



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT ASBURY
DEPUTY PRESIDENT O'NEILL
DEPUTY PRESIDENT SLEVIN
DEPUTY PRESIDENT GRAYSON**

AM2024/21

s.157 - FWC may vary etc. modern awards if necessary to achieve modern awards objective

Gender undervaluation — priority awards review — Social, Community, Home Care and Disability Services Industry Award 2010

Sydney

10.15 AM, FRIDAY, 19 DECEMBER 2025

Continued from 20/11/2025

PN5766

JUSTICE HATCHER: Good morning. I'll take appearances. Mr Saunders and Mr Anwar, you appear for the Australian Services Union?

PN5767

MR L SAUNDERS: Yes, your Honour.

PN5768

JUSTICE HATCHER: Mr Scott, you appear for Australian Business Industrial, Aging Australia, the New South Wales Business Chamber and National Disability Services?

PN5769

MR K SCOTT: I do, if it pleases.

PN5770

JUSTICE HATCHER: Ms Cruden, you appear for the Australian Industry Group, Australian Federation of Employers and Industries and Ability First Australia, with Ms Bulu; is that right?

PN5771

MS L CRUDEN: Yes, your Honour, thank you.

PN5772

JUSTICE HATCHER: Ms de Plater, you appear for the HSU?

PN5773

MS L DE PLATER: Yes, your Honour.

PN5774

JUSTICE HATCHER: Ms van Gent, you appear for the UWU?

PN5775

MS A VAN GENT: Yes, your Honour.

PN5776

JUSTICE HATCHER: Ms Pope and Ms Varian, you appear for VCOS and NCOS; is that right?

PN5777

MS POPE: Yes, your Honour.

PN5778

JUSTICE HATCHER: Mr Latham is coming to represent your clients?

PN5779

MS POPE: Yes.

PN5780

JUSTICE HATCHER: That's right. Thank you. Mr Leach, you appear for Community Legal Centres Australia?

PN5781

MR T LEACH: Yes, your Honour.

PN5782

JUSTICE HATCHER: Is that all the appearances in Sydney? All right. And, Ms Cooper, you appear for the Commonwealth?

PN5783

MS A COOPER: Yes, that's right.

PN5784

JUSTICE HATCHER: So, Mr Saunders, how do you say we should proceed?

PN5785

MR SAUNDERS: I think the most efficient course, if the matters is heard today, is to take the issues one by one. The first two issues are really matters raised by the ASU. The residual ones are more matters being put forward by the employer parties, and so it might be more convenient for them to go first on those discrete questions. That said, from the correspondence I understand that ABI and AIG have an application to make.

PN5786

JUSTICE HATCHER: Have a what?

PN5787

MR SAUNDERS: An application to make.

PN5788

JUSTICE HATCHER: An application. Yes. All right. Mr Scott, what's your application?

PN5789

MR SCOTT: Thank you, your Honour. My client sent correspondence yesterday afternoon to chambers.

PN5790

JUSTICE HATCHER: Yes.

PN5791

MR SCOTT: I take it your Honours have had an opportunity to see that.

PN5792

JUSTICE HATCHER: Yes.

PN5793

MR SCOTT: That, in short, effectively sets out my client's position in the matter, both generally and in terms of what we say should be the process from today onwards to finalise the matter. And we propose at paragraph 6 of that letter some directions that we say, respectfully, is the quickest and only real way, or certainly the quickest way, to finalise the matter in a manner that gives parties a reasonable opportunity to contribute in light of the document that was published a couple of days ago.

PN5794

JUSTICE HATCHER: Paragraph 6. Why do we need a further hearing?

PN5795

MR SCOTT: It may be that you don't. It may be that you don't.

PN5796

JUSTICE HATCHER: That is, can I perhaps respectfully suggest this course, that if the ASU wants to be heard today, they should make their submissions, otherwise parties can make submissions in response to the statement and the report by 30 January, and we simply reserve our decision after that point. That is, there's only so much we can hear about these issues. We've already had a hearing. We've already received extensive evidence and submissions. At some stage we have to make a decision. Why isn't that sufficient to give everyone a fair hearing?

