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Commission

BACKGROUND DOCUMENT 10 – STAGE 3 OUTSTANDING ISSUES

Fair Work Act 2009

s.158—Application to vary or revoke a modern award

Aged Care Award 2010

(AM2020/99)

Nurses Award 2020

(AM2021/63)

Social, Community, Home Care and Disability Services Industry Award 2010

(AM2021/65)

DEPUTY PRESIDENT ASBURY

DEPUTY PRESIDENT O'NEILL

COMMISSIONER BISSETT

BRISBANE, 23 DECEMBER 2022

Background document – classification structures in Aged Care Award, SCHADS Award, Nurses Award – claims, submissions and key issues arising.

This document has been prepared to facilitate proceedings and does not purport to be a comprehensive discussion of the submissions made; nor does it represent the concluded view of the Commission on any issue.

INDEX

Section	Paragraph
1. Introduction	[1]
2. Current Award classification structures	[6]
3. HSU claim to vary the personal care worker / Recreational/Lifestyle activities officer classification structure in the Aged Care Award	[26]
3.1 The HSU claim	[26]
3.2 HSU submissions supporting claim	[29]



4.	ANMF claim to vary the personal care worker classification / Recreational/Lifestyle activities officer structure in the Aged Care Award 2010	[46]
4.1	The ANMF claim	[46]
4.2	ANMF submissions supporting claim	[51]
5.	Social, Community, Home Care and Disability Services Industry Award 2010	[57]
6.	Comparison of the two proposed Aged Care Award classification structures	[59]
6.1	Separate classification structure for PCWs	[62]
6.2	Changes to classification titles and changes to RAO classifications	[64]
6.3	Changes to classification descriptions	[70]
7.	Principles underpinning classification structures	[72]
8.	Key issues arising	[96]
8.1	Separate classification structure for PCWs	[96]
8.2	Senior PCW (Aged Care employee level 5) – allowance or separate classification	[105]
8.3	Specialist PCW – classification or allowance?	[111]
8.4	Specialist PCW – inclusion of Household Model of Care	[122]
8.5	Difference between AINs under the Nurses Award and PCWs under the Aged Care Award	[127]
8.6	Moving aged care nurses from the Nurses Award into the Aged Care Award?	[153]
8.7	Application of the C10 framework & internal & external relativities	[156]
8.8	SCHADS Award – Impact of an increase on disability workers	[174]
8.9	Distinction between home care and residential aged care	[186]
9.	Indirect care employees	[187]
10.	Further increase for direct care workers	[188]
		Page
	Attachment A – HSU's classification proposal	59



Fair Work
Commissioner

Attachment B – ANMF’s classification proposal	64
Attachment C – Nurses Award 2020 minimum wages with interim increase applied	71
Attachment D – Social, Community, Home Care and Disability Services Industry Award 2010 minimum wages with interim increase applied	75
Attachment E – Abbreviations	77



1. Introduction

[1] On 4 November 2022, the Full Bench constituted to hear and determine the applications being dealt with in the Work value case – Aged care industry, published a [Decision](#) (the *Stage 1 decision*).¹ The Full Bench concluded that the applications would be determined in 3 stages, with the *Stage 1 decision* constituting the first stage in the process.

[2] The Full Bench determined that the classification structures in the relevant awards would be considered in Stage 3:

[52] Stage 3 will include a more detailed consideration of the classification definitions and structures in the relevant Awards. Interested parties may wish to make further submissions and call additional evidence in relation to these matters in this stage of the proceedings. We would then issue a further decision finalising the classification definitions and structures in the relevant Awards

[53] Stage 3 will also determine wage adjustments that are justified on work value grounds for employees not dealt with in Stage 1, and determine any further wage adjustments that are justified on work value grounds for direct care employees granted interim wage increases in Stages 1 and 2 (in the context of our decision on classification definitions and structures).²

[3] The Full Bench noted in relation to classification structures that:

[902] These proceedings have raised a number of complex issues for determination relating to the appropriate classification structures in the relevant Awards such as:

- the appropriate classification and minimum rates of pay for Personal Care Workers (PCWs) and Nursing Assistants (AINs), noting the differing rates of pay in the Aged Care and the Nurses Awards and noting the Joint Employers' suggestion that rewarding administering Schedule 4 medications in a residential facility and working in dedicated dementia and/or palliative care facilities may be dealt with by way of an allowance rather than the classification structure
- the appropriateness of separating out the PCWs from other employees in the Aged Care Award and creating a new PCW classification stream
- the appropriateness of inserting in the Aged Care Award the nursing classifications from the Nurses Award
- the application of the C10 framework to the relevant Awards, especially in relation to the fixation of wage rates for RNs
- the application of appropriate internal relativities within each Award, and

¹ [2022] FWCFB 200, 4 November 2022.

² [2022] FWCFB 200, 4 November 2022.



Fair Work
Commissioner

- in relation to the SCHADS Award, the impact on disability support workers of the increase sought for aged care workers covered by the SCHADS Award.

[903] In our view these issues require close examination and we would benefit from further submissions and, potentially, further evidence, from the parties.³

[4] This background paper sets out the parts of each application relevant to classification structure issues, submissions made and sets out key issues arising.

[5] This paper sets out a number of questions for the parties, which for the purposes of responses, includes the Commonwealth, which is requested to file responses to any questions it has an interest in and wishes to express a view about.

³ [2022] FWCFB 200, 4 November 2022.



2. Current Award classification structures

[6] The Work value case – Aged care industry deals with applications to vary the *Aged Care Award 2010* (Aged Care Award), the *Nurses Award 2020* (Nurses Award) and the *Social, Community, Home Care and Disability Services Award 2010* (SCHADS Award).

Aged Care Award

[7] The Aged Care Award is an industry award that covers employers and their employees in the ‘aged care industry’, which is defined as:

‘aged care industry means the provision of accommodation and care services for aged persons in a hostel, nursing home, aged care independent living units, aged care serviced apartments, garden settlement, retirement village or any other residential accommodation facility.’⁴

[8] Employees covered by the Aged Care Award work in residential aged care facilities and are split into 3 streams:

- Personal Care, which encompasses Personal Care Workers (PCWs) and Recreational/Lifestyle Officers (RAOs)
- Food services, which encompasses cooks, chefs, and food service assistants, and
- General and administrative services, which encompasses cleaners, laundry attendants, gardeners, clerks, typists, receptionists, interpreters, clerical supervisors, general services supervisors, drivers and maintenance employees

[9] All 3 streams are included under a 7-level ‘Aged care employee’ classification structure. The classification structure does not generally provide job-specific skills descriptions of each stream and category of employee but does provide general training, responsibility and supervisory indicators.⁵

SCHADS Award

[10] The SCHADS Award is an industry award that relevantly covers employers and employees in the ‘home care sector’. The home care sector is defined as:

‘home care sector means the provision of personal care, domestic assistance or home maintenance to an aged person or a person with a disability in a private residence.’⁶

⁴ Aged Care Award at 3.1.

⁵ For example, Aged care employee Level 4 includes a descriptor for a personal care worker as follows: “in the case of a personal care worker, holds a relevant Certificate 3 qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work.”

⁶ SCHADS Award at 3.1.



Fair Work
Commissioner

[11] Employees who work in the home care sector under the SCHADS award are classified as 'home care employees'. Home care employees are currently encompassed under a 5-level 'home care employee' classification structure. Unlike the Aged Care Award, the home care employees classification structure does contain job-specific skills descriptions at each classification level, and sets out the requirements for accountability and extent of authority, judgment and decision-making, specialist knowledge and skills, interpersonal skills and qualification and experience.

Nurses Award

[12] The Nurses Award is an occupational award that covers employers and their employees, including in the aged care industry, that are classified as:

- Nursing assistants, often known as Assistants in Nursing (AINs)
- Enrolled nurses (including student enrolled nurses) (ENs)
- Registered nurses (RNs)
- Occupational health nurses, and
- Nurse practitioners (NPs)

[13] A Nursing Assistant/Assistant in Nursing is defined as:

'Nursing assistant means an employee other than one registered with the Nursing and Midwifery Board of Australia or its successor or one who is in training for the purpose of such registration, who is under the direct control and supervision of a Registered nurse (RN) nurse and whose employment is solely to assist an RN or Enrolled nurse (EN) in the provision of nursing care to persons.'⁷

[14] Nursing Assistants have a service-based classification structure starting from 1st year and moving to 3rd year and thereafter. A further classification level of 'Experienced' is available to the holder of a relevant Certificate III qualification.

[15] Enrolled Nurses have a classification structure made up of five separate pay points. Each pay point sets out relevant training and experience requirements and contains 'skill indicators' which set out broad skills required to be exercised at each pay point, including observation, communication and interpersonal skills.

[16] Registered Nurses have a 5-level classification structure as follows:

- RN—level 1
- RN—level 2 (Clinical nurse)
- RN—level 3 (Clinical nurse consultant, Nurse manager or Nurse educator)
- RN—level 4 (Assistant director of nursing (clinical), Assistant director of nursing (management), Assistant director of nursing (education))
- RN—level 5 (Director of nursing)

⁷ Nurses Award at A.1.



Fair Work
Commission

[17] Each classification level sets out indicative skills and duties to be performed, including supervisory and management responsibilities.

[18] There is a minimum entry rate for registered nurses with a 4-year degree or a Masters degree.⁸ Progression from these entry rates will be to RN—level 1, pay point 4 and 5 respectively.

[19] RN levels 1–3 have additional pay points to progress through at each level.

[20] RN levels 4 and 5 have additional “grades” under each level, rather than pay points. Appointment to a particular grade depends on the level of complexity associated with the duties described under the relevant level. In this respect, the number of beds in a facility is a relevant consideration.

[21] Occupational health nurses have a 3-level classification structure including pay point progression within a level. Occupational health nurses levels 1 and 2 have minimum post-registration experience requirements and level 2 requires completion of a relevant post-registration qualification. An additional classification “Senior occupational health clinical nurse” exists between levels 2 and 3.

[22] Senior occupational health clinical nurse and occupational health nurse consultant level 3 require at least 5 years post-registration experience and minimum supervision requirements.

[23] A Nurse Practitioner is defined as:

(a) A Nurse practitioner:

- (i) Is a registered nurse/midwife appointed to the role;
- (ii) Has obtained an additional qualification relevant to the Nursing and Midwifery Board of Australia or its successor to enable them to become licensed Nurse practitioners.

(b) A Nurse Practitioner is authorised to function autonomously and collaboratively in an advanced and extended clinical role.⁹

[24] Nurse practitioners have a 2-level classification structure based on years of practice (1st Year and 2nd Year) with no pay point progression.

[25] For all classifications, progression through pay points is governed by clause 15.7. Clause 15.7 provides that for full-time employees, progression will be by annual movement, while part-time or casual employees progress through with 1786 hours of experience.¹⁰ Clause 15.7 provides that progression to the next pay point in a classification for which there is more than one pay point will have regard to:

⁸ See Nurses Award, clause 15.4(b)

⁹ Nurses Award at A.7.

¹⁰ See Nurses Award, clause 15.7(a)



Fair Work
Commissioner

- The acquisition and use of skills described in the definitions contained in Schedule A to the Award, and
- Knowledge gained through experience in the practice settings over such a period.¹¹

¹¹ See Nurses Award, clause 15.7(b)



3. Health Services Union claim to vary the personal care worker / Recreational/Lifestyle activities officer classification structure in the *Aged Care Award*

3.1 *The HSU claim*

[26] The Health Services Union and four individuals (together the HSU) have applied to vary the Aged Care Award. They seek to increase minimum wage rates for all workers under the award by 25 per cent and make changes to the classification structure for personal care workers (PCWs) and recreational/lifestyle activities officers (RAOs) in Schedule B of the Aged Care Award. The changes to the classification structure, according to the HSU, address systemic issues impeding career progression¹² and are as follows:

- Changing the term 'indicative tasks performed' in the description of each of the 7 levels to 'indicative roles';
- at the Aged Care Employee level 2 classification: replacing the personal care worker grade 1 with a 'personal care worker (entry up to 6 months)' position and adding a descriptor that level 2 relates to employees with more than 3 months' experience in the industry or entry level personal care workers;
- at the level 3 classification: replacing the personal care worker grade 2 with a 'personal care worker (from 6 months)' and to modify the recreational/lifestyle activities officer – unqualified position to make it a role that is 'entry - up to 6 months';
- at the level 4 classification: replacing the personal care worker grade 3 with a 'personal care worker (qualified)' position and adding a new 'recreational/lifestyle activities officer from 6 months' position;
- at the level 5 classification: replacing the personal care worker grade 4 position with a 'senior personal care worker' position and adding a new 'recreational/lifestyle activities officer (qualified)' position. Also providing that senior personal care workers may be required to assist residents with medication and hold the relevant unit of competency (HLTHPS006);
- at the level 6 classification: adding new 'specialist personal care worker' and 'senior recreational/lifestyle activities officer' positions. Also providing that a level 6 worker may be required to lead/supervise the work of others, that they may require 'Certificate IV' or 'Diploma' level training, (changed from Advanced Certificate and Associate Diploma) and in the case of a personal care worker that they provide specialised care and may have undertaken training in specific areas such as dementia care, palliative care or the household model of care; and
- at the level 7 classification: replacing the personal care worker grade 5 position with a 'personal care supervisor' position.¹³

¹² HSU submissions dated 1 April 2021 at [2].

¹³ The HSU's application retained the Level 7 qualifications as set out in the current award. They later corrected the qualifications to reference 'Advanced Diploma' as discussed later in this document.



Fair Work
Commission

[27] The proposed classification titles compared to the current award are as follows:

Classification	Current	Proposed by HSU
Aged care employee-level 1	-	-
Aged care employee-level 2	Personal care worker grade 1	Personal care worker (entry-up to 6 months)
Aged care employee-level 3	Personal care worker grade 2	Personal care worker (from 6 months)
	Recreational/Lifestyle activities officer (unqualified)	Recreational/Lifestyle activities officer (unqualified) (entry – up to 6 months)
Aged care employee-level 4	Personal care worker grade 3	Personal care worker (qualified)
	-	Recreational/Lifestyle activities officer (from 6 months)
Aged care employee-level 5	Personal care worker grade 4	Senior Personal care worker
	-	Recreational/Lifestyle activities officer (qualified)
Aged care employee-level 6	-	Specialist Personal care worker
	-	Senior Recreational/Lifestyle activities officer
Aged care employee-level 7	Personal care worker grade 5	Personal care supervisor



[28] HSU's proposed changes as they would appear in the Aged Care Award are marked up at **Attachment A**. The below table is a condensed version.

Classification level	Changes to indicative tasks performed roles (Personal Care stream)	Changes to classification description
Aged care employee – level 1	n/a	<p>An employee who has less than three months' work experience in the industry and performs basic duties.</p> <p>An employee at this level:</p> <ul style="list-style-type: none"> ▪ works within established routines, methods and procedures; ▪ has minimal responsibility, accountability or discretion; ▪ works under direct or routine supervision, either individually or in a team; and ▪ requires no previous experience or training.
Aged care employee – level 2	<ul style="list-style-type: none"> ▪ Personal Care Worker Grade 1 (entry - up to 6 months) 	<p>An employee who has more than three months' work experience in the industry or is an entry level employee (up to 6 months) in the case of a Personal Care Worker.</p> <p>An employee at this level:</p> <ul style="list-style-type: none"> ▪ is capable of prioritising work within established routines, methods and procedures; ▪ is responsible for work performed with a limited level of accountability or discretion; ▪ works under limited supervision, either individually or in a team; ▪ possesses sound communication skills; and ▪ requires specific on-the-job training and/or relevant skills training or experience
Aged care employee – level 3	<ul style="list-style-type: none"> ▪ Personal Care Worker Grade 2 (from 6 months) ▪ Recreational/Life style activities officer (unqualified) (entry - up to 6 months) 	<p>An employee at this level:</p> <ul style="list-style-type: none"> ▪ is capable of prioritising work within established routines, methods and procedures (non admin/clerical); ▪ is responsible for work performed with a medium level of accountability or discretion (non admin/clerical); ▪ works under limited supervision, either individually or in a team (non admin/clerical); ▪ possesses sound communication and/or arithmetic skills (non admin/clerical); ▪ requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical); and ▪ In the case of an admin/clerical employee, undertakes a range of basic clerical functions within established routines, methods and procedures.



