

Australian Industry Group

*Gender Undervaluation
– Social, Community, Home Care
and Disability Services Industry
Award 2010*

Reply Submission
(AM2024/21, AM2024/25 &
AM2024/27)

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GENDER UNDERVALUATION – SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010

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1. INTRODUCTION

1. This submission of the Australian Industry Group (**Ai Group**) concerns various matters relating to the *Social, Community, Home Care and Disability Services Industry Award 2010 (Award)*. It primarily responds to:
 - (a) In AM2024/21 (that being, the proceeding concerning Gender Undervaluation, commenced at the Fair Work Commission's (**Commission's**) initiative):
 - (i) A submission of the Australian Services Union (**ASU**), dated 27 September 2024 (**ASU First Submission**);
 - (ii) A submission of the United Workers Union (**UWU**) and Health Services Union (**HSU**) (undated) (**UWU/HSU Submission**);
 - (iii) A submission of the Commonwealth, dated 27 September 2024 (**Commonwealth Submission**)
 - (b) In AM2024/25 (that being, an application made to vary the definition of the 'home care sector' in the Award), a submission of the ASU, HSU, UWU and Australian Workers' Union (**AWU**), dated 27 September 2024 (**Joint Union Submission**); and
 - (c) In AM2024/27 (that being an application made to vary the Award in various respects) a submission of the ASU, dated 1 October 2024 (**ASU Second Submission**).

2. THE PROPOSALS

2. The unions participating in this proceeding are variously proposing a number of variations to the Award. The key elements of the proposals in which Ai Group has a relevant interest can be summarised as follows.

3. *First*, in AM2024/25, pursuant primarily to s.160 of the *Fair Work Act 2009 (Act)*, it is proposed that the definition of the ‘*home care sector*’ be amended as follows:

home care sector means the provision of personal care, domestic assistance or home maintenance to an aged person ~~or a person with a disability~~ in a private residence.

4. Consequential amendments are also proposed to clauses 17.1 and 17.2 of the Award, which prescribe minimum rates of pay.

5. The practical effect of the variation sought to the aforementioned definition would be to remove from the scope of the home care (**HC**) sector the provision of services to a person with a disability. The HC sector would thus be confined to the provision of the services described to an aged person in a private residence. The relevant unions’ submissions proceed on the basis that employees providing disability services can be classified in the ‘*social and community services*’ (**SACS**) sector, per the existing definition at clause 2 and the classification definitions at Schedule B to the Award.

6. We respond to the above proposals at Chapters 3 – 5 of this submission.

7. *Second*, in AM2024/21, the union parties relevantly argue that, in effect, the Award should be varied as identified above and Schedule E should be deleted. They contend that this would address the undervaluation of work performed under the HC stream in the provision of disability care (if that work were to exist which, in the unions’ submission, it does not).

8. We respond to these submissions at 5 of this submission.

9. *Third*, in AM2024/27, it is contended that:
- (a) Clauses 15.1 – 15.8 of the Award should be varied by increasing the existing minimum wage rates, such that they instead reflect the rates that are payable by virtue of the Equal Remuneration Order¹ (**ERO**).
 - (b) Schedules B and C of the Award should be amended to include various indicative job titles, as set out in a draft determination filed on 24 July 2024.
10. We respond to these submissions at Chapters 5 – 6.

¹ PR525485.

3. THE ALLEGED AMBIGUITY & UNCERTAINTY

11. The material relied upon by the unions does not establish that the Award is ambiguous or uncertain in the relevant sense.
12. The Joint Union Submission focuses in large part on the definitions of the HC and SACS sectors at clause 3 of the Award. As can be seen from clause 4.1 of the Award, the definitions are relevant, as a first step, for the purposes of determining whether an *employer* is covered by the Award. That assessment is to be made by determining whether the *employer* falls within any of the sectors identified at clauses 4.1(a) – (d), having regard to the relevant definitions at clause 3. In the context of the HC and SACS sector definitions, the question will require a consideration of the nature of the services provided by the employer and the ‘*substantial character*’ of its enterprise.²
13. Where an employer falls within on or more of the relevant sectors listed at clause 4.1, they are covered by the Award. The subsequent question is whether their *employees* can be classified in the relevant classification levels, having regard to the definitions set out in the corresponding Schedule to the Award. That question must necessarily be determined having regard to their responsibilities and duties, as well as the skills, knowledge and experience that they are required to hold. One must undertake ‘*an examination of the nature of the work of the employee in question and the circumstances in which the employee is employed to do the work for the purpose of ascertaining the principal purpose for which the employee is employed*’³ (emphasis added) (**Principal Purpose Test**).
14. It is difficult to delineate between the HC and SACS sectors in the abstract; because, as outlined above, the question of whether an *employer* falls within any one of the relevant sectors and whether their *employees* can be classified within the corresponding schedule, turns on a careful assessment of a number of detailed factual matters particular to them.

² *Mitolo Group Pty Ltd v National Union of Workers* [2015] FWCFB 2524 at [41] – [42].

³ *Zheng, Lingli v Poten & Partners (Australia) Pty Ltd* [2021] FWCFB 3478 at [47].

15. It is however tolerably clear that:
- (a) Where an employer satisfies the definition of both the HC and SACS sectors, the appropriate classification of their employees is to be determined by the application of the Principal Purpose Test. The outcome of the application of that test will necessarily turn on the specific facts of the matter.
 - (b) The question of whether the work is performed in a *'private residence'* is not of itself a determinative factor. The apparent inclusion of work performed in respect of persons with a disability in that environment in both sectors arguably gives rise to some overlap between the HC and SACS streams. We would also acknowledge that the definition of the SACS sector at clause 3 is not, on its face, *'simple and easy to understand'*.⁴
 - (c) Nonetheless, the HC sector plainly includes (at the very least) employers who provide *'personal care, domestic assistance or home maintenance'* to persons with a disability *'in a private residence'*, without more, and their employees who can be classified under Schedule B to the Award.
16. To the extent that the unions argue that, by virtue of the operation of the National Disability Insurance Scheme (**NDIS**), the nature of disability services has evolved such that HC work is no longer undertaken (at least in respect of services funded by the NDIS) – that is not a matter that goes to the question of ambiguity or uncertainty. We acknowledge that if the unions' proposition (which is a question of fact) were to be accepted (we say it should not), it may lead the Commission to form the view that the various parts of the Award that relate to the HC sector are otiose and therefore, no longer necessary for inclusion in the Award. However, that is a matter that is separate and distinct from the question of whether the Award is ambiguous and / or uncertain. The Joint Union Submission appears to inappropriately conflate the two issues.

⁴ Section 134(1)(g) of the Act.

17. Further, the focus in the Joint Union Submission on specific elements of the HC and SACS sector definitions⁵ overlooks the more wholistic assessment that is required, in order to determine questions associated with the coverage of the Award and how employees are to be classified.
18. Further, any evidence of employers adopting an approach to the above questions that differs from that of the unions is not *'indicative'* of ambiguity in the relevant sense.⁶ The evidence of disputation concerning the relevant issues is nothing more than a reflection of various unions seeking to assert their position in the context of specific employees or workforces, where employers have sought to classify their employees under the HC stream.