PN5797

MR SCOTT: I think that is, your Honour. I think that is. If the position is that the union parties are in a position today to say what they want to say about the proposed structure, I can only speak for my clients, but if there has been a direction that enables my clients to say what they want to say by 30 January, then our concerns around procedural fairness and the like and an opportunity to comment would fall away.

PN5798

Whether or not there would need to be a hearing thereafter, it may depend on what arises. But certainly, there are – despite the fact there's extensive material before the expert panel to date, the document published a couple of days ago does raise, on my count, three, what I would say are new issues that we wish to ventilate. And so it may be that after 30 January, the expert panel can form a view as to whether they can reserve at that point, or whether there would need to be a further hearing.

PN5799

JUSTICE HATCHER: All right.

PN5800

MR SCOTT: Can I just indicate that – obviously, other parties can speak for themselves, but I'm at least aware that a couple of other parties have indicated, in my conferral with them around 30 January, that that would pose them some difficulty, and that they would be seeking mid-February. But certainly, speaking for my clients, 30 January resolves any issue that we have.

PN5801

JUSTICE HATCHER: All right. Ms Cruden, did you want to take any different position to that just expressed?

PN5802

MS CRUDEN: Your Honour, that would also be an acceptable outcome. We also note the difficulty of some parties with the 30 January date. Whilst, for Australian Industry Group, that would be acceptable, we know in particular for

ABI, they didn't have the capacity to be involved in the conferences. They have only had the structure for two days, so they are really playing catch-up, in terms of reaching out to consult with their members. So any additional time that may be granted would no doubt be of benefit to that organisation. But other than that, the proposed course is acceptable. Thank you, your Honour.

PN5803

JUSTICE HATCHER: They haven't participated in the proceedings at all to date, have they? Or have they?

PN5804

MS CRUDEN: My apologies. We appeared for them in relation to the hearing, and our submissions were made on behalf of ABI, but they were unable to attend in person at the conferences.

PN5805

JUSTICE HATCHER: All right. Thank you.

PN5806

MS CRUDEN: Thank you, your Honour.

PN5807

JUSTICE HATCHER: I'll come back to the ASU. Does any other party wish to say anything about this?

PN5808

MS VARIAN: Your Honour, we would support this proposal to take submissions, but we would ask for that extension to mid-February. We've got many diverse and very – a broad range of people that would like to be able to see this, and there may be implementations that we haven't been able to consider over the last 48 hours.

PN5809

I know it's a period of time when lots of people are going to have leave, but the social service sector, it's a period of high demand for our services. And we know there's going to be natural disasters, not to mention the fallout from the tragic events that happened earlier this week. So that extra time will be vital for them, to have time to deliver those services and consider the alternate proposal.

PN5810

MR LEACH: Your Honour, on behalf of Community Legal Centres Australia, we appreciate the opportunity to make submissions, but we, like our colleagues at the COSS, think that a mid-February date would be better for organisations in our sector, for the reasons that the COSS have outlined.

PN5811

JUSTICE HATCHER: Thank you.

PN5812

MS POPE: And for the record, I concur with my colleague from the COSS Network.

PN5813

JUSTICE HATCHER: Thank you. How does that proposal commend itself to your client, Mr Saunders?

PN5814

MR SAUNDERS: The primary position of the ASU and the unions was that the matter should proceed today. We're in a position to make submissions, with the caveat that I'll come to. That said, what's put by the NCOSs is compelling in that respect. They seem to be experiencing a degree of prejudice that we weren't otherwise persuaded by. The proposal at large, we can live with. I think it does, however, need to be more than one exchange of submissions.

PN5815

The reason for that is, of the identified issues, we take an active position in two respects. Issues 1 and 2, we say the alternative structure should be amended in two particular ways. Dealing with DSWs, and where SCHADS work kicks in, that, I would propose to speak to. The rest of it is reply to things that I understand the employer wishes to advance.

PN5816

The difficulty is, nothing has been put beyond what was said in confidential conferences, so I can't deal with that until reply anyway. What we would suggest is submissions due – interested parties to make submissions on 20 January, or some convenient date, and a reply, say, two weeks after that.

