

# Digital Hearing Book



## AM2021/63, AM2024/11 — Applications by ANMF to vary the *Nurses Award 2020* [MA000034]— work value case — nurses and midwives

Before an Expert Panel for pay equity in the Care and Community Sector

ORIGINATING APPLICATIONS			
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1	Form F46, AM2021/63 (nurses in the aged care industry) <i>Note: the parts of this application relating to assistants in nursing have already been determined as part of the aged care industry work value case: <a href="#">[2024] FWCFB 150</a>, <a href="#">[2024] FWCFB 298</a>, <a href="#">[2024] FWCFB 367</a>.</i>	18/05/2021	3
2	Form F46, AM2024/11 (nurses and midwives generally)	09/02/2024	27
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9	ANMF third witness statement of Julianne Bryce <i>Note: Ms Bryce's first witness statement is in the <a href="#">Stage 1 DHB</a> from the aged care industry work value case at 13853 and her second witness statement is in the <a href="#">Stage 3 DHB</a> from the aged care industry work value case at 1171.</i>	26/04/2024	262
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## Form F46 – Application to vary a modern award

Fair Work Act 2009, ss.157–160

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

### The Applicant



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

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address	Level 1, 365 Queen Street		
Suburb	Melbourne		
State or territory	Victoria	Postcode	3000
Phone number	(03) 9602 8500	Fax number	(03) 9602 8567
Email address	kwischer@anmf.org.au		

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

Legal name of business	AUSTRALIAN NURSING AND MIDWIFERY FEDERATION (ANMF)
Trading name of business	AUSTRALIAN NURSING AND MIDWIFERY FEDERATION (ANMF)
ABN/ACN	41 816 898 298
Contact person	KRISTEN WISCHER (Senior Federal Industrial Officer)

### Does the Applicant need an interpreter?



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

Yes – Specify language

No

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

Yes – Please specify the assistance required

No

**Does the Applicant have a representative?**



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

Yes – Provide representative's details below

No

**Applicant's representative**



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

Name of person	NICHOLAS WHITE		
Firm, organisation or company	GORDON LEGAL		
Postal address	Level 22, 181 William Street		
Suburb	Melbourne		
State or territory	Victoria	Postcode	3000
Phone number	(03) 9603 3035	Fax number	(03) 9603 3050
Email address	nwhite@gordonlegal.com.au		

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

Yes

No



## 1. Coverage

### 1.1 What are the names of the modern awards to which the application relates?



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

MA000018: Aged Care Award 2010

MA000034: Nurses Award 2010

### 1.2 What industry is the employer in?

Aged care (in the case of the Aged Care Award)

Health (in the case of the Nurses Award)

## 2. Application

### 2.1 What are you seeking?

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

a determination varying a modern award

a modern award

a determination revoking a modern award

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

Please refer to Annexure 1, **attached**.

Attach additional pages, if necessary.

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

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



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

Please refer to Annexure 2, **attached**.

Attach additional pages, if necessary.

### Signature



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

Signature	
Name	NICHOLAS WHITE GORDON LEGAL
Date	17 May 2021
Capacity/Position	Applicant's representative



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

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

# AUSTRALIAN NURSING AND MIDWIFERY FEDERATION (ANMF)

## APPLICATION TO VARY MODERN AWARDS

### ANNEXURE 1: DETAILS OF APPLICATION

#### A. Variation to MA000034: Nurses Award 2010

1. Insert new Schedule F, as follows:

#### “Schedule F — SCHEDULE OF MINIMUM WAGES FOR AGED CARE EMPLOYEES

##### F.1 General

F.1.1 The provisions of this schedule apply until [insert date 4 years after commencement].

F.1.2 The provisions of this schedule are to be applied to employees in the classifications listed in Schedule B, engaged in the provision of:

- (a) 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; and/or
- (b) services for an aged person in a private residence.

##### F.2 Nursing assistant

	<b>Per week</b>
	<b>\$</b>
Entry up to 6 months	1028.50
From 6 months	1045.40
From 12 months	1062.80
Experienced (the holder of a relevant Certificate III qualification)	1097.00

##### F.3 Enrolled nurses

(a) Student enrolled nurse

	<b>Per week</b>
	<b>\$</b>
Less than 21 years of age	952.20
21 years of age and over	1001.80

(b) Enrolled nurse

	<b>Per week</b>
	<b>\$</b>
Pay point 1	1117.40

Pay point 2	1132.10
Pay point 3	1147.10
Pay point 4	1163.60
Pay point 5	1175.40

**F.4 Registered nurses**

Minimum entry rate for a:

- (a) four year degree is \$998.40 \$1248 per week;
- (b) master's degree is \$1032.90 \$1291.13 per week.

Progression from these entry rates will be to level 1—Registered nurse pay point 4 and 5 respectively.

	<b>Per week \$</b>
<b>Registered nurse—level 1</b>	
Pay point 1	1195.30
Pay point 2	1219.80
Pay point 3	1249.80
Pay point 4	1282.90
Pay point 5	1322.40
Pay point 6	1360.60
Pay point 7	1400.00
Pay point 8 and thereafter	1436.40
<b>Registered nurse—level 2</b>	
Pay point 1	1474.50
Pay point 2	1497.90
Pay point 3	1523.90
Pay point 4 and thereafter	1548.90
<b>Registered nurse—level 3</b>	
Pay point 1	1598.80
Pay point 2	1628.10
Pay point 3	1656.30
Pay point 4 and thereafter	1686.00
<b>Registered nurse—level 4</b>	
Grade 1	1824.80
Grade 2	1955.50
Grade 3	2069.50
<b>Registered nurse—level 5</b>	
Grade 1	1841.40
Grade 2	1939.10
Grade 3	2069.50
Grade 4	2198.60

Grade 5	2424.90
Grade 6	2653.10

**F.5 Nurse practitioner**

	<b>Per week</b>
	<b>\$</b>
1st year	1839.80
2nd year	1894.40

**B. Variation to MA000018: Aged Care Award 2010**

2. Amend clause 14 as follows:

**14. Minimum weekly wages**

**14.1A Minimum wages— Personal care workers**

<u>Grade</u>	<u>Per week</u>
	<u>\$</u>
<u>Grade 1</u>	<u>1043.30</u>
<u>Grade 2</u>	<u>1084.10</u>
<u>Grade 3</u>	<u>1097.00</u>
<u>Grade 4</u>	<u>1134.10</u>
<u>Grade 5</u>	<u>1216.80</u>

3. Amend Schedule B as follows:

**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

**Food services**

Food services assistant

Assistant gardener

## **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:

<b>General and administrative services</b>	<b>Food services</b>	<b>Personal care</b>
General clerk/Typist (between 3 months' and less than 1 year's service)	Food services assistant	<del>Personal care worker</del> <del>grade 1</del>
Laundry hand		
Cleaner		
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/clerkal);
- is responsible for work performed with a medium level of accountability or discretion (non admin/clerkal);
- works under limited supervision, either individually or in a team (non admin/clerkal);
- possesses sound communication and/or arithmetic skills (non admin/clerkal);
- requires specific on-the-job training and/or relevant skills training or experience (non admin/clerkal);and
- In the case of an admin/clerkal 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**

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**

**Personal care**

~~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:

- 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  
supervisor

**Personal care**

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

## **ANNEXURE 2: GROUNDS OF APPLICATION**

### **A. Introduction**

1. This application is made to give effect to Recommendation 84 of the Royal Commission into Aged Care Quality and Safety, *Final Report: Care, Dignity and Respect* (“**Final Report**”). Recommendation 84, titled “Increases in award wages”, provides that employee organisations entitled to represent the industrial interests of aged care employees should collaborate with the Australian Government and employers and apply to vary wage rates in awards including the Aged Care Award 2010 (“**Aged Care Award**”) and the Nurses Award 2010 (“**Nurses Award**”).
2. The Final Report at Vol 3A, p 416 also recognised that:

*“... on the extensive evidence before this inquiry about the work performed by personal care workers and nurses in both home care and residential care, we consider that all three of the section 157(2A) reasons [pertaining to work value] may well justify an across-the-board increase in the minimum pay rates under the applicable award.”*
3. Attempts by the ANMF to collaborate about varying rates in those awards are ongoing. This application pursuant to s 157 of the *Fair Work Act 2009* (Cth) (“**FW Act**”) to vary the Nurses Award and the Aged Care Award is filed in accordance with a commitment by the ANMF to do so by 17 May 2021, notwithstanding pending collaboration.
4. Finally by way of introduction, in what follows when the ANMF refers to aged care, it (like the Royal Commission at p 416) is referring to work performed in both home care and residential care settings.

### **B. Variations sought by the ANMF**

5. There are two major amendments proposed to the Aged Care Award 2010 and the Nurses Award 2010:
  - (1) the amendment of the Nurses Award by inserting a new schedule, applicable to aged care workers only and expiring after four years, which increases rates of pay by 25 per cent (see Annexure 1, Part A); and
  - (2) the amendment of the Aged Care Award by removing Personal Care Workers (“**PCWs**”) from the main stream of “aged care employee” in Schedule B, and

creating a new classification structure for them—and increasing their rates of pay by 25 per cent (see Annexure 1, Part B).

References to “aged care employees”, “aged care workers” and similar expressions in the following refer to personal care workers for the Aged Care Award and to nursing assistants, enrolled nurses, registered nurses and nurse practitioners within the scope of proposed clause F.1.2 of the Nurses Award.

6. As to the pay increase in each of the variations contemplated in [5(1)] and [5(2)] above, this is justified by work value reasons and necessary to achieve the modern awards objective. The ANMF seeks flat, across-the-board, increases of 25 per cent to minimum rates notwithstanding that there exists some incongruity in internal relativities within the Nurses Award and as between the Aged Care Award and Nurses Award. Flat, across-the-board increases are sought where this recognises the chronic undervaluation of all relevant aged care employees.
7. It is important to emphasise this: the fact that the variation presently sought to the Nurses Award involves a pay increase only for aged care employees does not imply that a pay increase for other employees covered by that award is not also justified. As noted above, this application is brought to give effect to Recommendation 84 of the Final Report pertaining to “aged care employees”. A determination should here be made in the terms sought by the ANMF. Additionally, it is the ANMF’s position that pay increases for the non-aged-care classifications under the Nurses Award are also justified and necessary.
8. This is reflected in proposed clause F.1.1 to the Nurses Award. That clause provides that the specific Schedule of minimum wages for aged care employees shall apply for a period of four years only. Despite this limited operation, it is not intended that the increased minimum wages for aged care employees would be temporary. Rather, the ANMF will bring a further application to increase the minimum rates for all classifications under the Nurses Award prior to the expiry of any new schedule of minimum wages for aged care employees.
9. As to the balance of the amendment contemplated in [5(2)] above, this 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.

