

FAIR WORK COMMISSION

MATTER NUMBERS AM2024/2022; AM2024/23; AM2024/20; AM2024/19; AM2024/21;
AM2024/25; AM2024/27

GENDER UNDERVALUATION – PRIORITY AWARDS REVIEW

SUBMISSIONS OF THE COMMONWEALTH

A. INTRODUCTION AND SUMMARY

Introduction

1. This submission is made on behalf of the Commonwealth of Australia in accordance with the directions of the Fair Work Commission (**Commission**) on 24 June 2024 in Statement [2024] FCWFB 29 (as subsequently amended).
2. Parts B – E of these submissions deal with the Commonwealth’s position in relation to this matter, as follows:
 - 2.1. Part B — sets out the Commonwealth’s support for this process and submissions as to principles the Commission should adopt, including to ensure that the Commission’s decision has appropriate regard to the macroeconomic considerations which underpin the modern awards objective and the minimum wages objective, as well as to workforce and service supply impacts.
 - 2.2. Part C — addresses matters relating to the interaction between the Social, Community, Home Care and Disability Services Industry Award 2010 (**SCHADS Award**) and the National Disability Insurance Scheme (**NDIS**) in the context of the amendments sought in AM2024/25 and AM2024/27
 - 2.3. Part D — addresses matters relating to the interaction between any pay increases under the Children Services Award 2010 and the Commonwealth’s Early Childhood Education and Care (**ECEC**) Worker Retention Payment
 - 2.4. Part E — sets out the likely timing of any decisions by the Commonwealth regarding funding changes in connection with the wage increases under consideration in these proceedings, and the Commonwealth’s views on phasing of any wage increases.

Lodged on behalf of the Commonwealth of Australia.

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B. COMMONWEALTH SUBMISSIONS AS TO KEY PRINCIPLES

3. The Commonwealth supports the Commission's review process and the broader task of identifying and addressing gender undervaluation in the modern awards system. The Commonwealth's submissions regarding the Commission's approach are underpinned by the following principles:
 - 3.1. **Gender equality:** — advancing gender equality by remedying gender undervaluation in modern awards to narrow the gender pay gap and reduce gender segregation in industries;¹
 - 3.2. **Close the gap:** — adopting positions that align with commitments made through the National Agreement on Closing the Gap and improving First Nations' outcomes, including through recognising First Nations workers' cultural skills;²
 - 3.3. **Consistent outcomes for workers:** — aligning outcomes for workers, especially so that comparable qualifications receive comparable remuneration across affected sectors;³
 - 3.4. **Economically responsible phased approach:** — an economically and fiscally responsible approach to wage increases, such as through phasing, where appropriate, to manage potential workforce, macroeconomic and budgetary impacts;⁴
 - 3.5. **Balancing transitions to servicing, workforce and consumer outcomes:** — considering the risks to business, the maintenance and expansion of critical workforces, outcomes for consumers, women's workforce participation and the long-term sustainability of affected sectors.⁵
4. As detailed in these submissions, the Commonwealth's position recognises and supports the Commission's statutory task — substantially informed by amendments in the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Amending Act)* — to identify and rectify gender-based undervaluation. Equally, the modern awards objective and the minimum wages objective require the Commission to consider broader economic and related considerations.
5. The Commonwealth submits that any wage increases should be implemented in an economically and fiscally responsible manner, to promote productivity and economic growth for Australia's future prosperity, and which has due regard to the likely impact of any exercise of the Commission's modern award powers on employment growth,

¹ See paragraphs [8 -10], and [14 - 22]below.

² See paragraphs [23 - 25] below.

³ See paragraphs [26 -27] and [40] below.

⁴ See paragraphs [38 - 52] below.

⁵ See paragraphs [46 - 52] below.

workforce allocation and impacts, inflation, productivity and business competitiveness and the sustainability, performance and competitiveness of the national economy. In the current context, this should include phasing, to manage potential workforce, consumer, business competitiveness, economic and fiscal impacts.

