

President's Statement on Expert Panels

ACCI Submission

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1. ACCI thanks the President for the opportunity to provide feedback in relation to his Honour's provisional views about which matters currently before the Fair Work Commission (**Commission**) should be transferred to the new Expert Panels to be established following the passage of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (**SJBP Act**).
2. ACCI agrees with the President's provisional views expressed at paragraphs [15]-[17].
3. In relation to whether AM2022/34 – Application by The Association of Professional Engineers, Scientists and Managers, Australia to vary the *Pharmacy Industry Award 2020* should be transferred to an Expert Panel, ACCI submits that it should not. This is because the pharmacy industry does not fall within the proper scope of the Care and Community Sector.
4. As noted in the President's statement, the phrase "Care and Community Sector" is not defined in the SJBP Act, however, the Revised Explanatory Memorandum states at [380] that:

The 'Care and Community Sector' includes the aged care, early childhood education and care and disability care sectors. This is not intended to be an exhaustive list.
5. The phrase "Care and Community Sector" refers to a single sector in which the activities carried out by employees can be described as relating to the provision of **both** "care" services and "community" services. This is denoted by the use of the conjunctive "and".
6. Further, the legislation uses the word "Sector" in its singular rather than plural form. Had the legislature intended the Expert Panel to deal with matters that might relate to employees who carry out activities that could be described as "care" services but not "community" services, or vice versa, the plural form of the word would have been adopted.
7. Although not conclusive, the Oxford English Dictionary usefully defines the term "care worker" as "a person employed to look after the interests of vulnerable, infirm, or disadvantaged people or those under the care of the state, esp. by providing support and supervising their progress."¹ It partly defines "community worker" as "a person who works to assist or improve a community";² however, it may be more useful to consider "community" work as that which is aimed at promoting social inclusion, enabling community participation, or strengthening social ties.
8. The three sectors identified in the Revised Explanatory Memorandum all involve activities carried out by employees that can be described as relating to the provision of **both** "care" services and "community" services in the ordinary understanding of those words.
9. The aged care sector clearly involves "care" services, but it also involves "community" services. The services provided are not restricted to health care or personal care, but also the enabling of social participation and general improvements to living conditions. As noted by the Royal Commission into Aged Care Quality and Safety:³

Aged care includes:

- assistance with everyday living activities, such as cleaning, laundry, shopping, meals and social participation
- equipment and home modifications, such as handrails

¹ *Oxford English Dictionary* (online at 2 March 2023) 'care worker'.

² *Ibid* 'community worker'.

³ *Royal Commission into Aged Care Quality and Safety* (Final Report, March 2021) vol 2, 6.

- personal care, such as help getting dressed, eating and going to the toilet
 - health care, including nursing and allied health care
 - accommodation.
10. The early childhood education and care sector involves both “care” services and “community” services. Children’s services employees are expected to, inter alia, “[a]ssist in the implementation of daily care routines” and “[g]ive each child individual attention and comfort as required”.⁴ However, there is also a significant community aspect to the services provided in childcare, with centres often enabling social participation between families and the children themselves.
 11. The disability care sector, as with aged care, involves not only the provision of health and personal care services to its recipients but also strives to promote the social inclusion of and participation in community life by people with disabilities.
 12. By contrast, while the pharmacy industry involves the provision of “care” services, such as dispensing medications and providing healthcare advice, it does not involve the provision of “community” services. The services provided by pharmacies are not directly intended to enable community participation. At most, these effects are indirect or tangential to the core functions of the businesses involved. Similarly, employees who provide healthcare services, such those covered by the *Nurses Award 2020*, provide “care” services but not “community” services for the same reasons. These industries are therefore not a part of the “Care and Community Sector”.
 13. It is contentious as to whether the school education industry, as defined in the *Educational Services (Teachers) Award 2020*,⁵ is a part of the “Care and Community Sector”. The school education industry likely involves the provision of “community” services, however, whether it also involves the provision of “care” services is arguable. Nevertheless, this issue does not appear to require resolution because the relevant modern awards, including the *Educational Services (Schools) General Staff Award 2020* for which the President considers that matters “must be dealt with by an Expert Panel for the Care and Community Sector” at paragraph [15], will also affect the childcare sector and therefore “might relate to the Care and Community Sector”.⁶
 14. In summary:
 - a. the President should not refer the AM2022/34 – Application by The Association of Professional Engineers, Scientists and Managers, Australia to vary the *Pharmacy Industry Award 2020* matter to the Expert Panel for the Care and Community Sector; and
 - b. the President should only refer matters to the Expert Panel for the Care and Community Sector or the Expert Panel for pay equity in the Care and Community Sector where they might relate to businesses that carry on activities involving the provision of **both** “care” services and “community” services.

⁴ *Children’s Services Award 2010* clause B.1.2 Level 2.

⁵ *Educational Services (Teachers) Award 2020* clause 4.2.

⁶ See *Educational Services (Teachers) Award 2020* clause 4.1 and *Educational Services (Schools) General Staff Award 2020* clause 4.2.

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We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education and training.

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We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

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