

File number: AM2024/20, AM2024/21,
AM2024/22, AM2024/23, AM2024/27

**BEFORE THE FULL BENCH
OF THE FAIR WORK COMMISSION**

Gender undervaluation – priority awards review

**Social, Community, Home Care and Disability Services Industry Award 2010- application for
variation by Australian Municipal, Administrative, Clerical and Services Union**

OUTLINE OF SUBMISSIONS

1. These submissions are made on behalf of Family Day Care Australia (**FDCA**).
2. FDFCA is a not for profit, national member association whose mission is to represent, support and promote the family day care sector in delivering high quality ECEC to more Australian children.
3. FDCA represents:
 - a. Approximately 9,000 family day care educator members.
 - b. 357 family day care service approved service member entities.
4. FDCA's approved service members employ approximately 1,457 staff members that largely fall under the current SCHADS.
5. This submission is made in response to paragraph [11] of Statement [2025] FWCFB 146 (**Statement**).
6. The Full Bench has deferred consideration concerning the provisional view of award coverage for the family day care sector.
7. The Full Bench has raised for consideration as to whether for the interim period the family day care sector should be classified in the new unified classification structure to be established for SCHADS.
8. FDCA is opposed to the family day care sector being covered by the new unified classification structure for the reasons set out in these submissions.

Principles and Application to Family Day Care

9. The Full Bench held at paragraph [388] of [2025] FWCFB 74 (**the Decision**) that a replacement classification was needed to:
 - a. Gender based undervaluation;
 - b. To make the classification structure simple and easy to understand; and
 - c. Provides minimum wage rates for work of equal or comparable value that apply to all types of work covered by the SCHADS Award.
10. The test as to whether an Award should be varied is not whether that variation is desirable but rather if the variation is necessary to achieve the Modern Awards objective.
11. As acknowledged by the Full Bench at paragraph [395] of the Decision there no evidence before the Full Bench of the work currently being performed by this sector and it was not possible the make any findings as to whether the work was equivalent to work value of employees engaged in disability support or the in home care of aged person or persons with disabilities in that it has been subject of gender based undervaluation.
12. Accordingly, there is no evidence which would support any need to vary the current classification in Schedule D to address gender-based undervaluation.
13. The Full Bench stated that the new classification structure was based on four fundamental principles which are:
 - a. Classifications should be defined in terms which render compliance as far as practicable in a straightforward manner not requiring complex evaluative judgments to be made;
 - b. The new classification structure should be structured on the Caring Skills benchmark rate and C1(a) benchmark rates identified in the Stage 3 Aged Care decision;
 - c. The new classification structure should appropriately recognize acquisition of relevant qualifications at each level whilst making allowance for recognition of equivalent experience and training; and
 - d. The current annual pay increments should be retained as they are not properly based on work value.
14. The Full Bench concluded at paragraph [392] that the new classification was based on Section 157(2A) of the FW Act.

15. As to the first principle there is no evidence before the Full Bench of any non-compliance or difficulty in compliance with classification structure in Schedule D.
16. As to the second principle the Full Bench's reliance on the Caring Skills benchmark was based on its findings as to the equivalence of work value in all direct care functions in the classification streams of the SCHADS.
17. As per paragraph [395] there is no evidence before the Full Bench as to the nature of the work or its work value when compared to employees engaged in disability support or in home care or any evidence as to whether or not their work involves direct care.
18. As to the third principle Clauses D.3.8 and D.4.7 currently have regards to the relevant statutory qualifications needed to perform the roles.
19. As to the fourth principle although the Full Bench has identified that the current annual increments in Schedule D should not be retained this does not necessitate a transition from Schedule D to the proposed new classification structure. To that end FDCA may seek to provide an amended variation of Schedule D if annual pay increments are to be removed.
20. Accordingly the work value and gender undervaluation considerations that the Full Bench relies upon to support the new classification structure do not exist in respect to family day care based on the state of the current evidence.
21. In the premise there is no evidentiary basis which supports a transition from Schedule D to the new classification structure.

Other Issues

22. There are also several difficulties that arise if family day care is to be transitioned into the new classification structure.
23. Currently an administrative employee in family day care would be classified as a Level 2 in Schedule D. Such an employee would be classified as Level 2 in the new classification structure.
24. Level 2 in the new classification structure applies to employees providing basic home care or undertaking basic care and community services work. Accordingly the transition would have the potential to create confusion and misclassification in the industry as there is no express reference to it applying to an administrative employee. To the contrary the proposed Level 2 only applies to those employees in direct care.
25. Level 5 employees in Schedule D would transition to Level 6 in the new classification structure. The role descriptors in Level 5 in Schedule D do not transfer across. For those without an undergraduate degree the Level 5 classification in Schedule D gives better descriptors of classification and accordingly more certainty than the broader provisions of Level 6 in the new classification structure.

26. The broad reach of Level 6 of the new classification structure may inadvertently incorporate employees in family day care organizations in roles like accounting, human resources, government advocacy and call centres into the coverage of SCHADS in circumstances where these employees may currently be Award free or covered by other Modern Awards. This issue may be more pronounced for smaller services where staff work across administration, coordination unit and management tasks in a similar role.

Conclusions

27. For the reasons contained above it is respectfully submitted that family day care sector employees should remain covered by Schedule D in the interim period with the issue of coverage being deferred for family day care as per paragraph [11] of the Statement.

Signed:

A handwritten signature in black ink, appearing to read "Chris Mamm", is written over a light grey rectangular background.

Wotton Kearney

Dated: 04/09/2025