

REPLY SUBMISSIONS OF THE UNITED WORKERS' UNION

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Introduction

1. In its initial submission to the Minimum Wage Review 2024 (**2024 MWR**), UWU foreshadowed a submission that the Expert Panel should take a particular approach to certain feminised awards in its approach to the 2024 MWR to ensure the objects of the Act, the modern awards objective and the minimum wages objective are met¹. Since then, the *Stage 2 Report – Gender Pay Equity Research (Stage 2 Research Report)*² has been published, which finds indicia of gender based undervaluation exist in 12 modern awards relating to feminised sectors. The indicia includes the lack of a work value exercise undertaken by the Fair Work Commission (**FWC**), or the inadequate application of equal pay principles, or approaches to wage fixation which

¹ [Initial Submissions of the United Workers Union](#), C2024/1, [60]

² Stage 2 Report Gender Pay Equity Research, Fair Work Commission, 4 April 2024

not free of gender based assumptions or the making of consent awards and agreements which build in historical gender based undervaluation. In these submissions, UWU proposes a means by which the Expert Panel should deal with this matter in 2024 MWR, taking into account that it is now compelled to do so³. In particular:

- a. In awards relating to the “care sector”, the Expert Panel should, as part of the 2024 MWR, award an interim increase to minimum rates in those awards, in addition to and not offset by any general increase otherwise awarded in respect of modern awards arising from its decision. This is because, in relation to some of these awards, the FWC should be satisfied that there is a compelling case that the awards are afflicted by gender inequity similar to that which was recently found to exist in relation to Aged Care sector awards.
- b. The Expert Panel should map out a process by which any issues of gender based undervaluation too complex to be resolved within the timeframe of the 2024 MWR may be resolved, issues such as matters relating to award classification structures.
- c. In Awards not prima facie involving “caring work” UWU supports the position contended for by ACTU in its earlier submissions, that these “awards should be designated as priority awards for the purpose of assessing whether the C10 benchmark is appropriate and if not, identifying a replacement benchmark (as the first stage in rectifying any gender-based undervaluation of work)”⁴.

The circumstances giving rise to an interim increase in the Aged Care Award

2. In relation to the manner in which the Expert Panel should deal with ss 134(ab) and 284(1)(aa) of the *Fair Work Act 2009 (the Act)* (read in conjunction with s 3(a)) the recent decisions of FWC in relation to the Aged Care Sector and it’s relevant awards are instructive.
3. In the *Aged Care Stage 1 Decision*⁵, FWC considered it appropriate to award an interim increase to minimum rates of pay in relation to all direct care workers’ roles encompassed by the classification structures of the relevant awards on the basis that

³ [2023] FWCFB 3500 [40]

⁴ Submission to the Annual Wage Review, ACTU, C2024/60, 28 March 2024, [391]

⁵ Re Aged Care Award 2010 [2022] FWCFB 200

it had reached a state of satisfaction that in respect of direct care workers in the aged care sector existing minimum wage rates did not properly compensate employees for the value of the work performed⁶. An interim increase applicable to each classification level in respect of direct care workers was preferred for reasons including that such an approach allowed the maintenance of internal award relativities⁷ while a number of complex issues could be determined (including in relation the classification structures in the relevant awards⁸). The quantum of the interim increase – 15% - was adopted because it was “comfortably below” the level of increase likely to be determined on a final basis⁹.

4. It is appropriate to consider the decision to award an interim increase in the Aged Care sector awards as being based on factors including the need to remove gender based undervaluation. In the *Aged Care Stage 2 Decision*¹⁰ the Full Bench was satisfied that that the Full Bench in the *Aged Care Stage 1 Decision* “actively considered the question of historical undervaluation because of gender-based assumptions”¹¹, and that “the consideration in s.134(1)(ab) weighs in favour of the interim increase”¹² (as did the consideration in s 284(aa)¹³).
5. In the *Aged Care Stage 2 Decision* the Full Bench also decided that the interim increase should be paid, in full, from 30 June 2023 and should not be subject to any phasing-in. This was because:
 - a. While it was acknowledged that “phasing-in” may be a valid approach to increases in particular circumstances, there is no rule that this is the approach to be utilised in all cases¹⁴.
 - b. In a funded sector, the funder’s proposal as to phasing-in of the funding of the increase is not determinative of our decision with respect to the timing of an interim increase¹⁵.
 - c. The clear findings that the existing minimum wages in the awards did not properly compensate for the value of the work performed and / or that there

