



IN THE MATTER OF:

APPLICATION BY THE AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL
AND SERVICES UNION AND OTHERS FOR AN EQUAL REMUNERATION ORDER
No.C2010/3131

AFEI Further Submission on Remedy to Fair Work Australia

2 December 2011

AFEI
Australian Federation of
Employers & Industries

AFEI Further Submission on Remedy

1. AFEI relies on its earlier submissions dated 1 August 2011, 28 March 2011 and 15 December 2010 and make the following submissions in response to the Joint Submission of the Applicants and the Australian Government on Remedy dated 17 November 2011 (“the Joint Submission”).
2. The Joint Submission indicates that the Applicants and the Australian Government have reached a view on the level of gender based undervaluation for the employees who are the subject of the application and that their conclusion was informed by the study by Dr Briar and Dr Junor entitled the *Community Sector Work: Proportion of Client Based Care by Modern Award Level October 2011* (“the Report”), and other reports and literature concerning gender pay gap.¹
3. Although the Joint Submission does not provide any further detail concerning how the Report informed the conclusion, the Joint Submission indicates that the ‘outcomes’ of the Report were applied to the ‘*pay gap between public sector rates paid around the country*’² and the SACS modern award, and taking account of matters such as costs and funding, the Joint Submission proposes pay rates comparable to the 2009 Queensland Decision (“the Queensland Decision”).³
4. In its decision of 16 May 2011 (“the FWA Decision”) the Full Bench rejected reliance on the rates in the Queensland Decision as the relevant equal remuneration order benchmark for the following reasons:

[264] It is important to note that the employers and other parties had agreed [in the Queensland Decision] that undervaluation existed. In this case while some parties, including the Commonwealth agree that the award rates are

¹ Joint Submission paragraph 1.9

² Joint Submission paragraph 1.10

³ Queensland Community Services and Crisis Assistance Award – State 2008, [2009] QIRCComm 33; (2009) 191 QGIG 19.

undervalued to some extent, others disagree. It is also important to note that the agreed statement specifically dealt with the influence of funding models on wage rates.

[265] It is also significant that the case was conducted under several provisions of the Qld IR Act, not only the equal remuneration provisions and two of the wage fixing principles developed by the QIRC—one of which related to equal remuneration and one of which related to work value changes generally. On our reading, the decision to award significant wage increases was not based solely on equal remuneration considerations. To the extent that gender was a factor, it is unclear what component or proportion was attributable to it. It is clear enough, however, that the 1 per cent annual equal remuneration component was not intended to deal exclusively with gender-based undervaluation. As appears from the reasons for decision, the purpose of the equal remuneration component instalments was to keep the rates which had been fixed current.

[266] The applicants sought to specifically rely upon some of the QIRC's findings in relation to work value. They submitted that the value of the work in the industry has increased as the result of the increased reporting requirements of funding agencies, new legislative requirements, increases in the skills knowledge and qualifications required and the increased complexity of service delivery and case management. In summary they submitted that the changes in work value identified in the Queensland Equal Remuneration decision as having occurred in Queensland have occurred in the rest of Australia. We observe that although work value change is not irrelevant under Part 2-7, it is clear that the equal remuneration provisions are directed not at undervaluation itself, but at undervaluation which is gender-based.

[267] There is another potential difficulty. The decision adopted the rates paid pursuant to enterprise agreements and awards in state and local government employment in Queensland. To that extent the resulting rates reflect local factors. We were provided with material indicating that rates paid in state and local government employment in other states differ substantially in some cases as between each other and from those paid in Queensland. In making an order to apply uniformly on a national basis, it is necessary to have regard to a range of rates applying in the SACS industry throughout the country and not just those applying in Queensland.

[268] For these reasons it would not be appropriate to simply adopt the rates resulting from the Queensland Equal Remuneration decision, although the decision is clearly a very significant one.

[269] Before leaving the Queensland Equal Remuneration decision we should mention that the QIRC was dealing with an application for a new award in the state jurisdiction in which it was asked to find that the rates in the relevant federal award were inadequate. The QIRC so found. The federal award in question was one of the predecessor awards to the modern award. For reasons we have already explained, the QIRC's finding, being based on considerations extraneous to the proper fixation of minimum rates in the federal system, cannot be relied on in relation to the correctness of the modern award rates.⁴

5. Thus it is clear that FWA has dismissed reliance on the Queensland Decision for the reasons expressed. FWA should reject the attempt by the Applicants and the Australian Government to re-open this issue in a manner which can only be seen as an attempt to canvass the FWA Decision in terms not now available to the Applicants and the Australian Government.

⁴ FWA Decision [264- 269]

The Briar/Junor Report and Outcomes

6. The Joint Submission indicated that the Report was commissioned by the Applicants in September 2011 to assist in discussions concerning remedy. The research was commissioned by the Applicants after the hearing of evidence in the current proceedings and is now relied upon in relation to the proposed assessment of remedy. It is inappropriate that material of such alleged significance was not presented with the Applicants' expert and employee evidence. It would also be inappropriate for FWA to place any reliance on such a limited research report.
7. The Report is a list of self-reported activities, without any apparent validation, which involved 17 employees in total, approximately 0.01% of employees in the SACS sector.⁵ The research concerning disability service work carried out at Level 2 of the SACS Modern Award, for example, is based on two employees out of approximately 48,000.⁶
8. The Report is ostensibly based on a 'typical' work day, however it is a composite of tasks and activities over a week – *"in most cases one or a combination of working days was used, cross referenced to the typical pattern of the working week"* – so that activities and hours worked which occur over time are displayed as a daily occurrence.⁷ In some cases it is based on what an employee describes as what would have happened rather than actual activity.⁸
9. Caring work is defined broadly in the Report:

Defining care and client-based work

A care worker is someone whose job involves helping individuals who have particular problems or special needs. Care work may be direct or indirect.