PN5817

JUSTICE HATCHER: All right. Well, I think we'll proceed on the basis that anybody who wants to make an oral submission today, in response to the statement and the report, can do so. And once we've heard those submissions, we'll adjourn, and we'll consider what further directions should be made about the receipt of written submissions.

PN5818

MR SAUNDERS: Certainly.

PN5819

JUSTICE HATCHER: So Mr Saunders.

PN5820

MR SAUNDERS: Starting with issue 1; this is the question as to whether disability support workers should enter the structure at level 2 or level 3. It's quite a narrow point, we accept. The only disability support workers that this is relevant to are unqualified DWS, by which I mean those who do not have a formal qualification, who also have less than 12 months' industry experience. So we accept we are really talking about new entrants.

PN5821

The difficulty is, it's not necessarily the case that they perform work that could really be classified as introductory or basic at all, let alone for 12 months. The alternative proposed structure, one difficulty with it, as an introductory classification, is that what it doesn't have, as I read it, is a reference to being

involved in structured training, being supervised or supported in a way that often justifies this rate.

PN5822

And as I understand from the previous submissions, is, the basis for having introductory work, the idea that there are some people who are being mentored, we say it does move backwards from where people performing types of higher level disability work are in fact correctly classified under the award, as opposed to the more basic work, which is now caught by the proposed definition of disability home care, the work that is in the disability sector, but does not in fact involve any direct work with a person with a disability.

PN5823

There's no evidence that the work was any different from – the work allocated to a new entrant of that kind is going to be any different to the work that is allocated and required of someone with 12 months' experience or six months' experience, et cetera, although, again, we do recognise that there is a degree of enhancement in work value steadily over time in any role in this structure. We have otherwise dealt with this relatively comprehensively in the earlier written submissions, and I don't, unless there's any questions, propose to expand on it further today, with one caveat. Sorry. I've misread my own note.

PN5824

I think we've drawn your Honour's attention to the earlier digital hearing book, some evidence in that that's relevant to the other aspect of this, where disability support workers performing that full disability support worker job are funded, in recognition of where they're currently classified, the work development. It's not a random allocation by the Commonwealth.

PN5825

One finds that at page 483 of the digital hearing book, and 741, but I don't ask your Honours to turn it up. Similarly, we've identified the particular statements of disability support workers that support what I'm saying about the work being complex, highly regulated, even at the introductory level, in the earlier email to chambers. Again, I don't ask your Honours to turn them up now, but that's the basis.

PN5826

I now propose to move to issue 2, having actually made the submissions. Issue 2 deals with where social and community sector work enters the structure. The debate, as identified in the issue paper, is whether it starts at level 2 or level 5. The ASU's position is that it's level 6; there's complexity there, due to the breadth and nature of work that is contemplated by the phrase 'social and community sector work', and the change in alignment, in that the alignment to current SCHADS 2 and 3 is split between two new classifications, so it's not an easy translation.

PN5827

Again, we recognise that. That's the ASU's position. We also recognise that that protection is there for case workers and practitioners. There was one observation about the current drafting that we wish to make. If your Honours go to page 16 of

her Honour Deputy President O'Neill's report to the expert panel. A54 identifies that this is the minimum entry point for persons engaged as defined, a case worker practitioner or counsellor. We then go to 6.2 on page 17 which deals with how one classifies case workers practitioners within – who qualify for level 6 within that level. We understand this to be limited - and it's really just confirming that our understanding is correct – we understand the intent of this debate that there are some case workers practitioners or counsellors who have qualifications or are working at a particular level that is considered to be involving diploma level skills, minimum 5.1. This delineation is more specifically to those with degree qualifications or who work at that higher level and it's not identifying that a two separate entry points – regardless of the fact that the level 5 case workers may well, and probably will, work under direct supervision. If I've understood correctly, there's nothing more I need to say about that.

PN5828

The effect of this change, there are degree qualified workers within this role but it's not mandatory and it's not ubiquitous in the same way that this whole sector deals with qualifications and formality in different ways, in different sub-sectors, really. What that will do is put people who are – because of the difficulty in necessarily assessing the difference between diploma level skills and bachelor's level skills in a job that's got the same job title, what the ASU's concern is that it will silo people who are doing the same work for three years at level 5 in a matter that is presently unjustified. That's the more minute disagreement about level 5, level 6.