⁵ Joint Union Submission at [58] – [71].

⁶ For example, Joint Union Submission at [69].

4. THE EXERCISE OF THE COMMISSION'S DISCRETION TO ADDRESS THE ALLEGED AMBIGUITY & UNCERTAINTY

19. For the reasons set out in Chapter 3 of this submission, Ai Group's primary submission is that the unions have not established that the Award is ambiguous and/or uncertain so as to enliven the power of the Commission under s.160(1) of the Act to make a determination varying the Award. Rather, the application in AM2024/25 may be characterised as a short-hand attempt to apply the ERO rates to the work of employees classified in the HC sector, in the absence of a work value assessment that justifies that outcome.
20. In the alternate, even if the Commission is satisfied of the existence of an ambiguity and/or uncertainty as contended by the unions, it should not make a determination varying the Award in the terms sought, in short, for the reasons that follow, noting that where an ambiguity or uncertainty has been established:
- [52] The Commission has a discretion as to the terms of the variation to be made, subject to the variation determined having the purpose and effect of removing the identified ambiguity or uncertainty or correcting the identified error.⁷
21. *First*, the variations proposed extend well beyond merely addressing the alleged ambiguity / uncertainty. They would have the effect of requiring employers to reclassify large cohorts of employees under the SACS stream and as a result, remunerate them at substantially higher rates of pay. The variations are by no means confined to a mere rectification of any alleged ambiguity / uncertainty.
22. *Second*, we do not accept that the performance of work in the HC sector by those providing disability services no longer exists.
23. *Third*, the proposed variations would result in many employees being reclassified under the SACS stream and being entitled to substantially higher rates of pay.

⁷ *Modern award superannuation clause review* [2023] FWCFB 264 at [52].

24. Adopting the comparison of rates set out in the Joint Union Submission at [11], if granted, the application would result in the following increases to the minimum wages payable to employees covered by the HC stream:

Home Care Classification Level	\$ Increase per hour	% Increase
3.1	\$6.24	23%
3.2	\$6.46	23%
4.1	\$7.71	26%
4.2	\$8.19	27%
5.1	\$7.46	23%
5.2	\$7.02	21%

25. The existing NDIS funding arrangements do not adequately cover the costs of providing disability services. These deficiencies would only be compounded if the unions' proposal were adopted and would result in employers in the sector coming under increased financial strain which may, in some cases, be simply unsustainable.
26. *Fourth* and relatedly, the Commonwealth Submission expressly states that it has not yet made a decision to fund any wage increases flowing from this proceeding. Indeed, it states that the Commission's decision should be made *'on the basis that the Commonwealth is yet to decide whether it will fund (including at all, and if so, to what extent) any wage increases'*.⁸
27. It would appear that the Commonwealth is submitting that the Commission ought to make its decision on the basis that employers covered by the Award may be required to fund or absorb any wage increases flowing from this proceeding in their entirety.
28. Our position in this respect is unequivocal. Given the nature of the NDIS funding arrangements – which prevent employers from passing on any cost increases to those who access their services – the Commission should not award any wage increases in this proceeding (either directly, or indirectly through the grant of the application in AM2024/25) in the absence of a commitment by the Commonwealth to fund those increases. To do otherwise would be to potentially

⁸ Commonwealth Submission at [38].

risk the viability of many employers in the sector and their ability to continue to employ their workers and provide critical services to the community. At the very least, it would result in many employers coming under considerable financial pressure.

29. *Fifth*, on its face, the variations proposed would curtail the coverage of the Award. For example, it appears that it would no longer cover employers who provide ‘*personal care, domestic assistance or home maintenance*’ to persons with a disability ‘*in a private residence*’, without more.
30. The Joint Union Submission states that, were the Commission to make the variation sought to the definition of the HC sector, ‘*[a]ny residual domestic assistance or home maintenance provided to a person with a disability will be covered by the existing awards applying to those services provided to persons without a disability*’.⁹ However, it does not identify which modern award(s) may cover the relevant employees.
31. Section 163(1) of the Act constrains the Commission from making a determination varying a modern award that would have the effect of certain employers or employees no longer being covered by the award, unless it is satisfied that they will instead become covered by another award (other than the *Miscellaneous Award 2020*) that is appropriate for them. In circumstances where this is not clear, the Commission should not exercise its discretion as proposed.
32. *Sixth*, alternatively, even if one or more alternative awards were to cover the work that is displaced from the scope of the Award; dispersing coverage of a particular category (or categories) of work from one to potentially several awards would be contrary to the need to achieve a stable awards system, that is simple and easy to understand.¹⁰
33. We elaborate on various above propositions in more detail in Chapter 5 of this submission.

⁹ Joint Union Submission at [77].

¹⁰ Section 134(1)(g) of the Act.

5. THE COMMISSION'S QUESTIONS

Question 1

34. Question 1 posed by the Panel is as follows:

- (1) Having regard to the findings contained in the Stage 1 and Stage 2 gender pay equity research reports, has the work to which the classifications apply been historically undervalued because of assumptions based on gender?

35. The ASU First Submission and UWU/HSU Submission both contend that Question 1 should be answered in the affirmative, in respect of the classifications applying to SACS and HC workers.¹¹

36. In support of their positions, both the ASU First Submission and UWU/HSU Submission point to the Commission having previously considered the undervaluation of SACS work and HC work involving the provision of support to aged people in the *Equal Remuneration Case*¹² (**2012 ERO Decision**) and the *Aged Care Work Value Case – Stage 3*¹³ (**Stage 3 Aged Care Work Value Decision**), respectively.¹⁴

37. In relation to disability support workers classified under Schedule E of the Award (**HCW Disability**), the ASU First Submission goes on to advance the following contentions:

- (a) *Firstly*, payment to an employee at the minimum rates applying to HCW Disability undervalues the work, including for reasons related to gender;¹⁵
- (b) *Secondly*, '[t]here is no such thing as a HCW Disability', with the minimum rates in the Award applying to this classification being '*an artefact*' of the Stage 3 Aged Care Work Value Decision;¹⁶ and

¹¹ ASU First Submission at [7] – [8]; UWU/HSU Submission at [6].

¹² [2012] FWCFB 5184.

¹³ [2024] FWCFB 150.

¹⁴ ASU First Submission at [9] – [10]; UWU/HSU Submission at [7] – [8].

¹⁵ ASU First Submission at [11].

¹⁶ ASU First Submission at [11].