⁵ Derived from data provided in the Australian Government Submission 18 November 2011 paragraphs 4.38- 4.40

⁶ Derived from data provided in the Australian Government Submission 18 November 2011 paragraphs 4.38- 4.40; and NSW Government Exhibit 2 March 2011 paragraph 21

⁷ Joint Submission Attachment 1, the Report, page 4 - *Time Use*

⁸ Joint Submission Attachment 1, the Report, see for example page 9

Direct care work means being available in person to assist and work with clients individually or in groups. It includes working face to face with clients, for example in counselling or in providing assistance with daily living. It includes general oversight of vulnerable clients in day care or residential care settings. It includes making phone calls to or on behalf of clients; providing mediation/advocacy in situations involving clients and/or social, medical, legal providers and authorities. It involves keeping clear, detailed, accurate and easily accessible case notes.

Indirect care work enables the direct work to occur and to be as effective as possible. Indirect care work can include program planning, creating training manuals or programs to deal with recurring problems, peer supervision, protecting staff from trauma or attack and providing as safe and healthy a work environment as possible. It also includes receiving or providing on-the-job training or educating oneself about the causes of the problems encountered by clients.

Other essential work is vital for the smooth running of social and care agencies and for helping reduce or prevent social problems. It involves applying for funding, meeting with funders, reporting to Boards, administration, website maintenance, liaising with community bodies and also lobbying for procedural and legislative changes in the interests of client groups.⁹

10. The Detailed Time Use Analysis attached to the Report demonstrates the expansive nature of this definition including work in association with caring work, such as cleaning, some but not all driving, cooking, training and education, statistical data collection and entry, and research.¹⁰

⁹ Joint Submission Attachment 1, the Report page 3

¹⁰ Joint Submission Attachment 1, the Report - Background Data

11. The proportions of time spent in caring work identified in the Report (“the outcomes”) are unreliable and subject to significant variation. Some driving, for example, such as a disability support worker picking up the van is identified as “indirect care” but returning the van is “other essential work”.¹¹ It is quite common in the SACS industry for disability support workers to routinely spend a significant amount of time driving to and from and between clients. We note in this regard that the Miscellaneous Workers (Home Care) State Award, a transitional wage instrument in the NSW SACS sector, distinguished between payment for time spent with clients and time spent travelling between clients.¹²
12. The Report offers no assistance to the tribunal in its assessment of a remedy. As a simple record of work activity, there is no consideration of relative work value factors. All of the broadly defined caring work performed by an employee at a particular award level is assumed to be of equal value.
13. Moreover, there is no comparable assessment of activity, and its value, of the alleged public sector comparator positions. The Report for example, includes consideration of a Family Support Early Intervention Worker (“FSEIW”) at Level 4, whose qualifications are not stated, which in the Joint Submission is compared with public sector child protection officer. While the FSEIW “helps the young people settle back with their families wherever possible, or at least become reconciled...” the FSEIW does not exercise the statutory responsibilities of the Director-General (in NSW) under the *Children and Young Persons (Care and Protection) Act* on a delegated basis¹³ which include, the removal of children¹⁴ and making applications to the Children's Court in relation to the care of children and young persons, including giving evidence in those proceedings and prosecuting them.¹⁵

¹¹ Joint Submission Attachment 1 The Report - Background Data pages 8-9

¹² Miscellaneous Workers Homecare Industry (NSW) State Award clause 29 (ii)

¹³ PN 2364/5

¹⁴ PN 2366

¹⁵ PN 2368/9

14. The outcomes, similar to Dr Junor's 'Spotlight Tool', provide no assistance to FWA in any work value assessment. In cross examination Dr Junor acknowledged that the Spotlight Tool was not a job evaluation or work value process;¹⁶ less so the listing of typical daily tasks now relied upon.
15. A higher order of precision is required to identify the extent to which wage rates in the SACS sector are lower than the public sector because of an alleged gender bias. As observed by the Full Bench:

*We deal first with the applicants' submission that the minimum wages in the modern award do not properly reflect the value of the work. Given the basis on which minimum rates are fixed, it is not possible to demonstrate that modern award wages are too low in work value terms by pointing to higher rates in enterprise agreements, or in awards which clearly do not prescribe minimum rates. In order to succeed in their submission it would be necessary for the applicants to deal with work value and relativity issues relating to the classification structure in the modern award and potentially to structures and rates in other modern awards. No real attempt has been made to deal with those important issues."*¹⁷

16. In terms of the requirements of s 302 (5) of the Fair Work Act:

Restriction on power to make an equal remuneration order

302 (5) However, FWA may make the equal remuneration order only if it is satisfied that, for the employees to whom the order will apply, there is not equal remuneration for work of equal or comparable value.

and in the light of the above findings of the Full Bench, there is no scope for FWA to make an equal remuneration order as the applicants have been found to have failed to meet the relevant statutory tests.

¹⁶ PN 9008

¹⁷ FWA Decision [261]

The Unexplained Gender Pay Gap

17. The studies cited in Table 2 of the Joint Submission and the discussion at paragraphs 2.26-2.33 concern the so called explained and unexplained components of the pay gap. These are conceptual studies of the aggregate pay gap and are not relevant considerations given the specific focus of these proceedings.
18. The evidence provided in these proceedings did not demonstrate a systematic gender wage gap for care workers in the SACS sector.¹⁸ An apparent gender gap was found for non-care occupations.¹⁹ No examination of the wage gap for SACS non-care workers was undertaken to demonstrate explained and unexplained components.
19. The Australian Government and the Applicants assert that the “true or full extent of undervaluation” cannot be measured as some degree of undervaluation will “always fall to the unexplained gender gap” between male and female workers.²⁰ No measure of the “unexplained” gender gap for SACS workers has been provided. FWA should not base in whole or in part an equal remuneration order on an identified and thus not demonstrated component of the alleged gender gap.