<p>Aged care employee – level 4</p>	<ul style="list-style-type: none"> ▪ Personal Care Worker Grade 3 (qualified) ▪ Recreational/ Lifestyle activities officer (from 6 months) 	<p>An employee at this level:</p> <ul style="list-style-type: none"> ▪ is capable of prioritising work within established policies, guidelines and procedures; ▪ is responsible for work performed with a medium level of accountability or discretion; ▪ works under limited supervision, either individually or in a team; ▪ possesses good communication, interpersonal and/or arithmetic skills; and ▪ requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience. ▪ in the case of a personal care worker, holds a relevant Certificate 3 III qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work.
<p>Aged care employee – level 5</p>	<ul style="list-style-type: none"> ▪ Senior Personal Care Worker Grade 4 ▪ Recreational/ Lifestyle activities officer (qualified) 	<p>An employee at this level:</p> <ul style="list-style-type: none"> ▪ is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures; ▪ is responsible for work performed with a substantial level of accountability; ▪ works either individually or in a team; ▪ may assist with supervision of others; ▪ requires a comprehensive knowledge of medical terminology and/or a working knowledge of health insurance schemes (admin/clerical); ▪ may require basic computer knowledge or be required to use a computer on a regular basis; ▪ possesses administrative skills and problem solving abilities; ▪ possesses well developed communication, interpersonal and/or arithmetic skills; and ▪ requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience. ▪ in the case of a Senior Personal Care Worker, may be required to assist residents with medication and hold the relevant unit of competency (HLTHPS006), as varied from time to time.
<p>Aged care employee – level 6</p>	<ul style="list-style-type: none"> ▪ Specialist Personal Care Worker ▪ Senior Recreational/ Lifestyle activities officer 	<p>An employee at this level:</p> <ul style="list-style-type: none"> ▪ is capable of functioning with a high level of autonomy, and prioritising their work within established policies, guidelines and procedures; ▪ is responsible for work performed with a substantial level of accountability and responsibility; ▪ works either individually or in a team; ▪ may have the responsibility for leading and/or supervising the work of others;



		<ul style="list-style-type: none"> ▪ may require comprehensive computer knowledge or be required to use a computer on a regular basis; ▪ possesses administrative skills and problem solving abilities; ▪ possesses well developed communication, interpersonal and/or arithmetic skills; and ▪ may require formal qualifications at post-trade or Advanced Certificate IV or Associate Diploma level and/or relevant skills training or experience. ▪ in the case of a Specialist Personal Care Worker, provides specialised care and may have undertaken training in specific areas of care (e.g. Dementia Care, Palliative Care, Household Model of Care).
<p>Aged care employee – level 7</p>	<ul style="list-style-type: none"> ▪ Personal Care Supervisor ▪ Worker Grade 5 	<p>An employee at this level:</p> <ul style="list-style-type: none"> ▪ is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures; ▪ is responsible for work performed with a substantial level of accountability and responsibility; ▪ may supervise the work of others, including work allocation, rostering and guidance; ▪ works either individually or in a team; ▪ may require comprehensive computer knowledge or be required to use a computer on a regular basis; ▪ possesses developed administrative skills and problem solving abilities; ▪ possesses well developed communication, interpersonal and/or arithmetic skills; and ▪ may require formal qualifications at trade or Advanced Certificate or Associate Advanced Diploma level and/or relevant skills training or experience.



3.2 *HSU submissions supporting claim*

[29] The HSU submits that the current minimum rates do not recognise ‘the nature of work, the level of skill and responsibility involved in performing the work or the conditions under which work is performed by employees covered by the Aged Care Award and working in personal care services, general and administrative services and food services’.¹⁴

[30] In relation to the ‘support’ services, the HSU submits:

- the knowledge and skills required of food service workers in residential aged care extend well beyond those of food service staff in non-care settings.
- Cleaning, laundry and maintenance staff can be appropriately conceptualised as part of the carer workforce and perform a critical role in the provision of aged care through infection control, maintaining the personal effects of residents and the appearance of the home to the needs of residents and through the relational care work they provide, not least during the ‘regular and substantial’ time they work in residents’ rooms.
- Administrative staff have experienced considerable change in the operating environment for residential aged care in recent years, notably in relation to regulation, information technology, compliance, rostering and financial affairs of organisations, through increased demands of consumers and their families and through the requirement to be involved in the provision of individualised, person-centred care throughout the facility.¹⁵

[31] The HSU submit that the Aged Care Award lacks a clear process for progressing through the classification structure and relies on generic and outdated skill descriptions and ‘indicative tasks’. It submits that job descriptions such as PCW, Receptionist or Gardener arise from historic award classifications. Further, the HSU submits that the classification structure is confusing because it refers to PCW ‘grades’ which no longer exist, including describing an indicative task for an Aged Care employee level 5 as a ‘Personal Care Worker Grade 4’. The HSU submit that its application seeks to clarify the classification structure.¹⁶

[32] The HSU submit that the delineation between the classifications at Aged Care Employee level 1, level 2 and level 3 lack clarity and that the award should be varied to clarify the progression between those classification levels.¹⁷

PCWs – Aged Care Worker level 2 to level 5

[33] The HSU submits that the progression of a PCW from Aged Care Worker level 2 to level 3 based upon a period of experience is appropriate and is consistent with the provision already made for clerical employees to progress from level 2 to level 3 based upon a period of experience.¹⁸

¹⁴ Amended application dated 17 November 2020, Annexure B at 9.

¹⁵ HSU closing submissions dated 22 July 2022 at [20].

¹⁶ HSU submissions dated 1 April 2021 at [5].

¹⁷ HSU closing submissions dated 22 July 2022 at [436].

¹⁸ HSU closing submissions dated 22 July 2022 at [439].



[34] The HSU submits that progression based on 6 months of experience for PCWs aligns broadly with industry practice, traditional probationary periods and reasonable periods for acquiring experience in order to progress beyond the starting classification level.¹⁹

[35] The HSU submits that its proposal to clarify the role descriptions within the personal care streams removes reference to obsolete grades, avoids confusion and clarifies that PCWs with a Certificate III are to be paid at the Aged Care Worker level 4 rate consistent with the existing classification description.²⁰

[36] The HSU proposes to introduce a new indicative role of Senior Personal Care Worker at Aged Care Worker level 5. At this level, the HSU propose to include an additional classification description for an employee who 'may be required to assist residents with medication and hold the relevant unit of competency'. The HSU submits that this is appropriate to recognise the responsibilities at level 5, including the responsibility, autonomy and accountability required of the role.²¹

[37] The HSU submit that the reference to a 'Senior' personal care worker is appropriate to recognise the responsibilities at level 5 including:

- Operating semi-autonomously;
- Substantial level of accountability;
- Substantial on-the-job training;
- May require formal qualifications at trade or certificate level and/or relevant skills training or experience.²²

[38] The HSU submit that there is extensive evidence of experienced PCWs administering medication to residents and having to undertake the relevant competency required to be able to do so. The HSU submit that such workers should be at the Aged Care employee level 5 given the nature of the work, the responsibility involved and the specific competency required.²³

Support stream – Aged Care Worker level 2

[39] The HSU proposes to indicate in relation to the 'Support' stream, that an Aged Care Worker level 2 will be an employee with at least three months' work experience. The HSU submits that this will also clarify that level 1 is reserved for an employee with less than 3 months' experience.²⁴

¹⁹ HSU closing submissions dated 22 July 2022 at [441].

²⁰ HSU closing submissions dated 22 July 2022 at [442]–[443].

²¹ HSU closing submissions dated 22 July 2022 at [443].

²² HSU closing submissions dated 22 July 2022 at [443].

²³ HSU closing submissions dated 22 July 2022 at [444].

²⁴ HSU closing submissions dated 22 July 2022 at [437]–[438].



Fair Work
Commission

Recreational/Lifestyle Officer – Aged Care Worker level 5

[40] The Aged Care Award currently contains a classification for an unqualified Recreational/Lifestyle Officer at level 3. The HSU submit that a new role description for a qualified Recreational/Lifestyle Officer at level 5 should be inserted into the award to recognise the qualifications or supervision responsibilities of care workers engaged in recreation and lifestyles activities work, as well as to create a better career path for those employees.²⁵

Specialist PCW – Aged Care Worker level 6

[41] The HSU proposes to insert a role description for a Specialist Personal Care Worker at Aged Care level 6 as follows:

‘...in the case of a Specialist Personal Care Worker, provides specialised care and may have undertaken training in specific areas of care (e.g. Dementia Care, Palliative Care, Household Model of Care).²⁶

[42] The HSU submits the Specialist PCW role recognises areas of work which require particular skills or experiences and often involve additional training in relation to the specific area of care. The HSU submit that there are a number of examples of specialist roles which have emerged in the industry which warrant the creation of a new role description at a higher level within the classification structure.²⁷

[43] The HSU submits that a specialist role has developed in relation to the homemaker or household model of residential care, with a ‘homemaker’ or PCW in a household model of care required to assume greater responsibilities, undertake a wider range and diversity of duties and to exhibit a wider range of skills.²⁸ The HSU also submits that a specific role should be recognised for dementia care workers, who require additional skills, experience and capabilities to provide care to those residents, often with specific training and qualifications.²⁹ Palliative care workers are also engaged in the provision of services requiring additional skills and responsibilities.³⁰

[44] The HSU’s proposed level 6 classification is said to reflect the current Aged Care Award but updates the outdated reference of ‘Advanced Certificate’ with ‘Certificate IV’. The current Aged Care Award specifies qualifications at level 6 of ‘post-trade or Advanced Certificate or Associate Diploma level’ whilst the HSU application proposes ‘post-trade or Certificate IV or Diploma level’.³¹

²⁵ HSU closing submissions dated 22 July 2022 at [445].

²⁶ HSU closing submissions dated 22 July 2022 at [450].

²⁷ HSU closing submissions dated 22 July 2022 at [452].

²⁸ HSU closing submissions dated 22 July 2022 at [457].

²⁹ HSU closing submissions dated 22 July 2022 at [462].

³⁰ HSU closing submissions dated 22 July 2022 at [463].

³¹ ANMF closing submissions in reply dated 17 August 2022 at [48].



Personal care supervisor – Aged Care Worker level 7

[45] HSU’s proposed level 7 classification initially referenced the qualifications ‘Advanced Certificate’ or ‘Associate Diploma’. The ANMF submitted that these qualifications are not known to the Australian Qualifications Framework (AQF).³² In response, the HSU acknowledged that references to ‘Advanced Certificate’ and ‘Associate Diploma’ at level 7 were incorrect and should have instead referred to ‘Advanced Diploma’.³³ The HSU repeated this correction in closing oral argument, noting that the wording should be ‘a trade or advanced diploma level.’³⁴

Questions for the parties:

Question 1 for the HSU: Does the above discussion accurately summarise the changes to the classification structure in the Aged Care Award sought by the HSU and the submissions already filed?

³² ANMF closing submissions in reply dated 17 August 2022 at [48].

³³ HSU closing submissions in reply dated 19 August 2022 at [231]–[232].

³⁴ Transcript, 1 September 2022, PN15876–PN15877.



4. ANMF claim to vary the personal care worker / Recreational/Lifestyle activities officer classification structure in the Aged Care Award

4.1 The ANMF claim

[46] The ANMF application, in relation to the Aged Care Award, seeks to remove PCWs and Recreational/Lifestyle activities officers from the mainstream of 'aged care employees' under the Award and create a new classification structure for them, set out in grades 1-5.³⁵ Grades 1-4 mirror the existing classifications in substance for those workers in the personal care stream, while one change is proposed to the descriptor in grade 5 (level 7 equivalent):

- may require formal qualifications at trade or ~~Advanced Certificate or Associate Diploma~~ **Certificate IV** level and/or relevant skills training or experience **in Dementia Care or Palliative Care**.

[47] The ANMF submits that Advanced Certificates and Associate Diplomas are not known to the AQF, and that its proposal for a requirement for a Certificate IV at level 7 is preferred over the HSU's proposal, which would require a diploma at level 6 and an associate diploma, a lower qualification, at level 7.³⁶ The HSU has acknowledged that the ANMF's proposal may provide for quicker progression³⁷ and does not object to that proposal.

[48] In particular, the ANMF proposes to delete 'personal care worker' from the definitions of aged care employee levels 2, 3, 4, 5, and 7 in Schedule B of the Aged Care Award and insert a new classification structure for personal care workers.

[49] The ANMF also propose to change the titles of the PCW classifications as below:

Current level classification	Current Personal care stream	Proposed Personal Care Worker & Recreation officer classifications
Aged care employee - level 1	n/a	n/a
Aged care employee - level 2	Personal Care Worker grade 1	Grade 1 - Personal Care Worker (entry up to 6 months)
Aged care employee - level 3	Personal Care Worker grade 2 and Recreational/Lifestyle activities officer (unqualified)	Grade 2 - Personal Care Worker (from 6 months) & Recreational/Lifestyle activities officer (unqualified)
Aged care employee - level 4	Personal Care Worker grade 3	Grade 3 - Personal Care Worker (qualified)
Aged care employee - level 5	Personal Care Worker grade 4	Grade 4 - Senior Personal Care Worker
Aged care employee - level 6	n/a	NA
Aged care employee - level 7	Personal Care Worker grade 5	Grade 5 - Specialist Personal Care Worker

³⁵ ANMF application dated 17 May 2021 and ANMF closing submissions dated 22 July 2022 at Annexure 2.

³⁶ ANMF closing submissions in reply dated 17 August 2022 at [49].

³⁷ HSU closing submissions in reply dated 19 August 2022 at [230].



[50] The ANMF application states that the variation sought:

‘...reflects that the nature of work done by PCWs differs qualitatively from the work done by general and administrative services and food services workers, so that it is appropriate that their rates of pay should be treated separately (and, for work value reasons, increased). Any attempt to maintain PCWs and general and administrative services and food services workers in the same structure will lead to distortions in wage outcomes, and amounts payable to particular workers that do not reflect the underlying work value or nature of the work performed. Furthermore, recommendation 84 of the Final Report is focused upon “personal care workers and nurses in both residential and home care” rather than administrative services and food services workers.’³⁸

4.2 ANMF submissions supporting claim

[51] The ANMF submit that the rationale for their PCW classification variation to the Aged Care award is that the work performed by PCWs differs qualitatively from the work done by general and administrative service and food services workers under the Award, so their rates of pay should be treated separately.³⁹

[52] The ANMF submit that the existing classifications shoehorn different varieties of workers who perform very different work into a single classification, which may potentially stultify the development of particular terms and conditions which take account of the qualitative differences between the work.⁴⁰

[53] The ANMF submit that the work of PCWs is care work, and adjacent to nursing work, in a way that the work of (for example) gardener superintendents is not.⁴¹ Accordingly, the ANMF submit that it is appropriate for PCWs to have their own classification structure in the Aged Care Award.⁴²

[54] The ANMF submit that the PCW classification variation doesn’t involve any variation to modern award minimum wages and consequently work value reasons and the minimum wages objective are not relevant.⁴³

[55] The ANMF submit that the commonality of work as between PCWs under the Aged Care Award and Nursing Assistants under the Nurses Award supports the need for a separate PCW classification structure.⁴⁴ This issue is further discussed at section 8.5.

[56] In relation to the considerations in the modern awards objective, the ANMF submit that there are considerations that support their variation both immediately and in the future. For example, the ANMF submit that the award will be immediately easier to understand if different work is treated differently and in the future, flexible work practices and the need to provide

³⁸ ANMF application dated 17 May 2021 at 11-12.

³⁹ ANMF submissions dated 29 October 2021 at [205] and ANMF closing submissions dated 22 July 2022 at [21].

⁴⁰ ANMF closing submissions dated 22 July 2022 at [22] and [875].

⁴¹ ANMF submissions dated 29 October 2021 at [210].

⁴² ANMF closing submissions dated 22 July 2022 at [874].

⁴³ ANMF submissions dated 29 October 2021 at [206] and ANMF closing submissions dated 22 July 2022 at [871].

⁴⁴ ANMF submissions dated 29 October 2021 at [18].



additional remuneration (for example for working unsocial hours) would be advanced by allowing changes to be more easily be made (s.134(1)(d) and (da)).⁴⁵

Questions for the parties:

Question 2 for the ANMF: *Does the above discussion accurately summarise the changes to the classification structure in the Aged Care Award sought by the ANMF and the submissions already filed??*

5. Social, Community, Home Care and Disability Services Industry Award 2010

[57] There are no current applications to amend the classification structure under the SCHADS Award.