PN5829

Level 2 is the more substantive point and this is more challenging at a general level. Where we take it to be coming from is current schedule B and the inclusion of social, community or disability work in the descriptors for level 1 and level 2, which would suggest that the translation preserving the same rates brings them in in the same manner that SACS work starts at potentially level 1, but certainly level 2. This is a new development in the Award and has a complicated history that is worth setting out because the only justification, as we understand it, as advanced by – the only justification, we understand, will be advanced by the employers, is what I meant to say. It's what the Award currently says it is, but the situation is more complicated than that.

PN5830

It was very early but then there was (indistinct) a delay, my instructor sent some documents to Your Honours this morning, including the application by Parkerville, which is the genesis of these amendments. Yes. So this is the timeline of how those words were introduced into the Award and the difficulty that arises in the middle of this. 7 March 2023, Parkerville, which is an employer in the social and community services sector, applied to vary the Award on a range of different bases, but also to expressly resolve what they saw as an ambiguity as to their coverage. The proposal is found at – it's dealing with therapeutic care workers who, for clarity, are youth workers with a particular title, that's how they are referred to, but that's the job. And eight through to 11 sets out - - -

PN5831

JUSTICE HATCHER: So where are we?

PN5832

MR SAUNDERS: I beg your pardon, Your Honour. We're in the Parkerville application.

PN5833

JUSTICE HATCHER: Yes.

PN5834

MR SAUNDERS: Yes. So page 6 of that, at item 2.5. The ambiguity was identified by - notwithstanding that there are, obviously, other classifications within SCHADS that apply to youth workers - the ambiguity identified by Parkerville was the descriptors in level 1, level 2. They say this is work that our people are doing but it only says disability services, and at 12, the purpose of the identification. This application was made available to the ASU but did not itself come accompanied with a draft determination that had taken a view, 'We'll just tell you what the change is'.

PN5835

The second document I've provided Your Honours is the transcript. I've just provided it for convenience. It's a directions hearing on 22 March 2024. In that, the ASU appeared, and in that directions hearing, was asked by Your Honour, President Hatcher, as to its position on the coverage of therapeutic workers. Gave the answer, 'We think they're covered', which remains the position today. And on that basis, it was determined on that basis the Commission then issued a decision which is *Re SCHADS Award* [2024] FWCFB 2045. The conclusion was that a draft determination resolving the ambiguity as to the coverage of therapeutic workers would be published.

PN5836

JUSTICE HATCHER: So where's that decision?

PN5837

MR SAUNDERS: We haven't provided the decision, I'd just become aware of it, but it's a short decision and I can provide the citation again.

PN5838

JUSTICE HATCHER: So just go back to the transcript. So where does it deal with it in the transcript?

PN5839

MR SAUNDERS: One moment. We see it at PN27, page 4 of the PDF, and throughout that page.

PN5840

JUSTICE HATCHER: So at 38, it's indicated there's no opposition to clarifying coverage under the Award.

PN5841

MR SAUNDERS: Yes. Correct. And everyone agrees, it can be dealt with separately to the more complex and contested sleepover issue, a decision duly issued, saying, 'We're going to deal with this as a discreet issue because of the

developments in transcript'. I apologise for not providing it, the citation is [2024] FWCFB - - -

PN5842

JUSTICE HATCHER: Sorry, so back in 2024?

PN5843

MR SAUNDERS: FWCFB.

PN5844

JUSTICE HATCHER: Yes.

PN5845

MR SAUNDERS: 2045.

PN5846

JUSTICE HATCHER: Yes.

PN5847

MR SAUNDERS: And if Your Honour goes to page 3, paragraph 5. I'm terribly sorry, I was in the wrong decision. The second one I'm about to take you to, what I meant to say is page 25 – paragraph 25, page 7.

PN5848

JUSTICE HATCHER: And what did the draft determination do?