**C. Legislative considerations**

10. Section 157(2) and (2A) provide as follows:

“(2) The FWC may make a determination varying modern award minimum wages if the FWC is satisfied that:

- (a) the variation of modern award minimum wages is justified by work value reasons; and
- (b) making the determination outside the system of annual wage reviews is necessary to achieve the modern awards objective.

Note: As the FWC is varying modern award minimum wages, the minimum wages objective also applies (see section 284).

(2A) Work value reasons are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

- (a) the nature of the work;
- (b) the level of skill or responsibility involved in doing the work;
- (c) the conditions under which the work is done.”

11. A variation of the rates of pay outside the system of annual wage reviews is necessary to achieve the modern award objective. The Aged Care Award and the Nurses Award do not presently provide a safety net of fair and relevant minimum wages. A variation is necessary to achieve the modern award objective. This is because the inherent work value of work performed under those Awards, and because of changes to that work which have caused the work value to increase.

**D. Work value reasons**

12. No proper work value assessment for minimum rates of pay under the Nurses Award or Aged Care Award occurred during the award modernisation process. There was no discussion of whether rates adopted were properly fixed minimum rates. The process

by which minimum rates were incorporated into each award during that process remains unclear. However, the minimum wages for Assistants in Nursing in the Nurses Award appear to reflect those fixed by the Federal Commission in 2005 (see *Nurses Private Employment (A.C.T.) Award 2002*, 21 November 2005 PR965496).

13. The minimum rates under the Aged Care Award also appear to be based on the rates as fixed by the Commission in 2005. To this end, it is noted that equivalent minimum wage rates currently apply:
  - (1) Under the Nurses Award for a Nursing assistant – Experienced (the holder of a relevant Certificate III qualification); and
  - (2) Under the Aged Care Award for a Personal care worker grade 3 - where such a PCW 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.
14. The minimum rates and relativities in the Nurses Award for Enrolled Nurses and Registered Nurses appear to have been based on the *Nurses (ANF – South Australian Private Sector) Award 1989*, as amended annually via safety net adjustments and Australian Fair Pay Commission adjustments. These were deemed to be properly fixed minimum rates by the Federal Commission in 1998 (see *Paid Rates Review Decision*, 20 October 1998, Print Q7661).
15. Notably, the minimum wages adopted under the Nurses Award and Aged Care Award for aged care workers during the Award Modernisation process were lower than minimum rates applicable in other states and territories. Those minimum rates under the Nurses Award and Aged Care Award have not been adjusted outside the system of annual wage reviews since the Awards were created.
16. The Final Report recognised that the aged care workforce is poorly paid for difficult and important work (Vol 3A, p 372). The current pay rates do not reflect the underlying work value of the work performed by workers covered by the two relevant Awards, and do not reflect changes in the work value over the last sixteen to twenty-two years. The nature of the work, the level of skill or responsibility involved in doing the work and

the conditions under which the work is done all justify the payment of higher minimum wages. Changes to the work value of work performed by aged care employees include:

- (1) workloads and time pressure have increased, as has the inadequacy of staffing levels;
- (2) the increased prevalence of higher-acuity residents, with greater complexity of care needs including in relation to:
  - (a) wound care;
  - (b) medication;
  - (c) pain management;
  - (d) food, nutrition, and hydration;
  - (e) continence care;
  - (f) mobility and falls;
  - (g) social supports;
  - (h) quality of life;
  - (i) end of life / palliative care;
  - (j) greater and increased levels of co-morbidities;
- (3) there is an increased percentage of residents with dementia;
- (4) there is an increased requirement for documentation of care, including with the implementation of computerised care planning and documentation systems;
- (5) the regulatory environment is considerably more complex;
- (6) substantial changes to the model and philosophy of care, including a shift to person-centred care;
- (7) there has been a reduction in registered nurse numbers, leading to a greater supervisory burden for those nurses who remain;



- (8) COVID-19 has resulted in additional work and regulation (as well as stress and danger);
  - (9) greater technological requirements, including (*e.g.*) medication aids, lifting and mobility equipment, continuous positive airway pressure equipment;
  - (10) workers are having to interact with patients' animals and visitors to a greater degree;
  - (11) increasing requirement for formal qualifications and additional specialised training of workers;
  - (12) greater need for restraint management and reporting, especially in the context of a higher prevalence of dementia; and
  - (13) the number of, and complexity of administration of, medication has increased.
17. To an ever-increasing degree, the nature of the work of aged care employees:
- (1) involves the provision of direct care;
  - (2) is complex and demanding;
  - (3) is co-operative and team-based;
  - (4) is personal and intimate;
  - (5) is stressful and time pressured;
  - (6) involves exposure to workplace violence and aggression;
  - (7) is physically and emotionally demanding;
  - (8) is wide ranging in scope;
  - (9) carries significant responsibilities; and
- that work is, and has been, overwhelmingly performed by females and as such has been undervalued.
18. As recognised in the Royal Commission Final Report:

- (1) there is a clear and pressing need for a substantial development of the workforce in the aged care sector (Vol 3A, p 371);
- (2) the current aged-care workforce is not large enough to provide high quality aged care services on a consistent basis (Vol 3A, p 374);
- (3) the need for direct care workers will double by 2050 (Vol 3A, pp 374–375), as a result of a one-third increase in people aged 65–69 and a doubling of the number of people aged over 85 (Vol 3A, p 377);
- (4) the proportion of professionally-qualified staff such as nurses is too low (and declining—see Vol 3A, p376), which does not reflect the increasing medical acuity of people receiving aged care (Vol 3A, p 371, 374);
- (5) it is difficult work including because it is in stressful and sometimes unsafe workplaces (Vol 3A, p 372); and
- (6) a wages gap exists between aged care workers and workers performing equivalent functions in the acute health sector (Vol 3A, p 414), which gap persists despite attempts to narrow it (Vol 3A, p 414).

#### **E. The modern awards objective**

##### ***A fair and relevant minimum safety net of terms and conditions***

19. A significant number of aged-care workers are paid at Award rates. As summarised above, the current Award rates considerably undervalue the work value of the work performed by aged-care workers. This does not provide a “fair” safety net because, among other things, it does not properly recognise work value and there is a significant disparity between these Award rates and bargained outcomes.
20. Further, as outlined above, there is a wages gap between aged care workers and workers performing equivalent functions in the acute health sector (Final Report, Vol 3A, p 414).
21. Low wages contribute to the perception that work in aged care is undervalued, under-appreciated, and not respected. Insufficient remuneration is a factor in the difficulty in attracting staff to, and in causing workers to leave, the sector. Improved pay would be a factor in influencing workers to begin, continue in, or return to work in aged care.

22. An increase in Award wages is therefore necessary in order to ensure that a fair and relevant minimum safety net of terms and conditions (especially wages) is provided by the Awards.

***(a) relative living standards and the needs of the low paid***

23. A threshold of two-thirds of median full-time wages provides a suitable benchmark for identifying who is “low paid”, within the meaning of s 134(1)(a). On this measure, all Nursing Assistants and Enrolled Nurse classifications under the Nurses Award and PCW classifications under the Aged Care Award are currently close to or below this “low paid” threshold.
24. The variations sought by the ANMF would elevate each of these classifications beyond being “low paid”.

***(b) the need to encourage collective bargaining***

25. Employees covered by the Aged Care Award, and aged-care employees covered by the Nurses Award, have experienced the compounding effect over many years of difficulty bargaining successfully in the sector.
26. Difficulty bargaining in the sector arises including because of:
- (1) high levels of casual and part-time employment;
  - (2) low hours contracts;
  - (3) the female-dominated nature of the industry (which workforces have, historically, been less industrially organised);
  - (4) the shift-based nature of the work and rostering arrangements;
  - (5) the proportion of workers from culturally and linguistically diverse backgrounds (which presents as a barrier to effective communication in bargaining);
  - (6) a cultural reluctance (arising out of a sense of professional commitment) to take industrial action that may be seen to negatively affect residents;
  - (7) industrial regulation limiting rights to take industrial action;

- (8) a lack of union density; and
  - (9) the impact of insecure work.
27. An increase in the rates of pay provided by the Aged Care Award and for aged-care employees covered by the Nurses Award would encourage collective bargaining in that:
- (1) it would increase the incentive or necessity to negotiate enterprise-specific trade-offs and productivity benefits;
  - (2) it removes any disincentive to continue collective bargaining for employees who have negotiated rates at or higher than the correct work value of the work they perform, by removing the gap between these rates and the Award minimum.

***(c) the need to promote social inclusion through increased workforce participation***

28. The Final Report emphasised the absence of clear career paths for persons in the aged-care industry (Final Report, Vol 3A, pp 385–391 in particular). Increased minimum rates will lead to:
- (1) a greater ability to attract and retain staff;
  - (2) an incentive for career progression for workers in the industry;
  - (3) accordingly, higher-quality care and quality of life for aged-care residents.
29. Further, women make up the majority of: (1) employees in aged care; and (2) people providing unpaid aged care domestically. Increasing the wages payable to aged-care workers will in two ways promote social inclusion. First, assuming that (1) remains true, increasing rates of pay and creating a clearer career path will attract or retain female employees and thus increase the workforce participation of women. Second, increased wages will enhance confidence in the aged-care sector, so that women presently providing domestic unpaid aged care are more likely to entrust aged care to the paid sector, enabling them themselves to return to or enter the workforce (in aged care or otherwise).

***(d) the need to promote flexible modern work practices and the efficient and productive performance of work***

30. Given Australia's aging population and the requirement for aged care of increasing numbers of the "baby boomer" generation, there will be a need for the aged care workforce significantly to grow.
31. An increase in minimum rates will attract new workforce participants to meet the growing demand for labour, and will assist in addressing current recruitment and retention problems and facilitate the upskilling of the existing workforce.

***(da) the need to provide additional remuneration for: (i) employees working overtime; or (ii) employees working unsocial, irregular or unpredictable hours; or (iii) employees working on weekends or public holidays; or (iv) employees working shifts***

32. By its nature, aged care work involves unsocial hours, weekend and public holiday work and shift work. Under the Nurses Award and Aged Care Award, employees are compensated for work on weekends, public holidays and shifts by loadings based on their ordinary hourly rate. The need to provide additional remuneration for employees working unsocial hours, weekends, public holidays and shift work will only be properly met where the underlying ordinary rate of pay is appropriate.

