



STATEMENT

Fair Work Act 2009

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

Gender Undervaluation — Priority Awards

(AM2024/19, AM2024/20, AM2024/21, AM2024/22, AM2024/23)

JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT ASBURY
DEPUTY PRESIDENT O’NEILL
DEPUTY PRESIDENT SLEVIN
DEPUTY PRESIDENT GRAYSON

SYDNEY, 7 JUNE 2024

Gender-based undervaluation – priority awards – Commission’s own motion – Children’s Services Award 2010 – Social, Community, Home Care and Disability Services Industry Award 2010 – Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020 – Health Professionals and Support Services Award 2020 – Pharmacy Industry Award 2020.

[1] Arising from the *Annual Wage Review 2023–24 Decision*¹ (*AWR 2024 decision*), the Fair Work Commission has now commenced the following proceedings on its own initiative pursuant to s 157(3)(a) of the *Fair Work Act 2009* (Cth) (FW Act) to consider variations to the following modern award classifications and minimum wage rates on work value grounds to remedy potential gender undervaluation:

- (1) AM2024/23: *Children’s Services Award 2010* — classifications applying to the occupation of Child Carer.
- (2) AM/2024/21: *Social, Community, Home Care and Disability Services Industry Award 2010* — classifications applying to the occupation of Disabled Carer and other classifications applying to social and community services, home care and family day care workers generally.
- (3) AM2024/20 and AM2024/22: *Health Professionals and Support Services Award 2020* and *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020* — classifications applying to Medical Technicians, Dental Assistants and Psychologists, and classifications applying to health professionals generally.
- (4) AM2024/19: *Pharmacy Industry Award 2020* — Pharmacist classifications.

[2] This bench has been constituted as an expert panel for pay equity in the care and community sector pursuant to s 620(1D) of the FW Act to hear and determine the identified matters.

[3] The background to these matters is explained in detail in the *AWR 2024 decision* at [88]–[129] and [162]–[172]. In summary, the *AWR 2024 decision* determined that the above awards merited priority consideration as to whether they have been the subject of gender undervaluation with respect to the identified classifications. This conclusion was reached having regard to a number of developments including findings made in the *Teachers decision*,² the *Annual Wage Review 2022–23 Decision*³ (*AWR 2023 decision*), the Stage 1⁴ and Stage 2⁵ reports of the gender pay equity research project conducted following the *AWR 2023 decision*, the *Stage 1 Aged Care decision*⁶ and the *Stage 3 Aged Care decision*.⁷ The *AWR 2024 decision* described the contemplated consideration of the identified priority matters in the following terms:

[171] ... in respect of the four priority categories of occupations/awards identified in section 5 of this decision (paragraphs [112]–[123]), the Commission will immediately after the conclusion of this Review initiate proceedings pursuant to s 157 of the FW Act to consider whether the minimum wage rates for the relevant classifications in identified awards should be increased on work value grounds in order to remedy potential gender undervaluation. This will give interested parties a proper opportunity to adduce evidence in respect of all relevant issues. However, we emphasise two matters. *First*, it is not intended for these matters to go forward as if they are a blank slate. They will proceed on the gender undervaluation premises established in the Stage 1 and Stage 2 reports, the *Teachers decision*, the *AWR 2023 decision*, the *Stage 1 Aged Care decision* and the *Stage 3 Aged Care decision*. *Second*, consistent with the priorities we have given them and the imperatives of ss 134(1)(ab) and 284(1)(aa) of the FW Act, they will be dealt with to completion in a time-critical manner. We certainly intend that they will be completed by the time of next year’s annual wage review such as to permit that Review to move on to the consideration of any further gender undervaluation issues.