⁶ Ibid [899]

⁷ Ibid [933]

⁸ Ibid [922(3)]; [933]

⁹ Ibid [938]

¹⁰ *Re Aged Care Award 2010* [2023] FWCFB 93

¹¹ Ibid [183]

¹² Ibid [174]

¹³ Ibid [179]

¹⁴ Ibid [414]

¹⁵ Ibid [415]

is undervaluation because of gender-based assumptions were *compelling reasons* to recognise this by flowing an interim wage increase from the earliest possible date¹⁶.

- d. The delay of the interim increase would be inconsistent with the recent amendments to the Act relating including the promotion of job security and gender equality, eliminating gender-based undervaluation of work, promoting the full economic participation of women and addressing gender-based pay gaps¹⁷.
 - e. Several other elements of the modern awards objective weighed in favour of the interim increase, including ss 134(1)(a)¹⁸ and 134(1)(c)¹⁹ and with the exception of s 134(1)(f) the elements of the modern awards objective had either a positive or neutral impact on the decision to grant the interim increase²⁰.
6. The approach taken in the Aged Care Stage 1 and 2 Decisions was fortified by the *Aged Care Stage 3 Decision*²¹, in which FWC found several factors weighed in favor of aligning rates of pay in those Awards with a new benchmark rate designed to address gender based undervaluation. Two of those factors had been identified in the 2023 MWR²²:
- a. The **historical gender problem**: that the prevention of retrospective reconsideration of work value arising from the operation of the *National Wage Case April 1991*,²³ means that that gender assumptions which have “pervaded the federal industrial relations system since its inception in the early 20th century”²⁴ had been inherited in modern awards; and
 - b. The **gender bias in benchmarking problem** - that the C10 Metals alignment approach to the fixation of minimum award wages contained an inherent masculine bias and has operated to inhibit the proper valuation of women’s

¹⁶ Ibid [417]

¹⁷ Ibid [418]

¹⁸ Ibid [436]

¹⁹ Ibid [453]

²⁰ Ibid [480] – [481]

²¹ *Re Aged Care Award 2010* [2024] FWCFB 150

²² *Annual Wage Review 2022-23* [2023] FWCFB 3500

²³ Print J700 (16 April 1991).

²⁴ *Re Aged Care Award 2010* [2024] FWCFB 150, [25] – [95].

work²⁵, particularly through the failure to appropriately value aspects of work such as “invisible skills”²⁶.

7. In the *Aged Care Stage 3 Decision*, FWC decided to resolve these problems by establishing a new benchmark rate, aligned to the C10 rate plus the additional amount required to be paid pursuant to the Equal Remuneration Order made in respect of the *Social, Community, Home Care and Disability Services Industry Award 2010*.²⁷ The adoption of the new benchmark was considered desirable to establish a rate which is consistent with minimum rates for like work and which will be conducive to a stable award system which is free of gender bias and does not encourage leapfrogging²⁸ and was considered to be “a stable anchor point for a modern award system which ensures gender equality in the valuation of work”²⁹.

Awarding an interim increase in relation to female dominated caring work in the 2024 MWR

8. The Expert Panel is now “commanded” to take into account eliminating gender-based undervaluation of work as part of the conduct and determination of the minimum wage review³⁰, and can no longer leave these matters to be left to be dealt with on an application-by-application basis outside the framework of the review process³¹. Despite this, the Expert Panel *did not* deal with these matters in the 2023 MWR, but instead outlined a process by which they might be dealt with, possibly as part of or in conjunction with the 2024 MWR³².
9. The means by which UJU submits the Expert Panel should fulfill this requirement as part of the 2024 MWR, at least in part, is by awarding an interim increase in relation to female dominating care work in respect to relevant awards. This was the approach taken in relation to the Aged Care Awards. While that proceeding involved the work value mechanism, the Expert Panel is undoubtedly empowered to make an interim decision in relation to some awards through the MWR process.
10. The approach we contend for is one that has been traditionally eschewed³³. However this is an exceptional circumstance. The alternative is to allow gender-based

²⁵ Ibid [92].