- (c) *Thirdly*, the alleged undervaluation of the work of HCW Disability should be addressed by granting the relief sought by the unions in AM2024/25 (being to remove the words '*or person with a disability*' from the definition of '*home care sector*').
38. The UWU/HSU Submission makes the same contentions as the parts of the ASU First Submission set out above.
39. In response to the first contention, Ai Group responds as follows.
40. As set out in Ai Group's submission of 3 October 2024 (**October Submission**), neither the '*Stage 1 or Stage 2 gender equity pay research reports*' establish a basis for a conclusive determination that the work to which the relevant classifications apply (including but not limited to the work of HCW Disability) has been historically undervalued because of assumptions based on gender.¹⁷
41. Further, neither the ASU First Submission, nor the evidence and submissions of the unions filed in AM2024/25, provide a basis for such a determination.
42. The unions have made submissions and filed evidence in support of their contention that various workers are incorrectly classified under the HC classifications contained in Schedule E of the Award, instead of the SACS classifications in Schedule B.¹⁸ The focus of this proceeding (and more specifically, Question 1), however, is on the identification of historical gender-based undervaluation of work.
43. In this way, the unions conflate alleged misclassification (or under-classification) with undervaluation. They contend that misclassified work is undervalued; whereas the appropriate focal point is on whether a particular classification of work is properly valued, having regard to the work undertaken by persons who are properly engaged within that classification.

¹⁷ October Submission at [15].

¹⁸ Second Statement of Angus McFarland dated 26 September 2024 (Second McFarlane Statement), in particular at [3] and [20] – [42]; Statement of James Eddington dated 25 September 2024 (Eddington Statement) at [23] – [32]; Statement of Tin Sit dated 25 September 2024 (Sit Statement) at [42] – [46].

44. In response to the second contention in the ASU First Submission and UWU/HSU Submission, Ai Group does not accept the assertion that there is ‘*no such thing as HCW Disability*’. Services provided under the NDIS include the provision of HC services. Indeed:
- (a) The National Disability Insurance Agency (**NDIA**) expressly acknowledges that some employees providing services funded by the NDIS are classified under the HC stream¹⁹ (as does the Commonwealth²⁰) and
 - (b) The pricing arrangements implemented by the NDIA specifically contemplate the provision of services that involve only the provision of household and domestic duties.²¹
45. Further, the Commission should not be satisfied that the existing classifications and associated rates for HCW Disability have no work to do having regard to:
- (a) The recent decision of Deputy President Dean in *Australian Municipal, Administrative, Clerical and Services Union v Focus ACT*²² in which the Deputy President determined that the work in dispute aligned with Schedule E of the Award;
 - (b) There being live proceedings before the Federal Court of Australia (**FCA**) in which Paraplegic & Quadriplegic Association of South Australia (**PQSA**) seeks declaratory relief concerning the classification of its ‘*Casual Support Workers*’ (**CSWs**) under Schedule E of the Award; and
 - (c) Employers having previously made applications to the Commission for approval of enterprise agreements on the basis of the employees covered by the proposed agreement being classified under Schedule E of the Award, and the Commission having effectively accepted the legitimacy of

¹⁹ For example, the *National Disability Insurance Scheme Disability Support Worker Cost Model Assumptions and Methodology 2024 – 25* at page 5.

²⁰ Commonwealth Submission at [30].

²¹ *National Disability Insurance Scheme Pricing Arrangements and Price Limits 2024-25* at page 57.

²² [2021] FWC 2391.

the Schedule E classifications and rates as a point of reference in determining to approve such enterprise agreements²³.

46. In circumstances where the unions have raised disputes over the classification of work under Schedule E as distinct from Schedule B of the Award,²⁴ and two of the unions are respondents to a matter that is currently live before the FCA in which the PQSA seeks declaratory relief concerning the classification of its CSWs under Schedule E, it would appear that the unions are potentially also seeking to secure their desired outcome in those matters.
47. In response to the third contention in the ASU First Submission and UWU/HSU Submission, Ai Group refers to and relies on the reasons as to why the determination sought by the unions should not be made by the Commission, as set out in this submission.
48. The submission filed by the Queensland Alliance for Mental Health (**QAMH Submission**) contends that the work of HCW Disability has been historically undervalued due to gender-based assumptions, reflected in both the classification structure and remuneration levels;²⁵ and further, that HC work in both the aged care and disability sectors '*share similar skill sets, responsibilities, and challenges, with the 'invisible' nature of caring skills being a common factor*'.²⁶ The QAMH Submission asserts that there is a need to '*rectify*' alleged '*wage discrepancies*' across both streams, to provide '*fair recognition*' of the value of HCW Disability work and having regard to the fact that workers may work across both streams.²⁷
49. The QAMH Submission does not elaborate on the basis for these assertions, nor has QAMH filed any evidence in support of its contentions. Accordingly, we simply respond consistent with our October Submission that the absence of a work value assessment having been undertaken does not of itself warrant a

²³ Second McFarlane Statement at [21].

²⁴ Second McFarlane Statement at [3].

²⁵ QAMH Submission at [6].

²⁶ QAMH Submission at [6].

²⁷ QAMH Submission at [6].

finding of undervaluation.²⁸ Further, assumptions as to the likeness of HCW Disability with that of HC work performed in the aged care sector should not be made, absent a proper evidentiary basis (which, in our submission, does not exist).

Question 2

50. Question 2 is as follows:

- (2) Would variations to the minimum wage rates prescribed for the classifications:
- (a) be justified by work value reasons within the meaning of s.157(2A) of the Act?
 - (b) be necessary to achieve the modern awards objective in s.134(1) of the Act?
 - (c) be necessary to achieve the minimum wages objective in s.284(1) of the Act?

51. Given the interconnected nature of the matters relevant to the MAO in all three matters, we address them together in relation to AM2024/21 and AM2024/25 in this part of our submission.

Question 2(a)

52. The ASU First Submission contends that variations to minimum wages for HCW Disability are justified by work value reasons.²⁹ The union contends that the Award should be varied by:

- (a) Granting the relief sought by the unions in AM2024/25 (namely, to remove the words '*or person with a disability*' from the definition of '*home care sector*');³⁰ and
- (b) Incorporate the ERO rates of pay into the minimum wage rates applicable for employees classified under Schedules B.³¹

²⁸ October Submission at [15].

²⁹ ASU First Submission at [16].

³⁰ ASU First Submission at [17].

³¹ ASU First Submission at [18] – [19]. See also UWU/HSU Submission at [10] – [11].

53. The ASU First Submission offers nothing by way of elaboration on its position, which further reinforces the characterisation of its application in AM2024/25 as a short-hand attempt to apply the ERO rates to the work of employees classified in the HC sector in the absence of a work value assessment having been undertaken so as to justify this outcome.
54. The evidentiary case advanced by the unions lacks the kind of detailed evidence that is necessary in order for the Commission to be satisfied that, in effect, all work performed by employees in the course of providing disability services is of a value that justifies the rates presently payable to those classified under the SACS stream. That is, in particular, there is insufficient evidence that goes to the nature of the work performed by employees across the sector in a broad range of contexts and in the course of delivering the full gamut of disability services – those funded by the NDIS and otherwise. As a result, the Commission cannot be satisfied that the value of all such work corresponds with the relevant minimum wages.