Care work wage penalty was not established

20. The Applicants’ evidence did not support their assertion that there is a care penalty associated with women’s work of a caring nature for SACS workers.²¹ In this regard we rely on the AFEI Final Submission at paragraphs 70-73.²²

¹⁸ Exhibit ASU 1 Attachment B to Professor Meagher Statement: G Meagher & N Cortis The Social and Community Services Sector in NSW: Structure, Workforce and Pay Equity Issues page 29.

¹⁹ Op cit page 30 Table 7

²⁰ Joint Submission paragraphs 2.37 – 2.38

²¹ Applicants’ Final Submission 28 February 2010 paragraphs 189 –190;206-207

²² AFEI Final Submission 28 March 2011 paragraphs 70-73

21. Further if there were a care penalty attached to care work, one would expect that the “penalty” would be higher where the work involved higher levels of direct care. The Applicant’s own evidence found to the contrary. The data in Professor Meagher’s report showed that the so called care penalty was minimal or non existent for the bulk of the SACS sector workforce, higher for men and highest for non care occupations in a category labelled “other industries”.²³

Undervaluation based on care work ‘premium’ in the public sector

22. The methodology for measuring gender undervaluation now proposed by the Australian Government and the Applicants is to measure the proportion of time spent in broadly defined caring work and apply the proportion to the pay differential with comparator public sector rates.²⁴ Even if the proportion of care work undertaken by SACS workers was rigorously identified and measured, which in our view has not been achieved in the Report, this has no connection with the causes underlying higher public sector wages. The Full Bench has recognised the multiplicity of factors, unrelated to gender, which are reflected in higher public sector rates.²⁵

23. The Decision noted:

Differences in rates of remuneration between any one enterprise and another are to be expected. Indeed there are significant differences within the SACS industry itself. The reasons for differences between enterprises will be many and varied and are the result of the peculiar circumstances of each enterprise. In the public sector they may include considerations of relativities within the public sector, issues of restructuring and productivity, attraction and retention issues, cost of living factors, industrial negotiations, bargaining, informal dispute settlements,

²³ Exhibit ASU 1 Attachment B to Professor Meagher Statement: G Meagher & N Cortis *The Social and Community Services Sector in NSW: Structure, Workforce and Pay Equity Issues* Table 7

²⁴ Joint Submission paragraphs 2.44-2.45

²⁵ FWA Decision [277]

*arbitrations, historical fixations for paid rates awards and the general disposition of various governments. It goes almost without saying that it is also difficult to identify the quid pro quo for a particular wage rate in a particular agreement.*²⁶

24. The Full Bench observed that to establish the extent to which the gap between public sector rates and SACS rates is gender based would require an examination of the causes or probable causes of the differences in rates.²⁷ This exercise has not been undertaken by the Applicants who have relied on an alleged public sector premium for care work or “care penalty” in the SACS sector. The Applicants’ failure to make work value comparisons with precision in order to establish the extent of alleged undervaluation has prevented any meaningful examination of the causes or probable causes of differences in rates.

25. Nor have the Applicants established that higher public sector wages are attributable to a “care penalty” attached to care work in the private sector. Instead the evidence in this case, including the Applicants’ own evidence, demonstrated that there is a substantial wage premium generally for public sector employees, and it is not confined to those in care occupations.²⁸ For example, Applicant evidence showed that males working in public sector ‘other industries’, that is, not in the SACS industry or other community services sector, earned in excess of 23% more compared to the private sector. For those in non-caring occupations connected to community services public sector rates were between 10% and 14% higher.²⁹

26. It has been demonstrated that public sector wages are generally higher than the private sector and for reasons unrelated to the extent of care work undertaken.³⁰ For this reason it is wrong to rely on a methodology which uses estimates of care work proportions in the SACS sector as the measure of gender undervaluation to compensate

²⁶ FWA Decision [277]

²⁷ FWA Decision [281]

²⁸ Exhibit ASU 1 op cit pages 30-31; AIG Exhibits 1&2; AFEI Submissions on Remedy paragraphs 34-37

²⁹ Exhibit ASU 1 op cit pages 30-31

³⁰ Exhibit ASU 1 op cit pages 30-31; AIG Exhibits 1&2; AFEI Submissions on Remedy paragraphs 34-37

for higher public sector wages paid for a multiplicity of reasons unrelated to care work.

The Comparator Pay Rates

27. The Joint Submission relies on comparator rates for public sector employees in each jurisdiction. It claims to address certain limitations apparent in the public sector comparator rates in the Applicants' Submission on Remedy June 2011. The Joint Submission claims that adjustments have been made including the use of a "*larger pool*" of rates [2.16]; a median rate [2.16]; and a "*closer assessment of classification and position descriptions*" [2.17].
28. Despite the adjustments the comparator rates remain flawed and inappropriate.
29. Although the Report, for example, considered only the occupation of disability support worker at Level 2 of the SACS Award, the public sector comparator rates at Level 2 include administrative rates (ACT and NT) and operational rates (SA and Queensland) which all contribute to an artificially inflated median. Progression in the SACS Award for a Level 2 disability support worker is based on years of service, unrelated to qualifications. Public sector rates, however, include certificate IV rates for comparisons at levels 2.2, 2.3 and 2.4.
30. At Level 3 of the SACS Award the Report considered only a residential youth worker and a youth health worker/dietician (whose qualifications are not identified). In contrast, the public sector comparator rates include degree qualified child protection officer rates for Victoria and NSW as well as health professionals in several other states.
31. The comparator rates, moreover, are generally higher than the comparator rates provided earlier in the Applicant's evidence, in particular the Applicant's Outline of Submissions on Remedy (amended Attachments 3.1, 3.2 and 3.3).³¹

³¹ Applicant's Outline of Submissions on Remedy (amended Attachments 3.1, 3.2 and 3.3)

32. The inflated public sector median is consequently higher than many of the allegedly comparable public sector occupations, including disability support workers, youth workers (juvenile justice) and child protection officers as shown in Attachments A - E respectively.
33. The public sector comparator rates are overwhelmingly bargained rates in enterprise agreements or consent awards. None of the comparator rates, however, have been discounted to remove the non-gender components, the task identified in the FWA Decision.³² The Joint Submission median rates, therefore, are a median of bargained rates including non-gender components.
34. The use of median rates, moreover, to determine allegedly gender neutral wage outcomes, is wrong as it inevitably results in outcomes higher than many of the allegedly gender neutral public sector rates, with the implication that those public sector rates are undervalued due to gender.
35. In AFEI's Submission on Remedy, it considered and identified non-gender productivity components in NSW and Victorian public sector rates. In relation to the NSW rates, which significantly exceeded private sector wage growth in NSW and other public sector rates between 1997 and 2010 ³³, the submission identified the need for discounting by a very substantial 14.9%.
36. Even where appropriate classifications and levels are used as comparators, without appropriate discounting of non-gender factors for all public sector jurisdictions, the public sector median rates provide no assistance in an assessment of a remedy.

