

**Colin
Biggers
& Paisley**

Care economy webinar.

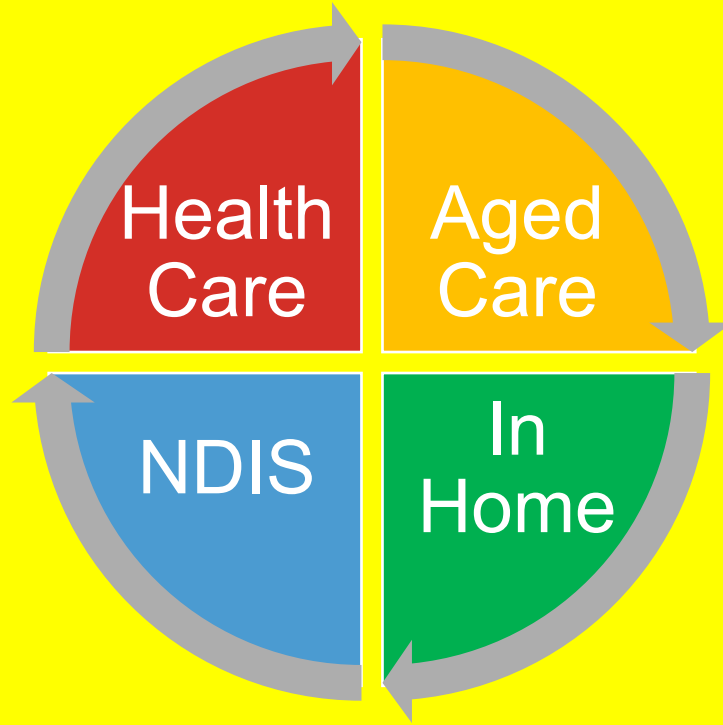
Changes and Challenges of the SCHADS Award

Megan Kavanagh & Leanne Dearlove

Tuesday 24 June 2025



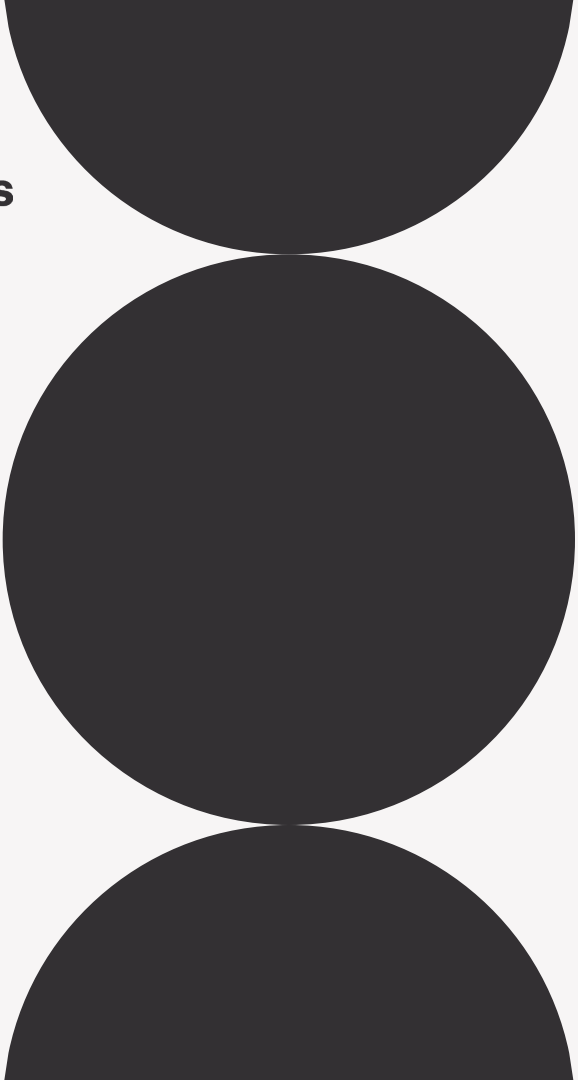
Welcome to the Care Economy



Agenda



- Context
- Difficulties with the Social, Community, Home Care and Disability Services Industry Award
- Overcoming Difficulties
- Fair Work Commission Review & Findings
- Proposed SCHADS Changes
- Next Steps



**Colin
Biggers
& Paisley**

Difficulties of the SCHADS Award

Workforce

300,000 people are employed by non-government organisations in social and community services

- Health Care and Social Assistance industry leads as the largest employer, with over 2.2 million workers.
 - Includes health care, aged care, nursing and allied health and NDIS support
- 300,000 are identified as SCHADS employees, though the numbers are likely higher
- Women dominate this sector (77%)
- Median age of workers is 40



