

FAIR WORK COMMISSION

AM2020/99; AM2021/63; AM2021/65

WORK VALUE CASE – AGED CARE INDUSTRY

SUBMISSION: NURSING ASSISTANTS IN HOME CARE

AGED & COMMUNITY CARE PROVIDERS ASSOCIATION LTD

AUSTRALIAN BUSINESS INDUSTRIAL

(“THE JOINT EMPLOYERS”)

12 JULY 2024

Overview

1. This submission responds to two questions arising from the most recent decision in the Aged Care Work Value proceedings:
 - (a) Should nursing assistants working in home care be covered by the *Social, Community, Home Care and Disability Services Industry Award 2010 (SCHADS Award)*?
 - (b) Should transitional arrangements in the forthcoming determination for the SCHADS Award address nursing assistants working in home care?¹

Question 1: Should nursing assistants working in home care be covered by the SCHADS Award?

2. Prior to the publication of the Draft Determination for the *Nurses Award 2020*,² no party in the proceedings had advanced submissions or put on evidence addressing nursing assistants working in the home care sector. The Fair Work Commission (**the Commission**) made a similar observation on 27 June 2024.³
3. As to nursing assistants working in home care, the Commission said (on a provisional basis):

*“...if such employees exist (as the ANMF appears to assert), they should be covered by the SCHADS Award, and the exclusion from coverage in the Nurses Award should make clear that it applies to aged care AINs in both residential and home care.”*⁴
4. We agree with that provisional view. We also agree that the reasoning at [190]-[191] of the *Stage 3 Decision* is supportive of that approach.⁵

Question 2: Should transitional arrangements in the forthcoming determination for the SCHADS Award address nursing assistants working in home care?

5. Whilst we are unclear as to the precise number of employers and employees that will be impacted by the proposed change in coverage, we respectfully submit that it

¹ See [2024] FWCFB 298 (27 June 2024) at [44]-[45].

² See *Stage 3 Decision* [2024] FWCFB 150 (15 March 2024).

³ See [2024] FWCFB 298 at [44].

⁴ *Ibid.*

⁵ *Ibid.*

appears sensible to adopt the same transitional arrangements that were adopted in relation to nursing assistants working in residential aged care.

6. Those arrangements were summarised by the Commission as follows:

“a translation table for AINs should be included in the determination for the SCHADS Award in equivalent terms to that in the determination for the Aged Care Award (see clause 1.2), and ... a grandparenting provision protecting AINs’ entitlement to an additional week’s annual leave in the same terms as that in the Aged Care Award determination (cl 28.3).”⁶

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⁶ Ibid at [45].