PN5849

MR SAUNDERS: Well, this is the part that I'm coming to. The draft determination does not currently appear on the website. It does not appear it was ever published on the website. My client has made inquiries. It does not appear it was ever sent to it. The point that the ASU, unsurprisingly, it made no submissions about it. It didn't, at the time, oppose – and doesn't – clarification for therapeutic workers, but it does oppose a variation that would have the effect of moving all SCHADS work into levels 1 and 2 where it didn't previously exist, which we don't take as necessarily the full intent. The language of the determination is pretty clearly drawn from Parkerville's application which wasn't trying to do that.

PN5850

The second decision is [2024] FWCFB 385. The Award was varied in the terms of the draft determination as posed, inserting these words in schedule B that are now driving the draft determination. That was - - -

PN5851

JUSTICE HATCHER: I'm not following this. So the determination was about the Award's coverage.

PN5852

MR SAUNDERS: Yes.

PN5853

JUSTICE HATCHER: So how does this plan into an issue about where they're classified? I'm not following that part.

PN5854

MR SAUNDERS: It's because of the – yes, sorry, it's because of a loose – possibly a loose description of the word 'coverage'. Really, it's talking about whether these employees of Parkerville were covered by the Award. So it's varying classification structure, not the coverage clause. Is the part that we're concerned about, I mean. But there was a variation to the coverage clause which included – just inserted, including the provision of personal care including therapeutic care and the classification structures were amended in the way proposed by Parkerville to bring in that express reference to SCHADS work being done at level 1 and level 2, which may or may not have been necessary. We're not cavilling with that now. I'm explaining why the ASU wasn't jumping up and down about it at the time.

PN5855

JUSTICE HATCHER: So what, the ASU did not respond to the draft determination?

PN5856

MR SAUNDERS: They never received it.

PN5857

JUSTICE HATCHER: How can you have not received it? You're on the subscriber list.

PN5858

MR SAUNDERS: I can't answer that question. What I can say is I have received - I've been told by my client that he didn't receive - inquiries (indistinct) and they did not receive the determination. That may be wrong. I can put on a solicitor's affidavit as to the inquiries but a further difficulty is the two - at least one of the relevant officers no longer works for the union. This always creates difficulties. This isn't a question as to - I don't really submit that it matters how it happened. The reality was the ASU was, as a matter of fact, not aware of the determination.

PN5859

JUSTICE HATCHER: So when did the ASU become aware of the variation?

PN5860

MR SAUNDERS: After the decision was made; very shortly.

PN5861

JUSTICE HATCHER: Well, I mean, why didn't the ASU raise it then? It would have been quite open to say, 'Due to some error we weren't heard and we want the matter reopened'.

PN5862

MR SAUNDERS: Did not at the time apprehend the significance of the change to the classification structure. It is much more clear now that the whole thing is

being simplified and it makes it more obvious that SCHADS work now based on that interpretation theoretically kicks in at that lower level. So it's inadvertence but the point is that the - as a basis for in fact valuing the work, saying what classification it does kick in, it creates difficulties with the idea that people perform work that can be classified backwards. It's less significant a change in the present award because of the surrounding descriptors of the nature of the work, the level of responsibility, the level of supervision. The simplification while obviously necessary does remove some of those handbrakes and just makes it more express that more work could be considered to fall within those levels. So we do accept that this is what the award currently says. We do accept that this is not an example of - could not be described as the ASU's best work. It has happened and it's the reality of the situation. That's the basis - - -

PN5863

JUSTICE HATCHER: Perhaps your client's being too hard on itself. I think the matter was brought forward as one about coverage, not about changing classification or rates of pay.

PN5864

MR SAUNDERS: The ASU only considered it was about clarifying to the extent the necessary therapeutic workers rather than the whole - the schedule as a whole.

PN5865

JUSTICE HATCHER: Yes, all right.

PN5866

MR SAUNDERS: So that's how it went in. It wasn't because it's a consent - well, it's a non-opposed application in that basis. It's not something that involved a consideration of the broader range of work that's caught by those words. So we say perhaps we should have, as Your Honour observes, come in earlier. But we're doing it now.

PN5867

DEPUTY PRESIDENT O'NEILL: Just before you move off the position of the entry point for (indistinct) - - -

PN5868

MR SAUNDERS: Yes.

PN5869

DEPUTY PRESIDENT O'NEILL: - - - I'm familiar with the Parkerville history.