6. The Commonwealth notes that the Commission has identified the five awards for priority consideration, and established an expedited timetable in order to meet the timeframe of completion by the 2024-25 annual wage review.⁶ Further, after the completion of the Priority Review, the Commission intends to move on to the consideration of any further gender undervaluation issues.⁷ The decisions of the Commission in relation to this matter will therefore have broader implications for workplaces and the economy to the extent they influence future processes.

Key provisions of the *Fair Work Act 2009*

7. Below, the Commonwealth notes the key provisions relevant to these proceedings, including the significant amendments to the *Fair Work Act 2009 (FW Act)* made by the Amending Act which empower and require the Commission to identify and remedy gender undervaluation in the modern awards system.

Objects of the *FW Act*

8. In performing functions or exercising powers, the Commission must take into account the objects of the FW Act (s 578(a)). Following amendments by the Amending Act, the objects of the FW Act include promoting gender equality. Section 3(a) reads (emphasis added):

3 Object of this Act

The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:

- (a) providing workplace relations laws that are fair to working Australians, promote job security and gender equality, are flexible for businesses, promote productivity and economic growth for Australia's future economic prosperity and take into account Australia's international labour obligations; and

...

9. The Revised Explanatory Memorandum to the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 (**Explanatory Memorandum**) explains the purpose of the amendments in Part 4 of the Amending Act as follows:

330. This Part would introduce job security and gender equality into the object of the FW Act. It would place these considerations at the heart of the FWC's decision-making, and support the Government's priorities of delivering secure, well-paid jobs and ensuring women have equal opportunities and equal pay.

⁶ *Annual Wage Review 2023-24* [2024] FWCFB 3500, [171], Statement [2024] FWCFB 280, [5].

⁷ *Annual Wage Review 2023-24* [2024] FWCFB 3500, [171].

10. The Explanatory Memorandum specifically describes the purpose of the amendment to the object in s 3(a) of the FW Act as follows:

- 333. The existing paragraph 3(a) sets out one of the means by which the object of the FW Act is achieved. This item would amend that means to add job security and gender equality as considerations.
- 334. The reference to promoting job security recognises the importance of employees and job seekers having the choice to be able to enjoy, to the fullest extent possible, ongoing, stable and secure employment that provides regular and predictable access to beneficial wages and conditions of employment. The reference to promoting gender equality recognises the importance of people of all genders having equal rights, opportunities and treatment in the workplace and in their terms and conditions of employment, including equal pay. The intention of the references to 'gender equality' in each of these provisions is to use language that is consistent with the Convention on the Elimination of All Forms of Discrimination against Women and ILO Convention concerning Discrimination in Respect of Employment and Occupation (No 111). It is also intended to reflect the policy objective of both formal and substantive gender equality.
- 335. Job security and gender equality would sit alongside existing considerations in the object of the FW Act, such as providing workplace relations laws that are flexible for business, assisting employees to balance their work and family responsibilities, and achieving productivity and fairness (see existing paragraphs 3(a), (d) and (f)).

Section 157

11. Subsections 157(2), (2A) and (2B) of the FW Act provide:

- (2) The FWC may make a determination varying modern award minimum wages if the FWC is satisfied that:
 - (a) the variation of modern award minimum wages is justified by work value reasons; and
 - (b) making the determination outside the system of annual wage reviews is necessary to achieve the modern awards objective.

Note: As the FWC is varying modern award minimum wages, the minimum wages objective also applies (see section 284).

(2A) Work value reasons are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

- (a) the nature of the work;
- (b) the level of skill or responsibility involved in doing the work;
- (c) the conditions under which the work is done.

(2B) The FWC's consideration of work value reasons must:

- (a) be free of assumptions based on gender; and
- (b) include consideration of whether historically the work has been undervalued because of assumptions based on gender.