³² FWA Decision [276; 281]

³³ AFEI Submission on Remedy 1 August 2011 paragraphs 45-46

37. The Applicants' proposed remedy, the Queensland rates, also exceed allegedly comparable public sector rates in a number of states, as demonstrated in Attachments A-E. When casual loadings are taken into account, the impact of the proposed remedy is more significant. The SACS Award casual loading of 25% is higher than public sector casual loadings in Tasmania,³⁴ South Australia³⁵ and Queensland.³⁶
38. It is beyond the statutory power conferred on FWA by s 302 (1) of the *Fair Work Act 2009* to make an order providing greater remuneration for the employees to whom the order applies than is payable to workers performing roles which are asserted to be comparable in the public sector. The statutory mandate of FWA is limited to ensuring equal remuneration. To grant an order as sought by the applicants would produce a new wage disparity with a clear potential for leapfrogging and flow on.
39. As noted in AFEI Submission on Remedy, if public sector wage rates are to be considered gender neutral, it must be concluded that any disparities between the (bargained) wage rates of the various public sectors are not due to gender and should be disregarded by FWA in consideration of any remedy. The starting point for any comparisons of wage rates should be the lowest discounted public sector rates for *comparable work*, noting the problem identified by the tribunal that the comparisons have been made at a generalised level.³⁷

The Award Comparator Proxy Rates

40. The Joint Submission claims that the proposed remedy has been tested against gender neutral public sector award rates ("the proxy rates"), as shown in Table 5³⁸, although the comparisons have not been made on the basis of a precise job match.³⁹

³⁴ Health and Human Services (Tasmanian State Service) Award

³⁵ SA Public Sector Salaried Employees Interim Award

³⁶ See for example Award for Employees in Direct Client Services - Disability Services Queensland 2003

³⁷ FWA Decision [242]

³⁸ Joint Submission page 19

³⁹ Joint Submission paragraph 2.49

41. The proxy rates, however, like the comparator rates, include inappropriate comparisons.
42. As noted in the Joint Submission the proxy rates include rates for degree qualified classifications in WA and SA, whereas SACS Award Level 3 year 1 does not require degree qualifications.⁴⁰ We note that the professional rate for Tasmania is also for a degree qualified professional.⁴¹ The professional rates for Victoria, the NT and the ACT, are a Professional *Legal Officer* Grade 2, taken from the State Government Agencies Award 2010 (“the State Government Award”).⁴² The comparisons with legal officers are inappropriate. It appears, moreover, that the State Government Award does not apply to the NT and the ACT. In this regard the Full Bench Decision concerning award modernisation noted that the NT and ACT would not be covered by the State Government Award.⁴³
43. It is conceded in the Joint Submission that if the degree qualified professional rates for SA and WA are removed the proxy average shown in Table 7 reduces to \$45,880.42.⁴⁴ If the degree qualified rate for Tasmania and the Legal Officer rates for Victoria, NT and ACT are also removed the average reduces further to \$44,815.56.
44. The proxy average also includes other rates unrelated to *caring work* including technical officers (NT, ACT and Vic) and administrative and clerical streams (all states).
45. Two of the three proxy rates for Queensland are not public sector rates but taken from SACS sector awards reflecting the Queensland Decision, the rates sought by the applicants.⁴⁵ Clearly it is not appropriate to test the rates claimed by using the same rates. The proxy Queensland administrative rate, \$51,069, applies to a senior administrative role, Administrative Officer Level 5, whose

⁴⁰ Joint Submission footnote 2 page 22

⁴¹ See Tasmanian State Service Professional Award Part 3 Classification and Related Matters, 1(b)(i)(2)

⁴² Joint Submission attachment 4

⁴³ [2009] AIRCFB 917

⁴⁴ Joint Submission footnote 2 page 22

⁴⁵ Joint Submission attachment 4

responsibilities include 'managing the operations of a discrete organisational element, program or activity', and 'policy advice across a range of programs'.⁴⁶

46. Even if the proxy rates were based on precise classification comparisons, the rates, like the public sector comparator rates used in Attachment 3 of the Joint Submission, are not gender neutral.
47. The NSW rates, for example, the highest in the operational and administrative streams, are bargained rates in consent awards. The Joint Submission notes that the NSW Public Sector Salaries Award provides salaries for "the positions covered by around eighty Awards and around fifty Agreements and Determinations...".⁴⁷ The wage rates in that instrument, along with the award source for operational rates (Crown Employees Ageing, Disability and Home Care – Department of Human Services NSW (Community Living Award) 2010) are bargained rates that include substantial non-gender components and should be discounted by at least 14.9% to remove non-gender components.
48. As noted above, the proxy average used to validate the Queensland rates is subject to substantial variation. A proxy average of operational rates only, without discounting, is \$43,600, and with a discounted NSW operational rate is \$42,800. The proxy average may be potentially lower again if the consent award rates in Tasmania, South Australia and Western Australia are also discounted for non-gender components.