***(e) the principle of equal remuneration for work of equal or comparable value***

33. The Final Report recognised that the aged care workforce is predominantly female (Final Report, V3, p 374). The Final Report also recommended an application pursuant to s 302 of the FW Act to ensure equal remuneration for men and women workers for work of equal or comparable value further or in the alternative to the present application.
34. The fact that the ANMF have not, at this time, brought an application pursuant to s 302 of the FW Act does not amount to concession that aged care workers currently enjoy equal remuneration for work of equal or comparable value.

***(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden***

35. It is the intention of the ANMF to continue to collaborate with the Australian Government and employers to minimise the likely impact of any award variation on business.

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

36. The proposed amendments perpetuate some overlap of modern award coverage between Assistants in Nursing under the Nurses Award and PCWs under the Aged Care Award. Such overlap is not “unnecessary” (see *Award Modernisation Decision* [2009] AIRCFB 345 at [152]).

***(h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy***

37. The Final Report identified a clear and pressing need for a substantial development of the workforce in the aged care sector. Increased wages will be a critical element of the development of the workforce.

**E.1 The minimum wages objective**

***A safety net of fair minimum wages***

38. For the same reasons as given above at [19]–[37], an increase in the minimum wages provided for by the Aged Care Award and the Nurses Award would ensure that there is a safety net of fair minimum wages having regard to the minimum wages objective.

## Form F46 – Application to make, vary or revoke a modern award

Fair Work Act 2009, ss.157–161

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

### The Applicant



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

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address	Level 1, 365 Queen Street		
Suburb	Melbourne		
State or territory	Victoria	Postcode	3000
Phone number	(03) 9602 8500	Fax number	(03) 9602 8567
Email address	kwischer@anmf.org.au		

### If the Applicant is not an individual, please also provide the following details

Applicant's legal name	AUSTRALIAN NURSING AND MIDWIFERY FEDERATION
Applicant's trading name	
Applicant's ABN/ACN	41 816 898 298
Contact person	KRISTEN WISCHER

**Does the Applicant need an interpreter?**



If the Applicant has trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help for non-English speakers](#) on our website.

Yes – Specify language

No

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

Yes – Please specify the assistance required

No

**Does the Applicant have a representative?**



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

Yes – Provide representative’s details below

No

**Applicant’s representative**



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

Name of person	NICHOLAS WHITE		
Firm, organisation or company	GORDON LEGAL		
Postal address	Level 22, 181 William Street		
Suburb	Melbourne		
State or territory	Victoria	Postcode	3000



FAIR WORK COMMISSION

Form F46 – Application to make, vary or revoke a modern award

Phone number	(03) 9603 3035	Fax number	(03) 9603 3050
Email address	nwhite@gordonlegal.com.au		

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

Yes

No

**1. Coverage**

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



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

Nurses Award 2020 [MA000034]

**1.2 What industry is the employer in?**

Health

**1.3 Does the application relate to the Care and Community Sector?**



The Care and Community Sector includes, but is not limited to, the aged care, early childhood education and care and disability care sectors. Applications to make, vary or revoke awards that relate to the Care and Community Sector are decided by Care and Community Sector Expert Panels. See sections 617(8) and (9) of the FW Act.

Yes

No

Unsure

**2. Application**

**2.1 What are you seeking?**

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

FAIR WORK COMMISSION

Form F46 – Application to make, vary or revoke a modern award

a determination varying a modern award

a modern award

a determination revoking a modern award

**2.2 Does the application seek to vary modern award minimum wages?**

Yes

No

**2.3 Does the application relate to gender pay equity?**



Variations to awards relating to substantive gender pay equity matters are decided by pay equity Expert Panels. See sections 617(6) and (9) of the FW Act. See also work value reasons in s.157(2A) and (2B).

Yes

No

Unsure

**2.4 What are the details of your application?**

Outline the changes you are asking the Commission to make. For example - if you are asking the Commission to vary an existing award, you should set out which parts of the award you are asking the Commission to change and how you think these parts should be changed.

See Annexures 1 and 2.

Attach additional pages, if necessary.

**2.5 What are the grounds being relied on?**

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

FAIR WORK COMMISSION

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You must outline how the proposed variation etc is necessary in order to achieve the modern awards objective, and the minimum wages objective if it applies, as well as any additional requirements set out in the FW Act.

See Annexure 3.

Attach additional pages, if necessary.

**Signature**



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

Signature	
Name	NICHOLAS WHITE, GORDON LEGAL
Date	9 February 2024
Capacity/Position	Applicant's representative



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

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

## AUSTRALIAN NURSING AND MIDWIFERY FEDERATION (ANMF)

### APPLICATION TO VARY A MODERN AWARD

#### ANNEXURE 1: BACKGROUND TO THE APPLICATION

1. In the context of the ANMF’s existing work value application to increase minimum wages for aged care employees under the *Aged Care Award 2010* and the *Nurses Award 2020* (“**Aged Care Work Value Case**”),<sup>1</sup> the ANMF has foreshadowed an intention to bring a further application to increase the minimum rates for all classifications under the *Nurses Award 2020* (MA000034) (“**Nurses Award**”).<sup>2</sup>
2. This is that application. It is, as was (and is) the Aged Care Work Value Case, based on two headline propositions:
  - (1) *First*, the minimum rates for nurses, midwives and AINs under the Nurses Award were never “*properly fixed*,” and involve historical undervaluation because of assumptions based on gender.
  - (2) *Second*, the nature of the work, the level of skill and responsibility involved in doing the work, and the conditions under which the work is done have changed demonstrably over the past several decades (so as to make the work more valuable), whereas wage rates have not commensurately increased.
3. This application affects nurses, midwives and nursing assistants working across the health care system, in a number of distinct domains and within a number of diverse settings. The work encompasses acute care, palliative care, midwifery care, rehabilitation, disability care, primary health care, community health care, and mental health care. It is performed across metropolitan, regional, rural and remote settings. The application affects nurses and midwives working in the public sector in Victoria and the Territories, and in the private sector across the country.

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<sup>1</sup> *Aged Care Award 2010 and Nurses Award 2010* (AM2021/63) as lodged by the ANMF. See also *Aged Care Award 2010* (AM2020/99) and *Social, Community, Home Care and Disability Services Industry Award 2010* (AM2021/65).

<sup>2</sup> *Application by the ANMF dated 18 May 2021*, Annexure 2, at [7] and [8]; Reply Submissions of the ANMF filed in the Aged Care Work Value Case, dated 21 April 2022 at [71]; and ANMF Closing Submissions in Reply filed in the Aged Care Work Value Case, dated 17 August 2022 at [169].

4. The ANMF estimates some 250,000 nurses and midwives will be affected by this application. It will also affect assistants in nursing throughout Australia, predominantly working in acute care.

## ANNEXURE 2: DETAIL OF THE APPLICATION

### A. Variation to MA000034: *Nurses Award 2020*

5. The ANMF applies to vary the Nurses Award by amending clause 15.1 “*Minimum rates for employees other than aged care employees*” as follows:
  - (1) by increasing the minimum rate of pay for a Registered Nurse level 1, pay point 1 (“**RN1.1**”), such that it is fixed in accordance with the minimum rate for the C1(a) classification under the *Metals Framework*, to \$1,472.60 per week (148 per cent of the C10 rate);<sup>3</sup>
  - (2) by increasing the minimum rates of pay for all other classifications and pay points of Registered Nurses, Enrolled Nurses, Student Enrolled Nurses, Nurse Practitioners and Occupational Health Nurses by maintaining existing relativities as between those classifications and the RN1.1 classification;
  - (3) by increasing minimum rates for Nursing Assistants (“**AINs**”) by 26.5 per cent (such that the rate of pay would be the same as the ANMF seeks for aged-care AINs).<sup>4</sup> That equates to a rate of \$1,258.60 per week for the experienced AIN classification (the holder of a relevant certificate III qualification).
6. The minimum rates of pay for all classifications and pay points of Registered Nurses, Enrolled Nurses, Student Enrolled Nurses, Nurse Practitioners and Occupational Health Nurses would increase by about 35.8 per cent.

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<sup>3</sup> See *Independent Education Union of Australia* [2021] FWCFB 2051 at [561]–[562] where it is recognised that the full *Metals Award* classification structure was incorporated by the *Manufacturing and Associated Industries and Occupations Award 2010* when it was made on 19 December 2008, but that the highest C1 classification was deleted on 30 December 2009 on the basis that degree-qualified professional engineers and scientists previously covered by the classification would now be covered by the *Professional Employees Award 2010*. The C1(a) rate may be extrapolated from those appearing in the *Metals Award* as originally made on 19 December 2008, as adjusted consistently with Annual Wage increases since then. See also Aged Care Stage 1 decision at [944] and Table 18.

<sup>4</sup> In the Aged Care Work Value Case, a 15 per cent increase has already been awarded on an interim basis in aged care: [2023] FWCFB 40 (“**Aged Care Stage 2 decision**”) and the *Nurses Award 2020 determination* PR751294, 3 March 2023. The ANMF seeks, in Stage 3, a further 10 per cent, but calculated on the figure that has already been raised by 15 per cent. That would, if awarded, be an increase of 26.5 per cent on the figure obtaining prior to the interim increase, leaving to one side annual minimum wage increases during the interim period (*i.e.*,  $((x * 1.15) * 1.10 = 1.265x)$ ).

7. The ANMF also applies to vary the Nurses Award to make specific provision for the role of the midwife by amending the name of the Nurses Award as recorded in the title and at cl 1.1 to be the “*Nurses and Midwives Award 2020*”.

**B. Legislative basis**

8. The ANMF makes this application to vary the Nurses Award pursuant to s 158(2), item 1 of the *Fair Work Act 2009* (“**FW Act**”). As a consequence of the Aged Care Work Value Case, the Nurses Award now provides separate minimum rates for “*employees other than aged care employees*”<sup>5</sup> and for “*aged care employees*”.<sup>6</sup> This application is made in respect of all employees covered by the award, other than aged care employees. That is, this application and the Aged Care Work Value Case together address all persons covered by the Nurses Award, but without overlap.
9. The ANMF’s intention is that, assuming the further increases sought by the ANMF in the Aged Care Work Value case were granted, and were the Commission to make the orders sought by this Application, the separate provision for aged care employees would be eliminated (*i.e.*, this application and the Aged Care Work Value Case, together, are intended to bring about an outcome where the rates of pay are the same for aged care, and non-aged-care, employees).<sup>7</sup>
10. The Commission has the power to make a determination to vary modern award wages in respect of employees covered by the Nurses Award, other than aged care employees, pursuant to s 157(2) of the FW Act, provided the Commission is satisfied that:
  - “(a) the variation of modern award minimum wages is justified by work value reasons; and
  - (b) making the determination outside the system of annual wage reviews is necessary to achieve the modern awards objective.”

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<sup>5</sup> Nurses Award clause 15.1 as substituted by PR751294 with effect from 20 June 2023.