12. Subsection 157(2B) was introduced by the Amending Act. The Explanatory Memorandum explains the purpose of new s 157(2B) as follows:

346. This item would introduce subclause 157(2B) to clarify that the FWC's consideration of work value reasons must be free of assumptions based on gender and must include consideration of whether historically the work being assessed has been undervalued because of such assumptions. This item is modelled after subsection 248(3) and paragraph 248(4)(c) of the *Industrial Relations Act 2016* (Qld) and would ensure that the FWC's consideration of work value applications cannot be affected by gender-based assumptions about the value of work.
347. In the *Equal Remuneration Decision 2015*, the Full Bench of the FWC expressed a view that the definition of work value reasons would be sufficiently broad to allow a party to advance a claim that minimum rates of pay in a modern award undervalue work due to historical gender-related reasons [(2015) 256 IR 362, [292]]. This item would have the effect of confirming the Full Bench's view in the FW Act.
13. In the *Aged Care Work Value Stage 3 Decision* [2024] FWCFB 150 (**Stage 3 Decision**), the Expert Panel considered that there was a 'sound basis' for the proposition that s 157(2B) requires the Commission to make findings or a statement of conclusions in respect of each of the matters in paragraphs (a) and (b) (at [21]–[22]). The Expert Panel further considered that even if this was not a statutory requirement, it was appropriate to do so in that matter, in light of the submissions and evidence lead by the parties on those issues. The Commonwealth considers that this approach is consistent with the broader policy purpose of the Amending Act including the insertion of s 157(2B).

Paragraph (a) – free of assumptions based on gender

14. Paragraph 157(2B)(a) imposes a negative standard or requirement on the Commission in terms of how it considers work value reasons within the existing meaning in s 157(2A). That is, in considering work value reasons, the Commission must not make assumptions based on gender.
15. In the *Stage 3 Decision*, the Expert Panel noted (at [13]) that the term 'assumptions based on gender' is undefined in the FW Act and has its origins in academic literature concerning gender inequality. The Expert Panel took this phrase to mean (at [13], citations omitted):
- as being subjective preconceptions and stereotypes derived from cultural and social norms about gender roles, skills and responsibilities. This may include, for example, assumptions that tasks and skills such as caregiving, manual dexterity, human relations and working with children commonly required in female-dominated occupations are inherently female characteristics and as such are of lesser work value than 'hard' tasks and skills performed in male-dominated occupations.

Paragraph (b) – consideration of historical undervaluation due to gender-based assumptions

16. Modern award minimum wages may be varied only if the Commission is satisfied that the variation is justified by work value reasons (s 157(2)), which, as was accepted in the *Aged Care Work Value Stage 1 Decision* [2022] FWCFB 200 (**Stage 1 Decision**), are exhaustively defined in s 157(2A) (at [148]). Section 157(2B)(b) operates by requiring the Commission, in considering the work value reasons specified in subsection (2A) (for example, the level of skill or responsibility involved in doing the

work), to consider whether gender-based assumptions have been made historically in relation to those matters which have resulted in the work being undervalued.

17. As [347] of the Explanatory Memorandum indicates, the principal mischief that new s 157(2B)(b) is intended to address is the Commission using minimum rates that were improperly fixed because of gender-based assumptions as a foundation or datum point for applying later changes in work value.⁸ Gender-based undervaluation will be perpetuated if minimum rates that have been set based on historical assumptions about gender are used as a reference point for future wage rises, even if later assessments of changes in work value do not themselves make such assumptions. Section 157(2B)(b) requires the Commission considers whether this is a factor in each case.