[58] The Commonwealth submits that the Commission may wish to consider further variations to the classification structure for home care workers (HCWs) who are covered by the SCHADS Award, for whom the rates of pay are set by very different classification structures to residential aged care workers, despite doing similar work.⁴⁶

Questions for the parties:

Question 3 for all parties: *Does any party propose any amendments to the classification structure under the SCHADS Award?*

6. Comparison of the two proposed Aged Care Award classification structures

[59] This section compares the changes proposed by the HSU and the ANMF to Schedule B of the Aged Care Award.

[60] The existing classification structure sets out 7 levels of aged care employee. Each level lists dot point descriptors with the capabilities, responsibilities, skills and training expected of an employee at that level. Each level also lists 'indicative tasks performed' in the 3 employee streams (General and administrative services, Food services and Personal care).

[61] Note that the 5 'grades' of personal care worker defined in the award do not align with the 7 'levels' under which they are classified.

6.1 Separate classification structure for PCWs

[62] The main difference is that the ANMF proposes a separate structure for workers in the personal care stream, while the HSU does not. A separate classification structure for these workers allows for their wages to be set separately from the 2 other streams of employees under the Award. As described above, the ANMF submits that the work of personal care workers is qualitatively different from the work performed in other streams in the award,

⁴⁵ ANMF closing submissions dated 22 July 2022 at [877].

⁴⁶ Commonwealth submissions dated 8 August 2022 at [227].



justifying different rates of pay,⁴⁷ however it supports HSU's application to increase the wages of all employees under the Award.⁴⁸

[63] If the Commission increases rates for the personal care stream only, as per the ANMF application, the ANMF considers a separate classification structure for those workers to be an obvious drafting technique to give effect to the increase.⁴⁹ In the event that the Commission increases rates for all workers under the Aged Care Award, as per the HSU's application, the ANMF still considers a separate classification structure to be appropriate in order to recognise the qualitative difference in the work performed by workers in the personal care stream from other workers under the Award.⁵⁰

6.2 Changes to classification titles and changes to RAO classifications

[64] Both parties propose similar changes to the titles for personal care workers.

Classification level	Current Personal care stream	Personal Care stream titles proposed by HSU	ANMF's equivalents
Aged care employee – level 1	n/a	n/a	n/a
Aged care employee – level 2	Personal Care Worker grade 1	<ul style="list-style-type: none"> Personal Care Worker (entry up to 6 months) 	<ul style="list-style-type: none"> Personal Care Worker (entry up to 6 months)
Aged care employee – level 3	<ul style="list-style-type: none"> Personal Care Worker grade 2 Recreational/Lifestyle activities officer (unqualified) 	<ul style="list-style-type: none"> Personal Care Worker (from 6 months) Recreational/lifestyle activities officer (unqualified) (entry up to 6 months) 	<ul style="list-style-type: none"> Personal Care Worker (from 6 months) Recreational/Lifestyle activities officer (unqualified)
Aged care employee – level 4	Personal Care Worker grade 3	<ul style="list-style-type: none"> Personal Care Worker (qualified) Recreational/lifestyle activities officer (from 6 months) 	<ul style="list-style-type: none"> Personal Care Worker (qualified)
Aged care employee – level 5	Personal Care Worker grade 4	<ul style="list-style-type: none"> Senior Personal Care Worker Recreational/lifestyle activities officer (qualified) 	<ul style="list-style-type: none"> Senior Personal Care Worker
Aged care employee – level 6	n/a	<ul style="list-style-type: none"> Specialist Personal Care Worker 	n/a

⁴⁷ ANMF submissions dated 29 October 2021 at [205].

⁴⁸ ANMF closing submissions in reply dated 17 August 2022 at [11].

⁴⁹ ANMF closing submissions dated 22 July 2022 at [873].

⁵⁰ ANMF closing submissions dated 22 July 2022 at [874]–[875].



		<ul style="list-style-type: none">• Senior Recreational/lifestyle activities officer	
Aged care employee – level 7	Personal Care Worker grade 5	<ul style="list-style-type: none">• Personal Care Supervisor	<ul style="list-style-type: none">• Specialist Personal Care Worker

[65] Both parties propose the same changes to the classification titles for personal care workers at levels 2, 3, 4 and 5 (or the equivalent grade in ANMF’s separate structure). Specifically, both propose that level 2 is specified as for ‘up to 6 months’, and level 3 ‘from 6 months’. HSU submit that this is to provide greater clarity in relation to the progression between levels 2 and 3, and that personal care workers commence at level 2 and progress to level 3 after 6 months.⁵¹

[66] Both the ANMF and HSU propose level 4 (currently PCW grade 3) be titled personal care worker ‘(qualified)’ and level 5 (currently PCW grade 4) ‘Senior Personal Care worker’. The HSU submit these changes make clear that PCWs with a Certificate III are to be paid at a rate consistent with the existing classification description at level 4 and to recognise the greater responsibilities of personal care workers at level 5, including assisting with medications and acquisition of the requisite competencies.⁵²

[67] At levels 6 (currently no PCW grade) and 7 (currently PCW grade 5) the titles proposed by the HSU and ANMF differ. The HSU propose to add ‘Specialist Care Worker’ to level 6. PCWs are not currently represented at this level, so this is an additional ‘grade’ between existing grades 4 and 5.

[68] The ANMF also propose a ‘Specialist personal care worker’ title, but for level 7. At level 7, the HSU propose a ‘Personal care supervisor’. The HSU submit that the addition of a specialist PCW classification at level 6 is to recognise PCWs with specialist skills and training in relation to a specific area of care, such as palliative care, dementia care or the household model of care, which requires a higher degree of responsibility.⁵³

[69] The current award only provides one title for Recreational/lifestyle activities officers: ‘Recreational/lifestyle activities officer (unqualified)’, at level 3. The ANMF do not propose any changes to Recreational/lifestyle activities officers titles and the HSU propose 3 changes. Similar to PCWs at level 2, HSU propose the recreational/lifestyle activities officer title specify ‘entry up to 6 months’ at level 3. At levels 4 and 5 respectively, HSU propose the additions of the ‘Recreational/lifestyle activities officer qualified’, and ‘Senior recreational/lifestyle activities officer’ to recognise workers with a qualification or leadership responsibilities in that area of work.⁵⁴

Questions for the parties:

Question 4 for all parties other than the HSU: Do parties support the HSU’s proposed changes to the entry level (unqualified) RAO classification level?

⁵¹ HSU closing submissions dated 22 July 22 at [436]–[441].

⁵² HSU closing submissions dated 22 July 22 at [442]–[444].

⁵³ HSU closing submissions dated 22 July 22 at [450]–[452].

⁵⁴ HSU closing submissions dated 22 July 22 at [445]–[449].

Question 5 for all parties other than the HSU: Do parties support the HSU's proposed additional classification levels for RAOs?

6.3 Changes to classification descriptions

[70] Aside from minor amendments resulting from the removal of the personal care stream into a separate classification,⁵⁵ the ANMF proposes a single change to the classification descriptions at level 7 (PCW grade 5). The HSU's proposed changes are more substantial. There is no overlap in the proposed changes to the descriptions of the classifications.

[71] ANMF have not adopted HSU's proposal to change the term 'indicative tasks performed' to 'indicative roles'. The table below shows the remaining differences in description changes:

Classification level	Description changes proposed by HSU	Description changes proposed by ANMF
Aged care employee – level 1	none	none
Aged care employee – level 2	An employee who has more than three months' work experience in the industry or is an entry level employee (up to 6 months) in the case of a Personal Care Worker.	none
Aged care employee – level 3	none	none
Aged care employee – level 4	none	none*
Aged care employee – level 5	An employee at this level ... <ul style="list-style-type: none"> ▪ in the case of a Senior Personal Care Worker, may be required to assist residents with medication and hold the relevant unit of competency (HLTHPS006), as varied from time to time. 	none
Aged care employee – level 6	An employee at this level ... <ul style="list-style-type: none"> ▪ may have the responsibility for leading and/or supervising the work of others; ...	none

⁵⁵ e.g., the exclusion from the new structure of terms which are expressed to apply only "in the case of an admin/clerical employee".



	<ul style="list-style-type: none"> may require formal qualifications at post-trade or Advanced Certificate IV or Associate Diploma level and/or relevant skills training or experience. in the case of a Specialist Personal Care Worker, provides specialised care and may have undertaken training in specific areas of care (e.g. Dementia Care, Palliative Care, Household Model of Care). 	
Aged care employee – level 7	none	<p>An employee at this grade ...</p> <ul style="list-style-type: none"> may require formal qualifications at trade or Advanced Certificate or Associate Diploma Certificate IV level and/or relevant skills training or experience in Dementia Care or Palliative Care.

*ANMF do propose to delete one descriptor relevant to personal care workers only from level 4, but this is included at the equivalent grade in the separate personal care stream structure so there is no effective change.

Questions for the parties:

Question 6 for all parties: Does the above discussion accurately summarise the changes to the classification structure in the Aged Care Award sought by the HSU and ANMF and the submissions already filed?

7 Principles underpinning classification structures

[72] The Commonwealth made submissions on how the proposed amendments to the classification structure of the Aged Care Award might address problems identified with the existing structure, including by providing more structured career progression for aged care workers.⁵⁶

[73] The Commonwealth submit that issues with the classification structure are identified in the expert evidence, including:⁵⁷

- concern expressed by Professor Charlesworth that skills classifications in the Aged Care Award and SCHADS Award are ‘rudimentary and compressed’;
- Professor Charlesworth argues that an increase in wage rates needs to be accompanied by a comprehensive skill and classification structure tied to training;

⁵⁶ Commonwealth submissions dated 8 August 2022 at [210]-[229].

⁵⁷ Commonwealth submissions dated 8 August 2022 at [213]-[214].

- expert opinions of Associate Professor Smith and Dr Lyons that the Aged Care Award classification structures ‘lack relevant description and information with the result that the work undertaken is not properly described and recognised in value’.

[74] The Commonwealth also highlight Professor Charlesworth’s conclusion in relation to the Aged Care Award and SCHADS Award that:

‘It is the lack of recognition of the skills and competencies required and used by home care workers in award skill classifications, the inadequate provision of additional on-the job training opportunities and the lack of any meaningful wage increases in progression up the limited skill classification in the ... Award that work to reinforce a view of home care workers as ‘under skilled’.⁵⁸

[75] The Commonwealth also submit that the Aged Care Quality and Safety Royal Commission (Royal Commission) Final Report ‘emphasises the need to professionalise the personal care workforce’ and made various relevant observations about classification structures including:⁵⁹

- the PCW structure is very flat with limited career progression opportunities;
- redefining existing roles and introducing new roles is a way to enable career progression opportunities;
- now is the right time to review and modernise occupational and job structures so that pay classifications reflect the competency, qualifications and complexity of the work.

[76] Comparing PCWs with nurses, the Royal Commission found that ‘there is an established career pathway through enrolled nursing to registered nursing, together with then moving to nurse practitioner and specialist roles. In contrast, career pathways for allied health workers and personal carers are limited or ill-defined.’⁶⁰

[77] Commissioner Lynelle Briggs AO supported a skills and qualifications-based classification structure, concluding that:

‘The aged care workforce must be ‘professionalised’ if its true value is to be appreciated fully and if there are to be sufficient numbers of these essential workers in the future. By this, I mean that the aged care workforce should develop as a profession, with properly structured career paths and consistent occupational groups, job design, job pathways, training and development programs, and leadership training which support the various occupational groupings. Award wages could then be linked directly to occupational classes.’⁶¹

[78] Additionally, the Royal Commission’s Final Report stated:

⁵⁸ Commonwealth submissions dated 8 August 2022 at [213], citing Charlesworth Report and Charlesworth Supplementary Report.

⁵⁹ Commonwealth submissions dated 8 August 2022 at [210]–[212].

⁶⁰ Royal Commission into Aged Care Quality and Safety, Interim Report Volume 1, 2019 at 230.

⁶¹ Royal Commission into Aged Care Quality and Safety, Final Report: Care, Dignity and Respect (Final Report 1 March 2021) Volume 1 at 41.



‘...the occupational and job structure within the aged care workforce must be well designed to respond to the needs of the future aged care system. Now is the right time to review and modernise occupational and job structures to lay the foundation for reforms to pay classifications for people who work in aged care so that the pay classifications reflect their competency and qualifications, and complexity of the work that they do.’⁶²

[79] The Final Report noted the importance of occupational and job structures in designing education, training and career frameworks, and that:

‘...the creation of long and rewarding career paths will be a key component in improving attraction and retention of aged care workers. Aged care workers should have a clear vision for career progression, and importantly, clarity about what they need to do to achieve progression.’⁶³

[80] The Commonwealth supports the classification changes to the Aged Care Award proposed by the HSU, and states that these would go some way towards improving career progression for PCWs in that they would:

- limit the application of level 2 of the classification structure to PCWs with up to 6 months experience;
- describe PCWs at level 4 as ‘Senior Personal Care Workers’ and specify that they may be required to assist residents with medication and hold the relevant unit of competency;
- recognise Specialist Care Workers, within level 6.⁶⁴

[81] The Commonwealth notes that the current classification structure in the Aged Care Award does not contemplate PCWs being employed at level 6, which requires employees to exercise greater autonomy and responsibility compared to employees at level 5. The Commonwealth point out that the wage rate for employees at level 6 is currently approximately 5.4 per cent higher than the level 5 rate.⁶⁵

[82] The Commonwealth also supports the HSU’s proposal to vary the classification to include a ‘Specialist PCW’ (to provide specialist care, such as, Dementia care, Palliative care, Household Model of Care) and ‘Senior RAO’ at level 6, and submit that this would mean PCWs have access to an additional level in the classification structure, allowing access to career progression and higher rates of pay. The Commonwealth submit that the number of Australians living with dementia is projected to double, from approximately 400,000 in 2021 to approximately 850,000 by 2058, noting that over half of residential care recipients have dementia and two-thirds of those living with dementia live in the community. The

⁶² Royal Commission into Aged Care Quality and Safety, Final Report: Care, Dignity and Respect (Final Report 1 March 2021) Vol 3A at 385.

⁶³ Royal Commission into Aged Care Quality and Safety, Final Report: Care, Dignity and Respect (Final Report 1 March 2021) Vol 3A at 385-386.

⁶⁴ Commonwealth submissions dated 8 August 2022 at [217].

⁶⁵ Commonwealth submissions dated 8 August 2022 at [218].



Commonwealth submit that as a result the increase in dementia will affect the delivery of both residential and home aged care and ‘establishing a ‘Specialist Personal Care Worker’ role would recognise the increased need for direct care workers in aged care with specialised skills to manage the complexities of these care needs and remunerate them accordingly.’⁶⁶

[83] The Commonwealth also supports alignment of the classification structure with the AQF, including to recognise Certificates III and IV as well as additional training undertaken in specific units of competency, such as dementia care.⁶⁷

[84] The Commonwealth submit that the Commission, in addition to granting the changes proposed by the HSU, could further amend the classification structure of the Aged Care Award to provide further career progression opportunities, suggesting the inclusion of additional classification levels or pay points within classifications. The Commonwealth also invites the Commission to consider changes to the classification structure applicable to home care workers (HCWs) under the SCHADS Award, noting the structure is very different despite the similarities in the work performed between HCWs under the SCHADS Award and PCWs under the Aged Care Award.⁶⁸

[85] The Commonwealth further suggests that the Commission could consider other variations to the classification structures of the Awards if it were satisfied that these changes were justified on work value grounds and necessary to achieve the modern awards objective.⁶⁹ The Commonwealth submit that qualifications need not be the only reference point and that the Commission has ‘broad discretion’ to take into account the range of work functions performed and the skills required to determine the number of levels in a classification structure.⁷⁰

[86] With the exception of the Joint Employers’ submission, submissions generally did not directly consider the issue of whether a service or competency-based classification structure would best suit each respective award. A service-based classification structure has a model of progression based on time served in a particular role; while a competency-based classification structure requires attainment of new skills or qualifications in order to progress. Some classification structures contain a combination of service-based and competency-based progression points, including the variations sought by the HSU and ANMF.

[87] The Joint Employers in their 22 July 2022 submission made a few observations about the acquired competencies of employees working in aged care over time:

- All aged care employees perform work within established competencies and or a scope of practice.
- PCWs who are new entrants to the industry and have a Certificate III but minimal experience are materially less competent than an employee who has several years’ experience. Having acquired several years of experience (reflected largely at the 2- 3

⁶⁶ Commonwealth submissions dated 8 August 2022 at [220].

⁶⁷ Commonwealth submissions dated 8 August 2022 at [220].