[4] Because these proceedings have been initiated by the Commission rather than by application, it is necessary to identify the issues which will arise for determination in the proceedings. Our *provisional* view is that the issues which will arise in the proceedings are as follows:

- (1) Having regard to the findings contained in the Stage 1 and Stage 2 reports, has the work to which the classifications apply been historically undervalued because of assumptions based on gender?
- (2) Would variations to the minimum wage rates prescribed for the classifications be justified by work value reasons and would such variations be necessary to achieve the modern awards objective?
- (3) Does the work of employees under any of the classifications involve the exercise of ‘invisible’ skills and/or caring work as described in paragraphs [156(1)] and [172]–[173] and elsewhere in the *Stage 3 Aged Care decision*?
- (4) Is the benchmark rate identified in paragraph [170] of the *Stage 3 Aged Care decision* appropriate to apply to any of the classifications for which a Certificate III qualification or equivalent is required?

- (5) Is the benchmark rate identified in paragraph [204] of the *Stage 3 Aged Care decision* appropriate to apply to any of the classifications for which an undergraduate degree qualification or equivalent is required?
- (6) To the extent that any adjustment to the existing classification structure in any of the awards is required, what are appropriate terms (including classification descriptors and minimum wage rates) for a new or modified classification structure?
- (7) To the extent that any increases to the minimum rates for any classifications are justified by work value reasons in order to remedy gender undervaluation, what is an appropriate implementation timetable for such increases having regard to funding and related issues?
- (8) Should the equal remuneration order ([PR525485](#)) applicable to social and community service employees under the *Social, Community, Home Care and Disability Services Industry Award 2010* be revoked consequent upon appropriate variations to the classification structure and minimum wage rates in that award?

[5] It is also necessary to establish a timetable for the expedited hearing and determination of these proceedings in order to meet the timeframe for completion⁸ intended in the *AWR 2024 decision*. Our *provisional* view is that the timetable for each of the proceedings should be as follows:

8–19 July 2024	Preliminary conferences with parties to ascertain any agreed matters.
6 September 2024	Parties to lodge submissions and evidence, and any agreed statements of facts, concerning the identified issues.
15 November 2024	Parties to lodge submissions and evidence in reply.
19 November 2024	Directions hearing.
2–6, 9–13 and 16–20 December 2024	Reserved for hearing of all matters.

[6] There will be a hearing before the presiding member in Melbourne at **2:00 pm (AEST) on Tuesday, 18 June 2024** to hear any submissions concerning the *provisional* list of issues and timetable. At this hearing, the parties may in addition advance any proposal for the Commission to undertake or commission independent research in any of the proceedings, including any appropriate directions to accommodate this. The final version of the list of issues and timetable will be issued following this. Parties interested in attending the hearing should email awards@fwc.gov.au by **5:00 pm (AEST) on Friday, 14 June 2024** to advise whether they will attend the hearing in person or wish to request to attend by video link using Microsoft Teams. Parties located in Melbourne will be expected to attend in person.

[7] A new major case webpage has been established for the ‘[Gender Undervaluation — Priority Awards](#)’. All material related to the case will be published on the major case webpage. Interested parties are encouraged to [subscribe](#) to receive updates. A submission coversheet and

template will be published on the major case webpage to assist parties that wish to participate in the case.



PRESIDENT

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¹ [\[2024\] FWCFB 3500](#) [171].

² *Application by Independent Education Union of Australia* [\[2021\] FWCFB 2051](#).

³ [\[2023\] FWCFB 3500](#), 323 IR 332.

⁴ Natasha Cortis et al, UNSW Social Policy Research Centre, *Gender-based Occupational Segregation: A National Data Profile* (Final Report, 6 November 2023).

⁵ Fair Work Commission, *Stage 2 report — Gender pay equity research — Annual Wage Review 2023–24* (Report, 4 April 2024).

⁶ *Aged Care Award 2010; Nurses Award 2020; Social, Community, Home Care and Disability Services Industry Award 2010* [\[2022\] FWCFB 200](#), 319 IR 127.

⁷ *Aged Care Award 2010; Nurses Award 2020; Social, Community, Home Care and Disability Services Industry Award 2010* [\[2024\] FWCFB 150](#).

⁸ [\[2024\] FWCFB 3500](#) [10], [171].