Questions 2(b) and (c)

AM2024/21

55. The ASU First Submission does not address how the variations it contends should be made in AM2024/21 would be necessary to achieve the MAO or MWO. Similarly, the UWU/HSU Submission contains no more than a bare assertion that variations to the minimum rates of pay for HCW Disability would be necessary to achieve the MAO and MWO,³² and ‘*may be*’ necessary for SACS workers pending the outcome of AM2024/25.³³
56. The QAMH Submission does not identify which components of Question 2 (that is, sub-questions (a), (b) or (c)) to which its various contentions relate, nor the specific elements of the MAO or MWO to which they are directed. As such, we respond to its contentions at paragraphs [8], [9] and [10] of the QAMH Submission in the context of the elements of the MAO contained in ss.134(1)(a),

³² UWU/HSU Submission at [10].

³³ UWU/HSU Submission at [11].

(f) and (aa) of the Act respectively (and the equivalent provisions of the MWO in ss.284(1)(c) and (a) of the Act for the first two of these) to which we have assumed the submissions are directed.

57. Paragraph [8] of the QAMH Submission contends that the recent comparison undertaken by the Commission of remuneration for work performed in the HC sector by aged care workers, against industry standards and living costs, represents a '*precedent*' that suggests that HCW Disability should also receive '*a fair wage adjustment that recognises these economic realities*'.³⁴
58. Mere assertions as to '*fairness*' are an inadequate basis upon which the Commission may be satisfied of the need to adjust wages. Rather, any adjustment to the minimum wage rates applicable for HCW Disability is to be based on work value reasons, together with the considerations contained in the MAO and MWO more broadly. Further, the Commission's decision in the aforementioned proceedings cannot be said to constitute a precedent in the relevant sense. Ultimately, any proposed increase to minimum rates must be considered in the context of the factors described above.
59. Paragraph [9] of the QAMH Submission contends that wage disparity between HCW Disability and HC workers in aged care exacerbates workforce retention and recruitment challenges, and incentivises '*lead frogging*' by workers out of disability care and into aged care.³⁵ To the extent the Commission may be satisfied that retention and recruitment challenges for employers may be exacerbated by disparate aged care and disability wages for HC, Ai Group submits that in the context of s.134(1)(f) of the Act,³⁶ any impact on employers that may arise from not granting the determination sought, needs to be balanced against the potentially far more significant impact on employers with respect to employment costs (particularly in the absence of full government funding to cover

³⁴ QAMH Submission at [8].

³⁵ QAMH Submission at [9].

³⁶ Which requires the Commission to have regard to '*the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden*'.

the increased costs). We also refer to and rely upon the October Submission at [17] – [23].

60. Lastly, paragraph [10] of the QAMH Submission contends that it is crucial to consider the financial viability of providers of disability services, in circumstances where wages constitute the largest cost for organisations; and that any increases to the HCW Disability rates of pay *‘must be matched by direct, equivalent government funding’*, or risk jeopardising the quality and availability of essential services and further limiting access for individuals in need of care.³⁷
61. Ai Group supports this contention in the context of both ss.134(1)(f) and (aa) of the Act, the latter of which requires the Commission to take into account *‘the need to improve access to secure work across the economy’*.³⁸
62. A Full Bench of the Commission recently considered the proper construction of s.134(1)(aa) of the Act in the context of the Modern Awards Review 2023-24, finding there was no reason to deviate from the views expressed by the Expert Panel as to its meaning in the AWR 2023 Decision³⁹ and the AWR 2024 Decision.⁴⁰
63. The views of the Expert Panel relevantly included the following:
 - (a) *‘In the award context, job security is a concept which is usually regarded as relevant to award terms which promote regularity and predictability in hours of work and income and restrict the capacity of employers to terminate employment at will’*;⁴¹
 - (b) *‘Beyond the immediate award context, job security has a broader dimension and may be understood as referable to the effect of general economic circumstances upon the capacity of employers to employ, or*

³⁷ QAMH Submission at [10].

³⁸ Ai Group October Submission at [17] – [23] inclusive.

³⁹ [2023] FWCFB 3500 (**AWR 2023 Decision**).

⁴⁰ [2024] FWCFB 3500 (**AWR 2024 Decision**).

⁴¹ AWR 2023 Decision at [28], cited in [Report - Modern Awards Review 2023- 24 \(Modern Award Review Report\)](#) at [47].

*continue to employ, workers, especially on a permanent rather than casual basis ...*⁴²

(c) *'In the context of this Review, the relevance of the consideration concerning the need to improve access to secure work across the economy (s 134(1)(aa)) is primarily whether the review outcome might affect the capacity of employers in the future to continue to offer, or maintain permanent employment.'*⁴³

64. In the context of the current proceeding, to the extent that any increased employment costs to employers threatens the potential viability of services, this may consequently jeopardise the capacity of employers to continue to offer and maintain employment (including permanent employment). This would be counter to the objective articulated in s.134(1)(aa).

AM2024/25

65. As noted above, s.134(1)(a) of the Act requires the Commission to take into account the *'relative living standards and the needs of the low paid'* when ensuring that modern awards, together with the National Employment Standards (**NES**) provide a fair and relevant minimum safety net of terms and conditions.

66. In AM2024/25, the unions contend that the proposed variation will meet the needs of low paid disability support workers, in so far as the weekly wages of *'most'* employees paid the rates prescribed for HCW Disability are less than the *'low paid benchmark'* adopted by the Expert Panel in Annual Wage Reviews; whereas in contrast, the rates applicable to employees classified under Schedule B are generally greater than the benchmark range.⁴⁴

67. The unions' application of the *'low paid benchmark'* is misconceived in the context of the Expert Panel's discussion of how it is to be applied. Relevantly, the Expert Panel stated: (footnotes omitted, emphasis added)

⁴² AWR 2023 Decision at [29], cited in Modern Award Review Report at [47].

⁴³ AWR 2023 Decision at [133], cited in Modern Award Review Report at [49].

⁴⁴ Joint Union Submission at [76](a).

[72] Sections 134(1)(a) and 284(1)(c) require consideration of the ‘relative living standards and the needs of the low paid’. ‘Relative living standards’ is plainly a comparative concept. In past annual wage review decisions, ‘the low paid’ have also been defined in a comparative way in that the measure adopted has been those employees whose ordinary-time earnings are below two-thirds of median adult ordinary-time earnings of all full-time employees. There are two measures of this benchmark. The first is derived from the ABS Characteristics of Employment (COE) data. Based on the COE data for August 2023, the benchmark is \$1066.67 per week. The second is derived from the ABS EEH data, and as at May 2023 is \$1131.33 per week.

