

**FAIR WORK COMMISSION**

**MATTER NUMBERS AM2020/99; AM2021/63; AM2021/65**

**WORK VALUE CASE – AGED CARE INDUSTRY**

**COMMONWEALTH’S SUBMISSIONS CONCERNING OPERATIVE DATE AND PHASING IN**

1. These submissions set out the Commonwealth’s position on the timing of its funding of the wage increases determined in the Commission’s *Stage 3 decision*.<sup>1</sup>
2. The Commonwealth strongly supports the wage increases determined in the *Stage 3 decision* (**Stage 3 wage increases**) and is committed to funding the increases for the relevant direct and indirect aged care workers, including on-costs incurred by aged care providers as a result of those wage increases in all Commonwealth-funded aged care.
3. As a result of a decision of the Commonwealth Government, the Commonwealth commits to providing this funding as follows (**Commonwealth funding commitment**):
  - 3.1. for indirect care workers – in full from 1 January 2025;
  - 3.2. for direct care workers –
    - 3.2.1. an increase in funding corresponding with 50 per cent of the Stage 3 wage increases for direct care workers (including on-costs) from 1 January 2025; and
    - 3.2.2. an increase in funding corresponding with the remaining 50 per cent of the Stage 3 wage increases for direct care workers (including on-costs) from January 2026.
4. Each phase of funding includes funding the on-costs associated with the Stage 3 wage increases in accordance with the Commonwealth’s approach to on-costs associated with the 15 per cent interim increase for direct care workers as set out in paragraphs [14] to [18] of the Commonwealth’s Stage 2 submissions dated 16 December 2022 (**Stage 2 submissions**).
5. As a consequence of this funding commitment, and having regard to the Commonwealth’s role as the principal funder in the aged care sector,<sup>2</sup> the Commission can be satisfied that granting the Stage 3 wage increases in alignment with the timing of the Commonwealth funding commitment would result in those increases having a non-material impact on business and employer costs. The result

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<sup>1</sup> [2024] FWCFB 150.

<sup>2</sup> As recognised in the *Stage 1 decision* [2022] FWCFB 200 at [904], [911].

is that, having regard to the modern awards objective in s 134(1)(f) of the *Fair Work Act 2009* (Cth) (**FW Act**):

- 5.1. 1 January 2025 would be an ‘appropriate’ operative date for the Stage 3 wage increases for all aged care workers subject to the Stage 3 wage increases for the purposes of s 166(2) of the FW Act; and
  - 5.2. for direct care workers, phasing in of the Stage 3 wage increases over a 12-month period from 1 January 2025 in alignment with the Commonwealth funding commitment (that is, 50 per cent from 1 January 2025 and 50 per cent from 1 January 2026) would be appropriate and consistent with the principles summarised in paragraphs [28] to [30] of the Commonwealth’s Stage 2 submissions and paragraphs [985] to [990] of the *Stage 1 decision*.<sup>3</sup>
6. The Commonwealth, however, acknowledges the presumption in s 166(1) of the FW Act and the fact that the timing of the Commonwealth funding commitment, including its implications for the modern awards objective in s 134(1)(f) of the FW Act, is not determinative of the Commission’s decision with respect to the timing or phasing in of the Stage 3 wage increases.<sup>4</sup>
  7. As was the case for the 15 per cent interim increase for direct care workers, the Commission need not consider whether it would be theoretically possible for the Commonwealth to fund the full Stage 3 wage increases sooner than it has decided. The question for the Commission is: given the Commonwealth’s decision on the timing of its funding of the Stage 3 wage increases, what timing and phasing in of the Stage 3 wage increases is necessary or appropriate, including to meet the modern awards objective and minimum wages objective?<sup>5</sup>
  8. By way of an explanation of the Commonwealth’s decision on the timing of its funding of the Stage 3 wage increases, the Commonwealth identifies the following matters that have informed the Commonwealth funding commitment:
    - 8.1. The Commonwealth anticipates that the Stage 3 wage increases will be implemented in a similar way to the interim wage increases, summarised in paragraph [11] of the Stage 2 submissions.
    - 8.2. As set out in paragraph [12] of the Stage 2 submissions, implementing funding for wage increases in the aged care sector takes time because:
      - 8.2.1. the Commonwealth does not directly fund wages and associated on-costs in the aged care sector;
      - 8.2.2. given that the size of the proposed increases varies as between different award classifications in the aged care sector, it is difficult to calculate and apply a standard indexation uplift to funding across the

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<sup>3</sup> [2022] FWCFB 200.

<sup>4</sup> As recognised in the *Stage 1 decision* [2022] FWCFB 200 at [911]-[916] and the *Stage 2 decision* [2023] FWCFB 93 at [415].