<sup>6</sup> Nurses Award clause 15.2 as substituted by PR751294 with effect from 20 June 2023.

<sup>7</sup> If the further increases sought by the ANMF in the Aged Care Work Value Case were not granted, then the ANMF would consider the Commission’s reasons and identify whether, in their light, it changes its position expressed in this paragraph.

11. As identified in s 157(2A), work value reasons are “*reasons justifying the amount*” an employee should be paid for “*doing a particular kind of work,*” being reasons relating to any of the following:
  - “(a) the nature of the work;
  - (b) the level of skill or responsibility involved in doing the work;
  - (c) the conditions under which the work is done.”
12. Section 157(2B) requires the Commission’s consideration of work value reasons to:
  - “(a) be free of assumptions based on gender; and
  - (b) include a consideration of whether historically the work has been undervalued because of assumptions based on gender.”
13. In giving effect to the modern awards objective, in accordance with s 134 of the FW Act, the Commission must ensure “*modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions*”, taking into account the factors prescribed by that provision. In accordance with s 284(2)(b) of the FW Act, the minimum wages objective will also apply to the performance of the Commission’s functions, given that the ANMF seeks a variation to minimum wages under the Nurses Award.<sup>8</sup> The minimum wages objective, as defined in s 284, requires the Commission to “*establish and maintain a safety net of fair minimum wages*” taking into account the factors prescribed by that provision.
14. Section 578(a) of the FW Act provides that the Commission must take into account the objects of the Act when performing functions or exercising powers under the Act. The object identified at s 3 is, “*to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians*” by, *inter alia*,
  - “(a) providing workplace relations laws that are fair to working Australians [and] promote ... gender equality; and
  - (b) ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through ... modern awards.”

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<sup>8</sup> The proposed variation to the title of the Nurses Award does not involve any variation to modern award minimum wages. In accordance with s 157(1), the Commission may make that amendment where satisfied it is necessary to achieve the modern awards objective to do so.



15. Section 578(c) requires the FWC to take into account the need to respect and value the diversity of the work force by helping to prevent and eliminate discrimination on the basis of (*inter alia*) sex and gender identity.
16. Given that the nursing and midwifery workforce (including AINs) is overwhelmingly female, the legislative provisions in regard to eliminating gender-based undervaluation are of real significance in this application.

### ANNEXURE 3: BASIS FOR THE APPLICATION

#### C. Introduction

17. The proposed increases sought by this application, to minimum wages for employees other than aged care employees in the Nurses Award, are justified by work value reasons in two respects:
- (1) *First*, the minimum rates for nurses, midwives<sup>9</sup> and AINs under the Nurses Award were never “*properly fixed*,” and involve historical undervaluation because of assumptions based on gender.
  - (2) *Second*, the nature of the work, the level of skill and responsibility involved in doing the work, and the conditions under which the work is done have changed demonstrably over the past several decades (so as to make the work more valuable), whereas wage rates have not commensurately increased.
18. A variation to the Nurses Award to make specific provision for the role of a midwife is sought in circumstances where the Nurses Award covers:<sup>10</sup>
- “employers who employ a nurse/midwife, principally engaged in nursing/midwifery duties comprehended by the classifications listed in Schedule A—Classification Definitions.”
19. The Schedule A.2 Classification Descriptors also defines “*Nursing Care*” to also include “*care provided by midwives*”.<sup>11</sup>
20. Midwives represent a large and increasing cohort of employees who are not covered by any other modern award. Data published by the Nursing and Midwifery Board of Australia for the quarter 1 July 2023 to 30 September 2023 records 25,420 persons registered as both a midwife and registered nurse, and 7,560 people with midwife-only registration.<sup>12</sup> Properly identifying the role of a midwife in the title to the Nurses Award is necessary to provide clarity in identifying that cohort within the Nurses

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<sup>9</sup> Where specific reference to the Nurses Award covering midwives was only included in the Nurses Award from March 2011 – see Nurses Award Variation AM2011/8 Transcript of Proceedings, Vice President Watson, 1 March 2011.

<sup>10</sup> Nurses Award clause 4.1(b) as inserted by PR507190 with effect from 9 March 2011.

<sup>11</sup> Nurses Award Schedule A.2 as inserted by PR507190 with effect from 9 March 2011.

<sup>12</sup> Nursing and Midwifery Board of Australia Registrant data - Reporting period: 01 July 2023 to 30 September 2023 at p 5.

Award, thereby ensuring the award is simple and easy to understand, and to ensure that the Award properly and accurately describes the workforce to which it applies.

### **C.1 Minimum wage rates not properly fixed**

21. The minimum wage rates for employees in the Nurses Award have not been properly fixed. In the case of aged care employees, proper fixation is in the process of occurring via the Aged Care Work Value Case. For non-aged-care employees, this application seeks such proper fixation.

22. In the Aged Care Work Value Case, the Commission found minimum wage rates in the Nurses Award were not properly fixed.<sup>13</sup> That finding was based upon consideration of the history of wages and classifications in the Nurses Award.<sup>14</sup> That history involves no relevant distinction between the fixation of minimum rates for aged care and non-aged care employees. The finding that minimum wage rates in the Nurses Award have not been properly fixed applies with equal force to “*employees other than aged care employees*” under that award.

23. Although no finding has been made in the Aged Care Work Value Case as to why minimum rates in the Nurses Award have not been properly fixed, the Commission did state the following:<sup>15</sup>

“[W]e accept the expert evidence that as a general proposition work in feminised industries, including care work, has been historically undervalued and that the reason for that undervaluation is likely to be gender based. We also accept that the evidence pertaining to gender undervaluation provides a useful context for the assessment of the work value and skills utilised in feminised industries...”

24. Nurses, midwives, and AINs perform care work in feminised industries. The Gender pay equity research - Stage 1 report, *Gender-based Occupational Segregation: A National Data Profile*, highlights the gendered nature of this work and the industries in which it is performed.<sup>16</sup> That research recognised the industry subdivision of Hospitals

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<sup>13</sup> *Aged Care Award 2010* (2022) 319 IR 127; [2022] FWCFB 200 (“**Stage 1 Decision**”) at [353.1].

<sup>14</sup> *Aged Care Award 2010* [2022] FWCFB 94 at [7.1] and *Background Document 2 – Award Histories 9* June 2022, published in the Aged Care Work Value Case (“**Background Document 2**”) at [38] to [78].

<sup>15</sup> *Stage 1 Decision* at [356].

<sup>16</sup> Cortis, N., Naidoo, Y., Wong, M. and Bradbury, B. (2023). *Gender-based Occupational Segregation: A National Data Profile*. Sydney: UNSW Social Policy Research Centre (“**Gender pay Equity - Stage 1 Research Report**”).

(except Psychiatric Hospitals) to be feminised (77.4 per cent female).<sup>17</sup> Highly feminised hospital occupations were also found to include Midwives (98.9 per cent female), Enrolled and Mothercraft Nurses (89.9 per cent female), Registered Nurses (87.9 per cent female), and Nurse Managers (86.6 per cent female).<sup>18</sup> In the industry subdivision of Medical and Other Health Care Services, three quarters of employees were recognised to be women, with 95.6 per cent Registered Nurses in General Practice Medical Services being female.<sup>19</sup>

## **C.2 The need to identify skills and fairly remunerate same**

25. Historically, the work of nurses, midwives and AINs has been perceived as inherently feminine in nature. The true nature of the work has been concealed by oversimplification and grossly undervalued as a result. While the focus to date, via the Aged Care Work Value Case, has been on varying the Nurses Award in respect of nurses and AINs employed in aged care,<sup>20</sup> a similarly-strong claim may (and will, in this application) be made in respect of non-aged-care AINs, Enrolled Nurses, Registered Nurses, Nurse Practitioners and Occupational Health Nurses.
26. Nurses, midwives and AINs perform a critical role in the healthcare system. Nurses and midwives are the largest group of registered health professionals in Australia, comprising over 50 per cent of all registered health professionals.<sup>21</sup> Nursing and midwifery care covers all phases of life: from fertility treatment to conception, to birth, to acute illness and injury, to management of chronic health conditions, to rehabilitation, right through to end of life care. Nurses and midwives are at the forefront of the system's ability to meet demand, by identifying and managing acuity and transitioning people between different models of care.
27. Nursing and midwifery work involves a high degree of skill and responsibility. The work is broad and varied, as is the cohort and needs of the communities nurses, midwives, and AINs serve. Advanced clinical (*i.e.*, technical) and interpersonal skills

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<sup>17</sup> Gender pay Equity - Stage 1 Research Report, Part 6, p 30.

<sup>18</sup> Gender pay Equity - Stage 1 Research Report, Table 5.2, p 29.

<sup>19</sup> Gender pay Equity - Stage 1 Research Report, Table 5.2, p 29.

<sup>20</sup> Following recommendation 84 of the Royal Commission into Aged Care Quality and Safety, Final Report.

<sup>21</sup> Australian Government, Australian Institute of Health and Welfare, Health workforce data as at 7 July 2022 - <https://www.aihw.gov.au/reports/workforce/health-workforce#overview>

are employed on a daily basis in meeting the needs of the “*the whole person*” seeking healthcare, engaging with their loved ones and collaborating effectively with other professionals and providers.

28. Nursing encompasses autonomous and collaborative care of individuals of all ages, families, groups and communities, sick or well, and in all settings. Nursing includes the promotion of health, prevention of illness, and the care of ill, disabled and dying people. Advocacy, promotion of a safe environment, research, participation in shaping health policy in patient care and in health systems of management, and education are also key nursing roles.<sup>22</sup>
29. Nurses and midwives are trusted professionals subject to rigorous regulatory requirements governing their practice and their suitability to practise.
30. Nursing care has been overwhelming performed by women. These women have been tirelessly serving the community in an economic and industrial relations system that has failed to recognise their skill and the complexity of their task. In the past, nurses were seen as mere assistants to (stereotypically male) doctors. While that erroneous view may be passing from contemporary currency, a situation to which it has contributed—wages that fail to reflect the true value of the work performed—remains. The fundamental nature and importance of nursing work, the skill it involves, and its impact on the overall health and wellbeing of the community, have been overlooked and underappreciated—and undervalued.
31. The current rates of pay for employees in the Nurses Award fail to reflect a proper work value assessment that encompasses the full spectrum of skills brought to bear in the work of nurses, midwives, and AINs. Like their aged care colleagues,<sup>23</sup> their work involves “*invisible skills*”—historically overlooked and undervalued—that require identification and recognition in order that work value may properly also be recognised. These workers have been underpaid and undervalued as a result, in part, of a system premised on traditional gender roles and unpaid care work.