[73] On the COE benchmark, every modern award minimum weekly rate of pay up to and including the C8 classification rate is below the low paid threshold. On the EEH benchmark, it is every modern award rate up to and including the C7 rate. However, other award ordinary time pay entitlements such as industry and other allowances, shift loadings, evening and weekend penalty rates payable on ordinary time, and the casual loading where applicable, also need to be taken into account in assessing employees’ earnings for the purpose of comparison with the low paid benchmark. Thus, while the majority of modern award base pay rates are below the benchmark, only a minority, albeit a substantial minority (36.1 per cent) of modern award-reliant employees (on adult rates of pay) are actually low paid. Using the comparative measure referred to, it is their needs which must be taken into account insofar as modern awards are concerned. This group constitutes approximately 6.2 per cent of the total employee workforce.⁴⁵

68. Insofar as the unions contend that ‘most’ of the weekly wages in clause 17.1 of the Award are less than the low paid benchmarks of between \$1,066.67 and \$1,131.33 (and further, stating that only at Level 4.2 do the rates start to rise above the benchmark)⁴⁶ it is apparent from the above that a comparison of the minimum weekly rates of pay in the Award is not the appropriate focal point for assessment as to whether HCW Disability are ‘low paid’.
69. No data has been provided by the unions regarding the proportion of HCW Disability who it contends receive weekly wages that are less than the ‘low paid’ benchmark adopted by the Expert Panel in the AWR 2024 Decision, assessed in accordance with the correct methodology.
70. The Joint Union Submission contends that in the context of s.134(1)(aa) of the Act, the ‘*proposed variation will ensure work of equal or comparable value and eliminate gender-based undervaluation*’ by reason that:

⁴⁵ AWR 2024 Decision at [72] – [73].

⁴⁶ Joint Union Submission at [76](a).

- (a) The Commission in the ERO Decision determined that work performed by disability support workers (**DSW**) in both '*residential*' and '*home*' settings was undervalued for reasons which included gender-based undervaluation of work;
 - (b) The ERO set '*proper*' rates of pay for SACS workers; and
 - (c) Rates of pay for SACS workers are reflected in the funding provided by the NDIS to participants and providers for DSW, and employers who wrongly classify DSW as Schedule E HC work are undermining the ERO and underpaying an already low-paid workforce.⁴⁷
71. As s.134(1)(aa) goes to '*the need to improve access to secure work across the economy*', we assume (and respond on the basis that) this aspect of the Joint Union Submission is more accurately directed at s.134(1)(ab) of the Act and '*the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women's full economic participation*'.
72. Insofar as the Joint Unions Submission is predicated on the misclassification of SACS workers as HCW Disability constituting a gender-based undervaluation, we refer to and rely upon our submissions earlier regarding Question 1.
73. The Joint Union Submission does not address the considerations in the MAO referenced at ss.134(1)(aa), (b), (c), (d) and (da).
74. Ai Group submits that:
- (a) The proposed variations are contrary to s.134(1)(aa) for the reasons explained above;
 - (b) The proposed variations are unlikely to encourage enterprise bargaining and may in fact discourage parties from participating in it (s.134(1)(b));

⁴⁷ Joint Union Submission at [75] and [76](b).

- (c) The evidence does not establish that the variations proposed would increase workforce participation (s.134(1)(c)); and
- (d) Sections 134(1)(d) and (da) are neutral considerations.
75. As against s.134(1)(f) of the Act, the Joint Unions contend '*there will be no impact on employment costs, as employers are already funded by the NDIS to pay DSW at the SACS rate*'.⁴⁸ We strongly contest this proposition.
76. As set out in the October Submission,⁴⁹ the pricing limits stipulated in the *NDIS Pricing Arrangements and Price Limits 2024-25 (Pricing Arrangements)*⁵⁰ effectively impose a cap on the amounts that providers can charge for their services, thereby preventing them from passing on additional costs. The *NDIS Disability Support Worker Cost Model 2024-25 (Cost Model)*⁵¹ from which the Pricing Arrangements are derived is based on a series of assumptions and is used by the NDIA to estimate the costs to disability service providers of providing the relevant services and inform its pricing decisions.⁵²
77. The NDIA has been found to be '*aggressive*' in its price regulation activities in '*trying to set the absolute minimal cost to control the cost to government of the NDIS as a whole*'.⁵³ As a result, the funding made available commonly does not cover the costs of providing the relevant services.
78. Despite the adoption of SACS rates in the Cost Model, the unions' contention that there will be '*no impact*' on employment costs is plainly misconceived when viewing the Cost Model as a whole and having regard to counter-considerations such as the omission from the Cost Model of certain Award-derived entitlements,

⁴⁸ Joint Union Submission at [76](c).

⁴⁹ October Submission at [19] – [22].

⁵⁰ *National Disability Insurance Scheme, Pricing Arrangements and Limits 2024-25* (Version 1.3) <https://www.ndis.gov.au/media/7150/download?attachment> (accessed 2 October 2024).

⁵¹ *National Disability Insurance Scheme, Disability Support Worker Cost Model, Assumptions and Methodology 2024-25* (Version 1.3) <https://www.ndis.gov.au/media/7152/download?attachment> (accessed 2 October 2024).

⁵² *Re. Social, Community, Home Care and Disability Services Industry Award 2010* [2021] FWCFB 2383 at [218](14) – (15).

⁵³ *Re. Social, Community, Home Care and Disability Services Industry Award 2010* [2021] FWCFB 2383 at [218](20).

the underestimation of the true cost of other items (such as overtime), and assumptions regarding labour optimisation and rostering efficiencies that are divorced from the operational realities of organisations that provide the relevant services (particularly having regard to the consumer-directed care model that underpins it).

79. Critically, since the October Submission, the Commonwealth Submission was filed, which states that a process for considering the ability of providers to *absorb* a wage increase is yet to be determined⁵⁴ (as opposed to any position that, having regard to the Cost Model there will be no impact on employers); together with the Victorian Submission which relevantly identifies the following considerations:

(a) In relation to the five priority sectors under review generally:

Noting that the sectors affected by the five awards under review have high levels of small businesses in them, any changes will impact on small businesses, and this is particularly important given the current economic context:

- Any increase in minimum wages can impact those small businesses that continue to face significant challenges in the current economic climate. In particular, the cumulative impact of multiple increasing costs often cannot be easily absorbed by a small business compared to larger business. Notably, wage increases typically lead to higher labour costs for small businesses who can experience tighter budget constraints and pricing pressures
- Increased wages may also lead to higher payroll taxes and other associated costs;⁵⁵ and

(b) In relation to employers covered by the Award specifically:

The prevalence of community-based and not-for-profit organisations as employers of workers under the SCHADS award has important implications for wage-setting. Unlike market-based sectors, these organisations are less able to pass on the higher costs (e.g. in the form of higher prices). These organisations are also more likely to operate with lower financial margins or operating capital, that could enable them to absorb sharp cost increases. For this reason, previous increases of award wages for workers under the SCHADS award – such as the 2012 Equal Remuneration Order – was met through a corresponding increase in government funding for relevant services.⁵⁶

⁵⁴ Commonwealth Submission at [42].

⁵⁵ Victorian Government Submission at page 6.

⁵⁶ Victorian Government Submission at page 8.

