

## Form F46 – Application to vary a modern award

Fair Work Act 2009, ss.157–160

This is an application to the Fair Work Commission to make a modern award or make a determination varying or revoking a modern award, in accordance with Part 2-3 of the [Fair Work Act 2009](#).

### The Applicant



These are the details of the person who is making the application.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address	Suite 46, 255 Drummond St		
Suburb	Carlton		
State or territory	VIC	Postcode	3053
Phone number	0418 538 989	Fax number	
Email address	<a href="mailto:leighs@hsu.net.au">leighs@hsu.net.au</a> ; <a href="mailto:louised@hsu.net.au">louised@hsu.net.au</a>		

### If the Applicant is a company or organisation please also provide the following details

Legal name of business	Health Services Union
Trading name of business	Health Services Union
ABN/ACN	68 243 768 561
Contact person	Leigh Svendsen <a href="mailto:leighs@hsu.net.au">leighs@hsu.net.au</a> 0418 538 989 Louise de Plater <a href="mailto:louised@hsu.net.au">louised@hsu.net.au</a> 0429 928 192

### Does the Applicant need an interpreter?



If the Applicant requires an interpreter (other than a friend or family member) in order to participate in conciliation, a conference or hearing, the Fair Work Commission will provide an interpreter at no cost.

Yes – Specify language

No

**Does the Applicant require any special assistance at the hearing or conference (eg a hearing loop)?**

Yes – Please specify the assistance required

No

**Does the Applicant have a representative?**



A representative is a person or organisation who is representing the applicant. This might be a lawyer or paid agent, a union or employer organisation, or a family member or friend. There is no requirement to have a representative.

Yes – Provide representative's details below

No

**Applicant's representative**



These are the details of the person or organisation who is representing the Applicant (if any).

Name of person			
Firm, organisation or company			
Postal address			
Suburb			
State or territory			
Phone number			
Email address			

**Is the Applicant's representative a lawyer or paid agent?**

Yes

No

**1. Coverage**

**1.1 What is the name of the modern award to which the application relates?**



Include the Award ID/Code No. of the modern award

Social, Community, Home Care and Disability Services Award 2010 [MA000100] (**SCHCDS Award**)

## 1.2 What industry is the employer in?

That part of the home care sector (as defined in the SCHCDS Award) which operates in the aged care industry.

## 2. Application

### 2.1 What are you seeking?

Specify which of the following you would like the Commission to make:

- a determination varying a modern award  
 a modern award  
 a determination revoking a modern award

### 2.2 What are the details of your application?

1. The Applicant applies to amend the SCHCADS Award as follows:

A. To insert into clause 3.1, the following definition:

**Home aged care employee** means a home care employee providing personal care, domestic assistance or home maintenance to an aged person in a private residence;

B. To amend the heading to clause 17 as follows:

**Minimum weekly wages for home care employees other than home aged care employees.**

C. To insert clause 17A, as follows:

#### 17A. Minimum weekly wages for home aged care employees

##### 17A.1 Home aged care employee Level 1

	Per week
	\$
Pay point 1	1014.13

##### 17A.2 Home aged care employee Level 2

	Per week
	\$
Pay point 1	1074.88
Pay point 2	1082.25

##### 17A.3 Home aged care employee Level 3

	Per week \$
Pay point 1 (certificate III)	1097.00
Pay point 2	1130.75

  

**17A.4 Home aged care employee Level 4**

	Per week \$
Pay point 1 (certificate IV)	1196.88
Pay point 2	1220.75

  

**17A.5 Home aged care employee Level 5**

	Per week \$
Pay point 1 (degree or diploma)	1283.13
Pay point 2	1333.75

D. To make such further or other amendments to the SCHCDS Award as appear appropriate to the Commission in light of the evidence in the proceeding.

Attach additional pages, if necessary.

### 2.3 What are the grounds being relied on?

Using numbered paragraphs, specify the grounds on which you are seeking the proposed variations.



You must outline how the proposed variation etc is necessary in order to achieve the modern awards objective as well as any additional requirements set out in the FW Act.

The grounds relied upon by the Applicant are contained in Annexure A to this application.

Attach additional pages, if necessary.

## Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	Lloyd Williams
Date	31 May 2021
Capacity/Position	HSU National Secretary



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

**PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS**

## ANNEXURE A

### GROUNDINGS AND REASONS FOR APPLICATION

#### INTRODUCTION

1. This application raises for consideration a number of issues that arise in respect of the application by the Health Services Union to vary the Aged Care Award 2010 [MA000018] (**Aged Care Award**) in proceedings number 2020/99 and the application by the Australian Nursing and Midwifery Federation in proceedings number 2021/63 to vary the Aged Care Award and the Nurses Award 2010 [MA000034] (**Nurses Award**).
2. Employees, other than nurses, providing aged care in residential aged care facilities are covered by the Aged Care Award 2010. Employees providing aged care in home settings (**the home aged care employees**) are covered by the Social, Community, Home Care and Disability Services Industry Award [MA000100] (**SCHCDS Award**).
3. As is the case with the minimum wage rates contained in the Aged Care Award, the minimum wage rates in the SCHCDS Award pertaining to home aged care employees were not evaluated during the award modernisation process which led to the making of the SCHCDS Award. No consideration of the minimum wages (other than by annual minimum wage adjustments) or the work value of the work performed by home aged care employees covered by the SCHCDS Award has been conducted since that Award commenced to operate in 2010.
4. The current minimum wage rates pertaining to home aged care employees in the SCHCDS Award do not recognise the nature of work, the level of skill and responsibility involved in performing the work, nor the conditions under which the work is performed by home aged care employees providing aged care services in home settings.
5. The current minimum wage rates pertaining to home aged care employees in the SCHCDS Award undervalue the work of employees currently covered by that Award by more than 25 percent.
6. The Applicant seeks an increase in wages of 25 percent for home aged care employees at all classification levels in Schedule E of the Award to rectify the undervaluation.
7. The claimed increase would address the historic establishment of Award wages and recognise significant increases in work value of home aged care employees.
8. In considering the application, the Commission would be informed by the findings of the Final Report of the Royal Commission into Aged Care Quality and Safety, *Final Report: Care, Dignity and Respect* (**Final Report**) about the conditions under which aged care work is performed, and the workforce needs of the aged care system.
9. The claimed increase would give effect to Recommendation 84 of the Final Report, namely:

#### ***Recommendation 84: Increases in award wages***

*Employee organisations entitled to represent the industrial interests of aged care employees covered by the Aged Care Award 2010, the Social, Community, Home Care and Disability Services Industry Award 2010 and the Nurses Award 2010 should collaborate with the Australian Government and employers and apply to vary wage rates in those awards to:*

- a. *reflect the work value of aged care employees in accordance with section 158 of the Fair Work Act 2009 (Cth), and/or*
- b. *seek to ensure equal remuneration for men and women workers for work of equal or comparable value in accordance with section 302 of the Fair Work Act 2009 (Cth).*

#### **S.157(2A) - WORK VALUE REASONS**

9. Section 157(2) of the *Fair Work Act 2009 (the Act)* enables the Commission to make a determination varying modern award minimum wages, where such variation is justified by work value reasons and making the determination outside the system of annual wage reviews is necessary to achieve the modern awards objective. 'Work value reasons' are addressed at section 157(2A) of the Act.
10. Whilst no specific datum point is required for an analysis of work value, the Commission should have regard to: changes in the nature of the work, the skills required to perform that work; the responsibility involved in doing the work; and the conditions under which work is performed which have occurred over time.
11. Any consideration by the Commission should readily ascertain that the variation is justified based on the following work value reasons.

#### ***The nature of the work – s 157(2A)(a)***

10. The nature of the work of home aged care employees justifies the variation to applicable minimum Award wages sought by the Applicant. The work performed includes a broad range of duties and requires a broad range of knowledge, skills and sound judgment in order to (in sum):
  - a. Understand and assess the needs of an ageing population with an increased level of frailty, vulnerability and/or behavioural and psychological symptoms of dementia or equivalent. Those needs include the physical, mental, social, emotional, nutritional and hygiene needs of clients;
  - b. Provide high quality physical, social and emotional care that is appropriate to the needs of people who require it;
  - c. Provide care that protects the safety, health and wellbeing of aged care clients in home settings;
  - d. Provide care that supports psychological, cultural and emotional wellbeing of aged care clients in home settings;
  - e. Provide re-ablement to the aged;
  - f. Provide specialist care in key areas of need, such as palliative or dementia care;
  - g. Provide care in an increasingly diverse aged care population;
  - h. Allow the aged to be able to exercise choice and be treated as individuals;