²⁶ See further [Initial Submissions of the United Workers Union](#), C2024/1, [65] – [72]

²⁷ *Re Aged Care Award 2010* [2024] FWCFB 150, [170]. See further the *Equal Remuneration Case* [2011] FWA FB 2700.

²⁸ *Re Aged Care Award 2010* [2024] FWCFB 150 [159]

²⁹ Ibid [173]

³⁰ Annual Wage Review 2022-23 [2023] FWCFB 3500 [40]

³¹ Ibid [120]

³² Ibid [137] – [139]

³³ *Annual Wage Review 2013-2014* [2014] FWCFB 3500 [514] – [515]

undervaluation in awards to continue unaddressed until some future – possibly indeterminate time – despite so much of the heavy lifting now having been done through the Aged Care awards proceedings and the Research Project.

11. Notably, in the *Aged Care Stage 3 Decision*, FWC observed that “much of our earlier analysis as to how historic gender assumptions have vitiated the proper fixation of award rates based on work value for the aged care sector is also likely to equally apply to award rates for other types of female-dominated ‘caring’ work³⁴.”
12. It may be that in some cases, there are issues of complexity to be addressed in relation to precisely how gender based undervaluation is eliminated in its entirety from these awards. But Uwu submits that there can be no serious doubt or contest that minimum rates of pay in some of these Awards must be increased, by some level, to free them of gender based undervaluation.
13. In our submission, the circumstances before the FWC in the *Aged Care Stage 1 Decision* are apposite to the position it now finds itself in in relation to at least some of the care sector awards, after the *Stage 2 Research Report*. The Expert Panel can be comfortably satisfied of the existence of indicia in some awards of gender based undervaluation, particularly the historical gender problem and the gender bias in benchmarking problem arising from the use of the C10 framework. For the Full Bench in the *Aged Care Stage 2 Decision* these were *compelling reasons* to flow an interim wage increase from the earliest possible date³⁵. The Expert Panel also has the benefit of the new benchmark rate – providing a pathway to remedy the problem. These are unusual circumstances – but they are the circumstances in which the traditional reticence to make interim orders in respect to minimum wage reviews should be departed from.

Care Sector Awards

14. In this part of our submission, Uwu provides commentary about some of the feminised care sector Awards – particularly those in which Uwu members have a direct interest – and the appropriateness in particular cases that the Commission make an interim order as part of its 2024 MWR to increase minimum rates in those awards, in addition to any general increase otherwise awarded in respect of modern awards arising from its decision.

³⁴ Ibid [160]

³⁵ *Re Aged Care Award 2010* [2023] FWCFB 93 [417]

The Childrens Services Award 2020

15. A most compelling case for an interim increase to be awarded exists in relation to the *Childrens Services Award 2020*. In relation to this award:

- a. The award covers a sector which is the third most highly segregated occupational group³⁶.
- b. Undervaluation arising from historical attitudes to gender that existed prior to 1990 has not been addressed in this award. The Expert Panel should consider the analysis conducted and findings made by the Full Bench in the *Aged Care Stage 3 Decision* about the history of gender-based assumptions within the Australian industrial relations system as relevant and having application to the early childhood education and care sector (it is plainly a feminsed sector)³⁷. The *ACT Child Care Decision* – a work value case conducted in 2003 - 2005 - took the operation of a previous work value analysis of a relevant award conducted in 1991 as the datum point from which work value changes in the early education and care sector should be measured³⁸. The award which arose from this case was used as the substantial basis for the *Childrens Services Award 2010*³⁹. Thus the influence of gender based assumptions outlined in the *Aged Care Stage 3 Decision* – which “pervaded the federal industrial relations system since its inception in the early 20th century” continue exist in this award.
- c. There is no question that the rates in the award were fixed according to the masculinsed C10 Metals Award Framework⁴⁰.
- d. There is no doubt in this sector, the work involves the considerable exercise of “invisible skills” which, given the strict application of the C10 Metals Award Framework in the *ACT Child Care Decision*, have not been properly valued in this award⁴¹. Indeed, in the *ACT Child Care Decision* the Full Bench said:

³⁶ Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, ‘Gender-based occupational segregation: a national data profile’ (Final report, UNSW Social Policy Research Centre, 6 November 2023) p.25

³⁷ *Re Aged Care Award 2010* [2024] FWCFB 150 [25] – [93]

³⁸ *Re Australian Liquor, Hospitality and Miscellaneous Workers Union* [2005] AIRC 28, PR954938 [365]; Stage 2 Research Report [120]

³⁹ Stage 2 Research Report [133]

⁴⁰ *Re Australian Liquor, Hospitality and Miscellaneous Workers Union* [2005] AIRC 28, PR954938 [182] – [183]; [367] – [368]; Stage 2 Report [121] – [122]

⁴¹ See for example [Initial Submissions of the United Workers Union](#), C2024/1, [74(c)]

“If anything, the nature of the work performed by child care workers and the conditions under which that work is performed suggest that they should be paid more, not less, than their Metal Industry Award counterparts”⁴²

and

“Contrary to the employer’s submissions the conditions under which the work of child care workers is performed do not warrant a lower rate of pay than that received by employees at the same AQF level in other awards. Indeed if anything the opposite is the case. Child care work is demanding, stressful and intrinsically important to the public interest.”⁴³

- e. As recently as in February 2024, in the *Aged Care Stage 3 Decision*, the Commission said in respect of the early childhood education and care sector:

“The Full Bench in the ACT Child Care decision made it tolerably clear, in our view, that unconstrained by the C10 Metals Framework Alignment Approach it would be assessed the key classifications in the early childhood education and care awards under consideration as having higher work value than the identified equivalents in the Metal Industry Award”⁴⁴.

16. Issues of complexity which may need to be addressed in relation to this award may well be more confined than is the case with other feminised Awards. Compared with other awards, the classification structure in the *Childrens Services Award 2010* was the subject of a reasonably comprehensive overhaul less than 20 years ago – arising from the *ACT Child Care Decision*. The Expert Panel can have more confidence in making an order for an interim increase to apply to this award than might be the case if, as is the case with some other awards, no proper attention has been given to the award’s classification structure for some time (or ever).

Other care sector Awards

17. In relation to other feminised care sector awards we note that:

- a. Indicia of gender-based undervaluation exists in the *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Award 2020*. The rates of pay in this award have not been

⁴² *Re Australian Liquor, Hospitality and Miscellaneous Workers Union* [2005] AIRC 28, PR954938 [183]

⁴³ *Ibid* [372]

⁴⁴ *Re Aged Care Award 2010* [2024] FWCFB 150 [92]; Stage 2 Report [123]

the subject of a proper work value assessment⁴⁵, and are based to a large extent on a consent or “collaborative” classification structure⁴⁶.

- b. Indicia of gender based undervaluation exists in relation to the *Animal Care and Veterinary Services Award 2020*. The rates of pay in relation to some of the classifications in this award were based on the *Veterinary Practice Employees’ Award – State* (referred to in the Stage 2 Research Report as the “Queensland NAPSA”) which when modernised, aligned rates of pay based on the masculinised “Metals Award” benchmark⁴⁷, or were set by consent⁴⁸ and have not been the subject of a proper work value process⁴⁹.
- c. In relation to the *Educational Services (Schools) General Staff Award 2020 (Schools award)* the Stage 2 Research Report finds there is no clear history of the rates and classifications in this award have been the subject of an assessment on work value grounds⁵⁰. When the Modern Award was created, the Full Bench observed, among other things, that the minimum rates and classification structure had been developed taking into account, among other things “the need for appropriate relativities between teachers and non-teaching staff ...”⁵¹ suggesting that, to the extent that minimum rates of pay in relation to teachers are afflicted by gender-based undervaluation, that issue carries through to the rates of pay in the Schools Award as a consequence. The classification structure itself, which was adopted and largely remains⁵² was explained by its author as having been aligned with a standard rate of pay for a qualified tradesperson, and “able to be compared to the metal industry classification structure”⁵³.
- d. In relation to the *Health Professionals and Support Services Award 2020*, the award history outlined in the Stage 2 Research Report shows its minimum wages were not generally subject to a systematic work value assessment, or, where a work value assessment was conducted in relation to awards from

