

BEFORE THE FAIR WORK COMMISSION

MATTER NO. AM2020/13

S157 – VARIATION OF MODERN AWARDS TO ACHIEVE THE MODERN AWARDS OBJECTIVE – PAID PANDEMIC LEAVE

SUBMISSIONS IN REPLY: EXTENSION OF SCHEDULE Y

1. To the extent that the submissions of the employer organisations seek to convey that the *Support for Aged Care Workers in COVID-19* grant program is the sole source of federal funding that may be drawn upon to assist in meeting the costs of the paid pandemic leave entitlement, we suggest they are mistaken.
2. Rather, relevant announcements made in connection with the recent Federal Budget confirm that:
 - a. a second round of COVID-19 supplements to aged care providers (i.e., additional to the \$205 million paid in June), of \$217.6 million is in the process of being paid this month.¹ The funding is intended to be used for “..infection prevention and control and additional staff costs”, among other purposes;² and
 - b. \$8.4 million has been allocated for supplementary payments to help cover “quarantine costs”³.
3. These funds are additional to the \$61.3 million *Aged Care Support Program*⁴ which provides reimbursements to residential and home care providers nationally over the period 24 February 2020 – 31 May 2021. Those reimbursements, which are expected to take only 4 weeks once applied for,⁵ specifically address (among other things) “replacing existing staff who are infected or isolated due to COVID-19”⁶ including

¹ [https://mcusercontent.com/1108de8332cef333bc1956686/files/f643cf04-f351-4e08-9baa-25acf926799e/Letter to residential aged care service providers from Minister Colbeck 13 October 2020.pdf](https://mcusercontent.com/1108de8332cef333bc1956686/files/f643cf04-f351-4e08-9baa-25acf926799e/Letter_to_residential_aged_care_service_providers_from_Minister_Colbeck_13_October_2020.pdf)

² *Ibid.*

³ <https://www.health.gov.au/sites/default/files/documents/2020/10/budget-2020-21-aged-care-covid-19-pandemic-response.pdf>

⁴ <https://www.grants.gov.au/Go/Show?GoUuid=068A9519-03B3-6B9E-7B61-126A5ABA12C1&keyword=GO3844>; <https://www.health.gov.au/news/financial-support-for-aged-care-providers-directly-impacted-by-covid-19>

⁵ [COVID-19 Aged Care Support Program Guidelines](#), at section 6.2

⁶ [COVID-19 Aged Care Support Program Guidelines](#), at section 5.1

“salary and wages for existing and new employees including full time, part time and casual staff [and] contractor expenses”⁷. Whilst these payments do not cover the cost of the worker who takes paid pandemic leave, they do pay the cost of the worker who replaces them. The payments therefore have the potential to achieve cost neutrality or better, even without having regard to the 30% “labour on cost and administrative overhead” available in respect of each claim.⁸

4. Even if one took the view that none of the alternate funding sources identified above was available to assist in meeting the costs of the entitlements, the reality – as the recent correspondence from the Department of Health to the Commission⁹ confirms – is that the *Support for Aged Care Workers in COVID-19* grant program has been extend twice. The potential for it to be extended in future is in no way ruled out, rather the Department explicitly states that “..the timeframe may be extended as needed and additional hotspot locations may be added...”. In our view, it would be counter productive to any endeavour to secure a further round of funding to place an arbitrary end date on the availability of the entitlement. In any event, the preservation of the entitlement on the basis we have contended for does not preclude an application being made to vary or remove it at some point prior to the end of the pandemic (notwithstanding that we would likely oppose such an application on its merits).
5. Finally, we would urge the Commission to recall that the *Support for Aged Care Workers in COVID-19* grant program has never provided any additional funding unless the aged care provider or the worker concerned were located in declared COVID-19 hotspot. This limitation, clearly expressed in the Departments’ Correspondence to the Commission prior to the entitlement being introduced¹⁰ and understood by the Commission¹¹ was not seen as a barrier to the introduction of the entitlement. It is therefore disingenuous to suggest that anything falling short of full cost recovery from the Commonwealth is a barrier to the maintenance of the entitlement.

Australian Council of Trade Unions

28 October 2020

⁷ [COVID-19 Aged Care Support Program Guidelines](#), at section 5.2

⁸ [COVID-19 Aged Care Support Program Guidelines](#) at Appendix A.

⁹ <https://www.fwc.gov.au/documents/sites/health-sector-pandemic-leave/submissions/am202013-sub-vic-gov-261020.pdf>

¹⁰ <https://www.fwc.gov.au/documents/sites/health-sector-pandemic-leave/submissions/am202013-fi-au-gov-240720.pdf>.

¹¹ [2020] FWCFB at 3940 [13].