⁴⁶ See Employees of Queensland State Government Departments (Other Than Public Servants) Award State – 2003 - Clause 5.1.7

⁴⁷ Joint Submission Attachment 2 page 50 paragraph 5

The Bargaining Loading

49. The Joint Submission proposes, in addition to the Queensland rates, an additional wage increase of 1% pa over each of four years, to address the *“historical inability of workers in the SACS sector to bargain at enterprise level”*.⁴⁸ The evidence, however, is that over half of the employees in the sector are covered by enterprise agreements, higher than most of the private sector.⁴⁹ The evidence of both union officials and employee witnesses also demonstrated that there is a notable amount of enterprise bargaining in the SACS sector.⁵⁰ Some union officials have actively discouraged bargaining.⁵¹
50. FWA should accept the Australian Government’s first written submission that 51% of employees are covered by agreements.⁵² AFEI relies on its first written submission that the SACS sector has one of the highest levels of agreement coverage outside the public sector and that recent outcomes of bargaining (3.7% average annualised wage increase) have been favourable compared with private sector bargaining outcomes.⁵³
51. There is no justification for a bargaining component. Not only is such an increase unsupported by enterprise based productivity, the impact, in addition to annual minimum wage adjustments, would be likely to provide wage outcomes higher than the public sector. The Victorian and NSW governments have capped non-productivity wage outcomes at 2.5% pa.⁵⁴
52. The application of a 1% pa increase applied in addition to a minimum wage adjustment of say 3.4%, compared with a public sector increase of 2.5% per annum, will result in SACS sector rates increasing at a significantly higher rate.

⁴⁸ Joint Submission of the Applicants and the Australian Government on Remedy 17 November 2011 paragraph 3.15

⁴⁹ Australian Government Submission 18 November 2010 paragraph 5.34

⁵⁰ AFEI Final Submission 28 March 2011 paragraphs 118-141

⁵¹ AFEI Final Submission 28 March 2011 paragraph 126

⁵² Australian Government Outline of Contentions 18 November 2010 paragraph 5.40

⁵³ AFEI Outline of Contentions paragraphs 187-189

⁵⁴ NSW Industrial Relations Amendment (Public Sector Conditions of Employment) Bill 2011; Victorian Budget 2011- 12 Treasury’s Speech Budget Paper No 1 page 3.

Funding

53. The Australian Government has announced that it is to provide supplementary funding in Commonwealth – funded programs to fund “its share of any pay rises which flow from the decision in this case. This will come *at a cost to the Federal Budget of over \$ 2 billion* [AFEI emphasis] for the full phase in period”.⁵⁵
54. We note that this is a cost to government, not costs to the sector. In this regard we rely on our earlier submissions that the Commonwealth Government’s cost estimates for the sector appear to be significantly lower than the cost assessments made by the Victorian and NSW Government.⁵⁶
55. With regard to the two most populous states where any Order could be expected to have the greatest impact, both the NSW and Victorian Government have also pointed to constrained fiscal environments.⁵⁷
56. Underfunding is a pervasive characteristic of the sector and appears to be particularly pronounced in relation to indexation. We rely on our earlier submissions made in reference to underfunding and existing cost shortfalls in the sector. In addition there is a significant proportion of sector services which do not receive funding at all.⁵⁸
57. A significant proportion of the SACS not for profit sector is substantially unfunded by governments both Federal and State. According to 2010 ACOSS Community Sector Survey data relied on by the Australian Government, approximately 30 per cent of income comes from non-government sources and must be funded from client fees, sales of goods and services to the general public and donations and other support from business.⁵⁹

⁵⁵ Joint Submission of the Applicants and the Australian Government on Remedy 17 November 2011 paragraph 1.15

⁵⁶ AFEI Submission on Remedy 1 August 2011 paragraphs 60 – 73, AFEI Final Submission 28 March 2011 paragraphs 244- 250

⁵⁷ Final Submission — NSW Government 27 April 2011 paragraph 8; Final Submission — Victorian Government 21 March 2011 paragraphs 191-193

⁵⁸ AFEI Final Submission 28 March 2011 paragraphs 250-258

⁵⁹ Australian Government Submission 18 November 2010 paragraph 6.8 and Figure 6.1

58. A review of the source of funds as indicated by the annual reports of eight of the largest employers in the SACS sector shows the magnitude of this gap.⁶⁰
59. In addition, there are organisations which whilst receiving a proportion of revenue from government, this by no means meets the overall expenditure of their operations. As described in the Bennett Report, there is general agreement in the SACS sector that non-profit organisations are underfunded – as summarised in this extract from ACOSS:

*“There is a paucity of reliable data on funding levels and funding sources in the Community Sector. At the same time, 80 per cent of respondents in the Australian Community Sector reported that government funding does not cover the true cost of delivering services”.*⁶¹

Funding implications with flow on beyond the SACS and public sectors

60. There has been no consideration of the potential cost impact of flow on wage increases outside the SACS sector. Apart from the disturbance of relativities within the public sector, the making of an Order in the terms sought has major implications for wages break outs of a greater magnitude.
61. The applicants assert that any flow on from this application will be prevented by the definition of “care work” utilized in the Briar-Junor report and that the Equal Remuneration Order will be contained within the limits of this definition.

⁶⁰ AFEI Final Submission 28 March 2011 paragraph 252

⁶¹ AFEI Final Submission 28 March 2011 paragraph 245

62. Care worker has been defined as *“someone whose job involves helping individuals who have particular problems or special needs”*.⁶² This definition and the sub definitions of direct and indirect care readily encompass workers in nursing, aged care, child care and teaching occupations, along with any number of health and allied professions - speech therapists, physiotherapists, dieticians, audiologists, beauticians and so on. Care work is not unique to the SACS sector.
63. Further the methodology used by the Australian Government and the applicants to demonstrate alleged undervaluation is readily transferrable to other occupations, either male or female dominated. In this application “care work” has been used as a proxy for undervaluation. The methodology used is to arrive at a definition of an “undervalued” occupation, provide a listing of work activities which fall within that definition, apportion time spent on those activities according to one day diary self report and then apply those proportions to selected comparator rates which are asserted to be gender neutral.
64. During the course of the proceedings the Applicants ostensibly clarified that the scope of the ERO application was not intended to cover employers and employees of the home care sector.⁶³ That sector operates predominantly on a fee for services basis without government funding. However the work ostensibly excluded in the home care sector would now appear to be encompassed within the scope of the Application based on the definition of care work relied upon in the Report.
65. Applicant unions have indicated from the outset that these proceedings would “pave the way for others”.⁶⁴ In this regard we note recent announcements by United Voice of a claim for a 30 per cent pay increase for child care workers and the Australian Nurses Federation

