

From: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>
Sent: Tuesday, September 24, 2024 3:28 PM
To: Penelope Parker <PParker@mauriceblackburn.com.au>
Cc: Nigel.ward@ablawyers.com.au; Alana Rafter <Alana.Rafter@ablawyers.com.au>; Mia Pantechis <MPantechis@mauriceblackburn.com.au>; Larissa Harrison <Larissa.Harrison@unitedworkers.org.au>; Ben Redford(unitedworkers) <Ben.Redford@unitedworkers.org.au>; Reeves, Stephen <Stephen.Reeves@ags.gov.au>; Besemerer, Clare <Clare.Besemerer@ags.gov.au>; Vermeesch, Paul <Paul.Vermeesch@ags.gov.au>; Angelica Nippard <ANippard@gordonlegal.com.au>; Claire Gray-Starcevic <claire.gray-starcevic@unitedworkers.org.au>
Subject: RE: AM2020/99 Work value case - Aged care industry

OFFICIAL

Dear Ms Parker,

The Commission's pay equity and awards team has provided the following information and the attached spreadsheet to assist.

In brief, the rates for clause 14.1 relating to the general stream are calculated simply by taking the rates published in the draft determination in March, which were a 3% increase on rates when the stage 3 decision was issued, and adding the AWR 2024 increase (3.75%). The increases apply in full from 1 January 2025.

*The rates for clause 14.3 relating to direct carers differ in that the level 1 rate is phased in: 3% increase in tranche 1, then the balance in tranche 2. For Levels 2-6, the increase is divided half and half: half in tranche 1 and the other half in tranche 2. The amount of each half is calculated by subtracting the 1 July rate from the rate determined in the stage 3 decision adjusted by the AWR (*1.0375), to find the dollar amount of the full increase, then halving it. It is worth noting that the second half will need to be adjusted by the AWR 2025 increase before it comes into operation on 1 October 2025.*

For every rate being changed, the final rates effective 1 October 2025 will be the rates determined in the stage 3 decision, combined with the AWR 2024 increase and any effect of AWR 2025. This is effectively the same outcome as if all the increases were awarded in full on the day the stage 3 decision was issued, only delayed.

The following explanatory notes accompany the spreadsheet and provide more detail on the methodology.

EXPLANATORY NOTES

The 27 June [decision](#) sets out that 1 January 2025 is the operative date for the full increases for indirect care workers. Indirect workers appear in the Aged Care Award only.

1 January 2025 is also the operative date for the first tranche of increases for direct care workers and will consist of 3 categories:

- if half of the total increase is more than 3%, half of the total increase should take effect on 1 January 2025;*
- if the total increase is more than 3%, but half of the total increase is less than 3%, a 3% increase should take effect on 1 January 2025; and*
- if the total increase is less than 3%, the total increase should take effect on 1 January 2025.*

In other words:

- if the increase is greater than 6%, half will take effect on 1 January 2025 (tranche 1) and the balance of the increase on 1 October 2025 (tranche 2);
- if the increase is between 3 and 6%, 3% will take effect on 1 January 2025 (tranche 1) and the balance of the increase on 1 October 2025 (tranche 2); and
- if the increase is less than 3%, the total increase will take effect on 1 January 2025 (tranche 1).

For every rate being changed, the final rates effective 1 October 2025 will be the rates determined in the stage 3 decision, combined with the AWR 2024 increase and any effect of AWR 2025. **This is effectively the same outcome as if all the increases were awarded in full on the day the stage 3 decision was issued, only delayed.** It is only necessary to calculate the values of the rates as at the date of the tranche 1 increase, as except for the effect of AWR 2025, the final values are already known. This approach ensures that the relativities established by the Expert Panel will be in place from 1 October 2025, once tranche 2 takes effect.

For indirect carer rates, the rates published in the draft determination in March, which were a 3% increase on the point-in-time rates, have been multiplied by the AWR 2024 increase (3.75%). This means that the AWR increase has compounded on the 3% increase in the same way it would if the 3% increase took effect in March 2024.

E.g.

AGED CARE AWARD	Rate when Stage 3 decision was issued (15 March 2024)	Rate determined in Stage 3 decision	
Aged care employee—general—level 1	910.9	938.2	
		(910.9*1.03)	

The direct carer rates have been calculated by multiplying the rates set out in the stage 3 decision by the AWR increase (3.75%) first. This finds the rates as they would be if they took effect in their entirety on 1 January 2025 (column F of sheet 1 of the spreadsheet).

For rates increasing by more than 6% in total, where half of the increase will take effect in tranche 1, and the other half in tranche 2, the amount of the increase will be the same dollar value in each tranche — except that the AWR 2025 will need to be applied to the second half of the increase (assuming the operative date of the AWR 2025 is before 1 October 2025). This adjusted half will need to be added to whatever the rates are post-AWR 2025, ensuring any effect of the AWR 2025 applies to the full increase.