- i. Liaise with clinical, health professional and supervisory staff to ensure the changing care needs of aged care clients in home settings are reported and can be reassessed when required;
- j. Facilitate the engagement, social participation and independence of aged care clients in home care settings in the context of an ageing population;
- k. Communicate effectively with a range of stakeholders, from family members to clinical and health professionals, on issues which are often of a sensitive nature.
- l. Operate autonomously with a high level of responsibility and limited level of supervision and support;
- m. At higher levels, manage day to day compliance with an increasingly complex regulatory regime (including quality and safety standards) and Aged Care industry policies and guidelines;
- n. Perform a broad range of administrative and human resource related duties including recruitment processes, rostering, induction, orientation, staff liaison and event organisation;
- o. Perform sales and promotional functions, targeted at prospective residents;
- p. Manage and evaluate capacity to deliver care to clients, making arrangements with potential clients, preparing paperwork for new clients including contracts, reconciling payments for care, admitting new clients and discharging clients;
- q. Deal with external auditors and compliance officers;
- r. Deal with resident, family and staff complaints and enquiries;
- s. Oversight of staff and outsourced providers;
- t. Manage the financial affairs of the service (including accounts payable and receivable, payment of invoices, checking of invoices, purchasing, managing petty cash, banking, receiving residents' payments); and
- u. Operate in an increasingly sophisticated care environment.

11. There have been significant changes in the nature of the work performed by home aged care employees resulting from:

- a. Changes in the acuity levels of aged care clients in home settings (with an increase in those with higher needs requiring a higher degree of responsibility from personal care workers, a higher level of care, a greater breadth of care and assistance and an increase in those with higher needs requiring a higher and more diverse range of paperwork and assessments to be performed prior to and whilst receiving care);
- b. Changes in theories and models of care;



- c. Increased requirements to, in consultation with the client, assess the medical, physical, emotional, social, dietary, nutritional and mobility needs of aged care clients in home settings and to assist clients with medication and medical needs;
- d. Increases in the need to, in consultation with the client, devise and provide individualised and complex physical, social and emotional care for each client, to document same and to report on significant developments to the client, employers and family members;
- e. Increases in the need to, in consultation with the client, plan and administer the provision of home aged care;
- f. Increasingly complex duties in financial management, oversight of outsourced providers, dealing with external auditors and compliance officers, human resource functions, managing accreditations and ensuring compliance, regulator and staff liaison;
- g. Increased community expectations with regard to the extent and quality of care;
- h. Increased skills required in providing client choice-centred care and assessing, planning and implementing the same;
- i. Employer requirements for higher qualifications and training, the content and complexity of which are increasing;
- j. Changes to infection control procedures;
- k. Changes to requirements when preparing client directed care documentation arising from (without limitation) altered government regulation, increased governance and accreditation requirements;
- l. Increased use and implementation of technology, including assisting and instructing older persons on the same;
- m. Increased delegation of more sophisticated work, once associated with specialist management roles, such as procurement, human resources/employee relations, finance, governance, regulatory and compliance and facilities management;
- n. Demands and pressures arising from the management of client directed care packages, and inadequate allowance for care in those packages.
- o. Other related productivity measures.

***The level of skill or responsibility involved in doing the work – s 157(2A)(b)***

- 12. The work of home care employees providing aged care in home settings increasingly requires Certificate III or IV qualifications and additional formal specialised training (for example, in dementia care or medication dispensation).
- 13. Home care employees have a high level of responsibility in a broad range of areas arising from their role as carers of uniquely vulnerable, highly dependent aged people of Australia. This responsibility is to provide care in all aspects for the aged and extends to responsibility

for the physical, emotional and mental wellbeing of some of the most acutely ill and highly dependent cohorts in Australian society.