80. Moreover, as set out in Chapter 4 of this submission, the Commonwealth has made clear that at this stage, it has not committed to funding *any* wage increases that may flow from this proceeding.⁵⁷

81. This is in direct contrast to the circumstances that applied when the Commission decided to increase wages in the aged care industry in the Aged Care Stage 3 Work Value Decision, which was described as follows, by reference to s.134(1)(f) of the Act: (emphasis added)

The variations will have a significant direct impact on employment costs for aged care employers, but this will be wholly or substantially ameliorated by the Commonwealth's funding commitment. It is possible that if the wage adjustments proposed lead to a greater capacity to recruit and retain directly-employed staff, this may result in savings due to a lower degree of labour hire utilisation which, the evidence demonstrates, have significantly higher costs to the employer than directly-employed staff. Lower turnover of employees may also lead to reductions in recruitment and training costs. An improved capacity to attract and retain staff could also improve the capacity for employers to operate at a higher occupancy rate, which might enhance their financial viability. The employer cost aspect of the consideration weighs against the variations but not to a significant degree because of the Commonwealth's funding commitment and the potential offsetting effects. ...⁵⁸

82. In a subsequent decision, referring to the above extract, the Commission said as follows: (emphasis added)

[13] It was fundamental to the outcome determined in the Stage 3 Aged Care decision that, subject to the issues of operative date and phasing-in, the Commonwealth had made a commitment to funding the pay increases that might arise from the decision. This is most readily seen in our consideration of the modern awards and minimum wages objectives in paragraphs [211]–[212] and [277]–[278] of that decision. In particular, it was substantially this commitment which caused us to conclude that the factors of security of employment (s 134(1)(aa)), the impact upon employment costs (s 134(1)(f)) and the effect on the national economy (ss 134(1)(h) and 284(1)(a)) were either neutral considerations or did not weigh significantly against the wage rates we proposed to award. We did not contemplate in the decision that we would be requiring aged care employers to themselves fund the cost of the wage increases to be awarded.⁵⁹

⁵⁷ Commonwealth Submission at [38].

⁵⁸ Aged Care Stage 3 Work Value Decision at [211].

⁵⁹ [2024] FWCFB 298 at [13].

83. In determining the impact of the proposed wage increases in that matter, including *whether* to grant the increases and the *quantum* of the increases, the Commission took into account (and indeed appeared to give significant weight to) the commitment made by the Commonwealth to fund the increases.
84. The Commission should adopt the same approach here. It follows that in the absence of any such funding commitments (and indeed in circumstances where the Commonwealth has clearly advised that it has not yet decided whether it will fund any increases); s.134(1)(f) weighs very heavily against the grant of any of the variations sought by the unions in this proceeding (as well as any other form of wage increase the Commission might contemplate).
85. In the circumstances, and taking into account the nature of the NDIS pricing arrangements (described above and in the October Submission), the Commission should not award any wage increases in this proceeding.
86. In relation to the consideration at s.134(1)(g) of the Act, the unions submit that *'the existence of overlapping definitions for the provision of services to a person with a disability in a private residence, and the existence of classification numerous [sic] disputes between some employers and workers, is contrary to the need for a simple, easy to understand and stable modern award system in Australia'*.⁶⁰
87. Ai Group would not necessarily oppose amendments to the HC and SACS sector definitions which render those aspects of the Award simpler and easier to understand, without more. Plainly, however, the amendments proposed by the unions go well beyond simply clarifying the meaning of those definitions. Moreover, any desire to make the Award simpler and easier to understand should not override the potentially significant cost implications that the variations sought would have on employers.

⁶⁰ Joint Union Submission at [76](d).

88. Lastly, in the context of s.134(1)(h) of the Act, the Joint Union Submission contends there *'are risks that existing DSW will leave the sector, and new workers will not be attracted to it, in the absence of proper remuneration'*; and that its variation to the Award proposed in AM2024/25 *'will likely ensure greater stability in the existing DSW workforce, and may contribute to employment growth in the sector'*.⁶¹ The evidence does not, however, establish this.
89. Section 134(1)(h) of the Act requires the Commission to take into account *'the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy'*.
90. The outcome of these proceedings may impact the performance of the national economy, due to potential budget impacts for the Commonwealth and/or state governments. The Full Bench in the Aged Care Stage 3 Work Value Decision acknowledged that:
- ...because of its funding commitment, the decision is likely to come at a significant direct cost to the Commonwealth budget. The Commonwealth has indicated that it will be necessary for it to calculate the cost of this commitment once it has the benefit of this decision and will make further submissions as to operative date and phasing-in once it has undertaken this task. The Commonwealth will have the opportunity in this context to provide us with any material indicating that the cost to the budget will have implications for the national economy.⁶²
91. Ai Group submits that the Commission should place significant weight on the assessment in the Commonwealth Submission as to the likelihood and extent of such impacts, and in particular:
- (a) That the assessment may take considerable time given the breadth of programs that could be in scope;⁶³

⁶¹ Joint Union Submission at [76](e).

⁶² Aged Care Stage 3 Work Value Decision at [211].

⁶³ Commonwealth Submission at [42].

- (b) The Commonwealth is yet to determine its consideration of impacts to consumers on costs of services across impacted services, and processes for considering the ability of providers to absorb a wage increase;⁶⁴
 - (c) The Commonwealth expects a '*wide range*' of Commonwealth programs and supports – including but not limited to HCW Disability – will be affected;⁶⁵
 - (d) Having regard to the Budget Process Operational Rules, once the quantum of any pay increase is determined the Commonwealth will at that time need to reconsider the fiscal impact on the Commonwealth budget, and provide information on its funding position and the appropriate approach to the timing and phasing-in of any additional funding support towards those wage increases.⁶⁶
92. Further, the Commission should also take into account the Victorian Government Submission that '*...a significant increase to rates of pay under the priority awards would likely have financial implications for the Victorian Government as a funder of services*'.⁶⁷
93. These matters also weigh against the grant of the variations proposed by the unions.

⁶⁴ Commonwealth Submission at [42].

⁶⁵ Commonwealth Submission at [43].

⁶⁶ Commonwealth Submission at [45].

⁶⁷ Victorian Government Submission at page 7.

Question 3

94. Question 3 is as follows:

(3) Does the work of employees under any of the classifications involve the exercise of 'invisible' skills (including gender-related indigenous cultural skills) and/or caring work of the nature described in paragraphs [156(1)] and [172]–[173] and elsewhere in the *Stage 3 Aged Care decision*?