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<sup>22</sup> International Council of Nursing “Definition of Nursing”, 2002.  
<sup>23</sup> Stage 1 decision at [759]–[784] and [856].

32. The Full Bench in the *Stage 1 decision* of the Aged Care Work Value Case carefully considered the expert evidence in respect of historical undervaluation and accepted the following propositions at [42] (citations omitted):

- “1. The valuation of work is influenced by social expectations and gendered assumptions about the role of women as workers. In turn these social practices influence institutional and organisational practices.
2. Undervaluation occurs when work value is assessed with gender-biased assumptions. The reasons for gender-based undervaluation in Australia include the continuation of occupational segregation, the weaknesses in job and work valuation methods and their implementation, and social norms, gender stereotypes and historical legacies.
3. Gender-based undervaluation in the employment context occurs when work value is assessed with gender-biased assumptions which means the skill level of occupations, work or tasks is influenced by subjective notions about gender and gender roles in society. Skills of the job occupant are discounted or overlooked because of gender.
4. Gender-based undervaluation of work in Australia arises from social norms and cultural assumptions that impact the assessment of work value. These assumptions are impacted by women’s role as parents and carers and undertaking the majority of primary unpaid caring responsibilities. The disproportionate engagement by women in unpaid labour contributes to the invisibility and the under recognition of skills described as creative, nurturing, facilitating or caring skills in paid labour. ...”

33. These findings will also be sought in the current application. There is a real need to vary the minimum rates of pay for employees other than aged care employees in the Nurses Award in order to “*promote gender equality*” and recognise that, historically, the work has been undervalued because of assumptions based on gender.

### **C.3 The need to recognise a change in work value**

34. No proper work value assessment for minimum rates of pay in the Nurses Award occurred during the award modernisation process.<sup>24</sup>

35. Minimum rates for employees, other than aged care employees, in the Nurses Award reflect rates derived from pre-modern awards. For nurses (and midwives) outside aged care, minimum rates reflect those fixed by the Federal Commission in 1998 in the *Paid*

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<sup>24</sup> See Aged Care Work Value Case, Background Document 2 at [38]–[78]. See also Statement dated 9 June 2022 [2022] FWCFB 94, and *Re Aged Care Award 2010* (2022) 319 IR 127 at 221 [353]–[354].

*Rates Review Decision*<sup>25</sup> as amended annually via safety net adjustments and Australian Fair Pay Commission Adjustments. However, the 1998 *Paid Rates Review Decision* did not involve any specific work value consideration. The most recent relevant assessment of work value occurred in 1990<sup>26</sup> and 1991<sup>27</sup> for registered nurses and for in 1992 for enrolled nurses.<sup>28</sup> Minimum rates for non-aged care AINs reflect those fixed by the Federal Commission in 2005 as amended annually.<sup>29</sup> The minimum rates for employees other than aged care employees in the Nurses Award have not been adjusted outside the system of annual wage review since the Award was created.

36. There have been fundamental changes to work value since the 1990s (with respect to nurses and midwives) and since 2005 (with respect to AINs). The value of the work performed has increased substantially. The work of nurses and midwives outside of aged care is wide and varied, and often dependent on the setting in which care is delivered. All this will be explored in evidence. However, some common features of change are apparent.
37. *First*, the nature of the work has changed on account of a fundamental cultural shift in the way in which care is delivered. The hierarchical relationship of the health professional “*treating*” the “*patient*” is no longer. In contemporary nursing and midwifery, “*person-centred*” care is a daily commitment and expectation of competent practice. Person-centred care (or “*people-centred care*”) treats each person respectfully as an individual human being, and not just a condition to be treated. Care is delivered collaboratively with the person receiving care, and health professionals work inclusively with family, friends, and community supports to share decision-making and plan care.
38. Delivering person-centred care requires ever-greater skills in managing complex interpersonal relationships, coordinating multiple people, and collaborating across the healthcare professions and support services. It takes time to seek out and understand what is important to the person receiving care: their preferences, needs and values.

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<sup>25</sup> *Nurses (ANF – South Australian Private Sector) Award 1989*, 20 October 1998, Print Q7661.

<sup>26</sup> *Registered Nurses National Rates Case Levels 1 - 3*, 21 August 1990, Print J4011.

<sup>27</sup> *Registered Nurses National Rates Case Levels 4 and 5*, 17 July 1991, Print J8402.

<sup>28</sup> EN National Rates Case, 10 July 1992, Print K3662.

<sup>29</sup> *Nurses Private Employment (ACT) Award 2002*, 21 November 2005 PR965496.

Nurses, midwives and AINs understand that building rapport is critical in establishing trust and confidence in the delivery of care. Person-centred care is widely recognised as the foundation to all safe, high-quality healthcare.<sup>30</sup> It underpins all settings in which nursing and midwifery care is delivered.

39. Second, the needs of people requiring healthcare have changed significantly:

- (1) People are presenting with greater acuity and greater complexity in their care needs. As a population, we are older, sicker, and more affected by co-morbidities than before. In 2020–21, nearly half of Australians (47 per cent, or 11.6 million people) were estimated to have one chronic condition. An estimated 20 per cent of people (4.9 million) had two or more conditions in 2017–18.<sup>31</sup> This change in the needs of people seeking care necessarily impacts the nature of the work in providing appropriate care, and the level of skill and responsibility involved in monitoring, assessing and reacting to patient care needs. The stakes are higher than they were, and the work is more complex.
- (2) The population has changed significantly, with associated changes to determinants of health. Nurses and midwives have a significant and growing role in combating social inequities in order to facilitate quality healthcare for all community members. Culturally safe care—that meets the needs of Aboriginal and Torres Strait Islander people, culturally and linguistically diverse people, and members of the LGBTQIA+ community—is an expectation of competent practice. The many varied cultural and socio-demographic factors—often referred to as determinants of health—combine to impact the health of individuals and populations. The work of the nurse, midwife and AIN in understanding and navigating these factors is far greater than it once was. Their work in delivering high-quality healthcare is necessarily more complex, and more nuanced, as a result.

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<sup>30</sup> Australian Commission on Safety and Quality in Health Care, Person-centred care - <https://www.safetyandquality.gov.au/our-work/partnering-consumers/person-centred-care>, as at 6 February 2024.

<sup>31</sup> Australian Institute of Health and Welfare (2022). *Australia's health 2022: in brief*, catalogue number AUS 241. Australia's health series number 18, AIHW, Australian Government, p 28.



- (3) People receiving healthcare have greater access to information and are more informed (or mis-informed) about healthcare than before. This has placed a greater educative burden on nurses and midwives, and necessitates new skills in combating misinformation and engaging with patients.

40. Third, the level of health care and intervention has increased exponentially with associated changes in the delivery of nursing and midwifery care:

- (1) People who are unwell and receiving care are living longer. This affects the number of co-morbidities they have and the complexities of their care. There is far greater work in managing chronic illness. Nurses are managing long-term therapeutic relationships, monitoring people in their care and continually adjusting to their changing needs.
- (2) Developments in health care have necessitated ever-increasing levels of upskilling for nurses and midwives. These workers have to be up-to-date with advances in healthcare services and technology, consequently scope of practice for nurses and midwives is continuously evolving and expanding.
- (3) With advances in treatment (e.g., less invasive surgical care) and greater efficiencies across the healthcare system, come flow-on effects that greatly increase the work of nurses and midwives. There are far greater levels of admission, discharge, and re-admission with more people coming through the system than ever before. There is significant work for nurses, midwives and AINs in establishing care plans and transitioning care from an acute setting to a primary health or community health setting.

41. Fourth, nurses and midwives have a much greater level of responsibility in managing persons receiving care. The nurse or midwife is the primary professional responsible for monitoring patients and collaborating with other health professionals. There is more communication about care of the person than ever before. Similarly, and by extension, the responsibility to keep correct and comprehensive notes—to effectively share care and document the impact of different interventions—is ever present.

42. Fifth, medical and nursing care is being delivered in new and varied ways that rely, fundamentally, on nurses and midwives. People are receiving treatment and care across

a broader range of settings, including but not limited to an increasing number of home-based settings. Nurses, midwives, and AINs are at the forefront of delivering these new forms of care and are, in the process, alleviating pressure on the acute or primary healthcare system.

43. The nature of nursing and midwifery work has necessarily changed as a result. Nursing and midwifery care is being delivered in increasingly autonomous settings. In a healthcare system struggling to keep up with population increase and acuity, people with more and more complex needs are being cared for, primarily and on a regular basis, by nurses and midwives. These workers have upskilled significantly in order to meet the responsibilities of delivering care in these settings.
  44. Sixth, nursing care has become increasingly specialised—necessitating greater levels of training and education. The nurse has always been a “*generalist*,” equipped to provide healthcare to whoever needs it. But these days, many nurses and midwives—faced with the demands of their role—are electing to specialise. Nurse practitioners, in particular, have developed highly-specialised skills and now practice with ever-greater levels of specificity and responsibility. While the evolution of specialist skills in nurses and midwives has played a critical role in meeting public demand and alleviating pressures within the healthcare system, the value of this work has not been properly recognised in award minimum wages.
  45. Seventh, nurses and midwives, as trusted professionals, are subject to increasing regulatory requirements governing their practice.
  46. These and other factors will demonstrate a change in work value having regard to “*the nature of the work, the level of skill or responsibility involved in doing the work [and] the conditions under which the work is done.*”
- D. Making the determination outside the system of annual wage reviews is necessary to achieve the modern award objective**
47. This application is made in the context of important work in regard to gender pay equity being conducted for the purpose of the Annual Wage Review 2023–24. Stage 1 of the Expert Panel’s research program has concluded, with publication of the Gender pay Equity - Stage 1 Research Report, as mentioned above.

48. Stage 2 of the research program is underway. The ANMF understands that this work will explore the history of wage fixing and work value assessments in each of the twelve Awards the focus of the Expert Panel’s work. Parties will be able to make submissions about it and the Stage 1 Report as part of the Annual Wage Review 2023–24 process.<sup>32</sup>
49. However, it is understood that the scope of the Annual Wage Review process will not extend to consideration of the particular “*invisible skills*” exercised by nurses, midwives, and AINs in classifications other than aged care employees under the Nurses Award. Nor is it understood that the Annual Wage Review process will consider changes to the work value of those employees. As was emphasised by the President’s statement in the Annual Wage Review, the scope of that review does not constrain interested parties from separately advancing proposals for changes to modern awards.<sup>33</sup>
50. Accordingly, the ANMF envisages that this application will supplement, but also draw upon, the work of the Panel by involving specific evidence of the invisible skills exercised by nurses, midwives and AINs. It will address changes in work value arising from the changes to work performed by those employees, including the skill and responsibilities involved in the delivery of safe, competent nursing and midwifery practice. It will involve a proper assessment of the work value reasons justifying the amount that nurses, midwives, and AINs should be paid.
51. For the reasons articulated above, the Nurses Award does not presently provide a safety net of fair or relevant minimum wages. A variation of the rates of pay outside the system of annual wage reviews is necessary to achieve the modern awards objective. Existing minimum rates are not fair or relevant where they fail to reflect the proper value of the work having regard to work value reasons.