14. Home care employees work, almost exclusively, alone without direct support or supervision. They are solely responsible for the care provided, monitoring, observing and reporting changes in the client's physical and mental health, activity and cognitive functions to ensure responses, intervention or reassessment of their needs by the appropriate health professionals.
15. Home care employees frequently provide care for periods in excess of their engagement, or at levels above their classification where the home care package allocated to the client is insufficient to provide an appropriate level of care to the client.
16. Home care roles have become increasingly complex with the necessary attainment and exercise of a higher level of skill arising from (without limitation) the factors set out above as well as the evolution of a more complex regulatory environment resulting in increased responsibility for care workers and a greater emphasis on regulatory compliance, increased accreditation requirements for employers, and increased responsibility for assessing the medical needs of residents and assisting clients with medication and medical needs.
17. The level of skill and responsibility required of home aged care employees has increased arising from (without limitation):
  - a. Increased reliance on workers to assess the medical and other needs of clients, to assist clients with medication and medical needs (rather than reliance on Allied Health Professionals, nurses and doctors) and liaise with medical practitioners and other health professionals;
  - b. Increased prevalence of high acuity clients with more varied and high needs and a consequential need to assess, plan around and treat increasingly complex physical, social and emotional needs of residents;
  - c. Changes in qualification requirements;
  - d. Increased minimum standards and regulatory requirements for employers;
  - e. Changes in technology used in performance of the work;
  - f. Increased skills and responsibilities arising from the shift to the provision of *client directed care* and assessing, planning and implementing the same;
  - g. More responsibility for the provision of physical, social and emotional care of clients;
  - h. Increasing ongoing quality assessment and accreditation requirements;
  - i. Reduction in the use and availability of registered nursing care and assessment;
  - j. Increasingly complex duties of financial management, oversight, compliance, human resource functions, liaison and more varied and more complicated maintenance and other functions;
  - k. The need to perform sales and promotional work at higher levels;

- I. The need to implement and oversee policies and protocols governing the delivery of services.

***The conditions under which the work is done – s 157(2A)(c)***

18. Home care employees perform work in a diverse range of environments, without supervision;
19. The provision of aged care in the home has changed markedly since the SCHCDS Award was made as a result of (without limitation):
  - a. Changes in the model of care (including the introduction of client directed care, specialist dementia care and palliative care);
  - b. Changes in the philosophy of care (including the shift to the provision of client directed care and the decreased role of health professionals in the home care environment);
  - c. Increased prevalence of high acuity clients with varied and higher needs including clients with later stage dementia and/or palliative care needs as more people choose to die at home;
  - d. An increase in the sophistication of care and the regulatory framework that care operates in;
  - e. Changes arising from COVID-19 that will likely continue, including:
    - i. Changes in infection control procedures;
    - ii. Changes in the use of technology; and
    - iii. Changes in emotional needs of clients arising from increased isolation.
20. In addition, it is anticipated that further changes to the conditions under which work is performed will result from the report of the Royal Commission into Aged Care Quality and Safety.

**MODERN AWARD AND MINIMUM WAGES OBJECTIVE – SS 157(1)(b), s134(1) and 284(1)  
– FAIR AND RELEVANT SAFETY NET**

***Relative living standards and the needs of the low paid***

21. Many employees in the aged care sector, including home aged care employees, are paid minimum Award rates. Home aged care employees are predominantly engaged in roles for less than full time hours. The Award rates do not provide a relevant safety net of minimum wages. For the reasons set out above, the current Award rates significantly undervalue the work performed by home aged care workers. Even where rates of pay are set by enterprise agreements these rates are little more than Award rates of pay.

***The need to encourage collective bargaining***

22. There are significant and widespread difficulties associated with collective bargaining in the aged care sector with the result that the majority of employees are being paid minimum rates pursuant to the Award or rates set under enterprise agreements that are usually no higher than 5 percent above the minimum rates set under the relevant Award.

23. Factors impeding enterprise bargaining include:

- a. the fact that the majority of funding for the sector comes from the Commonwealth Government.
- b. the lack of incentive for employers to bargain with employees due to the existing low wage rates;
- c. the dispersed nature of the work;
- d. the undesirable interruptions to client care posed by industrial action.