Modern Awards Objective and Minimum Wages Objective

18. In considering any variation to award wages under s 157(2), the Commission must consider if the variation is necessary to achieve the modern awards objective. The Amending Act made significant changes to both the modern awards objective and the minimum wages objective, so as to refer to gender equality and gender-based undervaluation of wages.
19. The Amending Act repealed former s 134(1)(e) of the modern awards objective and replaced it with new s 134(1)(ab), which reads:
 - (ab) 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; and
20. As indicated by the note to s 157(2), because the FWC would be varying modern award minimum wages, the minimum wages objective also applies. The Amending Act also repealed the former s 284(1)(d) of the minimum wages objective, and replaced it with new s 284(1)(aa), which reads:
 - (aa) the need to achieve gender equality, including by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and addressing gender pay gaps; and
21. As indicated in [211] of the *Stage 3 Decision*, if the Commission finds that variations to wages within the five awards will ensure equal remuneration for work of equal or comparable value and eliminate gender-based undervaluation of work, these

⁸ As discussed in *Re 4 yearly review of modern awards* (2018) 284 IR 121 at [148] and [156], the adoption of this approach by the Commission's predecessor tribunals significantly limited the capacity to undertake a full work value assessment of awards covering female-dominated areas of work.

considerations introduced by the Amending Act will weigh heavily in favour of making those variations.

22. However, there is no primacy to any one of the s 134(1) (or s 284(1)) considerations, and none of these considerations should be given ‘determinative weight’.⁹ The Commonwealth addresses matters which may be relevant to ss 134(1)(f) and (h) in Parts C to E of these submissions.

Recognition of gender-related Indigenous cultural skills

23. In the *Stage 3 Decision*, the Expert Panel accepted the importance of recognising ‘invisible’ skills in rectifying historical gender-based undervaluation. The Expert Panel concluded at [156(1)] that:

These skills of interpersonal and contextual awareness, verbal and non-verbal communication, emotion management and dynamic workflow coordination were effectively disregarded by the simplistic use of the masculinised C10 benchmark as the basis for the award pay structures for PCWs, HCWs and AINs. This represents a continuation of the history we have earlier outlined of treating the skills exercised in female-dominated industries and occupations as merely feminine traits and not representative of work value in the traditional, narrowly-defined sense. This mischaracterisation and disregard of ‘invisible’ skills lies, as was stated in the Stage 1 decision, ‘at the heart of the gendered undervaluation of work.’

24. In this matter, an issue the Expert Panel has identified to be considered is whether the work of affected employees involves ‘the exercise of ‘invisible’ skills (including gender-related indigenous cultural skills)’.
25. The Commonwealth supports this as a vital line of consideration for the Commission in this process. The concept of ‘invisible’ skills discussed in the *Stage 1 Decision* and *Stage 3 Decision*, provides a useful structure for a factual inquiry into previously overlooked characteristics when identifying work value, which may otherwise be missed in a simplified application of pay rate alignment based on qualifications. The Commonwealth submits that the requirements of s 157(2B) will extend to considering gender-based assumptions which may relate to Indigenous cultural skills. The Commonwealth further submits that if the Commission receives evidence of employees employing particular cultural competencies, then this is clearly capable of forming part of ‘work value reasons’ in s 157(2A), regardless of whether it forms part of the mandatory considerations under s 157(2B).

Comparable remuneration for comparable qualifications across sectors

26. The Commonwealth submits that while qualifications should not be the only determinant of appropriate award relativities, qualifications provide a useful indicator of the level of skill involved in particular work for the purposes of s 157(2A)(b). The Australian Qualifications Framework (**AQF**) has the benefit of providing a relatively

⁹ *Australian Workers’ Union* [2022] FWCFB 4, [154], quoted in [980] of the *Stage 1 Decision*.

objective point of comparison that can be drawn upon across industries and occupations.

27. However, the Commonwealth recognises that qualifications and the AQF are only a useful starting point and not a substitute for the statutory test. The Expert Panel in the *Stage 3 Decision* recognised that strict adherence to an alignment approach can operate to inhibit the proper valuation of women's work (at [90]–[91]).

