

## IN THE FAIR WORK COMMISSION

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

## WORK VALUE CASE – AGED CARE INDUSTRY

### SUBMISSIONS OF THE AUSTRALIAN WORKERS' UNION

#### INTRODUCTION

1. These submissions are made on behalf of the Australian Workers' Union (“**AWU**”) as an interested party to the *Work Value Case – Aged Care Industry* (“**Work Value Case**”), and are made in accordance with the Statements of the Full Bench of the Fair Work Commission (“**FWC** or **Commission**”) dated 17 November 2022 ([2022] FWCFB 208), 23 November 2022 ([2022] FWCFB 214) and amended directions of 6 December 2022, following the Commission’s decision in this matter dated 4 November 2022.<sup>1</sup>

#### TIMING AND PHASING IN OF INTERIM INCREASES

2. The AWU notes the Commonwealth’s submissions filed 16 December 2022 support the proposed interim increase for direct aged care workers in two phases, the timing of which would be:
  - a 10% increase in wages (including on-costs) from 1 July 2023; and
  - a 5% increase in wages (including on-costs) from 1 July 2024.
3. The AWU does not support the timing or phasing in arrangements proposed by the Commonwealth for the reasons that follow.
4. In our recent experience, enterprise bargaining in the industry has already stalled whilst employers wait on the Commission to confirm:
  - the quantum of any award rate increase or increases; and
  - the timing and phasing in of the 15% interim increase.

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<sup>1</sup> *Work Value Case* [2022] FWCFB 200.

5. Further, we note that the Commission has already formed the view that ‘increasing minimum wages will assist in attracting and retaining employees in the aged care sector, thereby promoting social inclusion through increased workforce participation’.<sup>2</sup>
6. We submit that a number of the modern award objectives in section 134 of the *Fair Work Act 2009* (Cth) (“**FW Act**”) will likely be undermined by unnecessarily delaying improved wages to workers in the aged care sector. In particular, we are concerned that any delay to increase award wages in the sector undermines the statutory requirement to provide a fair and relevant minimum safety net of terms and conditions, taking into account:
- relative living standards and the needs of the low paid;
  - the need to promote social inclusion through increased workforce participation;
  - the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women’s full economic participation; and
  - the need to encourage collective bargaining.
7. Regarding the modern award objective of promoting collective bargaining,<sup>3</sup> the AWU submits that this object has already been significantly undermined by the proposed timing and phasing in of wage increases, with the last of those wage increases to be implemented nearly 18 months from the date of making these submissions. Attached to these submissions and labelled **AWU1** is correspondence to the AWU from St Vincent’s Care Services Ltd which makes clear that the employer was delaying bargaining until “further details of the Aged Care Work Value Case are known, including government funding arrangements.”
8. This is an industry where bargaining with employers is already extremely

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<sup>2</sup> [2022] FWCFB 200 at [1040].

<sup>3</sup> FW Act s 134(1)(b).

difficult.<sup>4</sup> On the basis of our experiences seeing collective bargaining stalled with a number of employers, and in the context of an industry and an industrial framework where enterprise bargaining was already difficult, we submit that this aspect of the modern award objective should be given significant weight, and should lead the Commission to finding that the Commonwealth's suggested phasing in and timing of the proposed interim increases should be rejected.

9. Rather, the AWU submits that this aspect of the modern award objective would best be satisfied by awarding a single interim increase of 15 percent earlier than that proposed by the Commonwealth.

10. The Commonwealth's submissions of 16 December 2022 support the phasing in and timing of increases as follows:

5. The Commonwealth commits to providing this funding in two phases with the following timing:

5.1. an increase in funding corresponding with a 10 per cent increase in wages (including on-costs) from 1 July 2023; and

5.2. a further increase in funding corresponding with the remaining 5 per cent increase in wages (including on-costs) from 1 July 2024.

6. The Commonwealth supports timing and phasing-in arrangements that reflect the timing of these increases in funding.

11. With these submissions the Commonwealth modifies their position from the one made in their submissions of 29 August 2022, where the Commonwealth said at [15]:

Despite what is in paragraph 14 above, the Commonwealth affirms its commitment to provide funding to support any increases to award wages made by the Commission...

12. The AWU supports the 29 August 2022 submissions of the Commonwealth insofar as they commit 'to provide funding to support any increases to award wages made by the Commission.'