24. The variations sought in this application would encourage employers to engage in collective bargaining by:

- a. increasing the relevance of the minimum rates applicable to the work performed;
- b. encouraging industrial parties to bargain for particular arrangements in workplaces to improve productivity and properly utilise a skilled workforce; and
- c. increasing the competitiveness of enterprises who currently engage in enterprise bargaining.

***The need to promote social inclusion through increased workforce participation***

25. Given an overwhelming majority of employees in the aged care sector are women, creating an incentive for employees to remain in the sector (by increased rates of pay and an enhanced classification structure), has the potential to increase the workforce participation of women. Further, given women still perform the majority of unpaid caring responsibilities to the elderly outside of paid employment, increased confidence in the aged care sector may allow those women providing unpaid care to their elderly relatives, the opportunity to return to the workforce.

***The need to promote flexible modern work practices and the efficient and productive performance of work***

26. The undervaluation of the work performed in the aged care sector is a significant obstacle to attracting and retaining skilled aged care workers. This presents a material risk to the efficient and productive performance of work in the sector given that it is estimated that in order to maintain adequate levels of care, three times the current numbers of aged care workers will be required to sustain the sector by 2050. This is largely due to the ageing population, and the expectation that the number of persons requiring aged care is likely to increase significantly during that time.

27. The challenges in retaining and attracting staff as a result of disproportionately low wages is well documented. The inability to retain and attract staff is a contributing factor to understaffing, increased workloads and more challenging working conditions within the sector which necessarily has a negative impact on the quality of care provided to clients. As a result, the persistence of the undervaluation of aged care work is likely to dramatically decrease the efficient delivery of a high standard of care within the sector.

28. Further, granting the variation sought, is also likely to provide incentives for aged care workers to increase their qualifications and skills, which would necessarily translate into productivity gains.

***Equal remuneration for work of equal or comparable value***

29. As demonstrated comprehensively above, unlike other comparable professions, an increase in the qualifications, knowledge and skills required to perform work in the aged care sector, has not led to an increase in wages.

30. The workforce is female dominated. The undervaluation of aged care work has been contributed to significantly by the fact that the work has commonly been considered 'women's work' and is therefore inherently undervalued. Granting the variation sought would address the inherent undervaluation of feminised work and would be an important step in closing the gender pay gap that currently exists and is concentrated in the caring sectors (including in aged care).

31. The need to increase wages for aged care workers in order to achieve this objective is recognised in Recommendation 84 of the Final Report.

***Likely impact on business, including on productivity, employment costs and the regulatory burden***

32. The variation sought is likely to address the skill shortage that currently exists in the aged care sector. This skill shortage is forecast to dramatically increase in the coming decade, addressing this issue will increase productivity and benefit business.

***The need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards***

33. Granting the variation sought is crucial to ensuring a stable and sustainable modern award system. The variation will simplify progression for home aged care workers, through the inclusion of tenure-based progression and will set wages that accurately reflect the value of the work performed. This is fundamental to the integrity of the modern award system and maintaining its relevance to the labour market. Indeed, maintaining wage rates that are fair and equitable is a key component of an Award system that is simple and easy to understand.

***Likely benefit to the sustainability, performance and competitiveness of the national economy***

34. An aged care system which provides good quality and reliable care to the elderly is critical in permitting the working-age population to contribute to the economy, reducing pressures on the health care system and supporting economic activity, competitiveness and growth.

35. The setting of proper and fair rates of remuneration for home aged care employees will foster an efficient, productive and skilled workforce and support an aged care system which is able to contribute to the maintenance of a sustainable, productive and competitive national economy.

***Other discretionary reasons***

36. The correlation between adequate remuneration and the provision of a high level of care to elderly Australians is well documented. Increasing the minimum wage rates in the Award is fundamental to attracting and retaining skilled members of the workforce in the aged care system. Without the ability to retain employees in the system, the standard of care able to be provided is significantly reduced. Providing a level of care to elderly Australians which affords them dignity in their old age, is an essential feature of a just and prosperous society.

***Conclusion***

37. On the basis of the above the variations sought are:

- a. justified by work value reasons pursuant to s.157(2A);
- b. meet the minimum wages objective pursuant to Part 2-6 of the Act; and
- c. necessary to be varied as soon as possible in order to achieve the modern awards objective pursuant to s.157(2)(b).