C. INTERACTION BETWEEN THE SCHADS AWARD AND THE NDIS

28. The National Disability Insurance Agency (**NDIA**) sets price limits within the NDIS through an Annual Pricing Review,¹⁰ the outcomes of which are then published in the NDIS Pricing Arrangements and Price Limits (which was previously known as the NDIS Price Guide).
29. As part of the Annual Pricing Review, the NDIA uses the Disability Support Worker (**DSW**) Cost Model to estimate the costs that a reasonable efficient provider would incur in delivering a billable hour of support.¹¹ The DSW Cost Model estimates costs by considering base salary (including shift loadings), direct on-costs (superannuation, leave entitlements and allowance), operational overheads, corporate overheads and the providers' margin.¹²
30. A key input into the DSW Cost Model is employment entitlements under the SCHADS Award. While recognising that some DSWs are employed under Schedule E as home care employees, and some under an enterprise agreement, the DSW Cost Model uses the wage rates in social and community services sector under Schedule B of the SCHADS Award as the assumption for calculating base salary in the DSW Cost Model.¹³ The DSW Costs Model uses 4 categories of DSW worker (titled DSW Level 1 through Level 4) which are aligned in the model to SCHADS Award Schedule B classifications.¹⁴
31. In AM2024/25, the Applicants seek a variation to the definition of the 'social and community services sector', such that if an employee is providing disability services funded by the NDIS, they will fall within the social and community services sector and Schedule B. The above explanation of the current DSW Cost Model used in the Annual Pricing Review may assist the parties and Commission in considering the impacts of such an amendment.

¹⁰ See the 2023/24 Annual Pricing Review Report, June 2024. Available at: <https://www.ndis.gov.au/providers/pricing-arrangements/making-pricing-decisions/annual-pricing-review>

¹¹ Ibid, page 35.

¹² NDIS Disability Support Worker Cost Model Assumptions and Methodology 2024-25 (28 June 2024), page 4. Available at: <https://www.ndis.gov.au/providers/pricing-arrangements>.

¹³ 2023/24 Annual Pricing Review Report, June 2024, page 36.

¹⁴ See Table 1 on page 5 of the NDIS Disability Support Worker Cost Model Assumptions and Methodology 2024-25.

32. In AM2024/27, the Applicant seeks substantial amendments to the classification structures under the SCHADS Award. The Commonwealth is still considering the potential implications of such amendments to the DSW Cost Model, as part of the process and timeframes detailed in Part E, below.

D. WORKER RETENTION PAYMENT

33. In the 2024-25 Budget, the Commonwealth decided to provide funding towards a wage increase for the ECEC workforce. This decision was taken in recognition of:
 - 33.1. long-term challenges for the ECEC workforce, including recruiting and retaining staff due to low wages;
 - 33.2. the importance of maintaining the benefits of the Government's Cheaper Child Care reforms so that families have access to affordable ECEC;
 - 33.3. the urgent need to address workforce shortages to enable the Government to chart a path towards universal early education and care; and
 - 33.4. evidence provided in the ACCC interim report regarding capacity of the sector to contribute to or absorb the level of wage rise required to address these workforce shortages
34. Commencing 2 December 2024, the Commonwealth will provide funding for two years to support a wage increase. This will be known as the ECEC Worker Retention Payment.
35. Funding will be phased at a rate equivalent to 10 per cent on top of the relevant *Children's Services Award 2010* rates in year one and increased to 15 per cent in year two. Funding will include provision for the wage increase and will contribute to associated on-costs.
36. To ensure workers have a legally enforceable entitlement to the ECEC Worker Retention Payment, employers will be required to engage employees through a compliant workplace instrument that provides workers with minimum rates that are at least 10% higher than the *Children's Services Award 2010* rates of pay from 2 December 2024, and at least 15% higher from December 2025.
37. The Commonwealth intends for the Payment to be available to all ECEC workers employed in a centre-based day care or outside school hours care setting. The Commonwealth notes that should wage rates under the *Children's Services Award 2010* be increased by the aforementioned amounts, the Commonwealth will recognise the modern award as a compliant workplace instrument for funding eligibility purposes. Any increases to the *Children's Services Award 2010* which exceeds these amounts will not attract funding under the ECEC Worker Retention Payment, as the Commonwealth will require additional time to consider the associated impacts, in line with paragraphs [41] and [43] below.