⁶⁸ Commonwealth submission dated 8 August 2022 at [222]-[227].

⁶⁹ Commonwealth submissions dated 8 August 2022 at [228].

⁷⁰ Commonwealth submissions dated 8 August 2022 at [229].



year mark) a PCW will demonstrate a step change in their ability to proficiently apply competencies learnt through the Certificate III program.

- Experienced care employees are highly valued for their ability to apply their skills and experience accumulated over a number of years. They have also benefitted from the training provided over time to them by their employers.⁷¹

[88] The Joint Employers submit that the approach taken in the *Teachers decision* ‘is instructive as to the approach to be taken with respect to applications to vary an award based on work value reasons.’⁷² The Joint Employers pointed out that the *Teachers decision* Full Bench regarded the annual increment classification structure as ‘anachronistic’ as it did not properly relate to the work of teachers.⁷³

[89] In the *Teachers decision*, the Full Bench regarded the service-based classification structure of the award under consideration as outdated and ‘inappropriately based on years of service rather than the essential elements of qualifications, displayed competence and acquired experience and responsibility.’⁷⁴

[90] The Full Bench noted the historical underpinnings of service-based progression, and the trend to move beyond ‘service-based’ towards ‘standards based’ remuneration:

‘Annual incremental pay scales were long a feature of government service employment conditions, but we consider them to be an anachronism in the context of the current statutory regime for the fixation of minimum wage rates. We note that, even in the context of government school teachers, there is a move away from annual incremental salary scales to more modern classifications structures. For example, in the NSW Teachers Award 2020, an award of the NSW IRC, teachers employed after 1 January 2016 are paid in accordance with a new “Standards Based Remuneration”.’⁷⁵

[91] The Full Bench supported a classification structure based on professional standards instead of time spent in service:

‘[W]e consider that the current classification structure with its annual increments is anachronistic and does not properly relate to the work value of teachers. We consider that a new classification structure should be established which is anchored upon the professional career standards established by the APST and is tied to teacher registration.’⁷⁶

[92] In relation to the Nurses Award, the Joint Employers submitted that ‘the incremental pay points should be reviewed to ensure they relate to competency and not service.’⁷⁷ They also submitted:

⁷¹ Joint Employers closing submissions dated 22 July 2022 at [4.28].

⁷² Joint Employers closing submissions dated 22 July 2022 at [7.10].

⁷³ Joint Employers closing submissions dated 22 July 2022 at [7.20(b)].

⁷⁴ [2021] FWCFB 2051 at [647].

⁷⁵ [2021] FWCFB 2051 at [647].

⁷⁶ [2021] FWCFB 2051 at [653].

⁷⁷ Joint Employers closing submissions dated 22 July 2022 at Annexure O [3.7].



'To the extent any of the increments are service based or the effluxion of time, they should be reviewed and only retained if set by reference to competency.'⁷⁸

[93] Further, the Joint Employers submit that to the extent that the Commission embraces any segregation of nurse employees in aged care, the relevance of service and acquisition of competency needs to be considered in the context of service in aged care and not generally.⁷⁹

[94] In relation to the SCHADS Award, the Joint Employers submitted that:

'It is unclear whether the pay points within the classification levels are based upon competency and/or service. This should be reviewed at the time of making any adjustment to the minimum rates. Pay points based upon service should be either removed altogether or replaced with pay points fixed in relation to work value (i.e. competency).'⁸⁰

[95] The HSU submitted in reply to the proposed new classification structure in the Joint Employers' 22 July 2022 submission that 'the idea that annual increments are to be abolished in all circumstances involves a misreading of the Teachers Case.'⁸¹ HSU submitted that a distinction could be made between the circumstances in the Teacher's case and the current proceedings:

'[T]he rejection of the time-based classification structure [in the Teacher's case] ... occurred in the context of a nationally recognised career progression scheme reflecting an established career path. It is not authority for the proposition that workers in lower-skilled industries, including those with underdeveloped career progression models, should be dead-ended and have no access to progression through experience.'⁸²

Questions for the parties:

Question 7 for all parties: *Do the parties agree that the principles that should be applied by the Commission when establishing an appropriate classification structure are that:*

- 1. It should be a career-based classification structure*
- 2. It should clearly state the skills, qualifications and experience required at each level*
- 3. It should provide a clear means to transition from one level to another*

Question 8 for all parties: *Do parties have further suggestions regarding specific changes to the classification structure for HCWs under the SCHADS Award?*

Question 9 for all parties: *Does any party seek changes to the incremental pay points in the Nurses Award?*

⁷⁸ Citing [2021] FWCFB 2051 at [647].

⁷⁹ Joint Employers closing submissions dated 22 July 2022 at Annexure O [3.8]-[3.9].

⁸⁰ Joint Employers closing submissions dated 22 July 2022 at Annexure O [4.10].

⁸¹ HSU closing submission in reply dated 19 August 2022 at [48(b)].

⁸² HSU closing submission in reply dated 19 August 2022 at [30].



Fair Work
Commission

Question 10 for all parties: Does any party seek changes to the incremental pay points in the SCHADS Award?

Question 11 for all parties: Does any party wish to present any further evidence and/or make any further submissions in addition to the evidence and submissions already before the Full Bench in Stage 1 in relation to this issue?

8. Key issues arising

8.1 Separate classification structure for PCWs

[96] The ANMF and the Joint Employers support a separate classification structure for PCWs in the Aged Care Award, and submit:

- work performed by PCWs differs qualitatively from the work done by general and administrative service and food services workers so their rates of pay should be treated separately.⁸³
- the current structure conflates unrelated job families which challenges alignment to the C10 framework.⁸⁴
- the evidence does not support the view that the ‘support’ workers should be on a par with PCWs.⁸⁵
- the evidence supports the view that ‘support’ workers are distinguishable from PCWs, despite paragraph 22 of consensus statement.⁸⁶
- evidence demonstrates that ‘support’ workers have greatly diminished interaction with the residents than PCWs, despite both groups being required to participate in in-house training to deal with dementia etc.⁸⁷
- the work of PCWs is care work, and adjacent to nursing work, in a way that the work of (for example) gardener superintendents is not.⁸⁸
- the commonality of work as between PCWs under the Aged Care Award and Nursing Assistants under the Nurses Award suggests the need for a separate PCW classification structure.⁸⁹
- the separation of the PCW would contribute to a simpler and consistent modern award system.⁹⁰

⁸³ ANMF closing submissions dated 22 July 2022 at [21].

⁸⁴ Joint Employers submissions dated 4 March 2022 at [22.2].

⁸⁵ Transcript, 1 September 2022, PN15661.

⁸⁶ Transcript, 1 September 2022, PN15661.

⁸⁷ Transcript, 1 September 2022, PN15664–PN16665.

⁸⁸ ANMF submissions dated 29 October 2021 at [210].

⁸⁹ ANMF submissions dated 29 October 2021 at [18].

⁹⁰ Joint Employers submissions dated 4 March 2022 at [23.35].



- the current structure is not very logical and was hastily put together during award modernisation.⁹¹
- a separate PCW stream is an obvious drafting technique if the Commission increases rates for PCWs only.⁹²
- it is still appropriate to separate out AINs/PCWs even if the Commission is satisfied that support stream should have same increase.⁹³
- this proposal does not involve any variation to modern award minimum wages, so work value reasons are irrelevant and so is the minimum wages objective.⁹⁴
- all of the modern award objective considerations are either neutral or support the proposed variation. Of those that support the variation, considerations may be either 'immediately furthered by variation' or 'advanced in future':
 - immediately, the award will be easier to understand;
 - in the future, changes to remuneration and insertion of terms specific to AINs/PCWs would be more easily made and the separate classification would encourage the insertion of terms specific to AINs/PCWs into the award or in collective agreements.⁹⁵

[97] The HSU and UWU do not support a separate structure for PCWs for the following reasons:

- indirect care roles should not be seen as something distinct but are properly to be considered as part of the provision of care.⁹⁶
- the changes in the demographics and care needs of residents over the last 20 years has affected the work of all workers working in residential aged care.⁹⁷
- it is not uncommon for aged care workers to perform functions across the personal care and administrative and general or food services streams.⁹⁸
- the current classification structure is long-standing and derived from the pre-modernisation awards, with no evidence that the current classification structure is problematic.⁹⁹

⁹¹ Transcript, 1 September 2022, PN15682.

⁹² ANMF closing submissions dated 22 July 2022 at [873].

⁹³ ANMF closing submissions dated 22 July 2022 at [22].

⁹⁴ ANMF closing submissions dated 22 July 2022 at [871].

⁹⁵ ANMF closing submissions dated 22 July 2022 at [876]–[877].

⁹⁶ HSU closing submissions in reply dated 19 August 2022 at [48].

⁹⁷ HSU closing submissions in reply dated 19 August 2022 at [52]–[53].

⁹⁸ HSU closing submissions in reply dated 19 August 2022 at [52]–[53].

⁹⁹ HSU closing submissions in reply dated 19 August 2022 at [52]–[53].



[98] The UWU does not support a separate classification structure if the consequence of such a change is to confine an increase in wage rates only to personal care workers, and not to support staff.¹⁰⁰

[99] The Unions, ACSA and LASA are signatories to the [Aged Care Sector Stakeholder Consensus Statement](#) (the Consensus Statement). The Consensus Statement is broadly supportive of the Applications. In the course of these proceedings, the Applicants were directed to file any agreed position involving union parties and relevant employer associations. The Consensus Statement was lodged in response to that direction.

[100] The Consensus Statement was considered in Chapter 7.1 of the *Stage 1 decision*.

[101] Paragraph 22 of the Consensus Statement is as follows:

'22. The changes in the characteristics of aged care consumers (increased acuity, frailty and incidence of dementia) mean the conditions under which work is done are more challenging for employees providing indirect care support services (such as food services, cleaning or general/administrative work). These workers are an important part of the aged care team. Their work necessitates higher levels of skill when compared to similar workers in other sectors, or to aged care in the past.'¹⁰¹

[102] In response to the Joint Employer oral submission that 'support' workers are distinguishable from PCWs despite paragraph 22 of the Consensus Statement,¹⁰² the HSU responded as follows:

'Then with respect to paragraph 22 of the consensus statement, submissions were made with respect to what were described as support workers, laundry, gardening and maintenance, and it was suggested that they shouldn't simply be swept in with care work.

The submissions somewhat seemed to suggest that the impact of the changes which have occurred and the particular demands of that kind of work in an aged care context would have to be exactly the same for cleaners or the food assistants for any work value reasons to justify an increase. Those submissions failed to take account of the particular demands of that type of work in an aged care context and the context in which it is performed, including the regulatory context, and in that respect, the submissions that we have advanced in relation to the need to apply a person-centred approach to care to all of the roles, the fact that the care team - that care is a comprehensive concept provided by everyone in the organisation and the difficulties of dealing with and accommodating the increasing complexity of needs and behaviours of residents with whom those persons deal, and compliance with other regulatory requirements.'¹⁰³

¹⁰⁰ UWU closing submissions in reply dated 19 August 2022 at [21].

¹⁰¹ Consensus Statement dated 17 December 2021 at [22].

¹⁰² Transcript, 1 September 2022, PN15661.

¹⁰³ Transcript, 1 September 2022, PN15852-15853.

[103] The Full Bench in the *Stage 1 decision* considered the Unions' contention that some of the submissions made by the Joint Employers may be read as departing from the matters agreed in the Consensus Statement, in particular paragraph 22:

'In respect of paragraph 22 Mr Ward, on behalf of the Joint Employers, advanced the following submission in closing oral argument:

'It's paragraph 22 that is probably the issue and we accept that, and I've said that in our opening submissions. We do [not] believe that the evidence in this case supports the view that those people in the support functions should be considered to be on a par with the personal care workers. We think the evidence is, with respect to my friends, very clear on that particularly the evidence from the people who work in the laundry, the gardening, some of the people who were undertaking jobs that I think were colloquially described as sort of handy people. It seems to us to be very clear that, with one exception which I will come to, those people had not been exposed to the great majority of things that all parties seem to have acknowledged about personal care workers. So, we think the evidence does distinguish that group.

To the extent that that submission is at odds with paragraph 22, we accept that. My clients acknowledge that it is at odds.'

As will become apparent at this stage it is not necessary for us to decide whether a minimum wage increase for indirect or support workers is justified by work value reasons as we have decided to defer consideration of that issue. That aspect of the Applications will be decided in a subsequent stage of these proceedings; see **Chapter 9 Next Steps** [footnotes omitted].¹⁰⁴

[104] Other than the ANMF's proposal to move PCWs into a separate classification structure, there does not appear to be any proposals to change the classification structure for indirect care workers (food services employees and general and administrative employees).

Questions for the parties:

Question 12 for all parties: *Does the above discussion accurately summarise the parties' positions on whether there should be a separate classification structure for PCWs in the Aged Care Award?*

Question 13 for all parties: *Would any such separate classification structure include only PCWs and RAOs?*

Question 14 for all parties: *Does any party wish to present any further evidence and/or make any further submissions in relation to this issue?*

Question 15 for the HSU: *Does the HSU maintain its opposition to a separate classification structure for PCWs?*

Question 16 for the HSU: *If opposition is maintained, what evidence currently before the Full Bench is relied upon by the HSU in relation to this issue?*

¹⁰⁴ [2022] FWCFB 200 at [549]-[550].



Question 17 for the ANMF and Joint Employers: *What evidence currently before the Full Bench is relied upon to support the claim that a separate classification structure should be established for PCWs?*

Question 18 for all parties: *Are any parties proposing any changes to the classification structure in the Aged Care Award for indirect care workers?*

8.2 Senior PCW (Aged Care employee level 5) – allowance or separate classification?

[105] As outlined above, both the HSU and ANMF seek to introduce the title of ‘Senior Personal Care Worker’ (at level 5 of the HSU’s application and grade 4 of the ANMF’s application) in the Aged Care Award.

[106] The HSU application also seeks to amend the classification description for an Aged Care employee Level 5 by adding:

- in the case of a Senior Personal Care Worker, may be required to assist residents with medication and hold the relevant unit of competency (HLTHPS006), as varied from time to time.

[107] The ANMF submit that the imposition of an additional requirement for a ‘particular’ qualification is unnecessary as the existing wording (‘substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience’) already encompasses a relevant unit of competency.¹⁰⁵

[108] The Joint Employers object to the HSU proposal that those who undertake medication duties be classified at Aged Care employee level 5. They submit firstly that there are differences between jurisdictions as to who may administer medications and secondly, that it would create an ‘arbitrary distinction’ between classifications based on a singular task.¹⁰⁶ The Joint Employers submit that if it is considered that PCWs with medication responsibilities should be rewarded, this would be better dealt with by way of an allowance.¹⁰⁷

[109] In response, counsel for the HSU in closing oral argument stated:

‘So far as the different jurisdictions is concerned, I have a recollection that there was some debating about that in the hearing of the evidence, or some mention of it, but we don’t think there’s actually any direct evidence as to what those differences are or that they would be of such significance as to affect the type of work or the type of responsibility involved in the administration of medications. If we have overlooked something in that respect, it can be (indistinct) out, but we don’t think that there’s any evidence that any such differences mean that they’re being done in any particular jurisdiction or is of any substantial way the nature of the role is, in any substantial way, different.

¹⁰⁵ ANMF closing submissions in reply dated 17 August 2022 at [52].

¹⁰⁶ Joint Employers closing submissions in reply dated 19 August 2022 at [2.12].

¹⁰⁷ Joint Employers closing submissions in reply dated 19 August 2022 at [5.8]–[5.9].



As to the second matter, we think that it is appropriate to clarify that given the significance of that role, recognised within, according to the evidence by providers in that particular workers are identified, trained, required to maintain their competencies on an annual basis, in order to undertake that type of work, it is appropriately recognised that it ought be done at a higher level within the classification structure and we've put it in it at aged care employee level 5.

That is the evidence. It's not a one-off thing, the evidence supports the view that, as I say, providers are identifying particular employees with that competency, by way of training and maintenance to undertake that work which ought [to] be recognised.'¹⁰⁸

[110] The Joint Employers do however support the inclusion of an 'experienced' PCW classification, located above Certificate III but below Certificate IV for PCWs with two to three years' experience. In closing oral argument, the representative for the Joint Employers argued that there is 'merit' in such a classification:

'It wasn't uniformly the case in the evidence, but a number of witnesses, particularly our witnesses, indicated that around that mark, personal care workers do develop a greater capacity to apply their competencies that they've learned from the Certificate III, and we think that that would be a useful step to include in any modern award for a variety of reasons.