<sup>5</sup> The Commonwealth reiterates its Stage 2 Reply Submissions dated 10 February 2023 at [4].

various aged care programs, which is the usual method of implementing wage increases in this sector; and

- 8.2.3. it is necessary to ensure that increased funding is distributed accurately and that there are appropriate accountability mechanisms in relation to the expenditure of additional funding, which takes time given the diversity of aged care program arrangements as set out in paragraph [11] of the Stage 2 submissions.
- 8.3. A funding implementation date of 1 January 2025 will ensure that:
- 8.3.1. the increased funding needed to fund the Stage 3 wage increases is correctly calculated and applied, including, for residential aged care workers, based on independent pricing advice from the Independent Health and Aged Care Pricing Authority (IHACPA);
  - 8.3.2. subordinate legislation necessary to effect the increases for residential aged care workers is developed and in place ahead of the operative date;
  - 8.3.3. relevant information and communications technology (ICT) changes required to implement the increased funding are correctly developed and in place ahead of the operative date;
  - 8.3.4. for funding through Home Care Packages, the Commonwealth Home Support Programme (CHSP) and other small aged care and related programs, the necessary program changes can be developed and contractual arrangements negotiated to give effect to the increased funding; and
  - 8.3.5. taxpayers' money is used efficiently and value for money is achieved, which requires accurate distribution and appropriate accountability mechanisms as set out in paragraph [8.2.3] above.
- 8.4. As for the Commonwealth's decision to implement funding for direct care workers over a period of 12 months, the Commonwealth makes the following observations:
- 8.4.1. employment shortages are prevalent across the economy, including in sectors such as hospital nurses, disability carers and childcare workers who have substitutable skills with aged care workers. Job vacancies in the Health Care and Social Assistance Industry as at February 2024 were around 118% higher than February 2020 levels, and have remained around this level in recent quarters. This compares to the rest of the economy where job vacancies were only

49% higher than February levels as at February 2024, and have started to soften in recent quarters;<sup>6</sup>

- 8.4.2. in this context, the Commonwealth considers it prudent to adopt a phased approach to the funding of large one-off wage increases, particularly where large wage increases may draw workers from other sectors of the economy that also face employment shortages;<sup>7</sup>
  - 8.4.3. the Commonwealth notes that in the *Equal Remuneration Case* [2012] FWAFB 1000 increases in award rates for workers in the social, community and disability services industry were phased in over a period of eight years;
  - 8.4.4. further, the Commonwealth funding commitment has been made in the context of its fiscal strategy, which is focused on improving the budget position in a measured way, consistent with the overarching goal of reducing gross debt as a share of the economy over time, while seeking to deliver relief from cost-of-living pressures without adding to inflation;<sup>8</sup>
  - 8.4.5. direct care workers received a substantial additional wage increase of 15 per cent relatively recently, such that the Stage 3 wage increases would result in cumulative wage increases as set out in the Summary of the Commission's Stage 3 Decision (15 March 2024) at [12]; and
  - 8.4.6. in all the circumstances the Commonwealth considers that the Commonwealth funding commitment is fair and reasonable.
9. The Commonwealth funding commitment and these submissions deal only with the direct and indirect care workers who are the subject of the Stage 3 wage increases, which does not include Registered Nurses (RNs) and Enrolled Nurses (ENs). The Commonwealth notes that the Full Bench considered the appropriate course to be to finalise the classification structure and pay rates for aged care RNs and ENs in conjunction with the Australian Nursing and Midwifery Federation's application in matter AM2024/11.<sup>9</sup> Matters relating to the timing and implementation of any wage

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<sup>6</sup> Australian Bureau of Statistics (Reference period: February 2024) 'Table 4. Job vacancies, industry, Australia ('000) - original' [time series spreadsheet], Job Vacancies, Australia, accessed 09 April 2024.

<sup>7</sup> As noted by the Commonwealth in its submissions to the Commission dated 8 August 2022 at [206], additional labour supply for aged care is expected to mostly draw on workers in other sectors of the economy, as well as new entrant workers and migrants.

<sup>8</sup> See, eg, Mid-Year Economic and Fiscal Outlook 2023-24, pp 51-52, 54-55: <https://budget.gov.au/content/myefo/download/myefo2023-24.pdf>.

<sup>9</sup> *Stage 3 decision* [2024] FWCFB 150 at [208].

increases for aged care nurses made as part of that process will be the subject of a future decision of the Commonwealth Government.

Date: 12 April 2024

A handwritten signature in black ink, appearing to read 'Paul Vermeesch', written in a cursive style.

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Paul Vermeesch  
AGS lawyer  
for and on behalf of the  
Australian Government Solicitor,  
Solicitor for the Commonwealth

These submissions were settled by David Chin SC and Dan Fuller, counsel for the Commonwealth of Australia.