⁴⁵ Stage 2 Research Report [69]

⁴⁶ Ibid [57]

⁴⁷ Ibid [88]

⁴⁸ Ibid [92], [96]

⁴⁹ Ibid [99]

⁵⁰ Ibid [157]

⁵¹ Ibid [149]

⁵² Ibid [154]

⁵³ Ibid [155]

which it was derived, it cannot be said those assessments were free of gender based assumptions⁵⁴.

- e. In the decisions concerning the Aged Care awards, FWC decided to address gender-based undervaluation in relation to the *Social, Community, Home Care and Disability Support Industry Award 2010 (SCHADS award)*, by increasing pay rates in respect to home care workers covered by the award to align it with the new benchmark rate⁵⁵, but only in respect of those workers performing home care work in relation to providing aged care. In doing so, FWC recognised that “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”.⁵⁶ The Stage 2 Research Report noted that in relation to the SCHADS Award several indicia of gender based undervaluation exist, including the lack of a proper work value assessment in relation to the relevant predecessor awards for workers in family day care⁵⁷ or in home care⁵⁸, or the use of consent arrangements aligned to some extent with the C10 Metals framework, as in the case of disability support⁵⁹. As with the *Childrens Services Award 2020* a compelling case exists that an interim increase to rates of pay in the SCHADS award form part of the 2024 MWR decision. Undoubtedly, an increase to these rates of pay will be required to deal with the untenability of having one set of minimum rates applying to home care work in respect to aged persons, and a different set of minimum rates apply to home care work in respect to people with a disability – a differential which exists as a result of the identification and rectification of gender based inequity in those rates arising from the Aged Care decision, confirmed by the gender-based undervaluation indicia identified in the Stage 2 Research Report.

Other Awards

18. In its initial submissions to the 2024 MWR, the ACTU explained that feminised Awards carrying indicia of gender based undervaluation are likely to require, at the least, an examination of the application of “invisible skills” in the work covered by

⁵⁴ Ibid [319]

⁵⁵ *Re Aged Care Award 2010* [2024] FWCFB 150 [173]

⁵⁶ Ibid [186];

⁵⁷ Stage 2 Research Report [482]

⁵⁸ Ibid [475]

⁵⁹ Ibid [458]

those awards⁶⁰. UWU agrees with that proposition and suggests these awards be the subject of the process identified below in terms of how FWC deals with issues gender based undervaluation in awards too complex to be resolved in their entirety within the timeframe of the 2024 MWR itself.

The modern awards objective

19. The balance of the factors making up the modern awards objective weigh in favor of the proposition that FWC award an interim increase in relation to feminsed awards.
 - a. The factors outlined in s 134(1)(a) – relative living standards and the needs of the low paid – weighs *in favor* of the proposition. The position is similar to that in the *Aged Care Stage 2 Decision*⁶¹. Many of the occupational groups subject to the relevant awards have low earnings relative to the wider workforce: veterinary nurses⁶²; child carers⁶³; education aides⁶⁴; sales assistants⁶⁵; hairdressers⁶⁶; dental assistants, receptionists in hospitals and general practice medical services; medical technicians⁶⁷; pharmacy assistants⁶⁸; aged and disabled carers⁶⁹.
 - b. The factor outlined in s 134(1)(aa) – the need to improve access to secure work across the economy – is a neutral consideration⁷⁰.
 - c. The factor outlined in s 134(1)(ab) - 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 - *weighs in favor* of the proposition⁷¹.
 - d. The factor outlined in s 134(1)(b) – the need to encourage collective bargaining – is a neutral consideration⁷². In relation to this factor, we note the initial submission made by Business NSW and Australian Business