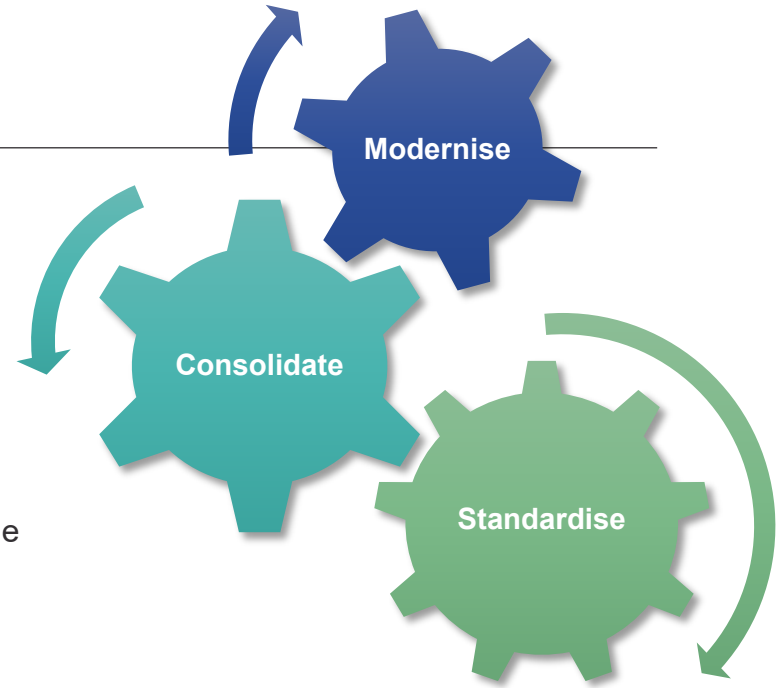
SCHADS Context

Background:

- Numerous overlapping instruments address these sectors.
- Established as part of the Fair Work Commission's (FWC) modernization of awards.
- Intended to standardize and streamline processes.
- Represents 'block funding' instead of the existing NDIS framework.
- Unites **diverse job categories, sectors, and arrangements** under a single framework.

Coverage:

- Crisis support and assisted housing
- Social and community services, social workers, youth workers
- In-home care and personal care, clerical and admin workers
- Family day care programme, group home supervisors, NDIS/In-Home Aged Care



Defines

Minimum Pay Rates and Conditions:

The award outlines minimum pay rates, working hours, rest breaks, leave entitlements, and other employment conditions for covered employees.

Classification Structure:

Employees are classified at different levels based on their roles, qualifications, experience, and responsibilities, which determines their pay rates and progression.

Covers a wide range of roles from managers to support workers and family day care coordinators, but not family day care workers

Overtime and Penalties and Shifts :

The award specifies when overtime rates apply, particularly for part-time and casual employees working outside their regular hours or during weekends and public holidays, overnights and broken shifts

Breaks and Rostering and Loading

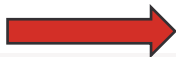
It mandates specific meal and rest break requirements and outlines roster change rules for employers. Full-time and part-time employees are entitled to annual leave loading, typically 17.5% of their ordinary hourly rate, when taking annual leave



What's the issue?

- A University of New South Wales study from June 2024 found that half the SCHADS workforce is being paid below their qualifications, skills, and level of experience.
- 3122 social and community services workers surveyed, including disability support workers, case managers, caseworkers, counsellors, youth workers, lawyers, project officers, and team leaders, 66% had their pay set by the Social, Community, Home Care and Disability Services Industry Award
- The report found that:
 - 43% of participants are under-classified based on their experience and qualifications
 - 18% are under-classified based on the supervision and support they provide to others
 - 43% are under-classified based on the supervision they receive
 - 91% of disability support workers were under-classified
 - More experienced workers were more likely to be misclassified. EG 90% of workers with at least ten years of service were misclassified as compared to 31% of workers in their first year of service

Point remains - classify people for the work they do



"I have a law degree and processes and regulatory years of relevant experience which helps me to understand government frameworks and how to achieve systemic advocacy.
"None of this is recognised in my current pay rate."

Concerns about low classification

Participants attributed low classification and pay to insufficient government funding and inadequacies in the SCHADS Award, including the ambiguous and overly-complicated wording of the award's level descriptors, which leave classification levels open to too much interpretation.

Workers also reported that the SCHADS Award fails to recognise relevant skills and experience, which in effect cap pay, and disincentivises upskilling.

The report found that lack of pay progression is a "major issue", partly because the SCHADS Award contains no entitlement to progress up pay points and levels , and instead, promotion or reclassification remain at the employers' discretion.

The survey showed that only 41% of participants had moved up a pay level in the past year, and that pay progression remained more common at higher levels.

Some 34% of social and community services Level 1 workers had moved up a pay point in the last year, compared to 59% at Level 8.