One, we think it is reflective of the value of the work at that period of time. It also might assist in terms of workforce participation because it would create a career path for personal care workers rather than having to move straight away to a Certificate IV.'¹⁰⁹

Questions for the parties:

Question 19 for all parties: *Does the above discussion accurately summarise the parties' positions on whether there should be a separate classification of Senior PCW (Aged Care employee level 5) in the Aged Care Award or, alternatively, an allowance provided?*

Question 20 for all parties: *Does any party wish to present any further evidence and/or make any further submissions in addition to the evidence and submissions already before the Full Bench in Stage 1 in relation to this issue?*

Question 21 for the ANMF: *Does the ANMF maintain their objection to the HSU application to amend the classification description at Aged care employee level 5?*

Question 22 for the ANMF and HSU: *What evidence currently before the Full Bench is relied upon in relation to this claim?*

Question 23 for the Joint Employers: *Is a claim for a classification level for an 'Experienced PCW' still pressed? If so, at which classification level?*

¹⁰⁸ Transcript, 24 August 2022, PN14578–PN14580.

¹⁰⁹ Transcript, 1 September 2022, PN15763–PN15764.



Question 24 for the Joint Employers: *What evidence currently before the Full Bench is relied upon in support of the claim that an allowance for PCWs administering medications is appropriate? What level of allowance is proposed?*

8.3 Specialist PCW – classification or allowance?

[111] As set out above, the Unions agree on the inclusion of a Specialist Personal Care Worker in the classification structure, however differ as to the classification alignment. The HSU seek to introduce a new additional PCW classification level, Aged Care employee level 6. The HSU's proposed wording to be included in the new Specialist level is:

- in the case of a Specialist Personal Care Worker, provides specialised care and may have undertaken training in specific areas of care (e.g. Dementia Care, Palliative Care, Household Model of Care).

[112] The HSU submits that the alignment at level 6 is to provide an 'additional step of progression' where a PCW is providing specialised care and may have undertaken specific training in relation to it, for example dementia care, palliative care and the household model of care.¹¹⁰

[113] The ANMF application seeks to retain the five classification levels for PCWs (grades 1–5) aligned at the same classification level of aged care employee as the current Award. It proposes that 'Specialist PCW' should be aligned at a level equivalent to Aged Care employee level 7 (current PCW grade 5) for the following reasons:

- It ensures that PCWs retain their current grade under the Aged Care Award and will not be re-aligned with a lower level.¹¹¹
- It is for the HSU to satisfy the Commission that an additional classification level (aligned with level 6) is necessary to achieve the modern awards objective and would not cause any PCWs to be re-classified at a lower level.¹¹²
- The ANMF's proposed alignment is intended to clarify that a PCW Grade 5 (Aged Care Employee Level 7) may already require formal qualifications at a Certificate IV level whereas the HSU's proposal imposes that requirement at Level 6 instead.¹¹³

[114] The ANMF submit that the HSU's proposed insertion of a new Specialist PCW classification between the current Personal Care Worker grades 4 and 5 is a realignment down for PCWs with a Certificate IV.

[115] The ANMF in closing oral submissions stated as follows:

'Finally, with respect to those matters, perhaps the significant difference there, between the ANMF and the HSU is that the ANMF proposal would retain a Certificate IV

¹¹⁰ Transcript, 24 August 2022, PN14581.

¹¹¹ ANMF closing submissions in reply dated 17 August 2022 at [50].

¹¹² ANMF closing submission in reply dated 17 August 2022 at [48].

¹¹³ ANMF closing submissions in reply dated 17 August 2022 at [51].



personal care worker at the existing level, ... rather than have them realigned to a lower level, level 6.¹¹⁴

[116] The HSU acknowledged that the ANMF's proposal would result in a Specialist PCW being classified at a higher level than its proposal and submits that it does not object to the Specialist PCW classification being aligned to level 7 as long as accommodation is made at a higher level for a PCW Supervisor. Counsel for the ANMF made the following observations during closing oral argument:

'In a sense, if the specialist care was at a higher level, we won't obviously have an objection to that. We do think there ought be a supervisor above though, so that will require some additional structural change, to have a supervisor role above level seven, as it presently is.'¹¹⁵

[117] Further, in respect of the Associate Diploma/Advanced Certificate issue, the HSU noted that its proposed classification definitions were reflecting the current wording of the Award which may require 'some correction', possibly by way of reference to an advanced certificate or diploma at level 7 in order to provide 'the appropriate sequencing of qualifications.'¹¹⁶

[118] The Joint Employers submit that any 'reward' for employees working in dedicated dementia or palliative care facilities should be properly dealt with by way of an allowance, rather than a classification level.¹¹⁷

[119] In closing oral argument, counsel for the HSU submitted that an allowance is not the appropriate approach. The HSU referred to the Royal Commission and observed that it 'identified the importance of recognition of the special needs of residents with dementia and of the specialist skills involved in the provision of care in that respect and with respect of palliative care'.¹¹⁸

[120] The HSU noted Recommendations 16 and 76 of the Royal Commission Final Report and submitted that these amount to 'specific recommendation [that] there ought [to] be recognition of specialist roles' and of 'special skills with respect to dementia and palliative care.' The HSU argues this supports the position that PCWs with specialist skills should be contained in a specialist classification, rather than an allowance.¹¹⁹

[121] It is noted that the Joint Employers submit there should be a classification level for a Certificate IV but have not specified at which level of the classification structure this should be.¹²⁰

¹¹⁴ Transcript, 25 August 2022, PN15289.

¹¹⁵ Transcript, 24 August 2022, PN14588

¹¹⁶ Transcript, 24 August 2022, PN14589.

¹¹⁷ Joint Employers closing submissions in reply dated 19 August 2022 at [5.8]-[5.9].

¹¹⁸ Transcript, 24 August 2022, PN14585.

¹¹⁹ Transcript, 24 August 2022, PN14586.

¹²⁰ Joint Employers closing submissions dated 22 July 2022 at [4.39].



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Questions for the parties:

Question 25 for all parties: *Does the above discussion accurately summarise the parties' positions on the appropriate level of a Specialist PCW?*

Question 26 for all parties: *Does any party wish to present any further evidence and/or make any further submissions in addition to the evidence and submissions already before the Full Bench in Stage 1 in relation to this issue?*

Question 27 for the HSU and ANMF: *Is it now agreed between the Unions that the Specialist PCW classification claim sits at Aged Care employee level 7?*

Question 28 for the Joint Employers: *Is a claim for a classification level for a Certificate IV still pressed? If so, at which classification level should this sit?*

Question 29 for the HSU: *If it is accepted that the Specialist PCW classification claim sits at Aged Care employee level 7, does the HSU press its claim for a PCW classification at Aged Care Employee level 8? What evidence currently before the Full Bench is relied upon in relation to this claim?*

Question 30 for the ANMF and the Joint Employers: *Does the ANMF or Joint Employers have a response to the HSU claim that there should be a classification for a PCW Supervisor?*

Question 31 for the Joint Employers: *do the Joint Employers press their claim for an allowance for specialist PCWs, and if so what level of allowance is proposed? What evidence currently before the Full Bench is relied upon in relation to this claim?*

8.4 Specialist PWC – inclusion of Household Model of Care

[122] As well as dementia and palliative care, the HSU application seeks to include PCWs who have undertaken training in the Household Model of Care in its proposed 'Specialist PCW' classification.

[123] The Joint Employers submit that 'care' should be taken with regards to creating a new classification for those who perform work in a homemaker model and argue that the model has 'limited use' in the industry and it would be 'misconceived to conclude from the evidence that the industry is on a path to adopt this model as the norm.' They further submit that the evidence appears to demonstrate that only 2 employers have adopted the model and classify these employees through the use of enterprise agreements.¹²¹

[124] In closing oral argument, the representative for the Joint Employers' expanded on these submissions and accepted that the homemaker model of care has increased in prevalence in the past 20 years, involves a greater number of staff and those staff exercise a broader range of capabilities. But the Joint Employers do not accept that the aged care industry is 'uniformly moving' towards the homemaker model of care.¹²²

[125] In respect of the prevalence of the homemaker model, counsel for the HSU conceded that the evidence before the Commission may not be precise as to the number of providers

¹²¹ Joint Employers closing submissions in reply dated 19 August 2022 at [2.13]–[2.15].

¹²² Transcript, 1 September 2022, PN15614–15626.



adopting the model but submitted that witness evidence demonstrates that 'significant operators' have adopted the model. The HSU submit additionally that recommendation 46 of the Royal Commission recommended that the Australian Government provide additional funding for the building and upgrading of facilities to provide small scale congregate living. The HSU submitted that this evidence provides 'ample basis' for the Commission to have regard to the specialist classification being proposed.¹²³

[126] Counsel for the HSU later submitted that the homemaker model is referenced in its proposed classification structure as an example of a type of PCW, so even if only a small number of operators were affected 'not much harm is done unless the Commission is of the view that that was not a role which had additional skills and responsibilities attached to it, warranting recognition as a specialised carer.'¹²⁴ The HSU argue that a PCW working in the homemaker model does exercise an additional range of skills and responsibilities because they are undertaking a 'far wider range of tasks in order to facilitate that...living household type environment.'¹²⁵

Questions for the parties:

Question 32 to all parties: *Does the above discussion accurately summarise the parties' positions on whether a Specialist PCW level should include PCWs who have undertaken training in the Household Model of Care?*

Question 33 to all parties: *Does any party wish to present any further evidence and/or make any further submissions in relation to this issue?*

8.5 Difference between AINs under the Nurses Award and PCWs under the Aged Care Award

[127] The Award modernisation process provides some background information regarding the retention of the separate PCW and AIN classification structures under the Aged Care Award and the Nurses Award.

[128] During the award modernisation process, there appears to have been debate about the overlap between AINs and PCWs. The Australian Nursing Federation (ANF) maintained that AINs should be included in the new nursing occupational award. The ANF proposed there be 3 levels of AINs, with an AIN level 2 holding a Certificate III and an AIN level 3 holding a Certificate IV. The following definition of an AIN was proposed:

'The Assistant in Nursing (however titled) shall mean an employee engaged to assist in the performance of nursing duties together with such other duties as may be required by the employer being duties incidental and related to the provision of nursing care services. The Assistant in Nursing at all times assists in the provision of nursing care under the direct or indirect supervision of a registered nurse.'¹²⁶

[129] Under the ANF's proposed classification structure, an AIN could be employed under the Award to 'perform mixed functions', provided that:

¹²³ Transcript, 24 August 2022, PN14564–PN14567.

¹²⁴ Transcript, 24 August 2022, PN14583.

¹²⁵ Transcript, 24 August 2022, PN14583.

¹²⁶ Australian Nursing Federation submission – Award Modernisation dated October 2008 at 54.



(a) The primary duties performed by the Assistant in Nursing being the delivery of direct care to occupy no less than the majority of the hours for which they are employed in any 28 day cycle;

(b) The Assistant in Nursing shall be paid at the appropriate rate for an assistant in nursing for all work performed;

(c) an Assistant in Nursing shall not be required to perform mixed functions where the employer does not provide adequate staff to ensure that the level of the quality of the service that would have otherwise been provided if the Assistant in Nursing did not perform mixed functions, is in fact provided;

(d) Subject to paragraph (a), an Assistant in Nursing may perform duties associated with a resident's well being and comfort, including functions of a laundry, kitchen or other personal support nature.¹²⁷

[130] A number of parties submitted that AINs should be removed from the proposed Nursing occupational award and instead be covered under one industry award.¹²⁸

[131] During the award modernisation process, the HSU submitted that the separate location of AINs in the Nurses Award and PCWs in what would become the Aged Care Award would create 'an unworkable situation' because:

a. Those classes of workers are amongst the most numerous in the industry, and in particular, in the aged care sector of the industry;

b. There is no clear distinction between the roles. This fact is relevant in two ways:

- (i) First, the creation of two named roles covered by separate awards would be productive of argument and confusion about the precise classification and coverage of a worker performing such tasks; and
- (iii) There is no imperative to deal with those workers in separate awards because there is no history of those workers having different award conditions, and no rationale based in their work for making such a distinction.¹²⁹

[132] In response, the ANF submitted that the position of 'Nursing Assistant' had historically been included in nursing awards operating in NSW, QLD, WA and the ACT. The ANF argued that there was a difference in the work performed by AINs and PCWs as follows:

¹²⁷ Australian Nursing Federation submission – Award Modernisation dated October 2008 at 56.

¹²⁸ See for example Australian Workers Union of Employees Queensland at transcript, 3 December 2008, PN374–PN379; AFEI at transcript, 3 December 2008, PN442–PN444; CCIWA at transcript, 4 December 2008, PN965; Private Hospital Employees Industry Association at transcript, 23 February 2009, PN374; Blue Care at transcript, 23 February 2009, PN462–PN465.

¹²⁹ Health Services Union supplementary submissions dated 19 January 2009 at [5].



'ANF agrees that large numbers of Personal Care Workers and Nursing assistants are employed in the health and welfare industries. Personal Care Workers are almost exclusively employed in the residential aged care sectors where lower levels of care are provided (a diminishing area) and in 'community care situations'. Nursing assistants in residential aged care are predominately employed where higher levels of care are provided such as nursing homes and are also employed in a range of other settings in the health and welfare industries.'¹³⁰

[133] The January 2009 exposure draft of the *Nurses Occupational Industry Award 2010* published by the Commission defined 'nursing assistant' as follows:

'Nursing assistant means an employee, other than one registered pursuant to the provisions of the State or Territory Nurse Registration Board or one who is in training for the purpose of such registration, whose substantial employment in terms of the purpose to be achieved by it is the provision of nursing care to persons.'¹³¹

[134] 'Nursing care' was defined as follows:¹³²

- giving assistance to a person who, because of disability, is unable to maintain their bodily needs without frequent assistance;
- carrying out tasks which are directly related to the maintenance of a person's bodily needs where that person because of disability is unable to carry out those tasks for themselves; and/or
- assisting a registered nurse to carry out the work described in A.5.

[135] The exposure draft contained 3 levels of AIN – 1st, 2nd and 3rd year. It did not contain a classification level for an AIN with a Certificate III or IV.

[136] The HSU and the LHMU noted that the proposed rates of pay for nursing assistants were significantly lower than for a PCW in the Aged Care Award Exposure Draft:

Exposure Draft	Classification descriptor	Minimum rates of pay
Nurses Occupational Industry Award 2010	Nursing assistant means an employee, other than one registered pursuant to the provisions of the State or Territory Nurse Registration Board or one who is in training for the purpose of such registration, whose substantial employment in terms of the purpose to be	1 st year: \$596.10 2 nd year: \$606.40 3 rd year: \$616.90

¹³⁰ Australian Nursing Federation submission on the Nurses Occupational Industry Award 2010 and Health Professionals and Support Services Industry and Occupational Award 2010 Exposure Drafts dated 13 February 2009 at [13.4].

¹³¹ *Nurses Occupational Industry Award 2010* Exposure Draft – January 2009 at Schedule A A.1.

¹³² *Nurses Occupational Industry Award 2010* Exposure Draft – January 2009 at Schedule A A.2.



	achieved by it is the provision of nursing care to persons.	
Aged Care Industry Award 2010	<p>Personal Care Worker Grade 1</p> <p>aged care industry means the provision of accommodation and care services for aged persons in a hostel, nursing home, aged care independent living units, aged care serviced apartments, garden settlement, retirement village or any other residential accommodation facility including in the home</p>	\$630.00

[137] The HSU and LMHU submitted that due to the overlapping scope of the awards, the absence of clear delineation between the classifications and the differences in wage rates, employers might engage in ‘award hopping’ and classify employees at the cheaper classification, rather than the most appropriate classification in relation to the work in fact being undertaken.¹³³ As the LMHU emphasised:

‘We see no valid reason for the Nurses’ Award, which by its scope extends to the provision of nursing care by personal care workers caring for aged persons, to have an entry level classification rate which is \$33.90 a week below the entry level for the personal care worker classification in the Aged Care Award. The temptation for aged care industry employers to utilise the Nurses’ Award classification in preference to the Aged Care Award classification may prove overwhelming.’¹³⁴

[138] The ANF submitted that an additional classification level should be added to the AIN classification structure, for an employee who has attained a relevant Certificate III qualification to be set at the C10 level.¹³⁵

[139] The Australian Industrial Relations Commission (AIRC) ultimately decided to retain the AIN classification when making the Nurses Award but determined to ‘make it directly relevant to the work of nurses’.¹³⁶ The definition of AIN was amended as follows:

¹³³ Liquor, Hospitality and Miscellaneous Union submission relating to the *Nurses Occupational Industry Award 2010, Aged Care Industry Award 2010 and Health Professionals and Support Services Industry and Occupational Award 2010* dated 13 February 2009 at [1]-[16]; Health Services Union submission – Exposure drafts dated 12 February 2009 at [14]-[19].