PN5870

MR SAUNDERS: Yes.

PN5871

DEPUTY PRESIDENT O'NEILL: But there was also an exhibit of - which included the agreed industry translation of Victoria following the ERO and I can't off the top of my head tell you what exhibit number that was but everyone will remember. It's a single page with the colour charts. That also provided translation at SACS level 1 and 2 for unqualified youth workers, community and

development workers and welfare workers. So I'm just curious as to what would be said about that.

PN5872

MR SAUNDERS: I'm just finding it, if your Honour bears with me. It'll just take one moment. There we go: the Victorian Classification Code.

PN5873

DEPUTY PRESIDENT O'NEILL: Yes.

PN5874

MR SAUNDERS: Yes. That is for the benefit of others at page 285 of the digital - at least one of the digital hearing books. It's an attachment to the statement of Ms Walk. I don't see that. What I see is SACS level 1 trainee with direct supervision, basic clerical duties, domestic duties and/or personal care.

PN5875

DEPUTY PRESIDENT O'NEILL: It's the columns on the left in grey, Victorian SACS Award.

PN5876

MR SAUNDERS: Yes, they're all translating into level 2 but it's a question of level. Certainly no one at level 1 except the - possibly the historically (indistinct) welfare worker. But it moves in. On the other hand we see on the earlier page, 284, SACS Victoria as well, which is less well graphically designed but not consistent. It has only administrative assistant, disability support worker at SACS level 2, entry level case workers come in at SACS level 3. We'd say that would be preferred, particularly since it's consistent with the New South Wales version, which appears in this document, I believe. Yes, it does, at page 291.

PN5877

These are not just agreed positions. This is a guide worked out based on the actual existing award structures at the time and the translation exercises, not some deal between the ASU and the Commonwealth. It's the industry reflection. Yes, so to the extent that the Parkerville variation could be said to have varied the classification coverage to the broader extent, beyond even bringing in therapeutic workers at those lower levels, it shouldn't be replicated in the amended view. This issue is related to why the ASU despite many promises, it never put on its work value claim yet. We really can't settle the rates until we know where the SACS work starts. That has an impact.

PN5878

DEPUTY PRESIDENT O'NEILL: Well, you might not be able to settle the rates but I'm not sure why the details of the claim couldn't be provided. There will be some amendment if necessary, depending on the outcome here but - - -

PN5879

MR SAUNDERS: Those are my instructions. That is as far as I can take the matter. That's all I had to say on issue 2. In respect of the remaining issues, these are things that the ASU - with two exceptions that I'll come to - the ASU supports the current drafting and the alternative structure and doesn't presently understand

the foreshadowed employer opposition and so that's inclusion of the definition of counsellor and counselling work as an indicative role at level 7. That is appropriate. Some assistance in that respect can be found in the submission of the Financial Counsellors Association, which sets out in some detail the nature of the work, where people are classified, and the statement of - excuse me one second - Ms Starry in the ASU's evidence. We've provided a link. Issue 4, clause 13.4, progression for part-time and casual employees: again, the ASU supports the current drafting. We say it appropriately reflects work value in the industry.

PN5880

We note further the casual and part-time employees are in a female-dominated industry themselves, more female dominated - more of them are women than proportionate within the industry as a whole, is what I mean to say. So slowly their progression down has a corresponding impact. The application of the standard rate is issue 5. The award of course defines the standard rate - defines certain allowances as percentage component of whatever is paid. It's an identified classification. The rate for that classification changes, the allowance changes. So it should be here. That is how that allowance has - at whatever point in time it hadn't been set.

PN5881

We've dealt with this in writing to a degree, I think in respect of the December proceedings. Issue 6 is whether classification structure should extend coverage to clerical employees. The issue identified by AGI and Ai Group rests on a proposition that we say is wrong, that these workers are currently exclusively covered by the clerical award. We base that on what the award says. This is particularly so in schedule E, which identifies clearly clerical and administrative tasks and schedule C, same issue and they're expressly called out in schedule B. It's appropriate that they remain in full. Question 7. The rate for level 3.3 and 4.1 are identical, replicating the current 1.3 and 2.1, should be what it should be. We say it should be \$1,433.81 because this is the correct alignment. It's also the higher number. Unsurprisingly, the same answer is for question 8 of the two options. Of the two options, we prefer the higher one for the same alignment-based reasons, and for ensuring - - -

PN5882

DEPUTY PRESIDENT O'NEILL: But not at level 6.5 presumably.