⁶² Joint Submission of the applicants and the Australian government on Remedy 17 November 2011 Attachment 1 Executive summary page 3

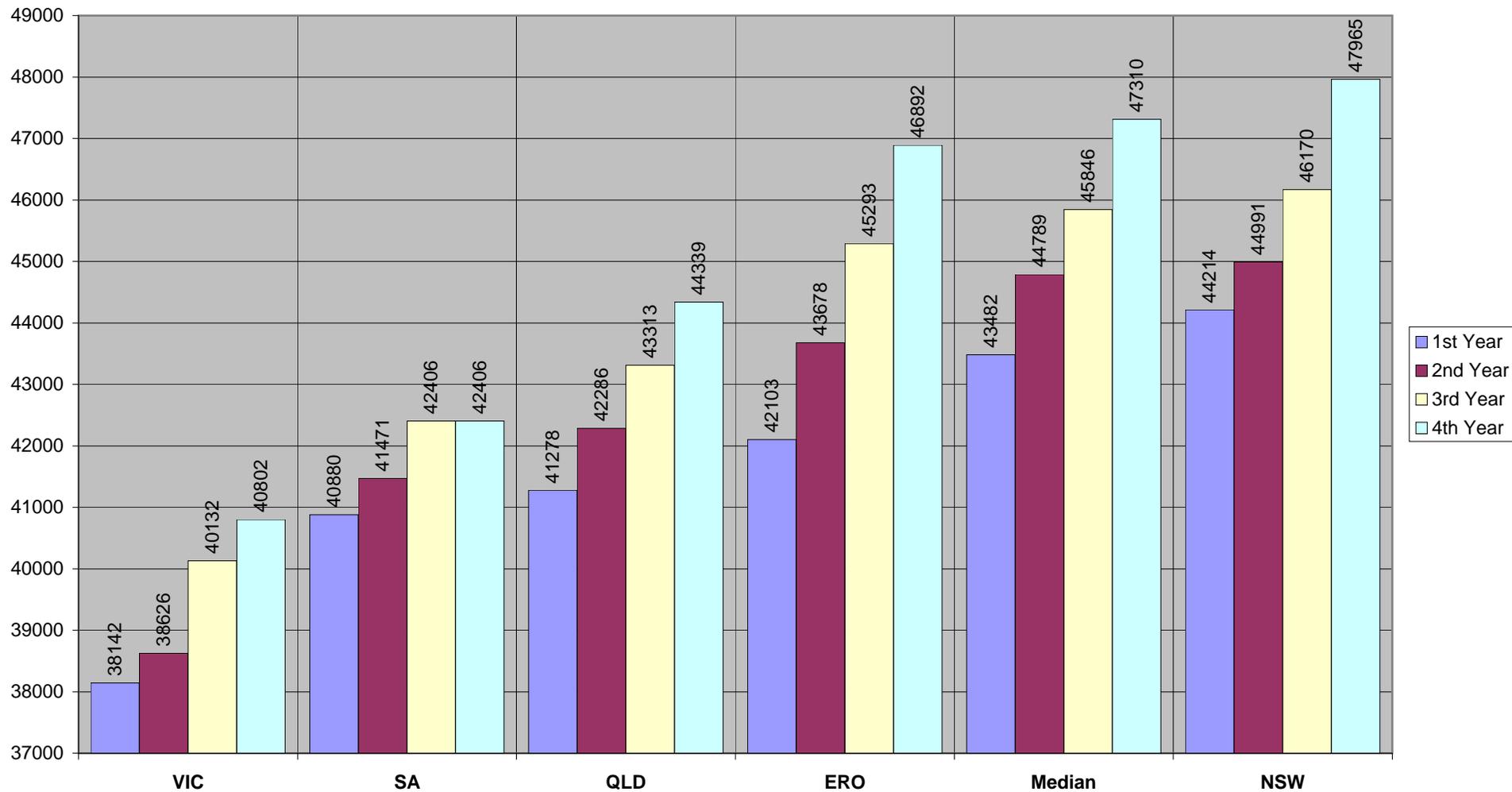
⁶³ ASU letter to AFEI dated 22 February 2011