⁶⁰ Submission to the Annual Wage Review, ACTU, C2024/60, 28 March 2024, [392]

⁶¹ [429] – [436]

⁶² Stage 2 Research Report [76]

⁶³ Ibid [105]

⁶⁴ Ibid [144]

⁶⁵ Ibid [205]

⁶⁶ Ibid [273]

⁶⁷ Ibid [297]

⁶⁸ Ibid [375]

⁶⁹ Ibid [437]

⁷⁰ *Re Aged Care Award 2010* [2023] FWC 93 [171]

⁷¹ Ibid [174], [418]

⁷² Ibid [445]

Industrial⁷³ that with the introduction of the new forms of bargaining, including the new supported bargaining regime, the Commission should operate “with some sensitivity” where female-dominated industries are utilising the machinery of that regime in substitution for variation to the modern award⁷⁴, and refers particularly to the supported bargaining authorisation granted by FWC in respect to the early education and care industry⁷⁵. In relation to this submission, UJU submits that the supported bargaining authorisation granted in respect to the early education and care sector is not a relevant consideration in respect to the way the Expert Panel approaches the 2024 MWR. The Expert Panel has no way to know the impact a particular approach it might take to 2024 MWR may have in relation to this process and is an example of the difficulty generally in predicting the impact of minimum wage increases on collective bargaining.

- e. The factor outlined in s 134(1)(c) – the need to promote social inclusion through increased workforce participation weighs *in favor* of the proposition that the Expert Panel award an additional increase in relation to some femised awards by way of an interim order. In the *Stage 2 Aged Care Decision* the Full Bench considered that increasing minimum wages will assist in attracting and retaining employees in the aged care sector, thereby promoting social inclusion through increased workforce participation weighed in favour of its decision⁷⁶. This was in the context of evidence of a significant shortfall in workers in the sector, projected to continue for some years⁷⁷. A similar circumstance exists in relation to, for example, the early education and care sector. In its recent Draft Report, the Productivity Commission found “ECEC workforce attraction and retention needs to be a priority”⁷⁸, and:

“Taken in sum, evidence suggests workforce constraints are biting ... Looking at the suite of evidence – including the lived experience of inquiry participants, vacancy data and data on waivers – it is apparent that the ECEC

⁷³ Business NSW and Australian Business Industrial, Initial Submission Annual Wage Review 2023-24, C2024/1, 28 March 2024

⁷⁴ Ibid [439(b)]

⁷⁵ *Re Application by United Workers’ Union, Australian Education Union and Independent Education Union of Australia* [2023] FWCFB 126

⁷⁶ *Re Aged Care Award 2010* [2023] FWCFB 93 [447], [453]

⁷⁷ Ibid [446]

⁷⁸ Australian Government Productivity Commission, A path to universal early education and care, November 2023, Draft Supplementary Paper, Summary of draft recommendations p 58

*sector is experiencing considerable workforce challenges, to the point families' access to ECEC is being impeded.*⁷⁹

- f. The Productivity Commission also noted the sector's relatively low pay rates and found the recruitment and retention challenges faced by the sector may be addressed through an increase in wages in the sector⁸⁰.
- g. The factors outlined in ss 134(1)(d), (da) and (g) are not relevant considerations in relation to the proposition that that the Expert Panel award an additional increase in relation to some feminsed awards by way of an interim order.
- h. The factor outlined in s 134(1)(f) – the likely impact on business, including on productivity, employment costs and the regulatory burden may weigh against the proposition that FWC award an interim increase in relation to feminsed awards or may be neutral, depending on matters such as the amount of the increase and, where relevant, the extent to which its impact may be ameliorated by Government funding. As part of the evaluative exercise, this matter must be weighed against the factors in favor of the proposition, particularly where they are "compelling", as they were in the *Aged Care Stage 2 Decision*⁸¹.
- i. In the *Aged Care Stage 1 Decision*, the Full Bench expressed the view that the factor outlined in s 134(1)(h) – the likely impact on employment growth, inflation and the sustainability, performance and competitiveness of the national economy – was a neutral consideration⁸² (a view that was later confirmed in the *Aged Care Stage 2 Decision*⁸³). This view was based on the fact that this part of the modern awards objective requires the aggregate, as opposed to sectoral, impact of the exercise of modern award powers, and the relatively small size of the aged care sector relative to the economy as a whole⁸⁴. This approach is instructive in terms of how the Expert Panel deals with feminised sectors in the 2024 MWR. Depending on the extent of any interim increase and the scope of the application of any such increase to multiple awards, the aggregate impact of such a decision may be greater than