¹³⁴ Liquor, Hospitality and Miscellaneous Union submission relating to the *Nurses Occupational Industry Award 2010, Aged Care Industry Award 2010 and Health Professionals and Support Services Industry and Occupational Award 2010* dated 13 February 2009 at [14].

¹³⁵ Australian Nursing Federation submission on the *Nurses Occupational Industry Award 2010 and Health Professionals and Support Services Industry and Occupational Award 2010* Exposure Drafts dated 13 February 2009 at [12.4.2].

¹³⁶ [2009] AIRCFB 345 at [152].



'Nursing assistant means an employee, other than one registered pursuant to the provisions of the State or Territory Nurse Registration Board or one who is in training for the purpose of such registration, who is under the direct control and supervision of a Registered or Enrolled nurse and whose employment is solely to assist an RN or EN in the provision of nursing care to persons.'¹³⁷

[140] Further, the AIRC adopted the ANF's suggestion to add an additional classification level for an AIN with a Certificate III at the C10 level.¹³⁸

[141] Two entry level classifications (PCW grade 1 and grade 2) were added to the Aged Care Award, with PCW grade 3 (Certificate III) being set at the C10 level. The resulting classification structures in the 2 Awards was as follows:¹³⁹

Classification under the Nurses Award 2010	Rate (\$)	Classification under the Aged Care Award 2010	Rate (\$)
Nursing assistant – 1 st year	596.10		
		Personal care worker grade 1	605.00
Nursing assistant – 2 nd year	606.40		
Nursing assistant – 3 rd year and thereafter	616.90		
		Personal care worker grade 2	630.00
Nursing assistant – Experienced (Certificate III)	637.60	Personal care worker grade 3 (Certificate III)	637.60
		Personal care worker grade 4	660.00
		Personal care worker grade 5	710.00

[142] The classification structures remain unchanged in the current versions of the awards.

[143] During the course of closing oral submissions, counsel for the ANMF agreed that the 'common position adopted by all parties' is that the work performed by PCWs and AINs is 'essentially indistinguishable', but submitted that there was a distinction in the classification structure:

'The classification, though, there will be some differences, Commissioner. You have identified there is a different test under the Nurses Award for a person who is an AIN. They will be performing nursing work under the supervision of a registered nurse. So, there is a distinction and it is not the case that there is a complete overlap. There is some overlap, but there is a definite distinction.

...

¹³⁷ Nurses Award 2010 PR986375 3 April 2009 at A.1.

¹³⁸ [2009] AIRCFB 345 at [152].

¹³⁹ Nurses Award 2010 PR986375 3 April 2009; Aged Care Award 2010 PR986359 3 April 2009.



As things stand and as things would continue under the ANMF's application, a PCW or an AIN who is Certificate III qualified has the same rate and would continue to have the same rate on the ANMF's case following determination of the application.¹⁴⁰

[144] Later in the proceedings, counsel for the ANMF made further submissions in relation to the retention of the AIN in the Nurses Award. The ANMF submitted that the distinction between AIN and PCW was debated during the award modernisation process and a decision was made to retain the AIN classification in the Nurses Award and 'make it more relevant'.¹⁴¹

'And what the Full Bench there did is tied that AIN classification, firstly to the provision of nursing care, and secondly to nursing care provided by somebody who is under the direct control and supervision of a registered nurse, and whose employment is to assist the RN and enrolled nurse.'¹⁴²

[145] Counsel for the ANMF submitted that while the ANMF's submissions do not distinguish between AINs, PCWs, extended care assistants and care services employees 'there is a distinction' in the AIN classification and the terms used in the Nurses Award.¹⁴³ The result is that the AIN is an 'integral' part of the nursing team and the class of work covered by the Nurses Award.¹⁴⁴ The ANMF also submitted that both AINs/PCWs work as part of the 'nursing team'.¹⁴⁵

[146] The following table, provided by the ANMF, sets out the minimum weekly rates for AINs under the Nurses Award and PCWs under the Aged Care Award currently applicable:

Classification under the Nurses Award 2020	Rate (\$)	Classification under the Aged Care Award 2010	Rate (\$)
Nursing assistant - 1 st year	883.40		
		Personal care worker grade 1	895.50
Nursing assistant - 2 nd year	897.20		
Nursing assistant - 3 rd year and thereafter	911.60		
		Personal care worker grade 2	929.90
Nursing assistant - Experienced (Certificate III)	940.90	Personal care worker grade 3 (Certificate III)	940.90
		Personal care worker grade 4	972.80
		Personal care worker grade 5	1043.60

[147] The following table sets out the minimum weekly rates for AINs under the Nurses Award and PCWs under the Aged Care Award if the HSU or ANMF's changes to the classification structures are granted. The rates in the table incorporate the 15 per cent interim increase.

¹⁴⁰ Transcript, 1 September 2022, PN14774-14776.

¹⁴¹ Transcript, 1 September 2022, PN15888 and PN15891.

¹⁴² Transcript, 1 September 2022, PN15889.

¹⁴³ Transcript, 1 September 2022, PN15890.

¹⁴⁴ Transcript, 1 September 2022, PN15892.

¹⁴⁵ 14 ANMF submissions dated 29 October 2021 [210], referred to in Background Paper 1 at [15].



Classification under the Nurses Award 2020	Per week	Per week (+15%)	Proposed new Classification under the Aged Care Award 2010	Per week	Per week (+15%)
Nursing assistant – 1 st year	883.40	1015.90			
			Personal care worker (entry up to 6 months)	895.50	1029.80
Nursing assistant – 2 nd year	897.20	1031.80			
Nursing assistant – 3 rd year and thereafter	911.60	1048.30			
			Personal care worker (from 6 months)	929.90	1069.40
Nursing assistant – Experienced (Certificate III)	940.90	1082.00	Personal care worker (qualified)	940.90	1082.00
			Senior personal care worker	972.80	1118.70
			HSU's proposed Specialist personal care worker (level 6)	1025.20	1178.90
			HSU's proposed Personal Care Supervisor & ANMF's proposed Specialist Personal Care Worker	1043.60	1200.10

[148] The above tables appear to indicate that there is a disparity in pay at the entry and unqualified level of the AIN and PCW classification structures. Currently, at the entry level, a PCW grade 1 receives \$12.10 more per week than an AIN – 1st Year. Additionally, the AIN classification structure is service-based, meaning an AIN must move through an additional classification level compared with the PCW who may move directly to PCW grade 2.

[149] This disparity appears to remain under the HSU's proposal for PCW grade 1 (Aged Care level 2) to become 'entry up to 6 months', meaning a PCW would move to grade 2 (Aged Care level 3) after this period. It appears that an AIN would require at least three years' experience to reach the equivalent classification level (AIN 3rd Year and thereafter). A PCW grade 2 currently receives \$18.30 more than an AIN – 3rd year and thereafter.

[150] Further, while AINs and PCWs with a Certificate III are currently paid at the same rate, PCWs may advance to two further levels (grades 4 and 5) upon the attainment of further qualification, including a Certificate IV, and when utilising greater skill, autonomy and supervisory responsibilities. Under the current Nurses Award classification structure, such career progression is not available to AINs. As a result, an award-covered AIN who obtains a Certificate IV or who undertakes training to specialise in a particular area of care does not appear to be entitled to additional remuneration under the Nurses Award. The proposals by



the HSU or ANMF to introduce the titles of 'Senior PCW' and 'Specialist PCW' do not appear to resolve the issue of career progression for AINs.

[151] The ANMF application does not propose any changes to the current AIN classification structure.

[152] During the course of closing oral argument, the representative for the Joint Employers observed that it appeared to be a consensus position that AINs and PCWs are 'doing exactly the same job' and as a result 'it seems to be almost nonsensical that the structure of their classification is different.'¹⁴⁶ The Joint Employers submitted that it would be 'entirely reasonable' to create an alignment between the AIN and PCW classification structure and that this approach would be supported by the modern awards objective.¹⁴⁷

Questions for the parties:

Question 34 for all parties: *Does any party wish to present any further evidence and/or make any further submissions in addition to the evidence and submissions already before the Full Bench in Stage 1 in relation to this issue?*

Question 35 for all parties: *Do the parties agree that AINs and PCWs perform functionally the same role? Are there differences in skills or qualifications acquired by the respective employees?*

Question 36 for all parties: *Should the classification structure and minimum wages for AINs in the Nurses Award and PCWs in the Aged Care Award be aligned and/or consolidated? If so, how? If not, what is the basis for maintaining a different classification structure and minimum wages for AINs and PCWs?*

8.6 Moving aged care nurses from the Nurses Award into the Aged Care Award?

[153] During the hearing on 24 August 2022, in response to concerns about inconsistencies in the Nurses Award the Full Bench raised the prospect of the coverage of aged care nurses being moved across to the Aged Care Award:

'JUSTICE ROSS: Another option would be to remove the Nurse's classifications in aged care from the Nurse's Award and move them to the Aged Care Award. That would avoid any inconsistency in the Nurse's Award.'¹⁴⁸

[154] The ANMF filed a submission on 25 August 2022 opposing the Commission's proposal.¹⁴⁹

[155] During the hearing on 1 September 2022 the Full Bench confirmed that there would be an opportunity for further submissions on this issue:

'JUSTICE ROSS: We just don't want to go too far down this rabbit hole. So, having read the ANMF's submission, we wanted to make it clear that we wouldn't be determining

¹⁴⁶ Transcript, 1 September 2022, PN15759.

¹⁴⁷ Transcript, 1 September 2002, PN15761.

¹⁴⁸ Transcript of proceedings, 24 August 2022, PN14762

¹⁴⁹ [ANMF submission](#) dated 30 August 2022.



that issue without giving everyone a further opportunity to be heard, including the ANMF's request that that may involve evidence, so we needn't take up any more time with this.

MR WARD: No, that's fine.

JUSTICE ROSS: And, look, it's increasingly becoming obvious to us that issues around classification structure may also require a further stage in these proceedings. The Commonwealth referred to whether we granted an interim position or an increase and then considered classification structures. I think both the joint employers and certainly the ANMF have made the point that part of their classification proposals may be given more weight in the event there are differential increases, et cetera. There's a clear inter-relationship between where we go in stage 1 and what might be emerging as a second stage.

To the extent the ANMF is no doubt thinking of a response to what you are putting, you needn't trouble yourself, you will be given an opportunity in due course, and probably following some sort of conference process. There's the other issue, not just for home care, there's the issue of what associated conditions might be involved, and whilst it may appear on its face to be of benefit to the aged care employers if you're actually moving most of the Nursing Award into the Aged Care Award, that might not be as attractive.¹⁵⁰

Questions for the parties:

Question 37 for all parties: *Does any party support moving the nursing classifications of such employees engaged in the aged care industry from the Nurses Award into the Aged Care Award?*

Question 38 for all parties: *If so, how would parties envision the classification and pay structure of aged care nurses resulting from such a move?*

8.7 Application of the C10 framework & internal and external relativities

[156] The *Stage 1 decision* found that when dealing with applications to vary modern award minimum wages it is appropriate and relevant to have regard to relativities between other wages within and between awards. The Full Bench stated that aligning rates of pay in one modern award with classifications in other modern awards with similar qualification requirements supports a system of fairness, certainty and stability.¹⁵¹

[157] Chapter 3 of the *Stage 1 decision* made findings as to the applicability of the C10 framework and the AQF to the statutory task of properly fixing modern award minimum rates. The decision found that the 'C10 Metals Framework Alignment Approach' developed by the AIRC and the AQF were useful tools in this task. However, this approach is subject to the following limitations:

- alignment with external relativities is not determinative of work value

¹⁵⁰ Transcript, 1 September 2022, PN15769-PN15772

¹⁵¹ *Stage 1 decision* at [939].



- while qualifications provide an indicator of the level of skill involved in particular work, factors other than qualifications have a bearing on the level of skill involved in doing the work, including ‘invisible skills’
- the expert evidence supports the proposition that the alignment of feminised work against masculinised benchmarks (such as in the C10 Metals Framework Alignment Approach) is a barrier to the proper assessment of work value in female-dominated industries and occupations, and
- alignment with external relativities is not a substitute for the Commission’s statutory task of determining whether a variation of the relevant modern award rates of pay is justified by ‘work value reasons’ (being reasons related to the nature of the work, the level of skill and responsibility involved and the conditions under which the work is done).¹⁵²

[158] The C10 Metals Framework Alignment Approach may be described as consisting of a 3-step process as set out in *ACT Child Care decision* and referenced in the *Stage 1 decision*:

1. The key classification in the relevant award is to be fixed by reference to appropriate key classifications in awards which have been adjusted in accordance with the MRA process with particular reference to the current rates for the relevant classifications in the *Metal Industry Award*. In this regard the relationship between the key classification and the Engineering Tradesperson Level 1 (the C10 level) is the starting point.
2. Once the key classification rate has been properly fixed, the other rates in the award are set by applying the internal award relativities which have been established, agreed or maintained.
3. If the existing rates are too low they should be increased so that they are properly fixed minima.¹⁵³

[159] The *Stage 1 decision* determined that an interim increase of 15 per cent to the minimum wages applicable to direct care workers in each of the relevant awards was justified by work value reasons.¹⁵⁴ The interim increase applies to all PCWs under the Aged Care Award, AINs, ENs, RNs and Nurse Practitioners working in aged care under the Nurses Award and HCWs working in aged care under the SCHADS Award.¹⁵⁵ The increase is to apply to every classification level applicable to these workers.¹⁵⁶ As a result the interim increase will maintain the current internal relativities between minimum rates for those classifications within each of the relevant awards.

¹⁵² *Stage 1 decision* at [179].

¹⁵³ *ACT Child Care decision* at [155]; *Stage 1 decision* at [177].

¹⁵⁴ *Stage 1 decision* at [923].

¹⁵⁵ *Stage 1 decision* at [933]-[934].

¹⁵⁶ *Stage 1 decision* at [965]-[967].



[160] The Full Bench in the *Stage 1 decision* indicated that while the interim increase will maintain the current internal relativities at present, these internal relativities are not ‘immutable’.¹⁵⁷

[161] While applying the increase uniformly ensures that internal award relativities for the relevant rates are maintained, this approach may result in the key classifications benchmarked to the C10¹⁵⁸ falling out of alignment, by the quantum of the interim increase.

[162] However, the *Stage 1 decision* noted that the C10 Metals Framework Alignment Approach does not mandate that wages for employees with qualifications equivalent to the C10 must be set so as to be equal to the C10 wage rate and nor does it require that qualifications should be the only means for considering appropriate relativities.¹⁵⁹

[163] Stage 3 of these proceedings will determine any potential increase in minimum wages for indirect care workers and any additional adjustments for direct care workers granted interim increases in Stages 1 and 2. Any such increases will naturally have the potential to further affect relativities both internal and external. The Full Bench has indicated part of the task of properly fixing the relevant rates and determining work value is to have regard to such relativities.

(a) Relativities in the Aged Care Award

[164] The 7-level classification structure of the Aged Care Award merges the classifications applying to PCWs with those applying to indirect care workers. Applicable levels for PCWs are Aged care employee—levels 2 to 5 (PCW grades 1 to 4), and Aged care employee—level 7 (PCW grade 5). Aged care employee—levels 1 and 6 do not currently apply to PCWs (although the HSU has proposed a new classification for PCWs at level 6 as previously discussed). For this reason, applying the interim increase to PCWs will necessitate the creation of a separate schedule to distinguish the rates of PCWs from those of indirect care workers under the award, if not permanently, at least until the classification structure is finalised at the conclusion of Stage 3.

[165] Table 1 sets out the existing rates under the Aged Care Award that apply to PCWs and then those rates with an increase of 15 per cent applied. The relativities are expressed using Aged care employee—level 4 as a benchmark (Cert III/C10 equivalent). As the increase is applied uniformly, the relativities between levels for PCWs remain the same before and after the increase.

¹⁵⁷ *Stage 1 decision* at [966].

¹⁵⁸ Aged care employee—level 4 in the Aged Care Award (Personal care worker grade 3); Home care employee level 3 (pay point 1) in the SCHADS Award and Nursing Assistant Experienced (the holder of a relevant certificate III qualification) in the Nurses Award.