⁶⁴ Transcript 3 February 2011, XXN PN2869

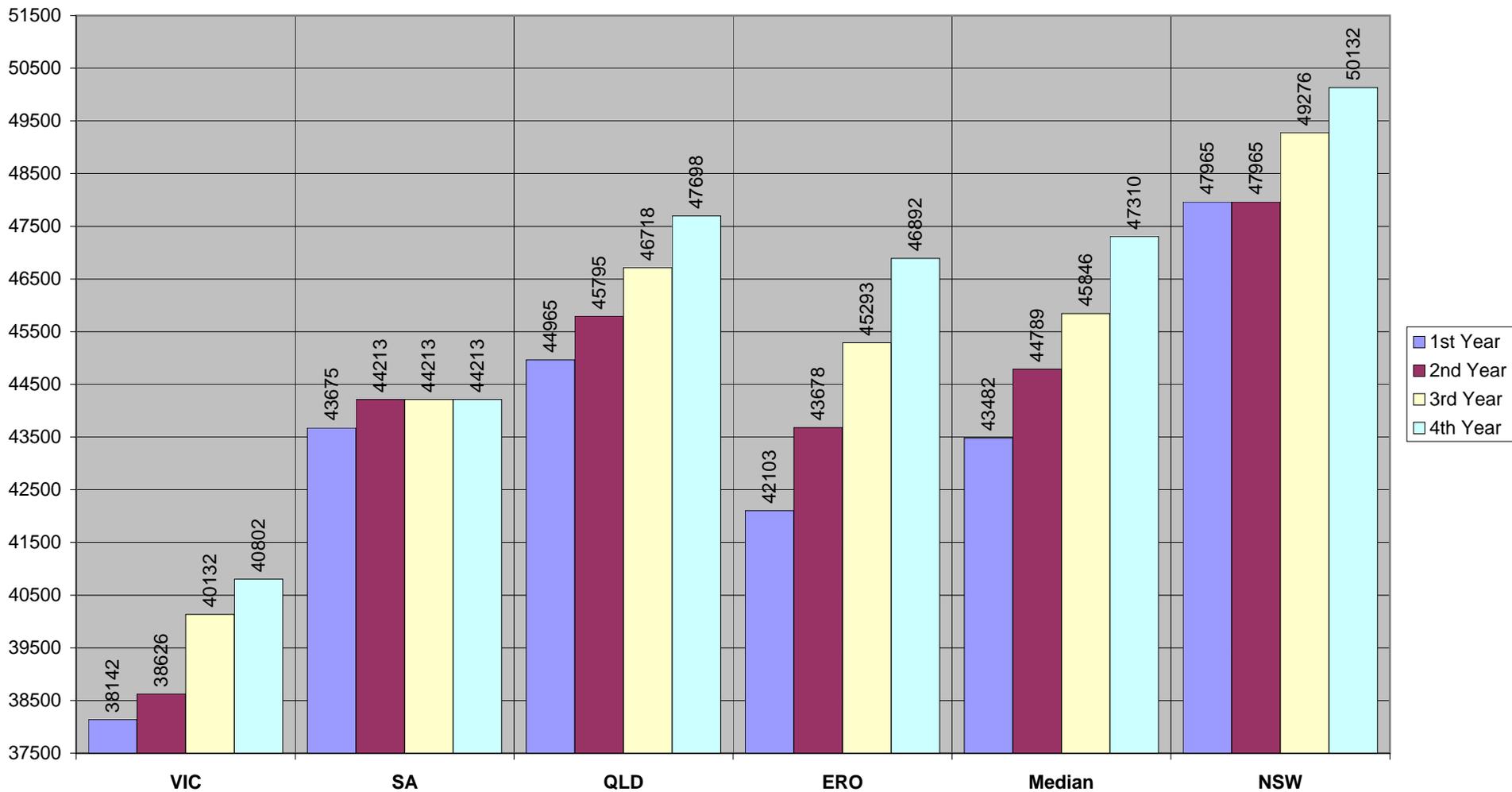
call for a federal government contribution of \$500 million a year to subsidise wage increases for aged-care workers.⁶⁵

⁶⁵ The Australian 16 November 2011 "Childcare staff join pay race with \$2bn pitch"
[Hhttp://www.theaustralian.com.au/national-affairs/industrial-relations/childcare-staff-join-pay-race-with-2bn-pitch/story-fn59noo3-1226196138414](http://www.theaustralian.com.au/national-affairs/industrial-relations/childcare-staff-join-pay-race-with-2bn-pitch/story-fn59noo3-1226196138414)

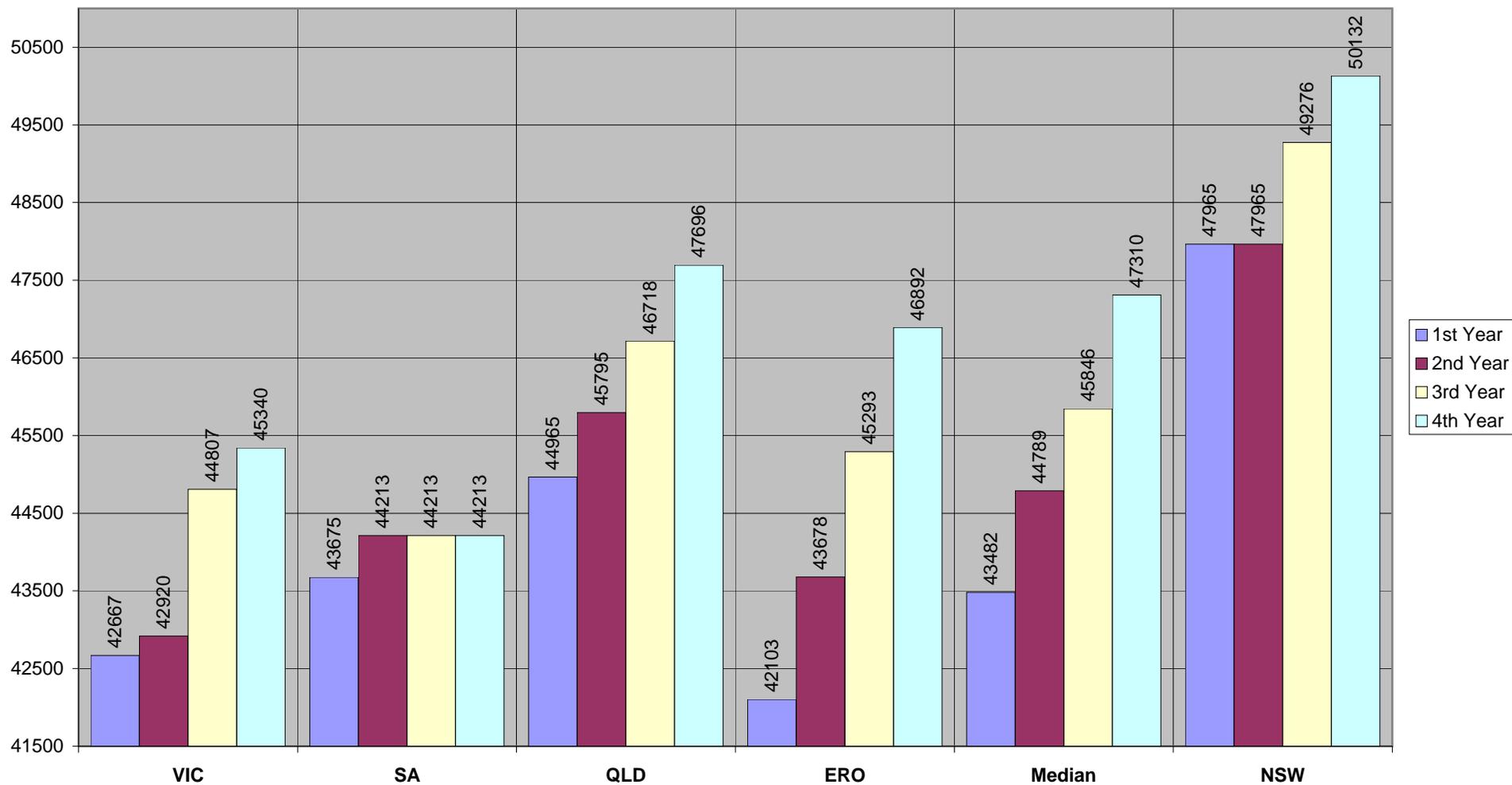
**Disability Support Worker - less than Certificate 3 : 1st Year - 4th Year
Comparisons of Public Sector Rates, Applicants Public Sector Median and Proposed ERO Rates**