**E. The minimum wages objective**

52. For similar reasons, an increase in the minimum wages in the Nurses Award would also provide a safety net of fair minimum wages, and give effect to the minimum wages objective.

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<sup>32</sup> President’s statement *Gender pay equity research — Stage 2 research to be conducted*, Justice Hatcher, President Sydney, 5 December 2023 at [6].

<sup>33</sup> President’s statement *Annual Wage Review 2023–24*, Justice Hatcher, President, Sydney, 2 February 2024 [2024] FWC 278 at [6] and [7].

**F. Conclusion**

53. That variations described above to the *Nurses Award* are:

- (1) “*justified by work value reasons*”—s 157(2)(a) of the FW Act—having regard to the “*nature of the work, the level of skill of responsibility involved in doing the work and the conditions under which the work is done*”, and with a view to ensuring that the award rates are set free of gendered historical undervaluation—s 157(2A) and (2B) of the FW Act;
- (2) “*necessary to achieve the modern awards objective*”, including but not limited to “*eliminating gender based undervaluation of work*”—ss 157(2)(b) and 134(ab) of the FW Act; and
- (3) part of the Commission’s task to “*maintain a safety net of fair minimum wages*” in order to “*achieve gender equality*”—s 284(a)(a) of the FW Act.

**FAIR WORK COMMISSION**

AM2021/63

**THE AUSTRALIAN NURSING AND MIDWIFERY FEDERATION**

Applicant

**APPLICATION UNDER SECTION 157 OF THE *FAIR WORK ACT 2009* (CTH) TO  
AMEND THE *AGED CARE AWARD 2010* AND *NURSES AWARD 2020***

First Matter

AM2020/99

**HEALTH SERVICES UNION**

Applicant

**APPLICATION UNDER SECTION 157 OF THE *FAIR WORK ACT 2009* (CTH) TO  
AMEND THE *AGED CARE AWARD 2010***

Second Matter

AM2021/65

**HEALTH SERVICES UNION**

Applicant

**APPLICATION UNDER SECTION 157 OF THE *FAIR WORK ACT 2009* (CTH) TO  
AMEND THE *SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES  
INDUSTRY AWARD 2010***

Third Matter

**AUSTRALIAN NURSING AND MIDWIFERY FEDERATION  
SUBMISSIONS ON “*MATTERS RAISED IN THE STAGE THREE DECISION [2024]  
FWCFB 150*”**

**A. Introduction**

1. These submissions respond to Directions [3(a)]–[3(c)] made by Hatcher J on 04 April 2024, in proceeding AM2021/63 (being the application by the Australian Nursing and Midwifery Federation (“ANMF”) to vary the *Nurses Award 2020*), and to the Panel’s invitation to comment on its draft determinations (see *Aged Care Award 2010* [2024] FWCFB 150 (“*Stage 3 Decision*”) at [279]).

**A.1 The issues and the ANMF’s headline submission in relation to each**

2. There are *seven* issues about which the ANMF makes submissions.
3. *First*, which of the three-year degree Registered Nurse (“RN”) classification (level 1 pay point 1) and/or the four-year degree RN classification would align with the C1(a) classification in the C10 Metals Framework (see *Stage 3 Decision* at [204]), and therefore be set at \$1,470.80. The ANMF submits that both of the three-year and the four-year degree classifications would be so aligned. This leaves the minimum entry rate for a four-year degree aged care RN as having little or no work to do, so the Panel would omit this classification. This is addressed in Part B below.
4. The ANMF has been authorised by the Joint Employers to say that (without prejudice to any other matter) this *first* proposition is a joint position as between the ANMF and the Joint Employers.
5. *Second*, which Enrolled Nurse (“EN”) classification would align with the new Level 6 – Team Leader direct care employee classification in the *Aged Care Award 2010* (*Stage 3 Decision* at [205]), and therefore be set at \$1,370.80. The ANMF submits that EN pay point 1 would be so aligned. This is addressed in Part C below.
6. The ANMF has been authorised by the Joint Employers to say that (without prejudice to any other matter) this *second* proposition is a joint position as between the ANMF and the Joint Employers. The ANMF and Joint Employers further are agreed that it is desirable that one or other of the *Aged Care Award* or the *Nurses Award* provide that supervision of care workers may be part of the role of an EN at any pay point. Consideration is still being given to whether any further words are needed in either award in this connection.
7. *Third*, what would be the increments and relativities within and between the RN and EN classifications, including between the RN classifications for three-year degrees and

four-year degrees (see *Stage 3 Decision* at [207(1)]). The ANMF's submission, which in part follows on from the first two points above, is as follows:

- (1) Both RN level 1 pay point 1, and the four-year degree RN classification, would be aligned with the figure stated in *Stage 3 Decision* at [204]—\$1,470.80. The four-year classification would be omitted. All other RN and Nurse Practitioner classifications, including the Master's degree classification, would retain their existing relativity to the RN level 1 pay point 1 classification.
- (2) EN pay point 1 would be aligned with the figure stated in *Stage 3 Decision* at [205]—\$1,370.80. All EN classifications would retain their existing relativity to the EN pay point 1 classification.

This is addressed in Part D below.

8. **Fourth**, the ANMF makes submissions concerning the drafting mechanism for transmitting AINs from the *Nurses Award* to the *Aged Care Award*, in relation to causing AINs to retain their additional week's annual leave in comparison with the *Aged Care Award*, and enabling effective access to the *Aged Care Award* classification structure. This is addressed in Part E below.
9. **Fifth**, provisions would be inserted into the *Nurses Award* so as to ensure that home care AINs do not lose their interim increase and indeed would receive increases to their minimum rates consistently with the Panel's finding in the *Stage 3 Decision*. As currently drafted, the draft determination would result in such AINs losing their interim increase, which the ANMF imagines was not intended. This is addressed in Part F below.
10. **Sixth**, there would be a separate "standard rate" for direct care employees under the *Aged Care Award*, as distinct from non-direct care employees. Similarly, there would be a separate "standard rate" under the *Nurses Award* for those who are, as distinct from those who are not, aged care employees. This would have the effect that entitlements would be calculated by reference to the different base rates applicable to the different groups of employee. This is addressed in Part G below.
11. **Seventh**, the *Aged Care Award* classification descriptors identified by the Panel for "aged care employees – direct care" contain descriptions at level 5 and level 6 based upon qualifications "obtained ... as a requirement for the performance of their duties

*by the employer.*” This language departs from that the descriptors for level 3 and level 4 which identify an employee “*who has obtained*” the relevant qualification. One reading of classifications 5–6 as currently framed is that entry to classification levels 5 and 6 is limited to employees who obtain the relevant qualification by reason of a specific requirement of their employer. It is not clear whether that was intended, and it would be undesirable. For this reason, the ANMF proposes an amendment to the drafting of these classification descriptors as identified in the *Aged Care Award* draft determination.

## **A.2 The ANMF’s material filed together herewith**

12. Herewith the ANMF files several documents intended to make concrete the above propositions. These are:
  - (1) A draft determination for each of the *Aged Care Award* and the *Nurses Award*;
  - (2) A marked-up award for each of the *Aged Care Award* and the *Nurses Award*. The ANMF has adopted the approach of marking up the Commission’s marked-up award (rather than marking up a clean award). So, each award contains two colours of mark-up: one being the Commission’s existing mark-up, and the other being the ANMF’s proposal.
  - (3) An Excel spreadsheet (filed in .xlsx format) showing the calculations feeding into the various relativities and rates of pay that were used to populate the rates in the *Nurses Award*.
13. The ANMF also relies on the following additional evidence:
  - (1) a further statement of Julianne Bryce (ANMF Senior Federal Professional Officer), dated 26 April 2024;
  - (2) a statement of Tanya Vogt (ANMAC Chief Executive Officer), dated 23 April 2024;
  - (3) a further statement of Heila Brooks (Care Manager, St Catherine’s Hostel), dated 22 April 2024.



**B. First issue: the three-year Bachelor of Nursing qualification for an RN should be benchmarked to C1(a) in the C10 Metals Framework**

14. The *Stage 3 Decision* at [204] says that the proper application of the C10 Metals Framework Alignment Approach, using a four-year degree qualified RN in aged care under the *Nurses Award* as a key classification, would result in this rate being set at \$1,470.80 per week. This rate was found to be:
- (1) justified by the work value reasons identified in the *Stage 1 Decision*<sup>1</sup> and in the *Stage 3 Decision*; and
  - (2) a rate which could confidently be regarded as free from gender assumptions since it approximately equates to the rate for a four-year degree qualified social and community service employee under the ERO.
15. The ANMF’s position is that the minimum entry rates for RNs both three- and four-year degrees would be aligned. The proper application of the C10 Metals Framework Alignment Approach would then involve aligning RN Level 1 pay point 1 (and the four-year degree classification) with Level C1(a) of the Metals Framework. Practically, this involves using a three-year degree qualified RN (RN Level 1 pay point 1) as a key classification, rather than the four-year degree qualified RN.
16. This approach is consistent with the ANMF’s submissions made in earlier stages.<sup>2</sup> It is now the joint position of the ANMF and Joint Employers that (without prejudice to any other matter) the three-year degree qualified RN would be treated the same as the four-year degree qualified nurse. As such, on commencement, all RNs with a Bachelor of Nursing would receive the same minimum award rate of \$1470.80.
17. For the reasons set out below, the work value reasons justifying the amount that RNs should be paid do not differ by reason of the length of the undergraduate degree completed. An RN who has completed a Bachelor of Nursing and is registered by the Nursing and Midwifery Board of Australia (“**NMBA**”) is fully qualified and capable of exercising the skills and discharging the responsibilities of the profession in an unsupervised and autonomous way. That is so whether the Bachelor of Nursing

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<sup>1</sup> [2022] FWCFB 200; (2022) 319 IR 12.

<sup>2</sup> Australian Nursing and Midwifery Submissions on “Classification and Allowance Issues”, dated 1 November 2023 at Part A.1.2. Reply Submissions of the Australian Nursing and Midwifery Federation, dated 21 April 2022 at [57] – [61]; Closing Submissions in Reply of the Australian Nursing and Midwifery Federation, dated 17 August 2022 at [142] – [148].

completed was a three-year or four-year degree (in particular where, as explained below, it is not entirely clear what is meant by a “four year” degree in this context, and in any case nearly every RN has what is unequivocally a three-year degree).