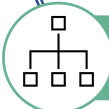
29% of participants reported needing help from family or friends to meet living costs – with the figure even higher amongst casual workers at 42.2% – and 25.4% for full-time workers



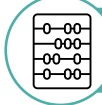
Other Difficulties: *Interpretation*



Broad scope and coverage



Complex classification structure



Multiple allowances and loadings

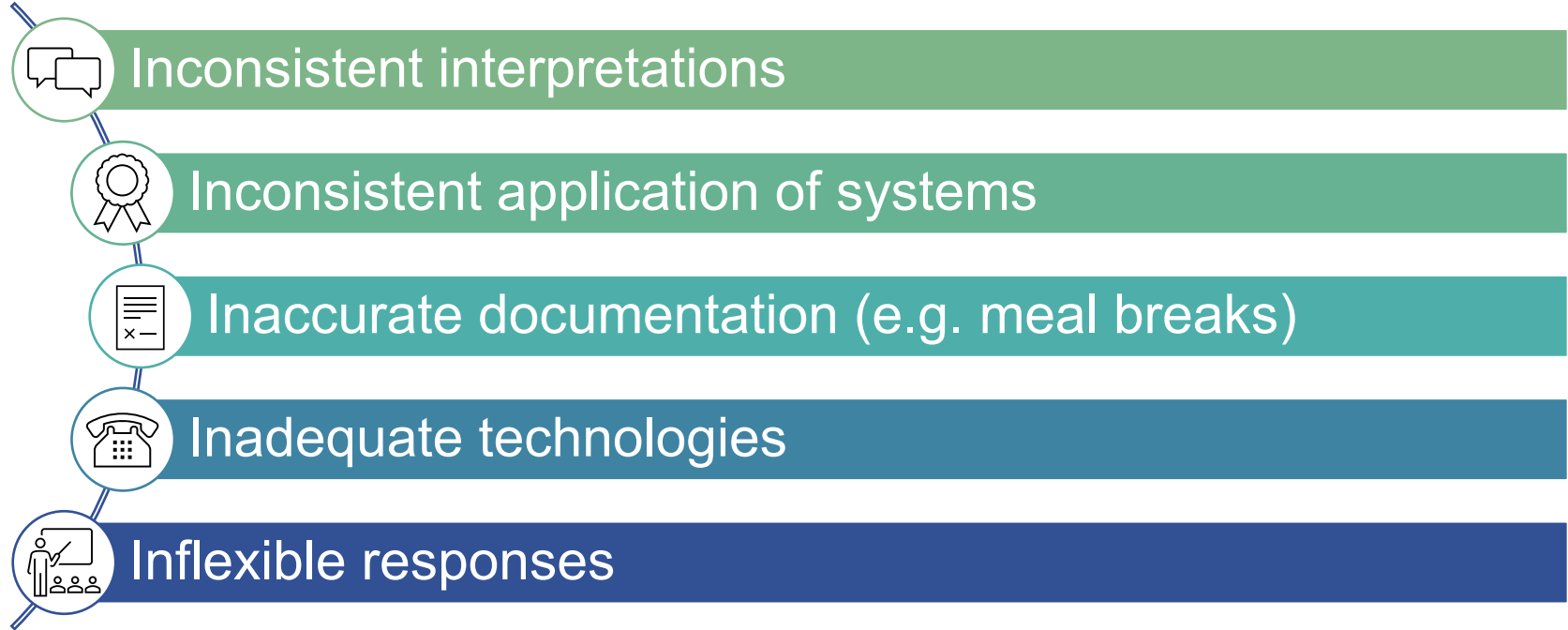


Variability in work patterns



Frequent changes and classifications

Further Difficulties: *Implementation*



Case Example - Underpayment Claim

Ghimire v Karriview Management Pty Ltd (2019)

- Mr Ghimire and Ms Sharma worked at a family-run business
- They alleged they were not paid for all hours worked under the relevant award. They submitted handwritten records of their hours, based on notes they had kept at the time.
- Karriview failed to produce any employment records, such as rosters, timesheets, or payslips. The Industrial Magistrate initially awarded partial compensation, citing concerns over the employees' credibility.

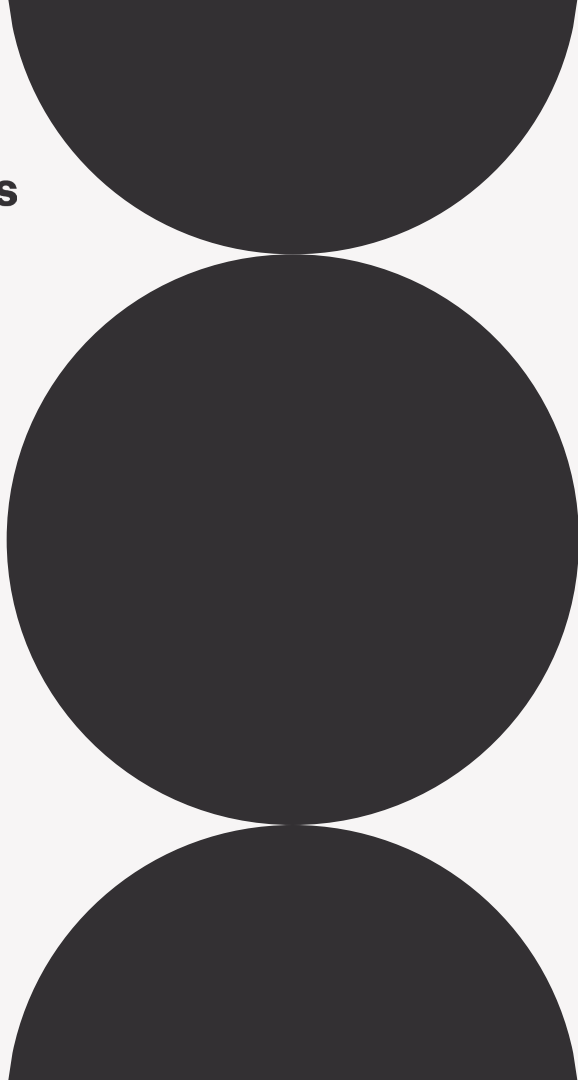
The Decision:

- On appeal, the Federal Court awarded the full amount claimed by the employees.
- The Court applied the reverse onus provisions of the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017.
- It held that, without proper records, the employer could not rebut the employees' claims.
- The Court confirmed that the responsibility for maintaining records lies with the employer, and failure to do so can result in a presumption that underpayments occurred.



The sophisticated employer

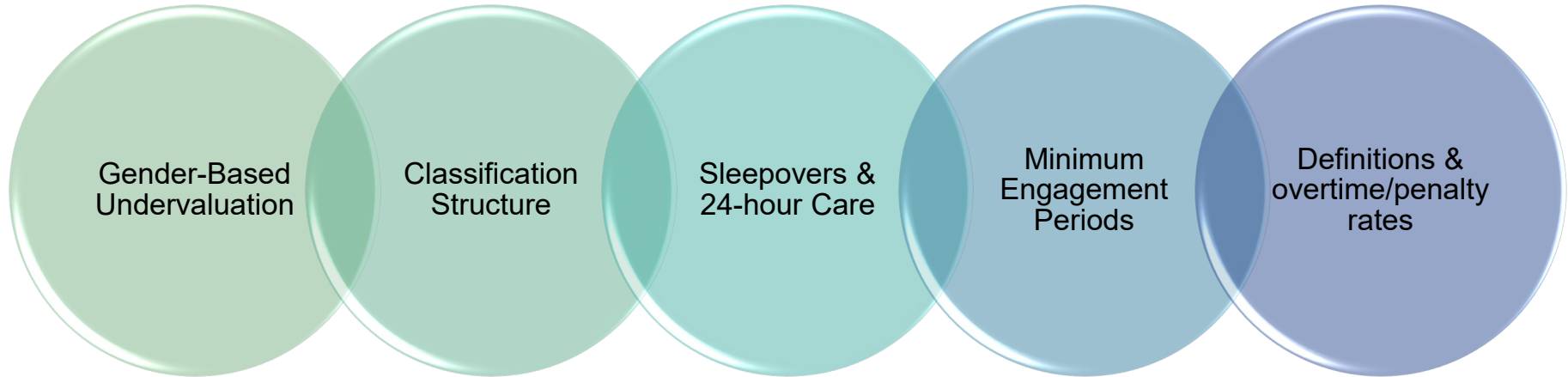
- In 2018, **Red Cross Australia** failed to pay its workers correctly
 - Incorrect assumptions about the award and enterprise agreement coverage, as well as the classification of roles
- In 2019, **World Vision Australia** was faced with a similar situation, owing 200 casuals and 45 permanent staff members money because there had been an error in determining the correct award for employees
 - An internal review found that employees should have been covered by the SCHADS award when they previously weren't. This was only determined after seeking advice
- In 2021, the **RSPCA NSW** signed an enforceable undertaking with the Fair Work Commission
 - Agreed to repay \$220,000 because of a payroll error



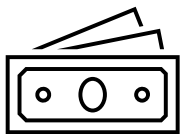
**Colin
Biggers
& Paisley**

Fair Work Commission

What is the Commission Monitoring?