E. COMMONWEALTH POSITION ON FUNDING AND TIMING

Commonwealth funding and affected programs and policies

38. For the reasons detailed below, the Commonwealth has not yet made any decision about funding or program adjustments to support any wage increases arising from these proceedings. Accordingly, the Commonwealth submits that the Commission's decision in the Priority Review 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 in areas where the Commonwealth has a funding role. Any such decisions will be made in accordance with the processes and timing outlined below.
39. Once the level of gender undervaluation has been determined and the Commission has formed a preliminary view as to any wage increases it should determine, the Commission should consider appropriate phasing, with consideration of the factors outlined at [40] to [52] below, and to other factors as may be submitted by other parties.
40. The Commonwealth submits that the Commission should adopt consistent approaches to remedying gender-based undervaluation of wages across both funded and non-funded sectors. The Commonwealth submits that the Commission should also have a view to the consistency of outcomes – which may result in different wage increase percentages to achieve consistent outcomes based on skill levels across awards. As stated at [51] below, the Commonwealth supports an approach that avoids distorting labour markets, which includes as between funded and non-funded sectors.
41. The coverage of the five awards identified for Priority Review includes sectors where the Commonwealth has a broad range of policies and programs that may be affected by any wage increases. The Commonwealth is a key funder of some sectors covered by the review, while in other sectors the Commonwealth has no direct or indirect funding role. There will be instances where States are funders alongside the Commonwealth, including instances where States are the primary funder and the Commonwealth is a partial funder, or where the Commonwealth funds through agreements with the States, but does not have a mechanism to ensure any increase in Commonwealth funding is passed to providers to fund a wage increase. The number of programs that are ultimately affected will depend on decisions made by the Commission on whether wages or classifications in occupations covered by the priority awards will be varied for work value reasons. For each sector, it will be necessary to identify the extent, role and mechanisms which deliver Commonwealth funding and which may impact a sector's capacity to pay its workers should they receive pay increases from this Priority Review. In many instances this will require negotiations with States and Territories.
42. The Commonwealth is identifying and assessing the potential impacts on any program that may be affected from decisions made as part of the Priority Review. This is anticipated to take considerable time given the breadth of programs that could be in scope. This is a complex task as there is no uniform approach to assessing

impacts, since programs range from being directly Commonwealth funded, indirectly funded, having shared funding with states and territories, and having shared funding with the private or philanthropic sector. Considerations of impacts to consumers on costs of services across impacted sectors are also yet to be determined, as is a process to consider the ability of providers to absorb a wage increase.

43. While its analysis is ongoing, Commonwealth expects a wide range of Commonwealth programs and supports will be affected across early childhood education and care, home care (disability), family and community services, carer support, allied health services, mental health services, dental services, community pharmacy and veterans supports. This process will not be complete in full within the current timetable of the Priority Review.
44. The Commonwealth has not made any decision regarding funding (or other policy and program adjustments) to support any wage increases at this time and is unable to commit to doing so prior to the current December 2024 hearings. Some programs may see wage movements automatically incorporated into funding allocation, while others may lead to pressure on service providers to reallocate existing resources to wages until program parameters and funding can be reconsidered. The latter may be the more prevalent outcome.
45. Commonwealth entities are required to adhere to Budget Process Operational Rules, which support the implementation of the Budget in a manner consistent with the Commonwealth's Fiscal Strategy. In accordance with these requirements, once the quantum of any pay increase is determined, the Commonwealth will need to reconsider the fiscal impact on the Commonwealth budget on the basis of that information and provide information on its funding position and the appropriate approach to timing and phasing-in of additional funding to support any further increases to award wages.

