

FAIR WORK COMMISSION

Matter No.: AM2020/99; AM 2021/65; AM2021/63

S 158 – APPLICATION TO VARY OR REVOKE A MODERN AWARD (AGED CARE AWARD 2020);

S 158 – APPLICATION TO VARY OR REVOKE A MODERN AWARD (NURSES AWARD 2010)

s 158 APPLICATION TO VARY OR REVOKE A MODERN AWARD (SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010)

AGED CARE WORK VALUE

SUBMISSIONS IN RESPECT OF BACKGROUND PAPER 10

1. In respect of Background Paper 10, a number of questions are posed by the Full Bench. The United Workers Union has not addressed questions directed at other parties and makes the following submissions.

Question 3 for all parties: Does any party propose any amendments to the classification structure under the SCHADS Award?

2. The UWU is open to discussing amendments to the classification structure of the SCHADS Award to better align them to the Aged Care Award. That said, the UWU does not at this stage propose a new classification structure.

Question 4 for all parties other than the HSU: Do parties support the HSU's proposed changes to the entry level (unqualified) RAO classification level?

3. The UWU supports the HSU's proposed changes to the entry level (unqualified) RAO classification.

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Question 5 for all parties other than the HSU: Do parties support the HSU's proposed additional classification levels for RAOs

4. The UWU supports the proposed additional classification levels for RAOs, and in particular notes the qualified recreational officers (often titled Diversional Therapists) regularly work in aged care, holding Certificate IVs and above.
5. The United Workers Union notes that these workers are ordinarily classified at Level 5 (correlating with the PCW Level 4 / Level 5 with the same qualifications) but such additional classification levels would provide greater guidance regarding the appropriate rate of pay.

Question 6 for all parties: Does the above discussion accurately summarise the changes to the classification structure in the Aged Care Award sought by the HSU and ANMF and the submissions already filed?

6. Yes, the summary accurately reflects the submissions already filed.

Question 7 for all parties: Do the parties agree that the principles that should be applied by the Commission when establishing an appropriate classification structure are that:

1. It should be a career-based classification structure

2. It should clearly state the skills, qualifications and experience required at each level

3. It should provide a clear means to transition from one level to another

7. The UWU agrees with the above principles, but in addition says that it is also appropriate for a classification structure to recognise the skills and experience obtained on-the-job by way of length of service (time-based increments).
8. The UWU supports the existing time-based progression contained in Schedule E of the SCHADS Award, and does not propose any variation to the classification structure.
9. The UWU notes the HSU's submissions in respect of the Teachers' Case, summarised at [95], and also agrees that the submissions of the Joint Employers misapplies the Teachers Case.

Question 8 for all parties: Do parties have further suggestions regarding specific changes to the classification structure for HCWs under the SCHADS Award?

10. We refer to our response at paragraph 2, above.

Question 9 for all parties: Does any party seek changes to the incremental pay points in the Nurses Award?

11. The UWU does not seek any changes to the incremental pay points in the Nurses Award.

Question 10 for all parties: Does any party seek changes to the incremental pay points in the SCHADS Award?

12. The UWU does not, at this stage, seek any changes to the incremental pay points in the SCHADS Award but is open to further discussions regarding the SCHADS classification structure.

Question 11 for all parties: Does any party wish to present any further evidence and/or make any further submissions in addition to the evidence and submissions already before the Full Bench in Stage 1 in relation to this issue?

13. At this stage, the UWU does not intend to present further evidence in relation to this matter. In the event that other parties file evidence and/or submissions in respect of the classification structure, the UWU reserves its position in relation to filing submissions in response.

Question 12 for all parties: Does the above discussion accurately summarise the parties' positions on whether there should be a separate classification structure for PCWs in the Aged Care Award?

14. The UWU agrees that the summary at [97] and [98] accurately reflects the position of the UWU.

Question 13 for all parties: Would any such separate classification structure include only PCWs and RAOs?

15. The UWU maintains its position that a wage increase of the same amount should be applied to all employees covered by the Aged Care Award (that being direct care employees, RAOs and non-direct care staff), therefore removing the need for separate streams or classifications.

Question 14 for all parties: Does any party wish to present any further evidence and/or make any further submissions in relation to this issue?

16. The UWU would be open to having further discussions with parties to narrow issues in dispute and attempt to reach a consensus position.