95. The ASU First Submission contends that Question 3 should be answered in the affirmative for reasons that include (amongst other things) the invisible skills of employees working with people with disability in a private residence were considered in the proceedings that led to the making of the ERO.⁶⁸

96. Similarly, the UWU/HSU Submission contends that '*the work of classifications applying to the occupation of disabled carer and other classifications applying to social and community services and home care workers generally involves the exercise of invisible skills, including skills in communication, cross-cultural understanding, social and emotional support*'.⁶⁹ Further, the UWU/HSU Submission contends that employees who are receiving rates applicable to the HCW Disability classifications '*are receiving rates of pay which do not recognise the invisible skills they exercise*'.⁷⁰

97. The ASU and UWU/HSU case supporting these contentions does not extend beyond pointing to the earlier decisions of the Commission in the 2012 ERO Decision and Stage 3 Aged Care Work Value Decisions. No evidence is advanced regarding any '*invisible skills*' exercised by HCW Disability.

98. It follows that the UWU/HSU Submission that the relief sought by the unions in AM2024/25 should be granted based on the above reason, should not be accepted. Ai Group also refers to and relies upon the October Submission at [26], in response to the unions' contentions.

⁶⁸ ASU First Submission at [23].

⁶⁹ UWU/HSU Submission at [12].

⁷⁰ UWU/HSU Submission at [14].

99. The QAMH Submission contends that all workers covered by the Award in community mental health and wellbeing services exercise invisible skills.⁷¹ Specifically, QAMH contends that the invisible skills identified in the Junor Report in the Stage 3 Aged Care Work Value Decision are skills that are also required of staff working in the community mental health and wellbeing sector;⁷² and include skills such as the provision of emotional and psychological support, cultural competency and sensitivity, indigenous cultural skills, complexity of care tasks, maintaining consistent quality of care across different settings, and gender-related skills (such as nurturing, empathy and emotional support).⁷³
100. The Expert Panel in the Stage 3 Aged Care Work Value Decision made no relevant findings or observations in relation to the work of staff in the '*community mental health and wellbeing sector*'; nor does QAMH advance any evidence in support of this assertion. Accordingly, Ai Group submits there is no proper basis before the Commission in this proceeding to make any conclusive determination as to whether these staff exercise invisible skills in their work (and if so, the nature and extent to which those skills are exercised).

Question 4

101. Question 4 is as follows:

- (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?

102. The ASU First Submission contends that the benchmark rate should be applied to HCW Disability by ensuring they are covered by Schedule B of the Award and relies on the Joint Union Submission and evidence of the unions filed in AM2024/25 in support of its position.⁷⁴

⁷¹ QAMH Submission at [13].

⁷² QAMH Submission at [12].

⁷³ QAMH Submission at [12].

⁷⁴ ASU First Submission at [25](c).

103. Ai Group relies upon its response in relation to the determination sought by the Joint Unions in AM2024/25 at Chapters 3 – 5 of this submission.
104. However, the ASU First Submission also contends that the SACS Level 2.1 classification is wrongly characterised as requiring an employee to hold a Certificate III.⁷⁵
105. Ai Group’s primary position in response to this submission is that there must be some doubt as to the extent to which the ‘*benchmark*’ rate may be said to be an appropriate rate to be applied to ‘*ensure*’ work of equal value.⁷⁶ Even if the Commission were minded to extend the ‘*benchmark*’ rate to further classifications, there must at a minimum be work value reasons for doing so, that align with the basis upon which the ‘*benchmark*’ rate was determined.⁷⁷
106. The ASU First Submission states that the appropriate time to consider significant changes to the Award’s classification structure and pay is after the conclusion of AM2024/21, in the context of AM2024/27.⁷⁸ Ai Group reserves its position to further respond to these issues in the context of those proceedings.
107. The UWU/HSU Submission contends that the minimum rates of pay for HCW Disability are ‘*strikingly low*’ compared to the ERO rates of pay and those for HC workers in aged care.⁷⁹ The UWU/HSU Submission proposes that the appropriate remedy to this is to grant the relief sought in AM2024/25 and relies on the Joint Union Submission and associated evidence filed in that matter in support of this.⁸⁰
108. Ai Group submits that any ‘*striking*’ difference between rates of pay for different types of work does not of itself provide a basis for adjustment of a lower rate of pay to achieve parity with the rates applicable to different workers; but rather, a proper basis must be established for adjustment of the lower rates grounded in

⁷⁵ ASU First Submission at [26].

⁷⁶ October Submission at [40].

⁷⁷ October Submission at [32](b).

⁷⁸ ASU First Submission at [27].

⁷⁹ UWU/HSU Submission at [15].

⁸⁰ UWU/HSU Submission at [15].

work value considerations, the MAO and MWO. As we set out in response to Question 3 above, we contend that no such basis has been established in this proceeding.

109. In response to Questions 4, 5 and 6, the QAMH submits that the benchmark rates should be '*competitive with those in sectors requiring similar levels of study*', to assist with worker attraction and retention and costs associated with pursuing qualifications relevant to the industry.⁸¹
110. The concept of the '*benchmark*' rate is directed towards ameliorating the effects of any gender-based undervaluation. Ai Group strongly opposes the proposition that any '*benchmark*' rate should be based on market competitiveness. This is particularly so in circumstances where the Award is intended to establish *minimum* rates of pay. Further, the Full Bench in the Stage 3 Aged Care Work Value Decision has clearly rejected the appropriateness of alignment in pay based on '*bare equivalence of training qualifications*'.⁸²

Question 5

111. Question 5 is as follows:

- (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?

112. Noting that the benchmark rate for undergraduate degree qualifications is roughly equivalent to the rate of pay for a SACS worker classified at Level 3.3 / CASH worker classified at Level 1.3 (being that set by the ERO Decision in 2012), the ASU First Submission submits that the issue of whether this is an appropriate benchmark for degree qualified workers covered by the Award in 2024 is a matter to be considered in the context of AM2024/27.⁸³

⁸¹ QAMH Submission at [14] – [15].

⁸² Stage 3 Aged Care Work Value Decision; see for example comments of the Full Bench at [108], [110].

⁸³ ASU First Submission at [28].

113. Ai Group reserves its position to respond to the above, including any further submissions and evidence advanced by the ASU in support of any contention to increase the *'benchmark'* rate applicable to degree-qualified work, in the context of Stage 3 of AM2024/27. Ai Group otherwise relies upon its position as set out in the October Submission.⁸⁴

114. In relation to the QAMH Submission concerning Question 5, we refer to and rely upon our response set out at Question 4 above.

Question 6

115. Question 6 is as follows:

- (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?

116. The ASU First Submission states that if the relief sought by the Joint Unions in AM2024/25 is granted, it would be appropriate for the HCW Disability classification structure in Schedule E to be deleted;⁸⁵ and that further classification changes may be considered as a consequence of the Commission's determination of AM2024/27.⁸⁶ The UWU/HSU Submission is to similar effect.⁸⁷

117. Ai Group refers to and relies upon its position set out at Chapter 3 – 5 of this submission as to why the determination sought in AM2024/25 should not be granted.

118. In relation to the QAMH Submission concerning Question 5, we refer to and rely upon our response set out at Question 4 above.

⁸⁴ October Submission at [42].

⁸⁵ ASU First Submission at [29] – [30].

⁸⁶ ASU First Submission at [31].