13. The AWU accordingly submits that, given the Commonwealth has committed to

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<sup>4</sup> See e.g. *Work Value Case* [2022] FWCFB 200 at [1014]; [1016]-[1017].

provide the necessary funding to support any interim increases awarded by the Commission, the Commonwealth's submissions regarding the proposed timing and phasing in of these increases should be given no weight.

14. The Commonwealth's 'commitment to provide funding to support any increases to award wages made by the Commission' also undermines the Commonwealth's later submissions that

the Commonwealth recognises and agrees with the Commission that, given the Commonwealth's funding role in the sector, the 'extent to which the Commonwealth funds any outcome from these proceedings is plainly relevant to [the Commission's] consideration of the impact of any increase in employment costs on the employers in the aged care sector'.<sup>5</sup>

15. With respect, given that the Commonwealth has already committed to funding any increases awarded by the Commission, it is difficult to see how the Commonwealth's concern about the impact on business can be sustained. The AWU respectfully submits that the modern award objective consideration of 'the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden' is a neutral consideration in respect to the timing and phasing in of the interim increases.

16. Applying the principles of the *Penalty Rates – Transitional Arrangements* [2017] FWCFB 3001 ("**Penalty Rates – Transitional Arrangements case**") does not lead to a conclusion that the phasing in of the proposed interim increase is appropriate, as asserted by the Commonwealth.<sup>6</sup>

17. Rather, the statutory framework supports the awarding of the proposed interim increase in full without any phasing-in arrangements when one considers the modern award objectives already detailed at paragraph 6 herein.

18. In respect to the consideration of "fairness", regard should be had to fairness from the perspective of both the employees and employers. As is evident from the Joint Statement regarding Stage 2 and 3 of this matter filed 16 December 2022, representatives of both employee and employer organisations concur that

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<sup>5</sup> Submissions of the Commonwealth dated 16 December 2022 at [22].

<sup>6</sup> Ibid at [28].

the proposed interim increase should “not be phased in over time and instead should occur from the first full pay period on or after a specific date”. We submit that awarding the proposed interim increase in full without phasing in would result in fairness to both employees and employers in the aged care sector.

19. The Commonwealth has also referred to the observations of the Commission in *In Application by Independent Education Union of Australia-New South Wales/Australian Capital Territory (130N-NSW-NSW)* at [981],<sup>7</sup> stating that the main factors considered by the Commission in that case in determining whether transitional arrangements were appropriate were as follows

- how much time employers had to prepare;
- the extent of the increase; and
- whether there was reliable evidence from the employers as to what date was manageable.

20. With respect, such submissions do not assist the Commonwealth in establishing that phasing in of the proposed interim increase is warranted.

21. In this matter, the Commonwealth has had ample time to prepare for the outcome of this case, which commenced in November 2020.

22. Further, the extent of the proposed interim increase (15%) is less than the 25% wage increase that the Commonwealth says was utilised in the economic modelling undertaken by Treasury in their submission of 29 August 2022.

23. Finally, we note that there has been no cogent evidence put by the Commonwealth as to why phasing in the proposed interim increase in the manner they propose is manageable, whereas awarding this increase in full without any phasing in would not be manageable.

**The Australian Workers' Union**  
**20 January 2023**

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<sup>7</sup> [2021] FWCFB 6021.

# AWU



**ST VINCENT'S  
CARE SERVICES**

A SERVICE OF ST VINCENT'S HEALTH AUSTRALIA

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2 December 2022

Cheri Taylor  
Australian Workers Union  
By email: [cheri.taylor@awu.org.au](mailto:cheri.taylor@awu.org.au)

Dear Cheri

We write in relation to the re-negotiation of the St Vincent's Care Services Queensland Enterprise Agreement. Significant progress has been made through the enterprise bargaining process and I note that agreement has been reached between the parties on the clauses within the agreement, with the exception of the wage increases for 2022, 2023 and 2024.

I note that a wage increase of 4.25% effective from the first full pay period on or after 1 October 2021 has been agreed to by all parties. In good faith, St Vincent's Care Services have agreed to pay this wage increase, as well as any associated backpay, to employees before the end of this year.

As discussed in our most recent meeting on 29 November 2022, it is our preference to postpone any further meetings until mid-January when further details of the Aged Care Work Value Case are known, including government funding arrangements. We will send out details of this meeting to you shortly.

If you would like to discuss this further or have any questions, please do not hesitate to contact me on [REDACTED]

Warm regards,

[REDACTED]

Vanessa Tetaz

**Executive General Manager, People and Culture  
St Vincent's Care Services**