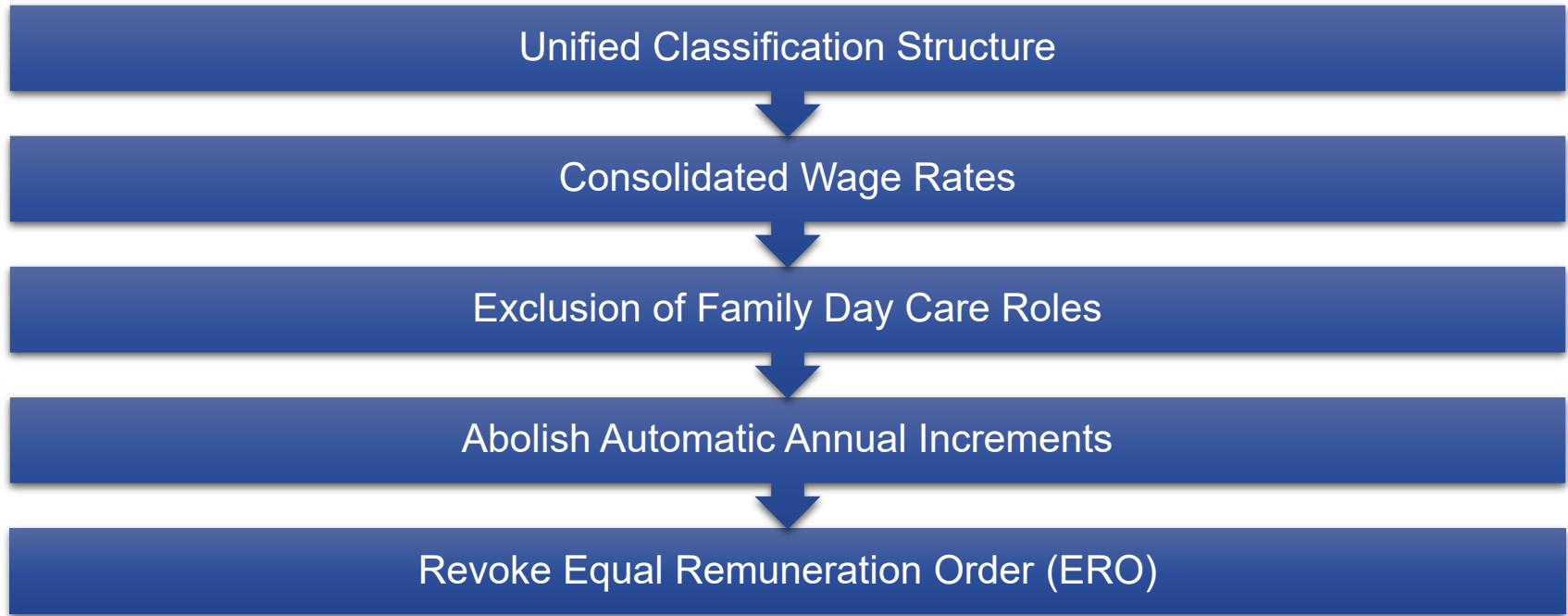


Key Determinations

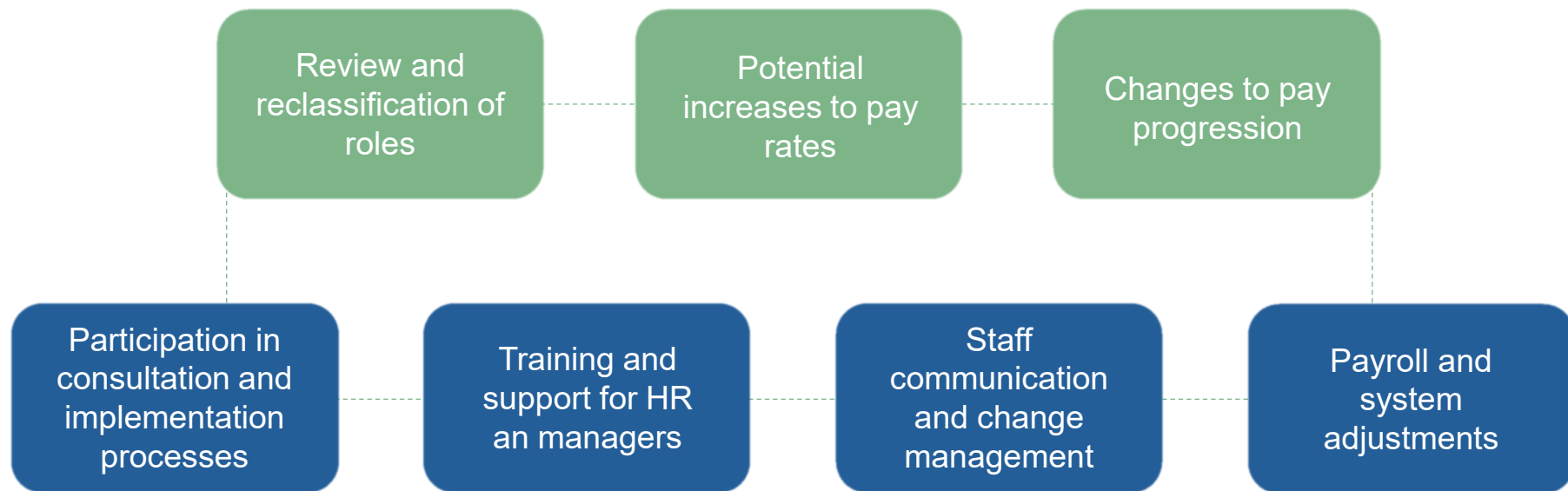


Gender-Based Undervaluation	Equivalence of Work	Classification Structures
Existing rates do not properly reflect the value of the work performed (due to historical undervaluation based on gender).	There is an equivalence of work value in all direct care functions in the classification streams in the SCHADS Award.	• The current multi-schedule setup (Schedules B–F) is overly complex, ambiguous, and inconsistent. • Problems include lack of clarity in role descriptors and under-classification of workers.

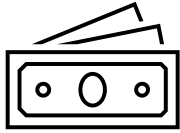
Proposed Changes



What Would This Mean for Workplaces?