¹⁵⁹ *Stage 1 decision* at [179].



Table 1: Aged Care Award 2010, PCW minimum wages with interim increase applied

Classification	Per week	Per week (+15%)	Internal relativity to benchmark
	\$	\$	%
Aged care employee—level 1*	n/a	n/a	n/a
Aged care employee—level 2 / PCW Grade 1	895.50	1029.80	95.17
Aged care employee—level 3 / PCW Grade 2	929.90	1069.40	98.83
Aged care employee—level 4 / PCW Grade 3	940.90	1082.00	100.00
Aged care employee—level 5 / PCW Grade 4	972.80	1118.70	103.39
Aged care employee—level 6*	n/a	n/a	n/a
Aged care employee—level 7 / PCW Grade 5	1043.60	1200.10	110.92

*classification not applicable to PCWs

(b) Relativities in the Nurses Award

[166] Applying the increase in the Nurses Award requires the creation of a new 'Aged Care Schedule', to distinguish aged care workers under that award from those who do not work in aged care.¹⁶⁰

[167] Attachment C shows the rates in the Nurses Award for the classifications applicable to aged care workers as they are now and as they will be after the interim increase is applied, along with a column indicating each rates' relativity to the C10 rate (\$940.90 per week, benchmarked to the Cert III level). As mentioned above, as the increase is applied uniformly it does not impact internal award relativities.

[168] In Annexure O of their closing submissions, the Joint Employers set out their application of the C10 Metals Framework Alignment Approach to the 3 relevant awards. In their analysis of the Nurses award, the Joint Employers identified a significant non-alignment between the minimum rates in the Nurses Award and the C10 Metals Framework and AQF in that:

- the minimum rates for ENs currently align at 102 per cent relativity, which sits between C10 and C9, despite the fact that an EN is required to obtain a Diploma of Nursing, which is the qualification requirement at the C5 rate in the Metals Framework

¹⁶⁰ Stage 1 decision at [934].



- the minimum rates for a RN currently align just below a C8, but the standard qualification for a RN is an accredited tertiary degree—which is an AQF Level 7 qualification that aligns with C1 in the Metals Framework, and
- the minimum rates for a Nurse Practitioner currently align with a C2(b) with a qualification requirement of an Advanced Diploma, yet the qualification for Nurse Practitioner is a post-graduate degree.¹⁶¹

[169] The Full Bench in the *Stage 1 decision* found that the application of the C10 Metals Framework Alignment Approach in accordance with the 3-step process set out in *ACT Child Care decision* would result in a 35 per cent pay increase across all levels.¹⁶²

[170] In the *Stage 1 decision*, the Full Bench indicated that despite support for a 35 per cent increase from the Joint Employers, and qualified support from the ANMF, it did not think it appropriate to contemplate an increase beyond that proposed by the Unions' claim in these proceedings 'and certainly not without providing all interested parties with an opportunity to be heard.'¹⁶³ While the Full Bench stated that there was considerable merit in realigning the classification rates in the Nurses Award to the C10 Metals Framework, it expressed the *provisional* view not to do so in these proceedings, noting that such a realignment would have implications for nurses and their employers in sectors other than aged care and that it is open to the AMNF to make a separate application addressing this issue.¹⁶⁴

(c) *Relativities in the SCHADS Award*

[171] The Applications do not propose any amendments to the classifications in the SCHADS Award, however as with the Nurses Award, a clause setting out the rates of aged care workers as opposed to other workers may be required in order to apply the interim increase to only the workers concerned. The HSU have proposed to insert a definition of 'home aged care employee' to identify the employees to whom the new clause will apply.¹⁶⁵

[172] Aged care workers under the SCHADS Award come under the 'Home care sector stream'. This stream also appears to include workers providing in-home care to persons with a disability. Increasing the rates for aged care work, but not disability care work will have important implications for such workers and their employers. This is discussed in section 8.8.

[173] Attachment D shows the rates in the SCHADS Award for aged care workers as they are now and as they will be after the interim increase is applied.

¹⁶¹ Joint Employers' [submission](#), 22 July 2022 at Annexure O [3.5]

¹⁶² *Stage 1 decision* at [945].

¹⁶³ *Stage 1 decision* at [951].

¹⁶⁴ *Stage 1 decision* at [956].

¹⁶⁵ Application AM2021/65 dated 1 June 2021 at [2.2](1)(A); HSU closing submissions dated 22 July 2022 at [4](b).



Fair Work
Commission

Questions for the parties:

Question 39 for all parties: *Should the key classification for the purposes of the C10 Metals Framework Alignment Approach in the Aged Care Award be Aged care employee—level 4?*

Question 40 for all parties: *Should the key classification for the purposes of the C10 Metals Framework Alignment Approach in the Nurses Award be Nursing Assistant, Experienced (the holder of a relevant certificate III qualification)?*

Question 41 for all parties: *Should the key classification for the purposes of the C10 Metals Framework Alignment Approach in the SCHADS Award be Home Care Employee Level 3?*

Question 42 for all parties: *Is it appropriate to benchmark a different or an additional key classification contained in the Manufacturing and Associated Industries and Occupations Award 2020?*

Question 43 for all parties: *Do parties agree with the provisional view expressed at paragraph [955] of the Stage 1 decision not to realign the rates in the Nurses Award to the C10 in these proceedings as proposed by the Joint Employers?*

Question 44 for all parties: *What changes, if any, are sought to the existing internal relativities of classifications in the Aged Care, Nurses, and/or SCHADS Awards?*

Question 45 for all parties: *Do parties propose any re-alignment between rates external to the relevant awards, considering the C10 Metals Framework Alignment Approach and AQF?*

8.8 SCHADS Award – Impact of an increase on disability workers

[174] When the SCHADS Award was made in 2009, it had 3 separate classification streams covering disability and home care workers: social and community services employees, disability services employees and home care employees, with the following definitions:¹⁶⁶

Disability services sector means the provision of personal care and domestic and lifestyle support to a person with a disability in a community residential setting, including respite centre and day services but excluding a private residence.

Home care sector means the provision of personal care, domestic assistance or home maintenance to an aged person or a person with a disability in a private residence.

Social and community services sector means the provision of social and community services including social work, recreation work, welfare work, youth work or community development work, including organisations which primarily engage in policy, advocacy or representation on behalf of organisations carrying out such work.

[175] Following the making of the SCHADS Award but prior to its commencement, Australian Business Industrial (ABI) made an application¹⁶⁷ to vary the SCHADS Award to remove distinctions in the regulation of the disability services sector and the social and community

¹⁶⁶ *Social, Community, Home Care and Disability Services Industry Award 2010 PR991066 4 December 2009 at cl.3.1*

¹⁶⁷ AM2009/195.



services sector by integrating the relevant definitions, wage rates and classifications.¹⁶⁸ ABI submitted that separating disability services from social and community services ‘does not reflect the realities of the combinations of services which are provided to clients by employers’ and ‘does not reflect staffing practices’ as many employees provide services across both streams.¹⁶⁹ ABI proposed adding the following to the definition of ‘social and community services sector’:

Disability services work (the provision of personal care and domestic and lifestyle support to a person with a disability in a community residential setting, including respite centre and day services but excluding a private residence).¹⁷⁰ [emphasis added]

[176] The Australian Workers’ Union (AWU), aged care industry peak employer associations, the HSU and the Australian Municipal, Administrative, Clerical and Services Union (now the Australian Services Union, or ASU) supported the application. However the Unions proposed an amendment to the application: to delete the words ‘but excluding a private residence’. The Unions submitted that some disability services are provided to individuals in the home and that this work was distinguishable from home care work.¹⁷¹ The aged care employers opposed the removal of ‘but excluding a private residence’ and argued that the Unions’ proposed amendment would create confusion between the disability services sector and the home care sector as there would be two separate classifications of employees with different entitlements potentially able to provide care to disabled clients in their own home.¹⁷²

[177] The Full Bench accepted the Unions’ proposed amendment and the definition of ‘social and community services sector’ was subsequently amended:

‘Social and community services sector means the provision of social and community services including social work, recreation work, welfare work, youth work or community development work, including organisations which primarily engage in policy, advocacy or representation on behalf of organisations carrying out such work and the provision of disability services including the provision of personal care and domestic and lifestyle support to a person with a disability in a community and/or residential setting including respite centre and day services.¹⁷³ [emphasis added]

[178] In March 2010, the ASU and a number of other Unions made an application for an Equal Remuneration Order pursuant to Part 2.7 of the FW Act (ERO Application). The ERO Application was only made with respect to the minimum rates for the social and community services sector and the crisis accommodation sector. Home care employees were not subject to the ERO Application. On 22 June 2012, a Full Bench issued an Equal Remuneration Order in respect of the two classifications.¹⁷⁴

¹⁶⁸ [2010] FWAFB 2024.

¹⁶⁹ AM2009/195 at [4].

¹⁷⁰ [2010] FWAFB 2024 at [2].

¹⁷¹ [2010] FWAFB 2024 at [4]-[5].

¹⁷² [2010] FWAFB 2024 at [6].

¹⁷³ PR995399 at [2].

¹⁷⁴ PR525485.



[179] As part of the 2012 review of modern awards, United Voice (UV) applied to vary the definition of social and community services sector to add a new clause 13.4.¹⁷⁵

To avoid doubt, a home care employee who is engaged in the provision of outreach or home visiting for aged people to identify needs or to provide support of a social or welfare nature (which could include support with organising appointments, monitoring medications, assistance with communication, meal planning, accompaniment of outing or the coordination of home care services) must be classified under Schedule B (and not Schedule E). However, an employee in a Home Care Program who has no social and/or welfare aspect to their work will be classified under Schedule E.

[180] Following discussions between the parties, a conference was held on 19 November 2012 after which the parties reached a consent position and a notation was inserted under the definition for 'Social and Community Services in clause 3.1 as follows:¹⁷⁶

To avoid doubt, an employee will not be precluded from being engaged under Schedule B, instead of another schedule, merely because they provide services in a private residence or in outreach.

[181] Currently, home care employees who work with persons with a disability in a private residence and home care employees who work with aged persons in a private residence are covered under the same classification and minimum wage structure. The minimum weekly wages for home care employees are set out in clause 17 and the classification definitions are set out in Schedule E of the SCHADS Award. However, it appears to be the case that some disability care workers who provide care in a private residence may also be classified under the social and community services sector in Schedule B.

[182] The HSU application seeks to insert a new definition of 'home aged care employee' into clause 3.1 of the SCHADS Award as follows:

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.¹⁷⁷

[183] The HSU then proposes to remove 'home aged care employees' from the minimum weekly wages in clause 17 and insert a new clause 17A – Minimum weekly wages for home aged care employees.

[184] The Joint Employers submit that a consequence of the HSU's proposed new definition and minimum wage structure is that home care employees working with persons with a disability could be paid less than home care employees working with aged persons. The Joint Employers argue this may have 'unintended practical consequences as the evidence suggests that some home care employees work with both aged clients and clients with a disability and aged clients with a disability.'¹⁷⁸

¹⁷⁵ AM2012/29 – Application to vary a modern award 2012 review dated 6 March 2012.

¹⁷⁶ PR531544.

¹⁷⁷ AM2021/65 at 2.2.

¹⁷⁸ Joint Employers closing submissions in reply dated 19 August 2022 at [2.8]-[2.9].



[185] Counsel for the HSU provided the following response to the Joint Employers' submission during final oral hearings:

'MR GIBIAN: As I understand, the issue that was raised in the joint employers' submissions is that the relevant schedule SCHADS Award would cover disability home care workers and aged care home care workers, and this application simply relates to aged home care workers, as it were, and that might create some difficulties if there were people doing both tasks.

I don't think I would say that doesn't happen. I don't think there was a great amount of evidence as to the extent to which that would happen or does happen. But I think there's really two responses to it. The first is that for obvious reasons, the application with respect to the SCHADS award is being heard now, together with these proceedings because it relates to aged care and is appropriately considered together.

It wouldn't be appropriate, given that it would diversify the evidence and relevant considerations to a substantial degree, to also endeavour to deal with the question of persons providing support in their homes to disabled people, as well. It's just simply that the circumstance that we're seeking to extract aged care because it's being dealt with as a matter of substance in this case.

In that context I note that there is an issue within the SCHADS Award of some complexity as to what is 'disability support work', and what is, 'disability home care work' in schedules B and E of that award respectively, and that's an issue that will have to be separately dealt with if there's need for clarity in that area. Much of the work which is, if it's said to be brought, the equivalent to the aged home care work that were talking about here, would be done as disability support work and paid the other rates, not under the same schedule E, as I understand it.

The second observation that I would make is that to the extent that there are individuals who do, for the same employer or for different employers, aged home care work and home care work for persons with a disability, that doesn't really raise any different issues than arise generally between awards or within awards where someone does work, which might cover or go across a number of different classifications.

Either that person has two jobs, in the sense that they're employed to do two things, in which case they're paid the appropriate rate for each of those. If it is truly one job then that is a difficulty that industrial tribunals, of course, have had to resolve since time immemorial by adopting some major and substantial or principle purpose types of approaches. That is not an unusual consequence of the structure of awards or industrial instruments more generally speaking, and if that has to happen in some cases, well, that'll have to be determined.¹⁷⁹

Question for the parties:

Question 46 for all parties: *Parties are invited to comment on what extent there is evidence currently before the Full Bench suggesting that HCWs work across multiple sectors and with clients with multiple care needs (aged care and disability care).*

¹⁷⁹ PN14593–PN14598.



Question 47 for all parties: *If a separate classification structure is created for home aged care workers, how will this apply to HCWs who work with both aged persons and people with a disability or who also work in the social and community services sector?*

8.9 Distinction between home care and residential aged care

[186] The *Stage 1 decision* considered the difference between home care and residential aged care workers and made the following observations:

‘We accept that the 2 sectors have different features but, as acknowledged by the Joint Employers, ‘at the end of the day ... that might not mean very much ... the Bench might ... weigh all that up and come to the view that ... on balance, while there are some differences ... to arrive at the same conclusion.’

We are satisfied in respect of direct care workers in the residential and in-home aged care sector that the evidence establishes existing minimum wage rates do not properly compensate employees for the value of the work performed. Accordingly, we do not propose to distinguish between residential aged care and home care in terms of the application of an interim increase.¹⁸⁰

Questions for the parties:

Question 48 for all parties: *Does any party consider that there should be any changes to the classification structure to take account of any differences between the home care and residential care settings?*

9. Indirect care employees

[187] The Full Bench noted that the *Stage 1 decision* did not conclude its consideration of the Unions’ claim for a 25 per cent increase for indirect care employees and determined that Stage 3 of the proceedings would consider submissions and evidence in relation to whether wage adjustments are justified by work value reasons for indirect care employees.¹⁸¹

Questions for the parties:

Question 49 for all parties: *does any party wish to file additional submissions and/or evidence in addition to the evidence and submissions already before the Full Bench in Stage 1 in relation to indirect care employees?*

10. Further increase for direct care workers

[188] The Full Bench further noted that the interim increase awarded in the *Stage 1 decision* did not ‘necessarily exhaust the extent of the increase justified by work value reasons in respect of direct care workers.’¹⁸² The Full Bench pointed out that in determining the interim increase it did not take into account all the material before it, in particular it did not take into account

¹⁸⁰ *Stage 1 decision* at [930]–[931].

¹⁸¹ *Stage 1 decision* at [1095].

¹⁸² *Stage c1 decision* at [1095].



Fair Work
Commission

the impact of the COVID-19 pandemic or the issues arising from understaffing. The Full Bench stated that these issues could be subject to further submissions and invited submissions on the extent to which the changes to work resulting from the pandemic have become permanent.

Questions for the parties:

Question 50 for all parties: does any party wish to file additional submissions and/or evidence in addition to the evidence and submissions already before the Full Bench in Stage 1 in relation to whether a further increase is justified on work value reasons for direct care workers?



ATTACHMENT A—HSU's classification proposal

Schedule B—Classification Definitions

B.1 Aged care employee—level 1

Entry level:

An employee who has less than three months' work experience in the industry and performs basic duties.

An employee at this level:

- works within established routines, methods and procedures;
- has minimal responsibility, accountability or discretion;
- works under direct or routine supervision, either individually or in a team; and
- requires no previous experience or training.