PN5883

MR SAUNDERS: Yes.

PN5884

JUSTICE HATCHER: No. Yes.

PN5885

MR SAUNDERS: Yes, I mean, the reasons for that were obvious and we look forward to responding to the employers' position in due course. In terms of question 9, the holding a qualification, this is a pretty critical issue. The current - the drafting effectively picks up in a more - in a clearer way, the current position under the award, which is that if you have this qualification and you do work relevant to it, as your job not just in passing, that's your rate.

PN5886

It's a minimum pegging system, which is not unusual in white collar work like this which doesn't have demarcations necessarily between roles, and you get better at it as you go. The employer opposition to this is a departure from the current structure and, by introducing a hard barrier, will lead to people not clearing it due to employer decisions and make people move backwards. It's just a feature.

PN5887

Question 11. The definition of caseworker, practitioner, excluding therapeutic care workers, this is appropriate and it's because they're youth workers. The nature of their work is identified appropriately within the description. It is just part of the balancing act between having some indicative tasks in terms that are broad enough to capture the various permutations of how things are described and taking the Vehicle Manufacturing Award and identifying every single job that one could possibly do. The former is preferable.

PN5888

Question 12, whether a community and assisted housing workers – crisis and assisted housing workers, I'm sorry, can access level 9 or 10. This is one that I can't address today. I'd need to see the employer position on it. We simply don't understand it yet. And the same with the ABI issue at question 13 of the rates to the homecare disability sector which presently are not articulated in a way I can respond to.

PN5889

I think with that my client doesn't need to put on further written submissions, unless there's some indication that I haven't addressed something sufficiently, but we do need to apply to what's put forward by the employers. There's parts that I can't address and there's – anything could arise in respect of the issues that I have spoken in detail about.

PN5890

JUSTICE HATCHER: Mr Saunders, a slightly separate issue which might arise is whether separate from the introduction of the new classification structure, which might take a longer time or have a delayed operative date, whether there should be ahead of that some phasing in of increases to homecare disability employees, to bring them up to where they would fit in.

PN5891

MR SAUNDERS: Yes.

PN5892

JUSTICE HATCHER: Do you have any submissions you want to make about how that should all fit together in terms of timing and phasing in?

PN5893

MR SAUNDERS: It should happen but we are conscious that the broader issues with schedule B have delayed what would otherwise be a very straightforward question with homecare disability for workers that are quite obviously and following the expert panel's determination, undervalued when you look at their immediate peers in the next schedule.

PN5894

It could be done in a number of ways avoiding delay, and one would be an interim measure just aligning those two schedules, making it one homecare schedule at the current aged care rates, but phasing that in for the disability workers over the period of time that it takes to phase in a broader structure and deal with any other changes following the ASU's application, but it really shouldn't be – we're anxious not to delay that through the ancillary measures. I appreciate that's, to use a technical term, is annoying because it involves immediate changes for employers who might have to change again, but it seems to be the most efficient, if not objectively necessary, very efficient way of dealing with the issue.

PN5895

JUSTICE HATCHER: Thank you. Anything else? Right. Thank you. Does any other party – leaving aside the procedural issues – want to make any submissions today? All right. We might adjourn and consider what further directions we should make. So can the parties reassemble at about 11.45, please.

SHORT ADJOURNMENT

[11.10 AM]

RESUMED

[12.04 PM]

PN5896

JUSTICE HATCHER: All right, so the directions we make are that all parties can file written submissions in response to our statement and the annexed report by 6 February 2026 and the parties can then respond to each other's submissions by 20 February 2026. We will then reserve our decision, except in relation to the subject of Family Day Care, which will need to be a subject of a further hearing at a time to be announced. Unless there's anything further, we'll now adjourn. All right. Thank you. We'll now adjourn.

ADJOURNED TO A DATE TO BE FIXED

[12.04 PM]