### **B.1 RN Level 1.1 and C1(a) minimum “degree” requirements**

18. The *Metal Industry Award 1984* (“**Metals Award**”) identified the minimum training requirement for the C1 classification of “*Professional Engineer Professional Scientist*” to be a “*Degree*”. The translation of relativities under the *Metals Award* to the modern context was addressed in some detail by the Full Bench in the *Teachers Decision* at [561], [562] and [654].<sup>3</sup>
19. The alignment of the RN level 1 pay point 1 classification under the *Nurses Award* with C1(a) was considered by the Full Bench in the *Stage 1 Decision* at [944]. There, the Full Bench said as follows:<sup>4</sup>

“... The Joint Employers accept that the role of RN corresponds to AQF Level 7 and aligns with level C1 in the Metals Framework. Both levels—RN Level 1 in the Nurses Award and C1(a) in the Manufacturing Award—have a degree as a minimum qualification....”
20. The *Stage 1 Decision* went on to incorporate Table 18 titled “*Alignment of existing Nurses Award classification structure with the Metals Framework rate C1(a)*”. That table identified rates and relativities for various nursing classifications under the *Nurses Award* by benchmarking the RN level 1 pay point 1 classification with C1(a) of the Metals Framework, and retaining existing relativities.
21. The title “*Registered Nurse*” is a protected title under the *Health Practitioner Regulation National Law Act 2009* (“**National Law**”).<sup>5</sup> To become an RN at any level under the *Nurses Award*, a person must have successfully completed a program of study accredited by the Australian Nursing and Midwifery Accreditation Council (“**ANMAC**”) and approved by the NMBA.<sup>6</sup>

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<sup>3</sup> *Application by Independent Education Union of Australia* [2021] FWCFB 2051.

<sup>4</sup> *Stage 1 Decision* at [943] – [944].

<sup>5</sup> ANMF 2, *Health Practitioner Regulation National Law Act 2009* (Qld) sch Health Practitioner Regulation National Law.

<sup>6</sup> Statement of Julianne Bryce, dated 29 October 2021 at [21]; Statement of Tanya Vogt, dated 23 April 2024 at [6].

22. ANMAC has published the Registered Nurse Accreditation Standards which are used to evaluate education programs. The Registered Nurse Accreditation Standards prescribe that the program of study must be delivered at an AQF Level 7 or above for the award of a Bachelor Degree, as a minimum.<sup>7</sup> This minimum standard involves a Bachelor of Nursing degree which must be delivered by an education provider registered with the Tertiary Education Quality and Standards Agency as a university or higher education provider.<sup>8</sup> The Registered Nurse Accreditation Standards do not prescribe the length of the program to be delivered. In practice, the overwhelming majority of programs accredited by ANMAC are delivered over three years.<sup>9</sup>
23. Tanya Vogt is the Chief Executive Officer of ANMAC. Her witness statement dated 23 April 2024 identifies that:
- (1) The Registered Nurse Accreditation Standards do not expressly prescribe the length of the program to be delivered;<sup>10</sup>
  - (2) Of the around 38 university or higher education providers who have programs accredited by ANMAC and approved by the NMBA, 36 offer three-year Bachelor of Nursing Degrees;<sup>11</sup>
  - (3) The ANMAC/NMBA accredited course requirements do not differ from those delivered in the three-year programs;<sup>12</sup>
  - (4) The delivery of a Bachelor of Nursing over four years simply has the effect that the program is less intense;<sup>13</sup>

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<sup>7</sup> Further Statement of Julianne Bryce, dated 01 November 2023, “JB-1”, ANMAC Registered Nurse Accreditation Standards, Standard 3.2 - Standard 3: Program of study.

<sup>8</sup> Further Statement of Julianne Bryce, dated 01 November 2023, “JB-1”, ANMAC Registered Nurse Accreditation Standards, p 4, Preamble. The transfer of RN education from hospital-based training to higher education occurred in Australia commencing in the 1980s. The last intake into hospital-based training for RNs occurred between 1984 (in NSW) and 1991 (in WA); see *Nursing Education in Australian Universities – Report of the national review of nurse education in the higher education sector - 1994 and beyond*, Commonwealth Department of Human Services and Health, Commonwealth of Australia, 1994 at 67 – 72.

<sup>9</sup> Statement of Tanya Vogt dated 23 April 2024 at [8].

<sup>10</sup> Statement of Tanya Vogt dated 23 April 2024 at [8].

<sup>11</sup> Statement of Tanya Vogt dated 23 April 2024 at [9]. See also AHPRA and National Boards Approved Programs of Study – registered nurse (division 1) identified in the Further Statement of Julianne Bryce, dated 26 April 2024 at [10].

<sup>12</sup> Statement of Tanya Vogt dated 23 April 2024 at [10].

<sup>13</sup> Statement of Tanya Vogt dated 23 April 2024 at [10].

- (5) A three-year bachelors level degree can readily be described as the benchmark professional qualification for registration by the NMBA as an RN.<sup>14</sup>
24. Heila Brooks is a Care Manager in a 72-bed residential aged care facility. Her further witness statement addresses the status accorded to RNs with a four-year degree *vis-à-vis* a three-year degree in aged care. Her evidence will be that her facility does not differentiate between three-year and four-year degrees.<sup>15</sup> In her experience the four-year degree entry rate is not applied in the residential aged care sector because:
- (1) The three-year degree prepares an RN for practise in the profession and the delivery of nursing care; and
  - (2) The practice requirements/competencies and scope of practice in accordance with AHPRA do not differentiate between different degree lengths for RNs.
25. The classification of RN, level 1 pay point 1 and the entry classification for a four-year degree require a minimum training requirement of a “*degree*”. That “*degree*” will meet the prescriptions of the Registered Nurse Accreditation Standards and is accredited by the ANMAC and approved by the NMBA, whether it is delivered over three or four years. A degree that involves three years of full-time course work, even if it is delivered at a less intense pace over four years, is still a three-year degree. The concept of a “*four-year degree*,” in this light, can be seen to have no relevance in aged care.

## **B.2 An RN level 1.1 is fully qualified and capable of operating without supervision**

26. The Registered Nurse Accreditation Standards, stipulate, *inter alia*, that:
- (1) the accredited program of study is delivered in Australia to prepare graduates for safe and ethical practice;<sup>16</sup> and
  - (2) the content and subject learning outcomes of an accredited program of study ensure achievement of the NMBA Registered Nurse Standards for Practice (“**RN Standards for Practice**”).<sup>17</sup>

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<sup>14</sup> Statement of Tanya Vogt dated 23 April 2024 at [14].

<sup>15</sup> Statement of Heila Brooks dated 22 April 2024 at [4].

<sup>16</sup> Further Statement of Julianne Bryce, dated 01 November 2023, “JB 1”, ANMAC Registered Nurse Accreditation Standards, p 14, Standard 1.2 - Safety of the public.

<sup>17</sup> Further Statement of Julianne Bryce, dated 01 November 2023, “JB-1”, ANMAC Registered Nurse Accreditation Standards, p 16, Standard 3.5(a) - Program of study.

27. The Statement of Tanya Vogt identifies that the current Registered Nurse Accreditation Standards must provide foundational person centred, integrated theoretical and practice-based knowledge of care across the human lifespan and across all body systems and must include a minimum of 800 hours professional experience placement to learning objectives of the program.<sup>18</sup> Ms Vogt will also say that the satisfactory completion of a degree that meets the ANMAC accreditation standards as approved by the NMBA constitutes preparation for nursing practice.
28. All RNs also have an ongoing professional responsibility to meet the RN Standards for Practice,<sup>19</sup> as read and applied in conjunction with the applicable NMBA companion documents (including the Code of conduct for nurses, National framework for the development of decision-making tools for nursing and midwifery practice, Supervision guidelines for nursing and midwifery, and Guidelines for mandatory notifications).<sup>20</sup>
29. In accordance with the RN Standards for Practice, an RN:
- (1) is responsible and accountable for ensuring they are safe and have the capability for practice;<sup>21</sup>
  - (2) accurately conducts comprehensive and systematic assessments;<sup>22</sup>
  - (3) is responsible for the planning and communication of nursing practice;<sup>23</sup>
  - (4) provides and may delegate quality and ethical goal-directed actions;<sup>24</sup> and
  - (5) takes responsibility for the evaluation of practice based on agreed priorities, goals, plans and outcomes and revises practice accordingly.<sup>25</sup>
30. As such, once an RN is fully qualified and has obtained registration with the NMBA they are considered fully registered. An RN level 1 pay point 1 would not be subject to required supervision, unless there is a condition or undertaking on their registration.<sup>26</sup>

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<sup>18</sup> Statement of Tanya Vogt dated 23 April 2024 at [8].

<sup>19</sup> ANMF tender bundle at ANMF 23 (“**RN Standards for Practice**”),.

<sup>20</sup> Further Statement of Julianne Bryce dated 01 November 2023, at [12] and RN Standards for Practice (ANMF 23), p 3.

<sup>21</sup> RN Standards for Practice (ANMF 23), p 4, Standard 3.

<sup>22</sup> RN Standards for Practice (ANMF 23) p 5, Standard 4.

<sup>23</sup> RN Standards for Practice (ANMF 23) 5, Standard 5.

<sup>24</sup> RN Standards for Practice (ANMF 23) p 5, Standard 6.

<sup>25</sup> RN Standards for Practice (ANMF 23) p 5, Standard 7.

<sup>26</sup> Further Statement of Julianne Bryce dated 01 November 2023, at [15]

In this respect, an RN level 1 pay point 1 may be contrasted with a graduate teacher, for whom the skills and responsibilities of the profession are not yet being fully exercised, as recognised by the national registration system requirements.<sup>27</sup>

### **B.3 The separate rate for a four-year RN degree is an anomaly**

31. Clause 15.2(c)(ii) of the *Nurses Award* provides a separate entry classification for an aged care RN with a “4 year degree.” That rate is currently \$1,301.90 per week. This is slightly below the weekly rate for an aged care RN level 1 pay point 3, at \$1,303.60 per week. By reason of a notation to clause 15.2(c)(ii), progression from the entry rates for an aged care RN with a four-year degree will be to aged care RN level 1 pay point 4.
32. This classification and progression structure has evolved as a product of decades of industrial arbitration.<sup>28</sup> In the *Stage 3 Decision*, the Panel recognised that in making the *Nurses Award*, the AIRC Award Modernisation Full Bench replicated the classification structure for ENs and RNs from the *Nurses (ANF – South Australian Private Sector) Award 2003* (“*SA Private Sector Award*”).<sup>29</sup> The *SA Private Sector Award* did not include a classification or minimum wage rate for a four-year degree qualified RN. No such four-year degree qualified RN was contained in other awards identified by the AIRC for the purpose of comparable adult rates.<sup>30</sup> The “*Exemplar Nursing Occupational Award*” filed by the (then) ANF in the award modernisation proceeding<sup>31</sup> provided for a weekly allowance for an RN with a relevant Master’s degree, but no separate classification for an RN with a four-year degree.

