determined it was appropriate to vary weekend and public holiday rates of pay for casuals to include casual loading. In giving effect to the Decision, the following transitional provisions to phase in the changes to casual penalty rates were proposed:

	Saturday	Sunday	Public Holidays
	<i>(% of ordinary rate, inclusive of casual loading)</i>		
1 December 2019	160	185	260
1 July 2020	175	200	275

- [9] Consistent with our previous submissions, the Aged Care Employers respectfully submit that the Decision of the Commission with respect to this claim is inconsistent with the Modern Awards objective.
- [10] However, Aged Care Employers acknowledge the Decision of the Commission and are supportive of transitional provisions that softens the immediate financial impact of the Decision on Aged Care providers who are already operating in a financially constrained environment.

The funding issues currently facing the aged care sector are highlighted by the StewartBrown report for the 2018 financial year (previously tendered by ABI). The report details:

- a) 45.1% of residential facilities recorded a negative operating result (EBT); and
- b) 63.5% of outer regional, rural and remote facilities recorded an EBT loss and 37% are operating at a cash deficiency.

Aged care providers have already formulated and implemented their budgets for the current financial year based on the Award in its current form. This Decision, if effected during the current financial year, will result in increased costs, which have not been forecast and will place further pressure on organisations who are already operating at a cash deficiency.

[11] Aged Care Employers present that given the current financial constraints on Aged Care Providers, it is appropriate to extend the current proposed transitional provisions to the following:

	Saturday	Sunday	Public Holidays
	<i>(% of ordinary rate, inclusive of casual loading)</i>		
1 July 2020	160	185	260
1 December 2020	175	200	275

Aged Care Employers

20 September 2019