17. The UWU does not intend to present further evidence in relation to the classification structure, except in respect of the classification of AINs (discussed below). In the event that other parties file evidence and/or submissions in respect of the classification structure, the UWU would seek to reserve its position in relation to filing submissions in response.

Question 18 for all parties: Are any parties proposing any changes to the classification structure in the Aged Care Award for indirect care workers?

18. At this stage, the UWU is not proposing changes to the classification structure for indirect care workers.

Question 19 for all parties: Does the above discussion accurately summarise the parties' positions on whether there should be a separate classification of Senior PCW (Aged Care employee level 5) in the Aged Care Award or, alternatively, an allowance provided?

19. The Discussion paper accurately summarises the parties positions in respect of medication allowance/provision of medication.

Question 20 for all parties: Does any party wish to present any further evidence and/or make any further submissions in addition to the evidence and submissions already before the Full Bench in Stage 1 in relation to this issue?

20. The UWU does not intend to present further evidence in relation to this matter. In the event that other parties file evidence and/or submissions in respect of the classification structure, the UWU reserves its position in relation to filing submissions in response.

Question 25 for all parties: Does the above discussion accurately summarise the parties' positions on the appropriate level of a Specialist PCW?

21. Yes, the summary reflects the parties positions.

Question 26 for all parties: Does any party wish to present any further evidence and/or make any further submissions in addition to the evidence and submissions already before the Full Bench in Stage 1 in relation to this issue?

22. The UWU does not intend to present further evidence in relation to this matter. In the event that other parties file evidence and/or submissions in respect of the classification structure, the UWU would seek to reserve its position in relation to filing submissions in response.

Question 32 to all parties: Does the above discussion accurately summarise the parties' positions on whether a Specialist PCW level should include PCWs who have undertaken training in the Household Model of Care?

23. Yes, the summary accurately reflects the parties positions except that the UWU also supports recognition of PCWs who have undertaken training in the Household Model of Care.

Question 33 to all parties: Does any party wish to present any further evidence and/or make any further submissions in relation to this issue?

24. The UWU does not intend to present further evidence in relation to this matter. In the event that other parties file evidence on this issue. The UWU reserves its position in relation to filing submissions in response.

Question 34 for all parties: Does any party wish to present any further evidence and/or make any further submissions in addition to the evidence and submissions already before the Full Bench in Stage 1 in relation to this issue?

25. The UWU seeks to file further evidence on this issue (that being the duties performed by AINs when compared to PCWs) and the classification structure more broadly, as well as make further submissions.

Question 35 for all parties: Do the parties agree that AINs and PCWs perform functionally the same role? Are there differences in skills or qualifications acquired by the respective employees?

26. In practice, AINs and PCWs perform functionally the same role in residential aged care homes. Indeed, AINs and PCWs are used interchangeably by aged care employers.

27. There are no skills or qualifications that are different between AINs and PCWs in residential aged care.

Question 36 for all parties: Should the classification structure and minimum wages for AINs in the Nurses Award and PCWs in the Aged Care Award be aligned and/or consolidated? If so, how? If not, what is the basis for maintaining a different classification structure and minimum wages for AINs and PCWs?

28. The classification structure and minimum wages for AINs should be aligned to that of PCWs, to ensure that persons performing the same work are paid at the same rates of pay.

29. The issue of 'award hopping' is still an issue and the UWU remains concerned that increased discrepancies between the AIN rate of pay and the PCW rate of pay will increase the financial incentive for employers to classify employees at the cheaper rate.

30. The UWU does not have a preference as to whether AIN classifications are aligned in the Nurses Award or if they are consolidated in the Aged Care Award.

Question 37 for all parties: Does any party support moving the nursing classifications of such employees engaged in the aged care industry from the Nurses Award into the Aged Care Award?

Question 38 for all parties: If so, how would parties envision the classification and pay structure of aged care nurses resulting from such a move?

31. The UWU supports the submissions of the ANMF in respect of questions 37 and 38.

Question 39 for all parties: Should the key classification for the purposes of the C10 Metals Framework Alignment Approach in the Aged Care Award be Aged care employee—level 4?

Question 40 for all parties: Should the key classification for the purposes of the C10 Metals Framework Alignment Approach in the Nurses Award be Nursing Assistant, Experienced (the holder of a relevant certificate III qualification)?

Question 41 for all parties: Should the key classification for the purposes of the C10 Metals Framework Alignment Approach in the SCHADS Award be Home Care Employee Level 3?