Government response



Gender-Based Undervaluation	Equivalence of Work	Classification Structures
The government committed to funding these wage increases, with a 15% increase to minimum wages for direct care classifications in the Aged Care Award, SCHADS Award, and Nurses Award * Increase in Award rate was 13% over three years	Under discussion Call for submissions	• Reviewing current classifications • Stay informed • Engaging with staff early

Calls for Submissions



Will all employees be successfully classified?



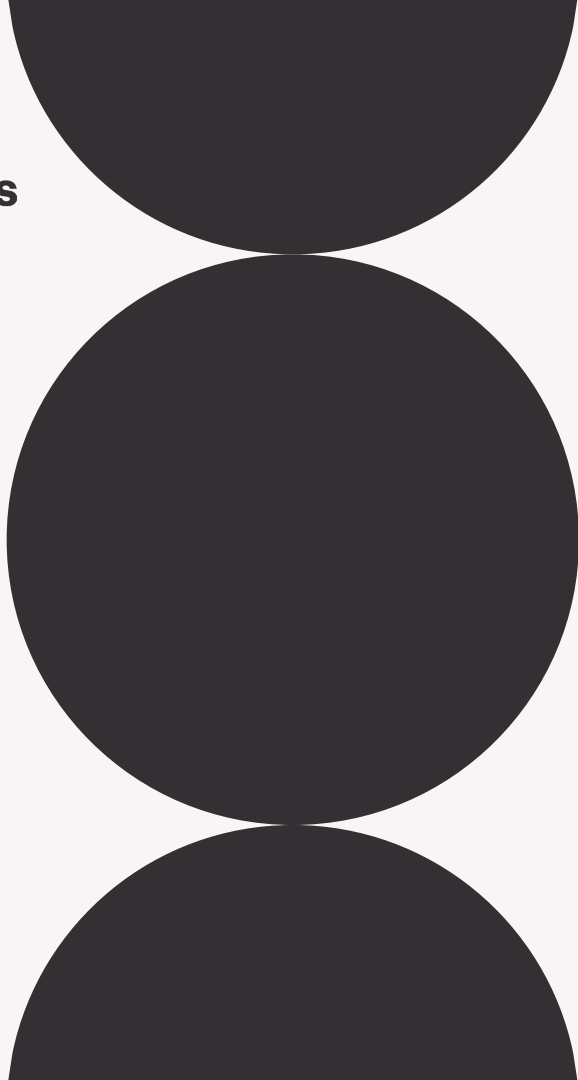
What transitional arrangements should be implemented?



When should the operative dates be?



What additional provision amendments might be required?



**Colin
Biggers
& Paisley**

Other Changes

Post-Election Policies - Ban on Non-Compete Clauses



Ban on non-compete clauses for workers earning less than \$175,000.



Projected increase of the wages of affected workers by up to 4% or \$2500 annually.



However, employers will suffer the repercussions (higher staff turnover, weakened protective measures).

Wage Theft Guidance - Resources

Voluntary Small Business Wage Compliance Code:

Outlines compliance expectations and steps to take to minimise prosecution, including,

- Taking reasonable efforts to understand correct rates of pay and entitlements for employees
- Process for ascertaining the right information about employee entitlements (e.g., role descriptions and classifications, progression and qualifications, hours of work)
- Seeking information, advice and guidance in relation to the payment of wages and entitlements.
- Provides tools, checklists and tips for compliance, record keeping and staying informed by subscribing to the Fair Work Ombudsman's (**FWO**) email updates or joining an employer association.

Compliance and Enforcement Policy: Outlines the FWO's approach to criminal and civil liability.

- Expectation of self reporting of broad/systemic non-compliance as soon as possible
- Exclusion from reporting unintended, isolated errors resulting in underpayments for less than 12 months
- Expands the matters FWO expects employers to report on
- Employers must be able to demonstrate consideration of the guidance, development and investment in robust compliance and audit systems to ensure compliance
- Complex Reporting guide to be released this year
- Guidance also on enforceable undertakings/cooperation agreements

Cooperation Agreements



Promotes Self-Reporting

Cooperation agreements encourage employers to self-report intentional non-compliance with pay obligations, fostering transparency and accountability.