The increases have been calculated by subtracting the figure in column D from the figure in column F to find the total dollar value increase (less AWR 2025), then halving this figure and subtracting it from the final figure to find the tranche 1 figure. (It might be more intuitive to add the figure to the current rate, but subtracting from the notional tranche 2 rate has been done because in cases where multiple pay points or classifications are being combined, there is no single figure to add to.)

E.g.

AGED CARE AWARD	Rate when Stage 3 decision was issued (15/3/24)	Rate determined in Stage 3 decision	Rate
Aged care employee—direct care—level 4—Senior	1144.2	1272.9	

For rates increasing in total by at least 3% to 6% and therefore receiving a 3% increase in tranche 1, and the remainder in tranche 2, as you would expect, the 3% increase is 3% of the rate post AWR 2024 (the 1 July 2024 rate in column D). The remaining increase will bring these rates to the values set in the stage 3 decision + the AWR 2024 increase. From there, any effect of AWR 2025 can be applied.

How the phasing-in category is determined

The increase percentages for each new rate are calculated according to the 1 July 2024 rates and stage 3 AWR 2024 adjusted rates (columns D and F). This is only used to find out which phase-in category each new rate belongs to and not to calculate the value of the increases. These are colour coded yellow to red.

In SCHADS, the existing 11 pay points will be condensed into 6 new levels, according to the translation table. In the Aged Care Award, 7 direct carers levels are translating into 6. Of course, the increase an employee will receive depends their previous rate. This is further complicated by a few employee classifications that are translated downwards or upwards in the classification levels and the fact that AINs are coming over from the Nurses Award into the Aged Care Award and SCHADS Award. However, for simplicity I have not factored in the value of increases to incoming AINs for the purposes of determining the phase-in category and it is unlikely to make any difference in any case. I have just used straight level 1 to level 1 comparisons, with the exception that where multiple classifications/pay points are condensing into one, I have averaged the incoming rates (column G) to find the workable percentage increases. Again, this is only for the purposes of determining the phase-in category.

Effect on relativities

Once the full increase is applied (by 1 Oct 2025), the relativities land at the proportions prescribed by the stage 3 decision. However, because the increases are not delivered in a proportionate way between the rates, the relativities will not be at the prescribed levels in the 1 Jan increase, see column O.

Again the Oct 1 figures are notional, they will be affected by the AWR 2025, but obviously provided that the AWR increase is percentage based, the relativities will be preserved.

Employee translations

The translation comparison (sheet 2) identifies that employees in the Aged Care Award translated from direct care level 3 (who translate to the new level 2) would by doing so have their pay reduced in tranche 1 by \$5.20 per week. This is due to the way the increase to Aged care employee—direct care—level 2—Direct Carer is being applied half and half and the pre-existing differences in pay between these 2 classifications. The pay reduction only applies to the tranche 1 increase – by the time the second adjustment is made their pay is clearly higher than where it started.

To remedy this, a new clause has been added to the Aged Care Award determination that will retain these employees' pay at current levels until it goes up. The same has been done for 2 classifications in the SCHADS Award where pay would otherwise drop, highlighted in red in the sheet.

Edrea Venal (she/her)
Associate to Justice Hatcher, President
Member Support Team, Tribunal Support Branch



Fair Work Commission

Australia's national workplace relations tribunal

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80 William Street, EAST SYDNEY NSW 2011

In the Sydney office on Tuesdays (usually!)



At the Fair Work Commission we respect and celebrate the diversity of our communities and we are committed to creating a safe and welcoming space for all.

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From: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>

Sent: Tuesday, September 24, 2024 11:02 AM

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Subject: RE: AM2020/99 Work value case - Aged care industry

OFFICIAL

Dear Ms Parker,

I will bring this to the President's attention.

Edrea Venal (she/her)

Associate to Justice Hatcher, President

Member Support Team, Tribunal Support Branch



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From: Penelope Parker <PParker@mauriceblackburn.com.au>

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Dear Associate

We refer to the above, and to the Aged Care Award 2010 determination published by the Commission on 11 September 2024 (**Determination**).

Upon an initial review of the rates in clauses 2 and 3 of the Determination, the HSU and the UWU hold some concerns in relation to the methodology applied in calculating the rates, and suspect that an inadvertent error may have been made.

Accordingly, the HSU and the UWU respectfully request that the Commission provide the parties with details of the methodology used to calculate the wage rates, so that we can better understand the methodology used.

This email correspondence has been sent with the consent of the UWU.

The active parties in these proceedings are included in this email.

Kind regards

Penelope Parker

Senior Associate

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