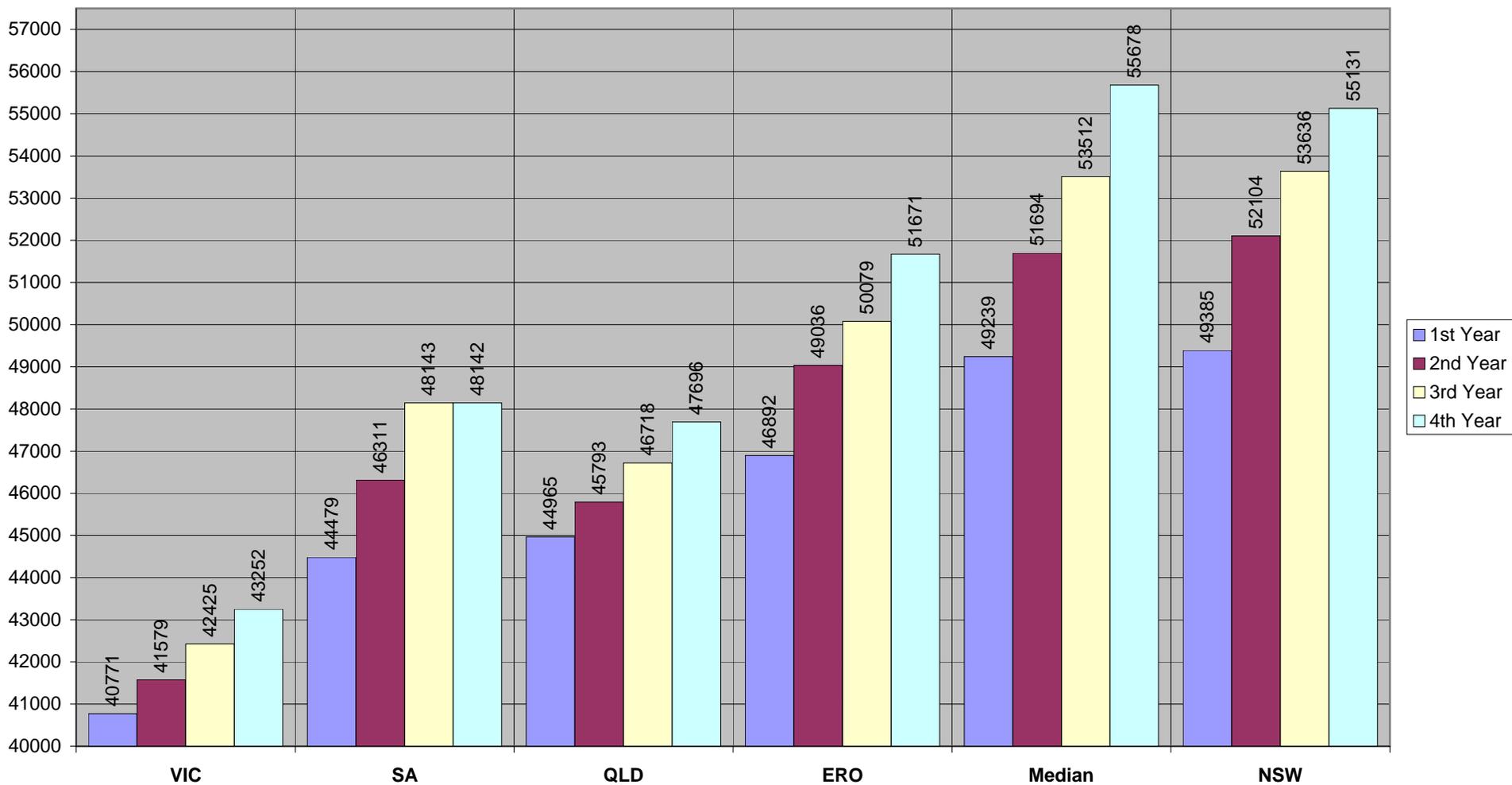
**Disability Support Worker - Certificate 3 : 1st Year - 4th Year
Comparisons of Public Sector Rates, Applicants Public Sector Median and Proposed ERO Rates**



**Disability Support Worker - Certificate 4 : 1st Year - 4th Year
Comparisons of Public Sector Rates, Applicants Public Sector Median and Proposed ERO Rates**



**Youth Worker : 1st Year - 4th Year
Comparisons of Public Sector Rates, Applicants Public Sector Median and Proposed ERO Rates**



Child/Family Worker : 1st Year - 4th Year
Comparisons of Public Sector Rates, Applicants Public Sector Median and Proposed ERO Rates

