

**FAIR WORK COMMISSION**

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

**WORK VALUE CASE – AGED CARE INDUSTRY**

**RESPONSE TO QUESTIONS BY THE FULL BENCH**

**AGED & COMMUNITY CARE PROVIDERS ASSOCIATION LTD AND AUSTRALIAN BUSINESS  
INDUSTRIAL – THE JOINT EMPLOYERS**

**15 FEBRUARY 2023**

## THE JOINT EMPLOYERS RESPONSE TO QUESTIONS BY THE FULL BENCH

By a Statement published 10 February 2023, the Full Bench requested the joint employers address four questions.<sup>1</sup> Following the provision of leave to provide a response to questions 3-5 within 48 hours of the adjournment on Monday 13 February 2023, the response of the joint employers follows.

### 1. QUESTION THREE:

**Whether the interim increase should be applied to all employees in Schedule E of the SCHADS Award, or whether it should exclude Home Care Employee Level 4 and/or Level 5, noting the implications for internal relativities in the Award if increases are not applied to supervisory workers who are not providing direct care.**

1.1 Schedule E of the SCHADS Award defines five levels of “*home care employee*”. The minimum weekly wage for those classifications appears at clauses 17.1 to 17.5.

1.2 For the following reasons, the interim increase *should* be applied to all employees in Schedule E:

(a) To increase the current wage rate of home care employee levels 1-3 by 15%, and retain the current wage rate for home care employee levels 4-5 will create an anomaly within the SCHADS Award that creates a tension with elements of the modern awards objective.

(b) The resulting anomaly is illustrated by the following table:

<b>Classification</b>	<b>Rate</b>	<b>Current Rate (+ 15%)</b>
<i>Level 1</i>	22.94	26.38
<i>Level 2 pay point 1</i>	24.26	<b>27.90</b>
<i>Level 2 pay point 2</i>	24.43	<b>28.09</b>
<i>Level 3 pay point 1</i>	24.76	<b>28.47</b>
<i>Level 3 pay point 2</i>	25.52	<b>29.35</b>
	<b>Rate</b>	<b>Rate (no change)</b>
<i>Level 4 pay point 1</i>	27.01	27.01

<sup>1</sup> Statement and Directions [2023] FWCFB 32 (10 February 2023).

<i>Level 4 pay point 2</i>	27.55	27.55
<i>Level 5 pay point 1</i>	28.96	28.96
<i>Level 5 pay point 2</i>	30.10	30.10

- (c) The Commission can in responding to this anomaly maintain existing relativities on the basis they were properly fixed or alternatively move the issue to Stage 3. Assuming the Commission favours the former approach, it would align with a “*simple, easy to understand, stable and sustainable modern award system*”.<sup>2</sup> To increase only Levels 1-3 by 15% has the following effect:
- (i) Level 2 to Level 3 (including all pay points) will have a wage rate higher than Level 4 pay point 1.
  - (ii) Level 3 pay point 2 will have a wage rate higher than Level 5 pay point 1.
- (d) In order to provide a fair and relevant minimum safety net of terms and conditions, at this stage of the proceedings, the Commission should apply the 15% increase to all employees but return to the question of the appropriateness of the existing classification structure in stage 3.

1.3 As observed in Annexure O to the Joint Employers Closing Submissions dated 22 July 2022, the existing classification definitions would benefit from improved clarity of scope and delineation between the levels.<sup>3</sup> This issue should be returned to in Stage 3 of these proceedings, but should not be a basis for not awarding a 15% increase to all home care employees.

<sup>2</sup> Fair Work Act 2009 (Cth), s 134(1)(g).

<sup>3</sup> Joint Employers Closing Submissions dated 22 July 2022, Annexure O, Section 4.

**2. QUESTION FOUR:**

In relation to the interim increase for “*Head Chef/Cooks*” how are the positions eligible for the increase identified within the Aged Care Award given the range of classification levels applicable to the roles?

2.1 The following table sets out the current progression in the “*food services stream*” by reference to the classification level in the Aged Care Award and the indicative tasks performed identified in Schedule B:

Classification	Indicative Task (Food Services Stream)	Rate
Level 1	Food services assistant	22.66
Level 2	Food services assistant	23.57
Level 3	Cook	24.47
Level 4	Senior cook (trade)	24.76
Level 5	Chef	25.60
Level 6	Senior chef	26.98
Level 7	Chef / Food services supervisor	27.46

2.2 The Joint Employers consent to the 15% interim increase applying to “*Head Chefs/Cooks*” under the Aged Care Award on the basis that it will be funded by the Commonwealth.<sup>4</sup> In advancing that submission, we note the following:

- (a) That position represents a point of compromise between the parties, following a direction by the Commission that the parties consult in respect of increased in minimum wages for “*Head Chefs/Cooks*”.<sup>5</sup>
- (b) That consent did not extend to the application of the 15% interim increase more broadly to the “*General and administrative services*” or “*food services*” streams within the Aged Care Award.
- (c) Schedule B of the Aged Care Award distinguishes between five types of “*Cook*” or “*Chef*”:
  - (i) Cook (Level 3);

<sup>4</sup> Joint Employer Submissions dated 20 January 2023 at [6], [94]-[95].