Question 42 for all parties: Is it appropriate to benchmark a different or an additional key classification contained in the Manufacturing and Associated Industries and Occupations Award 2020?

32. In respect of questions 39 to 41, to the extent that FWC decides that benchmarking to the C10 level is appropriate, the UWU agrees that the levels identified are appropriate.

Question 43 for all parties: Do parties agree with the provisional view expressed at paragraph [955] of the Stage 1 decision not to realign the rates in the Nurses Award to the C10 in these proceedings as proposed by the Joint Employers?

33. The UWU supports the ANMF's submissions in respect to Question 43.

Question 44 for all parties: What changes, if any, are sought to the existing internal relativities of classifications in the Aged Care, Nurses, and/or SCHADS Awards?

34. The UWU does not seek any changes to the relativities in the Aged Care and SCHADS Award, except in so far as the creation of a Level 8 in the Aged Care Award may necessitate it.

35. The UWU notes that it may be appropriate to adjust the relativities in the Nurses Award, noting the anomaly discussed in the Stage 1 decision.

Question 45 for all parties: Do parties propose any re-alignment between rates external to the relevant awards, considering the C10 Metals Framework Alignment Approach and AQF?

36. The UWU does not propose any re-alignment to rates external to the relevant Awards.

Question 46 for all parties: Parties are invited to comment on what extent there is evidence currently before the Full Bench suggesting that HCWs work across multiple sectors and with clients with multiple care needs (aged care and disability care).

37. There is limited evidence before the Full Bench that suggests that HCWs work across multiple sectors.

- a. In the evidence before the Full Bench, home care workers such as M Phillips and M Purdon appear to perform both disability and aged care work but their employment is covered by an enterprise agreement with a unique classification structure that is not reflective of the SCHADS Award.

- b. In the evidence of T Heenan, she describes performing both disability and aged care work but being paid at a higher rate of pay than the Award (and indeed Schedule B of the SCHADS Award)¹.
- c. For other home care workers who work across streams (of which there are few), it is unclear if these are divided on a shift by-shift basis or if there is ever an occasion where a worker would be engaged across both aged care and disability care in the one shift.

Question 47 for all parties: If a separate classification structure is created for home aged care workers, how will this apply to HCWs who work with both aged persons and people with a disability or who also work in the social and community services sector?

- 38. As indicated above, there is limited evidence of workers working across both aged care, community services and/or disability care work for the same employer.
- 39. Community services work is already covered by a separate stream. Much of the disability care work in homes is already paid under Schedule B of the SCHADS Award, rather than Schedule E.
- 40. In circumstances where a home care worker does perform work that would fall into separate streams (whether aged care, community services and/or disability care) it would be anticipated that a home care worker should be paid at the appropriate rate for the duties performed. That being that they would be paid as an aged care home care worker for shifts worked as an aged care home care worker.
- 41. Whilst the UWU acknowledges that where there are separate classifications, multiple rates of pay that may apply, it is not dissimilar to what already happens when a worker may work in various roles within an organisation or perform higher duties.

Question 48 for all parties: Does any party consider that there should be any changes to the classification structure to take account of any differences between the home care and residential care settings?

- 42. As indicated above, the UWU is open to further discussions regarding the SCHADS Award classification structure but does not propose changes at this stage.

¹ See [52] of the Statement of T Heenan.

Question 49 for all parties: does any party wish to file additional submissions and/or evidence in addition to the evidence and submissions already before the Full Bench in Stage 1 in relation to indirect care employees?

43. Noting the comments of the Full Bench in the Decision of 4 November 2022 at [903], [904], [922] and [926], the UWW seeks to present further evidence and submissions in Stage 3 in respect to non-direct care work under the Aged Care Award.

44. The UWW anticipates that this would involve further evidence from witnesses regarding the nature of their work as kitchen attendants, cleaners, gardeners and maintenance persons.

Question 50 for all parties: does any party wish to file additional submissions and/or evidence in addition to the evidence and submissions already before the Full Bench in Stage 1 in whether a further increase is justified on work value reasons for direct care workers?

45. The UWW does not intend to present further evidence in relation to this matter. In the event that other parties file evidence and/or submissions in respect of the classification structure, the UWW would seek to reserve its position in relation to filing submissions in response.

Filed on behalf of the

United Workers Union

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