⁸⁷ UWU/HSU Submission at [17] – [18].

Question 7

119. Question 7 is as follows:

- (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?

120. Both the ASU First Submission and UWU/HSU Submission submit that any increases to minimum rates of pay under the Award should be implemented as soon as possible, and no later than 1 July 2025.⁸⁸ The ASU Submission also proposes that the relief sought in AM2024/25 be granted immediately.

121. As we set out in the October Submission, it is not practicable to advance a detailed submission addressing an implementation timetable for any increases at this stage, given the Commission has not yet determined that it will in fact increase any minimum wage rates, and if so, to what extent.⁸⁹

122. In broad terms however, and for the reasons we elaborated on at Chapter 2 of the October Submission, as well as earlier in this submission; no increase should be implemented unless and until government funding to cover the increase is available. This includes the making of the variation proposed in AM2024/25 which would, in effect, require the payment of higher rates of pay to those presently classified in the HC stream.

123. The Commonwealth Submission relevantly highlights that:

- (a) Once the quantum of any pay increase is determined, the Commonwealth will need to reconsider the fiscal impact on the Commonwealth budget with the benefit of that information and will be able to provide information on its funding position and a proposed approach to timing and phasing-in of increases;⁹⁰

⁸⁸ ASU First Submission at [32]; UWU/HSU Submission at [19].

⁸⁹ October Submission at [47].

⁹⁰ Commonwealth Submission at [45].

- (b) In its submission, any increases should be implemented in a '*measured and responsible manner*' having regard to workforce, fiscal and macro-economic risks;⁹¹ and
- (c) Large increases are most appropriately phased in, to support an '*orderly transition*' for labour markets and to allow service supply to adjust⁹² as well as to avoid adjustment costs across labour markets and the broader economy.⁹³

124. In light of the position expressed by the Commonwealth and in particular, the absence of any indication as to if or when additional funding to cover any wage increases flowing from the proceeding would be afforded, the Commission should not at this stage make any decisions as to an appropriate implementation timetable. Critical to the determination of the timetable will be the aforementioned matters. A decision should not be made until the Commonwealth has articulated its position in respect of them.

125. Ai Group agrees with the QAMH Submission on this issue, which posits that '*[t]he implementation plan is entirely contingent on government funding availability*'.⁹⁴

126. In addition to issues associated with funding constraints, employers are likely to require a significant period of time to prepare for the changes sought, if made, noting the potential need to re-align payroll, human resources and other business systems. This too may necessitate a delayed operative date.

Question 8

127. Question 8 is as follows:

- (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?

⁹¹ Commonwealth Submission at [46].

⁹² Commonwealth Submission at [49].

⁹³ Commonwealth Submission at [50].

⁹⁴ QAMH Submission at [16].

128. The ASU proposes that minimum rates of pay in the Award be varied to incorporate the ERO rates, and submits that Question 8 should be answered in the affirmative.⁹⁵ The ASU relies on the ASU Second Submission in support of this position.⁹⁶ The UWU and HSU support the ASU position and the ASU Second Submission.⁹⁷
129. The ASU Second Submission consistently seeks to oversimplify the proposal and its effect and ignores the complexities set out in the October Submission. Further, we do not accept the ASU's contention that the '*standard rate*' for the purposes of calculating allowances presently incorporates the ERO.⁹⁸
130. The ASU Second Submission makes two further contentions; firstly, that the basis for Ai Group's opposition to the variation is not clear, and secondly, that it is not clear why our opinion should be given any weight.⁹⁹
131. In response to the first contention, Ai Group points to and relies upon its detailed position in response to Question 8 contained in the October Submission.¹⁰⁰
132. As to the second contention, self-evidently, the matters raised by Ai Group are grounded in cogent reasons previously considered by the Commission in circumstances where it determined it was not appropriate to incorporate the ERO into the minimum rates in the Award.
133. For completeness, we reject any contention that our rules are as limited in scope as the union asserts or that we do not have a relevant interest in the proceedings. We also strongly contest any contention that we lack a relevant understanding of the circumstances of employers in the sector or matters relevant to the issues before the Commission.

⁹⁵ ASU First Submission at [34].

⁹⁶ ASU First Submission at [34].

⁹⁷ UWU/HSU Submission at [20].

⁹⁸ ASU Second Submission at [8].

⁹⁹ ASU Second Submission at [9].

¹⁰⁰ October Submission at paragraphs [49] – [55].

134. Regardless, any contest over such matters should not be relevant to a determination of the matters before the Commission and as such, we do not propose to debate the matter through this submission. Instead, the Full Bench ought to have regard to the merits of the submissions advanced and certainly should not make a determination in relation to the matters before it based on the popularity of any particular course with a small number of parties participating in the proceeding. The matters before the Full Bench are of great significance and ought to be robustly assessed.
135. In any event, in circumstances where the ASU itself notes there is no issue of Ai Group's standing in this matter, its comment to the effect that Ai Group '*appears to be playing significantly outside of position*' is both ill-founded and gratuitous.

6. THE PROPOSED INDICATIVE JOB TITLES

136. Ai Group opposes the insertion of the proposed indicative job titles in Schedule B, for the reasons that follow.¹⁰¹
137. The ASU's submission blatantly oversimplifies the propositions it advances. The variations sought are neither '*very simple*', nor can they properly be described as a '*light touch*'.¹⁰² Further, we do not accept that the proposed descriptors necessarily reflect the '*status quo*'.¹⁰³
138. The introduction of indicative job titles would necessarily have a bearing on the manner in which the classification structure is interpreted thereafter. Indeed, it is for that very reason that their introduction is being proposed.
139. Problematically, the proposed job titles tend to overstate the appropriate classification level for certain roles. For instance, we do not accept that all DSW must be classified at level 2; rather, some may be classified at level 1. Relatedly, an employee who is not a '*trainee*' working under '*direct supervision*' may nonetheless be classified at level 1.
140. Further, the indicative job titles would introduce new terminology into the Award, which the ASU does not propose be defined. This of itself is likely to create further confusion, ambiguity and uncertainty, as well as potential disputation.
141. For instance, the term '*Youth Worker*' is used in the sector in different contexts to denote different roles. In the context of out-of-home residential care provided to children and young people, some employers refer to the employees who reside with the children to provide them with day-to-day care and support as Youth Workers. In other contexts, Youth Workers are persons who meet from time to time with young people to provide counselling and associated support, as

¹⁰¹ We do not seek to advance a position in respect of the job titles proposed in respect of Schedule C.

¹⁰² ASU Second Submission at [12].

¹⁰³ ASU Second Submission at [13].

well as to liaise with other agencies or professionals providing support to the individuals.

142. Any acceptance of the proposition that the existing classification structure is unduly complex and requires simplification should be considered and dealt with holistically when Stage 3 of AM2024/27 is heard and determined – rather than in the piecemeal fashion sought by the ASU. That would allow a more fulsome assessment of the work performed at each level of the SACS stream and how it should most appropriately be described in the classification structure.