Safe Harbour for Employers

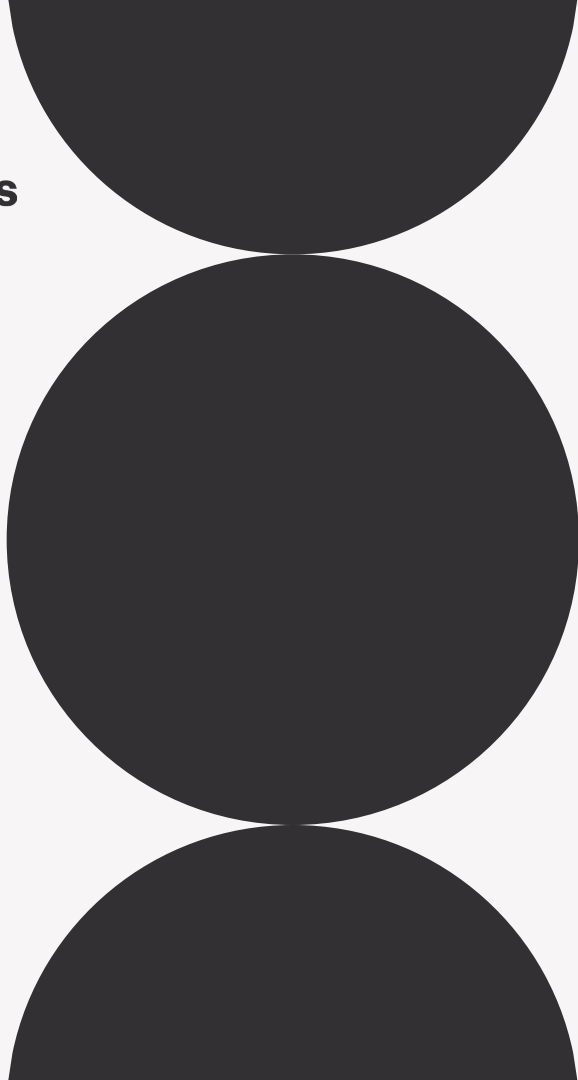
These agreements provide a safe harbour for employers from potential criminal prosecution for failing to meet minimum pay rates under Fair Work Instruments.

Small Business Exemption

Small business employers adhering to the Code are already shielded from criminal prosecution for failing to meet minimum pay rates.

Caveats

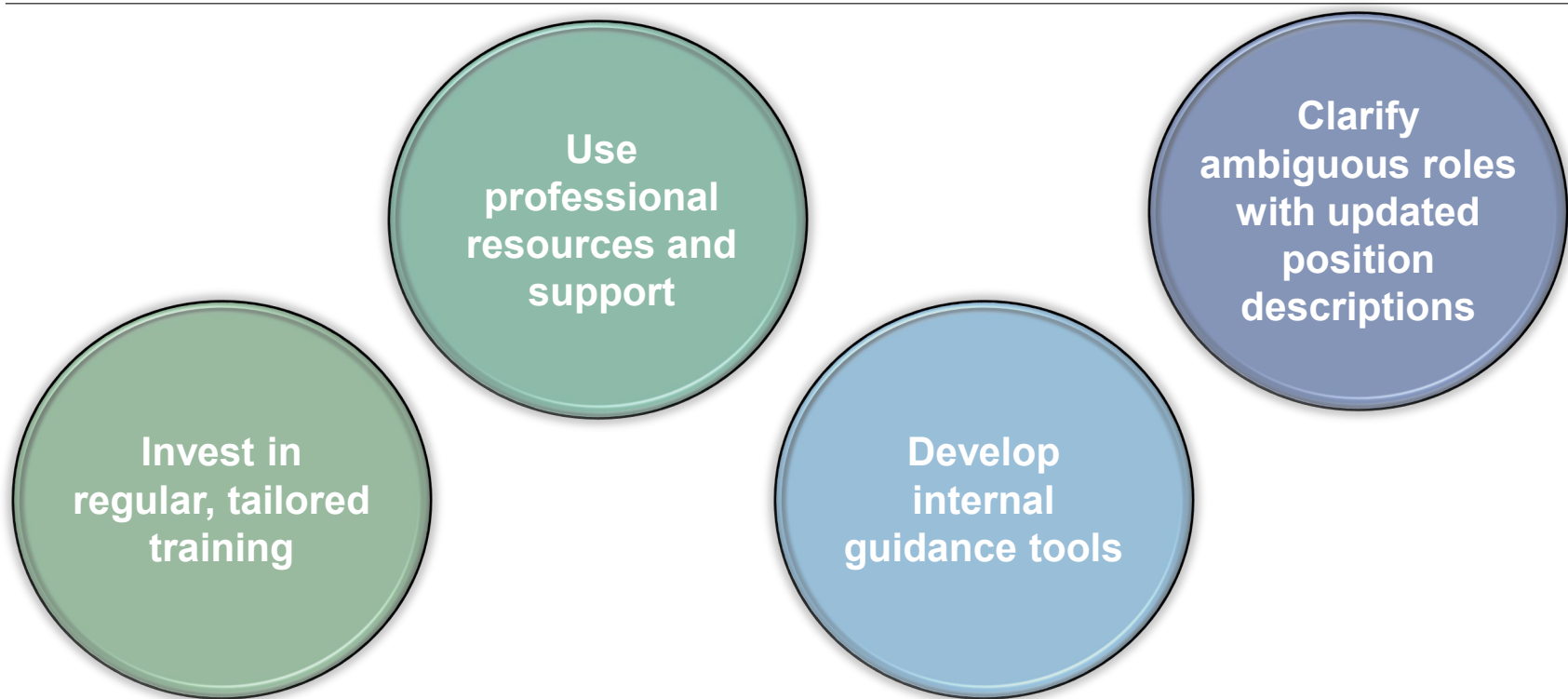
Agreements are reached at FWO's discretion, after self-reporting, but no protection from civil liability, only criminal