<sup>5</sup> Statement [2022] FWCFB 214 (23 November 2022) at [10].

- (ii) Senior cook (trade) (Level 4);
- (iii) Chef (Level 5);
- (iv) Senior chef (Level 6); and
- (v) Chef / Food services supervisor (Level 7).

2.3 The Commission had the benefit of evidence from three lay witnesses (each required for cross-examination) that fall within the broad category of “Cook” and “Chef”. They were as follows:

- (a) Mark Castieau – Chef in residential care facility;<sup>6</sup>
- (b) Anita Field – Chef in residential care facility;<sup>7</sup>
- (c) Darren Kent – Head Chef in residential care facility.<sup>8</sup>

2.4 The Commission also received the statement of Tracy Roberts, who had experience as a chef in addition to other roles.<sup>9</sup>

2.5 In addition to the evidence of Mr Kent, there were multiple references to “Head Chef”.<sup>10</sup> For example, Ms Wahl gave evidence that she “*is supported to report to the Head Chef*”.<sup>11</sup>

2.6 A few observations may be noted about the evidence:

- (a) Mr Kent’s evidence was broadly consistent with Mr Castieau but included additional managerial/supervisory duties. For example, he is also responsible for managing

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<sup>6</sup> See Report to the Full Bench – Lay Witness Evidence Report at [20], [204-[205] for a summary of his evidence.

<sup>7</sup> See Report to the Full Bench – Lay Witness Evidence Report at [30], [207] for a summary of her evidence (note, Ms Field also gave evidence about work as a laundry hand and AIN).

<sup>8</sup> See Report to the Full Bench – Lay Witness Evidence Report at [51], [206] for a summary of his evidence.

<sup>9</sup> See Report to the Full Bench – Lay Witness Evidence Report at [71].

<sup>10</sup> See Report to the Full Bench – Lay Witness Evidence Report at [88]

<sup>11</sup> See Report to the Full Bench – Lay Witness Evidence Report at [84], [243].

complaints about food served within the facility and setting the menu for resident meals. He said his meal planning is guided by templates provided by his employer containing information about options available to give residents a balanced diet.<sup>12</sup>

- (b) Unlike Mr Kent and Mr Castieau, Ms Field, who works as a chef, works alone in the kitchen and does all the preparation, cooking, dishing and cleaning. She gave evidence that her manager does the meal planning and she works from a set menu, making modifications for dietary requirements where needed. She cooks to residents' preferences, but the facility does not have any residents who need food chopped or pureed in a certain way.<sup>13</sup>
- (c) All witnesses that held the title of “*Chef*” had a Certificate III in Commercial Cookery.
- 2.7 Consistent with the existing classifications, the wage rate for a “*senior cook (trade)*” at aged care employee level 4 recognises there is a distinction between a “*cook*” (level 3) and “*senior cook (trade)*” (level 4). The key aspects of that distinction include an ability to work “*under limited supervision, either individual or in a team*” and “*may require formal qualifications and/or relevant skills training or experience*”.
- 2.8 The 15% increase to “*Head Chef/Cook*” should apply from “*senior cook (trade)*” (level 4), through to “*chef / Food services supervisor*” (Level 7). This implementation, however, will require the classification structure of the Aged Care Award to be reviewed and settled as the application from the Joint Employers' perspective was to the most senior chef/cook in the facility with ultimate menu and nutrition responsibility, not a series of chefs or cooks within a catering team.

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<sup>12</sup> See Witness statement of Darren Kent, 31 March 2021 at [34(g)], [34(c)], [83] and [85].

<sup>13</sup> See Witness statement of Anita Field, 30 March 2021 at [36], [29(i)] and [29(j)], Transcript, 6 May 2022, PN7777-7782.

**3. QUESTION FIVE:**

Noting the Joint Employers submission that the interim increase for head chefs/cooks and RAOs/lifestyle officers is supported “on the basis that the increase is to be funded by the Commonwealth”, has the Commonwealth agreed to fund the increase in relation to these employees?

- 3.1 On the basis that the Commonwealth have confirmed funding, the Joint Employers affirm this position.

**For the Joint Employers**

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**15 February 2023**