Timing of wage increases

46. The Commonwealth supports the Commission's review process and the broader task of identifying and addressing gender undervaluation in the modern awards system. However, the Commonwealth's position is that any wage increases arising from the gender-based undervaluation identified by the Commission should be implemented in a measured and responsible manner that manages workforce, fiscal and macro-economic risks.
47. In considering how it implements any wage increases, the Commission must have regard to the broader economic impact of the increases. Paragraph 134(1)(h) of the FW Act requires the Commission to consider:
 - (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.
48. Similarly, paragraph 284(1)(a) requires the Commission to consider:

- (a) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth;
49. The Commonwealth submits that it would be appropriate for the Commission to phase-in any large wage increases, to support an orderly transition period for labour markets and service supply to adjust, and to manage macroeconomic risks including the return of inflation to the Reserve Bank of Australia's 2 to 3 per cent target band. These risks would depend on the size of and timing of any wage increases. Annual inflation has moderated substantially to be 3.8 per cent in the June quarter of 2024 and is now less than half of its peak in of 7.8 per cent in the December quarter of 2022.¹⁵ Despite this progress, quarterly inflation is currently above the target band.
50. In addition to the direct impact of wage increases for those employing people covered by the five awards, large one-off increases impose adjustment costs across labour markets and the broader economy. Phasing can help to manage these costs for sectors competing for the same pool of labour, particularly when employment shortages are prevalent across the economy. Total job vacancies in Australia as at May 2024 were still 55 per cent above their February 2020 levels, and have remained at similar levels in recent months. This includes the Health Care and Social Assistance industry where job vacancies as at May 2024 were 108 per cent above their February 2020 levels and the Education and Training industry where job vacancies as at May 2024 were 59 per cent above their February 2020 levels.¹⁶ In this context, the Commonwealth considers that phasing would support an orderly transition period by reducing the immediate levels of job switching and the risk of competing employers offering large wage increases to remain competitive in the labour market. The Commonwealth submits that the Commission's approach to considering phasing of any wage increases should have regard to maintaining levels of employment (particularly in female dominated sectors), maintaining business viability, minimising any distortions to the allocation of workers between sectors if it determines substantial wage increases, and managing macroeconomic impacts. It should also have regard to the potential for broader impacts on women's participation in the workforce if a wage increase leads to decreased supply in particular sectors (such as the ECEC sector in particular).
51. The Commonwealth is concerned to ensure the process of remedying gender undervaluation does not create new labour market distortions as between workers and sectors that are predominantly Commonwealth funded, and those that are not Commonwealth funded. The Commonwealth submits that a sector should not be phased in a manner where it receives a wage rise at a faster rate than other sectors due to it being a predominantly Commonwealth funded sector.

¹⁵ ABS Consumer Price Index Data (June Quarter 2024) - [Job Vacancies, Australia, May 2024 | Australian Bureau of Statistics \(abs.gov.au\)](#)

¹⁶ ABS Job Vacancy Data (May 2024) - [Job Vacancies, Australia, May 2024 | Australian Bureau of Statistics \(abs.gov.au\)](#)

52. As set out above, the Commonwealth has not made any decisions regarding changes to policies or programs in order to fund (directly or indirectly) any wage increases arising from these proceedings. However, it foreshadows to the parties and to the Commission that any such decisions — as well as the Commonwealth's broader position as to appropriate timing — will be informed by responsible fiscal and economic management. If the Commission concludes that pay increases are warranted, the Commonwealth is likely to support a staged or phased process for implementation, particularly for any significant increases. If and when it would assist the Commission, the Commonwealth would address an appropriate phased implementation of any wage increases, at an appropriate stage in these proceedings.

Date: 27 September 2024



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The Commonwealth's submissions were settled by Kate Eastman AM SC, Cathy Dowsett and Vanja Bulut, of counsel