⁷⁹ Ibid p 194

⁸⁰ Ibid p 215

⁸¹ *Re Aged Care Award 2010* [2023] FWCFB 93 [415]

⁸² *Re Aged Care Award 2010* [2022] FWCFB 200 [1072]

⁸³ *Re Aged Care Award 2010* [2023] FWCFB 93 [479]

⁸⁴ *Re Aged Care Award 2010* [2022] FWCFB 200 [1071]

the impact of a 15% increase to all direct care classifications in the aged care sector (considered not to be likely to impact on employment growth, inflation or the sustainability, performance or competitiveness of the national economy). Or this may be a neutral consideration (as it was in the Aged Care decisions).

The minimum wages objective

20. Taking into account the substantial degree of overlap between the minimum wages objective and the modern awards objective, UWU submits the minimum wages objective also weighs, on balance, in favour of the proposition that that the Expert Panel award an additional increase in relation to some feminsed awards by way of an interim order.

A process by which further issues of complexity may be resolved.

21. UWU submits that as part of its 2024 MWR Decision the Expert Panel should map out a process by which any issues of gender based undervaluation too complex to be resolved within the timeframe of the 2024 MWR, such as, for example, matters relating to award classification structures, may be resolved. In this part of our submissions, we make several general observations as to how that process might occur.

22. An expedient approach may be to divide the awards into several groups and use different timeframes for the resolution of their issues. The groups could be based on complexity. For example:

- a. Group 1 – non-care sector awards involving issues of significant complexity.
- b. Group 2 – non-care sector awards not involving issues of significant complexity.
- c. Group 3 – care sector awards involving issues of significant complexity.
- d. Group 4 – care sector awards not involving issues of significant complexity.

23. The rationale for our suggestion that the feminsed awards relating to the care sector be dealt with separately from awards which do not is that the *Aged Care Stage 3 Decision* sets out principles which can be readily applied to these awards, including the new bench mark rate, meaning the process will require less time.

24. “Complexity” could relate primarily to the breadth of the issues that may need to be resolved, and the time it may take to resolve them. For example, it may be necessary for some awards to re-construct classification structures, where for others, it may not; some awards may need consideration to be given to C1 aligned rates of pay – others may not.
25. If this approach were adopted, we suggest that a timeframe for the resolution of gender based undervaluation issues for awards in Group 4 in particular be expedited and be concluded by the end of 2024.

Comments about the Stage 2 Report

26. There may be a typographical error at [104] of the Stage 2 Research Report. The Stage 1 Research Report *did* note some distinct characteristics of what are described in the report as “child carers” but they were:
- a. Child Carers in Child Care Services are young, relative to the wider workforce. A quarter (24.8%) are aged 24 years or under. Almost half were working part-time (48.3%). In this occupation, the proportion qualified below Certificate III level is lower than for the total workforce (16.6% compared with 31%) but higher than among Child Carers working in pre-schools, where fewer have low or no post-school qualifications (10.3%). In Child Care Services, the proportion with a Bachelor level degree qualification or higher was 29.3%, which is lower than among Child Carers in Preschool Education (35.8%). A third of Child Carers (34.1%) were born outside either Australia or other mainly English-speaking countries. The proportion in lone parent family households was high, at 13%, and the proportion in single person households was relatively low (5.3%). (Stage 1 at p.41).

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