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Sent: Wednesday, April 24, 2024 11:55 AM

To: Zoe Bright <Zoe.BRIGHT@fwc.gov.au>

Subject: OFWO feedback in respect of Aged Care Work Value Decision [SEC=OFFICIAL:Sensitive]

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Hi Zoe

I hope you're doing well.

When we met on 26 March, you asked for any feedback the OFWO may have in respect of the practical implementation of the Aged Care Work Value Decision handed down by the Commission on 15 March.

We are grateful for the opportunity to consider these matters and so have prepared the feedback below for the Commission's consideration, as it sees fit. I'd be very happy to discuss any of this, should that assist.

Aged Care Work Value Decision

We have confined our feedback below to the operative date of the proposed changes to the SCHADS, Aged Care and Nurses Awards flowing from the Aged Care Work Value Decision of 15 March, and any potential transitional/phasing arrangements, arising under each of the draft determinations published alongside the Decision, rather than any substantive issues arising under the Decision. We would just note para 186 of the Decision, though, where the Full Bench states:

On one view, having separate classifications and minimum rates of pay for aged and disability HCWs is an untenable situation given the functional overlap to which we have referred. There is also likely to be implications for the other categories of employees covered by the SCHADS Award. This will however need to be dealt with in future proceedings and we need not consider it further here.

We would like to take the opportunity to flag that the question of how to classify workers providing support to persons with disability in a private residence presents significant challenges for the OFWO from both an advice and enforcement perspective, as there is overlap in the duties covered by the classifications in Schedule B and Schedule E of the SCHADS Award. The creation of Schedule F may make this overlap, as well as a lower minimum rates of pay under Schedule E in respect of provision of home care services to persons with a disability, more stark. We are aware that this may be the subject of future proceedings, but would be happy to discuss this further at any point, should that be of interest to the Commission.

As David mentioned on 26 March, from our perspective, we would note that 30 June is a particularly challenging operative date for award changes, as it requires our pay tools and pay guides to be updated on 30 June, and again on 1 July after the AWR Decision takes effect, and can create similar challenges for payroll systems – but we appreciate there are a broad range of considerations that need to be taken into account in terms of determining an operative date.

In the context of determining the operative date and any phasing arrangements for increases to minimum rates of pay, it would be useful to have a clear roadmap of when various milestones occur – ie. when do the new classifications commence relative to the pay increases or phased pay increases, if applicable.

We would note the importance of comprehensive grandparenting clauses to expressly preserve existing minimum rates of pay for employees who will move to a new award, or a new classification within their current award, and reduce scope for uncertainty as to what was intended in the event that that move may result in lower minimum rates of pay for some employees, either on an ongoing basis or for part of a phasing period, if applicable. We note there are some grandparenting provisions included in the draft determinations, eg. G.2 in the draft SCHADS determination or 28.3 in the draft Aged Care Award determination, to protect employees from such impacts in the event of such a move, but outlier scenarios may arise. While there may be arguments available to employees to maintain their current rate of pay or other award-derived entitlements, for example under contract law, if the effect of a change to their Award is to decrease their pay or other award-derived entitlements, but this is not a viable option for many award-reliant workers, or conducive to maintaining the employment relationship.

Finally, while we haven't done a comprehensive analysis of the classification translation provisions under each draft determination due to time and resource constraints, we did note one potential scenario in Schedule G of the draft SCHADS determination that may present challenges for the OFWO from an advice and enforcement perspective. Specifically, regarding this translation:

| | |
|---|--------------------------------------|
| Home care employee level 3—aged care | |
| Pay point 1 | Home care employee level 3—aged care |
| Pay point 2 | Home care employee level 3—aged care |

We note that the existing classification for 'home care employee level 3' under the SCHADS Award provides for the following in respect of qualifications and experience:

E.3.5 Qualifications and experience

Indicative but not exclusive of the qualifications required in this level is an accredited qualification to the position at the level of Certificate 3 and/or knowledge and skills gained through on-the-job training commensurate with the requirements of the work in this level.

Whereas the translated classification 'home care employee level 3 – aged care' provides the following:

F.3 Home care employee level 3—aged care—Qualified An employee whose primary role is to provide direct care to aged care clients and who has obtained a Certificate III in Individual Support (Ageing) or equivalent

We anticipate this may cause confusion for customers where a worker currently classified as a home care employee level 3 has the on-the-job training currently required, but not the formal qualification, and may result in employers attempting to move workers to lower classifications. While again there may arguments available to employees who may find that their rate of pay decreases as a result of such a move, for example under contract law, this is not a viable option for many award-reliant workers.

I trust this is of assistance, and would be very happy to discuss this further once you have had an opportunity to consider.

Thanks again for the opportunity to provide feedback.

Kind regards,

Lowri

Lowri Hamilton (she/her) | Director – Technical Liaison Officer and Knowledge Management Teams

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