Indicative roles **tasks performed** at this level are:

General and administrative services

General clerk
 Laundry hand
 Cleaner
 Assistant gardener

Food services

Food services assistant

B.2 Aged care employee—level 2

An employee who has more than three months' work experience in the industry or is an entry level employee (up to 6 months) in the case of a Personal Care Worker.

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a limited level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication skills; and
- requires specific on-the-job training and/or relevant skills training or experience.



Indicative **roles** ~~tasks performed~~ at this level are:

General and administrative services

General clerk/Typist (between 3 months' and less than 1 year's service)

Laundry hand

Cleaner

Gardener (non-trade)

Maintenance/Handyperson (unqualified)

Driver (less than 3 ton)

Food services

Food services assistant

Personal care

Personal care worker
grade 1

(entry- up to 6 months)

B.3 Aged care employee—level 3

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures (non admin/clerical);
- is responsible for work performed with a medium level of accountability or discretion (non admin/clerical);
- works under limited supervision, either individually or in a team (non admin/clerical);
- possesses sound communication and/or arithmetic skills (non admin/clerical);
- requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical); and
- In the case of an admin/clerical employee, undertakes a range of basic clerical functions within established routines, methods and procedures.

Indicative **roles** ~~tasks performed~~ at this level are:

General and administrative services

General clerk/Typist (second and subsequent years of service)

Receptionist

Pay clerk

Driver (less than 3 ton) who is required to hold a St John Ambulance first aid certificate

Food services

Cook

Personal care

Personal care worker
grade 2 (from 6 months)

Recreational/Lifestyle activities officer (unqualified) **(entry- up to 6 months)**

B.4 Aged care employee—level 4

An employee at this level:

- is capable of prioritising work within established policies, guidelines and procedures;
- is responsible for work performed with a medium level of accountability or discretion;



Fair Work
Commission

- works under limited supervision, either individually or in a team;
- possesses good communication, interpersonal and/or arithmetic skills; and
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience.
- in the case of a personal care worker, holds a relevant Certificate **3 III** qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work.

Indicative **roles** **tasks performed** at this level are:

General and administrative services

Senior clerk
Senior receptionist
Maintenance/Handyperson (qualified)
Driver (3 ton and over)
Gardener (trade or TAFE Certificate III or above)

Food services

Senior cook (trade)

Personal care

Personal care worker
grade 3 (qualified)
Recreational/Lifestyle
activities officer (from 6
months)

B.5 Aged care employee—level 5

An employee at this level:

- is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability;
- works either individually or in a team;
- may assist with supervision of others;
- requires a comprehensive knowledge of medical terminology and/or a working knowledge of health insurance schemes (admin/clerical);
- may require basic computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.
- in the case of a Senior Personal Care Worker, may be required to assist residents with medication and hold the relevant unit of competency (HLTHPS006), as varied from time to time.



Indicative **roles** **tasks performed** at this level are:

General and administrative services

Secretary interpreter (unqualified)

Food services

Chef

Personal care

Senior personal care
worker **grade 4**

Recreational/Lifestyle
activities officer
(qualified)

B.6 Aged care employee—level 6

An employee at this level:

- is capable of functioning with a high level of autonomy, and prioritising their work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- works either individually or in a team;
- **may have the responsibility for leading and/or supervising the work of others;**
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at post-trade or **Advanced** Certificate **IV** or **Associate** Diploma level and/or relevant skills training or experience.
- **in the case of a Specialist Personal Care Worker, provides specialised care and may have undertaken training in specific areas of care (e.g. Dementia Care, Palliative Care, Household Model of Care).**

Indicative **roles** **tasks performed** at this level are:

General and administrative services

Maintenance tradesperson (advanced)
Gardener (advanced)

Food services

Senior chef

Personal care

Specialist Personal Care
Worker
Senior
Recreational/Lifestyle
activities officer



B.7 Aged care employee—level 7

An employee at this level:

- is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- may supervise the work of others, including work allocation, rostering and guidance;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses developed administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at trade or ~~Advanced Certificate or Associate~~ **Advanced** Diploma level and/or relevant skills training or experience.

Indicative ~~roles~~ **tasks performed** at this level are:

General and administrative services

Clerical supervisor
 Interpreter (qualified)
 Gardener superintendent
 General services supervisor

Food services

Chef /Food
 supervisor

services

Personal care

Personal Care
Supervisor
~~Personal care worker~~
grade 5



ATTACHMENT B—ANMF’s classification proposal

Schedule B—Classification Definitions

B.1 Aged care employee—level 1

Entry level:

An employee who has less than three months’ work experience in the industry and performs basic duties.

An employee at this level:

- works within established routines, methods and procedures;
- has minimal responsibility, accountability or discretion;
- works under direct or routine supervision, either individually or in a team; and
- requires no previous experience or training.

Indicative tasks performed at this level are:

General and administrative services

General clerk
Laundry hand
Cleaner
Assistant gardener

Food services

Food services assistant

B.2 Aged care employee—level 2

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a limited level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

Indicative tasks performed at this level are:

General and administrative services

General clerk/Typist (between 3 months’
and less than 1 year’s service)
Laundry hand
Cleaner

Food services

Food services assistant

Personal care

~~Personal care worker~~
grade 1



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General and administrative services

Food services

Personal care

Gardener (non-trade)
Maintenance/Handyperson (unqualified)
Driver (less than 3 ton)

B.3 Aged care employee—level 3

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures (non admin/clerical);
- is responsible for work performed with a medium level of accountability or discretion (non admin/clerical);
- works under limited supervision, either individually or in a team (non admin/clerical);
- possesses sound communication and/or arithmetic skills (non admin/clerical);
- requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical); and
- In the case of an admin/clerical employee, undertakes a range of basic clerical functions within established routines, methods and procedures.

Indicative tasks performed at this level are:

General and administrative services

Food services

Personal care

General clerk/Typist (second and subsequent years of service)
Receptionist
Pay clerk
Driver (less than 3 ton) who is required to hold a St John Ambulance first aid certificate

Cook

Personal care worker grade 2
Recreational/Lifestyle activities officer (unqualified)

B.4 Aged care employee—level 4

An employee at this level:

- is capable of prioritising work within established policies, guidelines and procedures;
- is responsible for work performed with a medium level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses good communication, interpersonal and/or arithmetic skills; and
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience.

- in the case of a personal care worker, holds a relevant Certificate 3 qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work.

Indicative tasks performed at this level are:

General and administrative services

Senior clerk
Senior receptionist
Maintenance/Handyperson (qualified)
Driver (3 ton and over)
Gardener (trade or TAFE Certificate III or above)

Food services

Senior cook (trade)

Personal care

Personal care worker
grade 3

B.5 Aged care employee—level 5

An employee at this level:

- is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability;
- works either individually or in a team;
- may assist with supervision of others;
- requires a comprehensive knowledge of medical terminology and/or a working knowledge of health insurance schemes (admin/clerical);
- may require basic computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

General and administrative services

Secretary interpreter (unqualified)

Food services

Chef

Personal care

Personal care worker
grade 4

B.6 Aged care employee—level 6

An employee at this level:



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- is capable of functioning with a high level of autonomy, and prioritising their work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at post-trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

General and administrative services

Maintenance tradesperson (advanced)

Gardener (advanced)

Food services

Senior chef

B.7 Aged care employee—level 7

An employee at this level:

- is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- may supervise the work of others, including work allocation, rostering and guidance;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses developed administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.



Indicative tasks performed at this level are:

General and administrative services

Clerical supervisor
Interpreter (qualified)
Gardener superintendent
General services supervisor

Food services

Chef /Food services supervisor

Personal care

~~Personal care worker~~
grade 5

B.8 Grade 1—Personal Care Worker (entry up to 6 months)

An employee at this grade:

- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a limited level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

B.9 Grade 2—Personal Care Worker (from 6 months) & Recreational/ Lifestyle activities officer (unqualified)

An employee at this grade:

- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a medium level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication and/or arithmetic skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

B.10 Grade 3—Personal Care Worker (qualified)

An employee at this grade:

- is capable of prioritising work within established policies, guidelines and procedures;
- is responsible for work performed with a medium level of accountability or discretion;
- works under limited supervision, either individually or in a team;



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- possesses good communication, interpersonal and/or arithmetic skills;
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience; and
- holds a relevant Certificate III qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work.

B.11 Grade 4—Senior Personal Care Worker

An employee at this grade:

- is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability;
- works either individually or in a team;
- may assist with supervision of others;
- may require basic computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.

B.12 Grade 5—Specialist Personal Care Worker

An employee at this grade:

- is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- may supervise the work of others, including work allocation, rostering and guidance;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses developed administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and



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- may require formal qualifications at trade or Certificate IV level and/or relevant skills training or experience in Dementia Care or Palliative Care.



Attachment C: Nurses Award 2020 minimum wages with interim increase applied

Nurses Award 2020

*note increase will apply to aged care workers only

15.2 Nursing assistant

Employee classification	Minimum weekly rate (full-time employee)	15% interim increase applied to weekly rate	Internal relativity to benchmark
	\$	\$	%
1st year	883.40	1015.90	93.90
2nd year	897.20	1031.80	95.40
3rd year and thereafter	911.60	1048.30	96.90
Experienced (the holder of a relevant certificate III qualification)	940.90	1082.00	100.00

15.3 Enrolled nurses

(a) Student enrolled nurse

Employee classification	Minimum weekly rate (full-time employee)	15% interim increase applied to weekly rate	Internal relativity to benchmark
	\$	\$	%
Less than 21 years of age	820.70	943.80	87.22
21 years of age and over	861.40	990.60	91.55

(b) **Enrolled nurse**

Employee classification	Minimum weekly rate (full-time employee)	15% interim increase applied to weekly rate	Internal relativity to benchmark
	\$	\$	%
Pay point 1	958.30	1102.10	101.85
Pay point 2	971.00	1116.70	103.20
Pay point 3	983.90	1131.50	104.57
Pay point 4	998.10	1147.80	106.08
Pay point 5	1008.10	1159.30	107.14

15.4 **Registered nurses**

(a) **Registered nurse—Levels 1-5**

Employee classification	Minimum weekly rate (full-time employee)	15% increase applied to weekly rate	Internal relativity to benchmark
	\$	\$	%
Registered nurse—level 1			
Pay point 1	1025.20	1179.00	108.96
Pay point 2	1046.20	1203.10	111.19
Pay point 3	1071.90	1232.70	113.92
Pay point 4	1100.40	1265.50	116.95
Pay point 5	1134.20	1304.30	120.54
Pay point 6	1167.00	1342.10	124.03
Pay point 7	1200.80	1380.90	127.62
Pay point 8 and thereafter	1232.00	1416.80	130.93
Registered nurse—level 2			
Pay point 1	1264.70	1454.40	134.41
Pay point 2	1284.80	1477.50	136.55
Pay point 3	1307.10	1503.20	138.92
Pay point 4 and thereafter	1328.50	1527.80	141.19



Employee classification	Minimum weekly rate (full-time employee)	15% increase applied to weekly rate	Internal relativity to benchmark
	\$	\$	%
Registered nurse—level 3			
Pay point 1	1371.30	1577.00	145.74
Pay point 2	1396.50	1606.00	148.42
Pay point 3	1420.60	1633.70	150.98
Pay point 4 and thereafter	1446.10	1663.00	153.69
Registered nurse—level 4			
Grade 1	1565.10	1799.90	166.34
Grade 2	1677.30	1928.90	178.27
Grade 3	1775.10	2041.40	188.66
Registered nurse—level 5			
Grade 1	1579.40	1816.30	167.86
Grade 2	1663.20	1912.70	176.77
Grade 3	1775.10	2041.40	188.66
Grade 4	1885.80	2168.70	200.43
Grade 5	2079.90	2391.90	221.05
Grade 6	2275.70	2617.10	241.86

(b) **Minimum entry rate**

Employee classification	Minimum weekly rate (full-time employee)	15% increase applied to weekly rate	Internal relativity to benchmark
	\$	\$	%
4 year degree ¹	1070.50	1231.10	113.77
Masters degree ¹	1107.40	1273.50	117.70



15.5 Nurse practitioner

Employee classification	Minimum weekly rate (full-time employee)	15% increase applied to weekly rate	Internal relativity to benchmark
	\$	\$	%
1st year	1578.00	1814.70	167.71
2nd year	1624.90	1868.60	172.70



**Attachment D: Social, Community, Home Care and Disability Services Industry Award 2010
minimum wages with interim increase applied**

Social, Community, Home Care and Disability Services Industry Award 2010

*note increase will apply to aged care workers only

17. Minimum weekly wages for home care employees

17.1 Home care employee level 1

	Per week	15% increase applied to weekly rate	Internal relativity to benchmark
	\$	\$	%
Pay point 1	871.60	1002.30	92.63

17.2 Home care employee level 2

	Per week	15% increase applied to weekly rate	Internal relativity to benchmark
	\$	\$	%
Pay point 1	921.90	1060.20	97.98
Pay point 2	928.20	1067.40	98.65

17.3 Home care employee level 3

	Per week	15% increase applied to weekly rate	Internal relativity to benchmark
	\$	\$	%
Pay point 1 (certificate 3)	940.90	1082.00	100.00
Pay point 2	969.90	1115.40	103.08

17.4 Home care employee level 4

	Per week	15% increase applied to weekly rate	Internal relativity to benchmark
	\$	\$	%
Pay point 1	1026.50	1180.50	109.10
Pay point 2	1047.00	1204.10	111.28

17.5 Home care employee level 5



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	Per week	15% increase applied to weekly rate	Internal relativity to benchmark
	\$	\$	%
Pay point 1 (degree or diploma)	1100.60	1265.70	116.97
Pay point 2	1144.00	1315.60	121.59



ATTACHMENT E – ABBREVIATIONS

4 yearly review	4 yearly review of modern awards
ABI	Australian Business Industrial
<i>ACT Child Care decision</i>	<i>Australian Liquor, Hospitality and Miscellaneous Workers Union re Child Care Industry (Australian Capital Territory) Award 1998 and Children’s Services (Victoria) Award 1998 - re Wage rates - PR954938 [2005] AIRC 28</i>
ACSA	Aged & Community Services Australia
Aged Care Award	<i>Aged Care Award 2010</i>
AIN	Assistant in Nursing
AIRC	Australian Industrial Relations Commission
ANF	Australian Nursing Federation
ANMF	Australian Nursing and Midwifery Federation
AQF	Australian Qualifications Framework
ASU	Australian Municipal, Administrative, Clerical and Services Union
Awards	<i>The Aged Care Award 2010, Nurses Award 2020 and Social, Community, Home Care and Disability Services Award 2010</i>
Charlesworth Report	<i>Dr Sara Charlesworth, Report of Sara Charlesworth: Health Services Union of NSW – Regarding work value for aged care members dated 31 March 2021</i>
Charlesworth Supplementary Report	<i>Dr Sara Charlesworth, Supplementary Report of Sara Charlesworth dated 22 October 2021</i>
Commission	Fair Work Commission
Consensus Statement	<i>Aged Care Stakeholder Consensus Statement dated 17 December 2021</i>
Direct aged care workers	Employees in the aged care sector covered by the Awards in caring roles, including nurse practitioners, RNs, ENs, AINs, PCWs and HCWs.
EN	Enrolled Nurse
FW Act	<i>Fair Work Act 2009 (Cth)</i>
HSU	Health Services Union
Joint Employers	Aged & Community Services Australia, Leading Age Services Australia, Australian Business Industrial
LASA	Leading Age Services Australia



Nurses Award	<i>Nurses Award 2010</i>
PCW	Personal Care Worker
RAO	Recreational Activities Officer/Lifestyle Officer
RN	Registered Nurse
Royal Commission	<i>Royal Commission into Aged Care Quality and Safety</i>
Royal Commission Final Report	<i>Royal Commission into Aged Care Quality and Safety, Final Report: Care, Dignity and Respect (Final Report 1 March 2021)</i>
SCHADS Award	<i>Social, Community, Home Care and Disability Services Award 2010</i>
Smith/Lyons Report	Associate Professor Meg Smith and Dr Michael Lyons, <i>Report by Associate Professor Meg Smith and Dr Michael Lyons dated October 2021, as amended 2 May 2022 at [91].</i>
<i>Stage 1 decision</i>	<i>Applications to vary the Aged Care Award 2010, Nurses Award 2020 and Social, Community, Home Care and Disability Services Award 2010 [2022] FWCFB 200</i>
<i>Teachers Decision</i>	<i>Independent Education Union of Australia [2021] FWCFB 2051</i>
UV	United Voice
UWU	United Workers Union