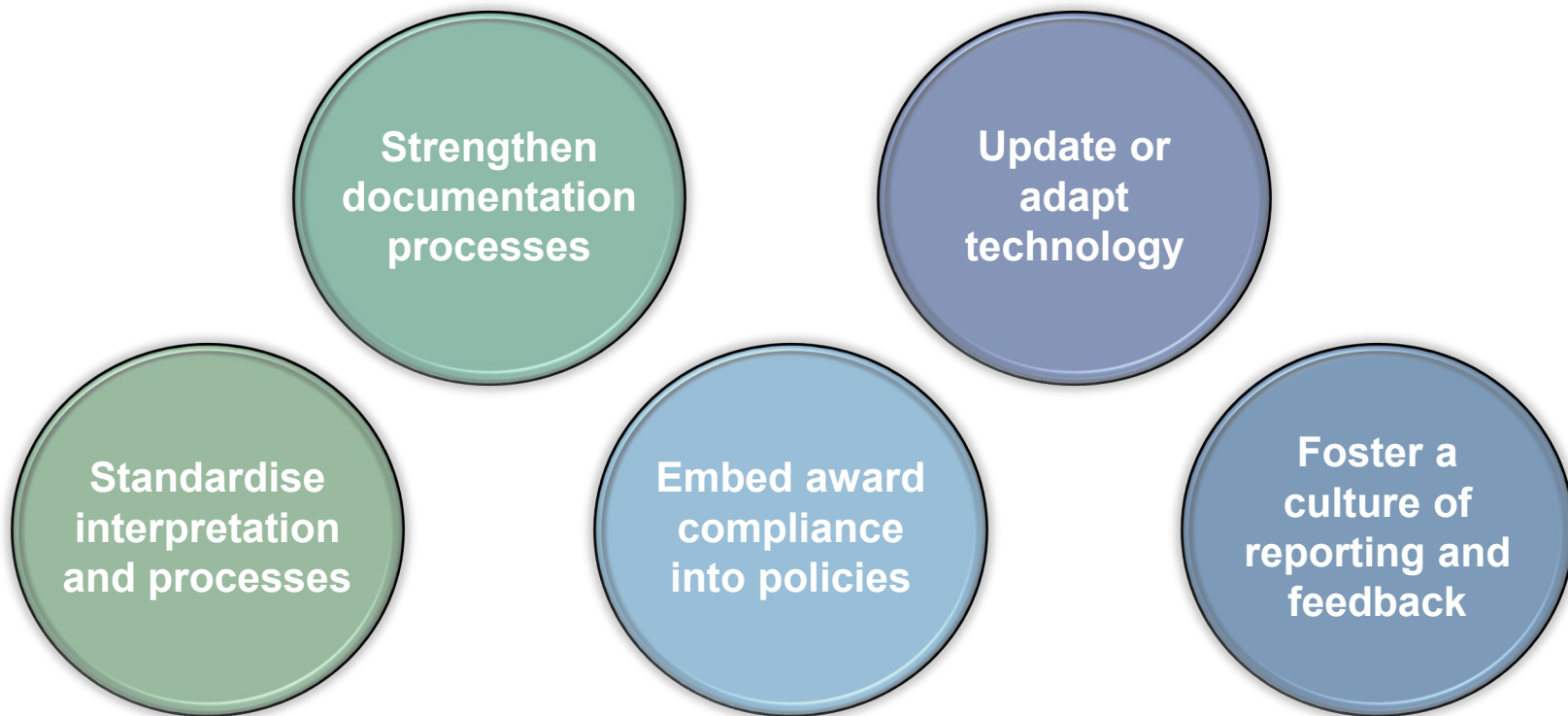
**Colin
Biggers
& Paisley**

Next Steps & Key Takeaways

Overcoming Difficulties: *Interpretation*



Overcoming Difficulties: *Implementation*



Key Takeaways



Proactively invest in understanding and applying the SCHADS award - conduct audits



Ensure consistency in interpretation, application and training across the workplace



Embed compliance in your policies, procedures and processes - single source of truth



Stay up to date with proposed changes & engage in FWC submission process



Start preparing for change

Presenters



Megan Kavanagh

Partner | Employment & Safety
Colin Biggers & Paisley
Megan.Kavanagh@cbp.com.au



Leanne Dearlove

Special Counsel | Employment & Safety
Colin Biggers & Paisley
Leanne.Dearlove@cbp.cm.au

**Colin
Biggers
& Paisley**

Thank you.

© 2025 Colin Biggers & Paisley Lawyers

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means—electronic, mechanical, photocopying, recording, or otherwise—without the permission of Colin Biggers & Paisley Lawyers.

This document provides an outline of a presentation and is incomplete without the accompanying oral commentary and discussion.

COMPANY CONFIDENTIAL

cbp.com.au