### **B.4 Conclusion on the Nursing qualification to be benchmarked to C1(a) in the C10 Metals Framework**

33. The historical basis for distinguishing between minimum rates for registered nurses with a four-year degree is unclear. All RNs with degree qualifications have completed a program of study that meets the prescriptions of the Registered Nurse Accreditation

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<sup>27</sup> Further Statement of Annie Butler dated 01 November 2023, at [88] and [152]; Cf *Teachers Case* at [653].

<sup>28</sup> See ANMF submissions dated 07 March 2023 at [10(2)], statements of Kristen Wischer dated 14 September 2021 and Leigh Svendsen dated 23 April 2022, and Background Document 2 - Award Histories; *Stage 3 Decision* at Part 2.9.

<sup>29</sup> *Stage 3 Decision* at [134].

<sup>30</sup> Federal comparison, [Health & welfare services Part 1 - Wages rates of adults - Federal comparison | Fair Work Commission \(fwc.gov.au\)](#); see in particular - *Nurses (Victorian Health Services) Award 2000*; *Nurses (Northern Territory) Private Sector Award 2002*; *Nurses (Tasmanian Private Sector) Award 2005*.

<sup>31</sup> Australian Nursing Federation Award Modernisation Submission, October 2018.

Standards, is accredited by the ANMAC and approved by the NMBA. An RN with a three-year degree who is registered by the NMBA possesses a “*degree*” qualification as identified in the C1(a) classification. Such an employee is also fully qualified and capable of operating without supervision.

34. As such, the entry level classification for a RN should be benchmarked to C1(a), whether the RN completed a three-year or four-year degree. Therefore, RN level 1 pay point 1 would attract the minimum award rate of \$1,470.80 per week. The classification providing a minimum entry rate for a four-year degree, which has no relevance, would be omitted.

**C. *Second issue: EN pay point 1 should correspond with the Level 6—Team Leader direct-care classification***

35. The *Stage 3 Decision* at [205] reads as follows:

“We also consider, having regard to the work value reasons identified in the Stage 1 decision and this decision, that the rate for an EN in aged care who has responsibility for supervising other PCWs should be set at the same rate which we propose for a Level 6 direct care employee (Team Leader) with supervisory responsibilities, namely \$1370.80 per week.”

36. This paragraph could, it appears to the ANMF, be read in two ways.

37. *First*, it could (and in the ANMF’s submission, would) be read as meaning that, because ENs (in general terms) have or may have as a responsibility supervising PCWs, the base EN rate (*i.e.*, EN pay point 1) should be set at the level of the Level 6 PCW, who also has those responsibilities. Context might suggest that this was the Panel’s intention. In the *Stage 3 Decision* at [192], the Panel said as follows (emphasis added):

“Fifth, we consider that the classification structure should include a supervisory level, contrary to the submissions of the Joint Employers. There is some evidence that non-nursing PCWs may be assigned supervisory functions equivalent to those of the EN.”

38. And, the definition that is proposed for “*aged care employee—direct care*” (see at [193]) refers to “*supervision of a registered nurse or enrolled nurse.*”

39. But, *second*, the paragraph is possibly capable of being read as meaning that only those particular ENs who do, in fact, have responsibility for supervising PCWs should have a rate set at the level of the Level 6 PCW (Team Leader). That is, rather than (as currently exists) a single EN structure which goes from pay point 1 to pay point 5, there would either be:

- (1) two structures—one for ENs who supervise, and one for those who do not;
  - (2) a clause which provides some additional allowance or penalty for ENs who have supervisory duties.
40. The ANMF does not regard this as the better reading of the *Stage 3 Decision*. But in any case, some submissions are directed below to the proposition that the *first* approach—existing EN pay point 1 would be set at the level of the Level 6 PCW—is the preferable approach.
41. It is assumed that the Panel’s reference, at [192] of the *Stage 3 Decision* (see [37] above), was to the evidence of Louanne Ribaldi given on 07 December 2023. That evidence was that ENs were largely engaged in a “*team leader role*” (PN3508), and paid at a “*slightly*” higher rate than team leaders with Cert IVs who were not ENs (PN3521–3522). There was no difference between the supervisory work done by ENs or team leader PCWs (PN3528).
42. Apart from Ms Ribaldi’s evidence concerning ENs and PCWs acting as team leaders, there was ample evidence in Stage 3 and earlier stages concerning ENs generally having supervisory responsibilities. In Stage 3, in addition to Mr Ribaldi, Chris Mamarelis gave evidence on 08 December 2023, who referred to ENs “*play[ing] a role in managing the delivery of care*” (PN4564).<sup>32</sup>
43. The EN witnesses gave evidence concerning supervisory responsibilities. Patricia McLean gave evidence that, in residential care, she supervised AINs and support workers, and in community care she supervised Personal Support Assistants.<sup>33</sup> Wendy Knights referred to her supervision responsibilities becoming more complex.<sup>34</sup> Suzanne Hewson gave evidence that she always worked a morning shift that, “[*she*] *alone was responsible for the 26 residents downstairs,*” and that PCWs reported changes in residents’ statuses to her—from which it would be inferred that she was responsible for supervising the work of care workers.<sup>35</sup>

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<sup>32</sup> The evidence was not all one way—Mr Brockhaus said that ENs at Buckland were not responsible for supervision (PN4411), but would attend as delegated to undertake tasks such as medication administration, non-complex wound dressings, and observations.

<sup>33</sup> Corrected statement of Patricia McLean dated 19 May 2022 at [78]–[79].

<sup>34</sup> Statement of Wendy Knights dated 29 October 2021 at [90].

<sup>35</sup> Statement of Suzanne Hewson dated 29 October 2021 at [16], [17(p)].



44. Paul Gilbert (Assistant Secretary, Victorian Branch, ANMF), himself an EN, similarly gave evidence that ENs had, over time, moved to taking on “*team leader*” roles at ward level.<sup>36</sup> In cross-examination on 03 May 2021, he agreed that that was a supervisory role of PCWs sitting between the PCW and the RN (PN4031–4032).
45. There was evidence to similar effect from other witnesses. Irene McInerney (RN) said that over the previous 15–20 years, ENs had “*taken on more supervisory and clinical responsibility*.”<sup>37</sup> In cross-examination on 10 May 2022, she said that ENs were “*first in line*” to supervise PCWs (*i.e.*, subject to her supervision as RN) (PN11017). Kristy Youd (PCW) gave evidence that the “*nurse in charge*” of her facility was an EN.<sup>38</sup> Marion Jennings (Industrial Officer),<sup>39</sup> and Lisa Bayram (RN),<sup>40</sup> gave similar evidence; Ms Bayram said that ENs were “*responsible for providing leadership for the PC[W]s*.”<sup>41</sup> Andrew Venosta (RN and Industrial Officer) said that ENs were often required to take on the role of supervising PCWs.<sup>42</sup> Professor Charlesworth gave evidence of PCWs being supervised by ENs and RNs.<sup>43</sup>
46. The proposition that ENs had developed a supervisory responsibility in respect of PCWs and a generally more-active supervisory role has been common ground between the ANMF and the Joint Employers for quite some time.<sup>44</sup> By closing submissions on 01 September 2022, the Joint Employers’ submission was as follows (PN15705):
- “I think we’re all agreed that in the residential care setting the enrolled nurse has taken on more of a supervisory role, or a team leader role. I think we were comfortable with that proposition. It’s a position advanced with some force by the ANMF.”
47. For the purpose of this stage of the proceeding, in addition to relying on the foregoing, the ANMF relies on the statement of Heila Brooks. Ms Brooks is the Care Manager at St Catherine’s Hostel in Wangaratta, which is a senior management position akin to a

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<sup>36</sup> Statement of Paul Gilbert dated 29 October 2021 at [27].

<sup>37</sup> Statement of Irene McInerney dated 29 October 2021 at [41].

<sup>38</sup> Transcript of 04 May 2022 at PN5419, 5430.

<sup>39</sup> Transcript of 02 May 2022 at PN2901.

<sup>40</sup> Transcript of 06 May 2022 at PN8072.

<sup>41</sup> Transcript of 06 May 2022 at PN8072, 8085.

<sup>42</sup> Amended Witness statement of Andrew Venosta dated 03 May 2022 at [130].

<sup>43</sup> Transcript of 02 May 2022 at PN2554.

<sup>44</sup> See ANMF submissions dated 17 August 2022 at [88], [91(8)], [100(1)], [100(4)], giving references to the closing submissions of the Joint Employers.

Director of Nursing.<sup>45</sup> Her evidence is that ENs provide guidance and supervision to PCWs,<sup>46</sup> as a “*central role*,”<sup>47</sup> and as a function of the scope of their educational preparation (*i.e.*, even from entry level).<sup>48</sup> This is reflected in applicable Standards for Practice.<sup>49</sup> This is different from PCWs, who unlike ENs do not have as a “*basic expectation*” that they will provide supervision.<sup>50</sup> Even if PCWs are “*team leaders*,” they remain subject the supervision of ENs on duty.<sup>51</sup>

48. So, the overall similarity between EN pay point 1 and Level 6 “*Team Leader*” PCWs is that they may both have as part of their responsibilities supervising PCWs. There are differences as well:

- (1) On the one hand, one might expect a Level 6 PCW to have some previous experience in aged care (though that is not a requirement in order to be classified at level 6), whereas an EN pay point 1 may have no prior experience.
- (2) On the other hand, the EN has a Diploma rather than a Cert IV. And, in addition to supervisory responsibilities, ENs have as part of their roles clinical tasks that PCWs are unable to perform (such as wound care and other clinical matters).<sup>52</sup>

49. The ANMF had sought a wage for EN pay point 1 of \$1,376.50 per week. However, in the light of the Panel’s view expressed at [205] of the *Stage 3 Decision*, and in light of the foregoing matters, the ANMF submits that it would be open to the Panel to set the EN pay point 1 wage at a level that is consistent with Aged care employee—direct care—level 6—Team Leader: *i.e.*, at \$1370.80 per week.

50. As noted at the outset of these submissions, this is a joint position between the ANMF and the Joint Employers (without prejudice to any other matter). They are giving ongoing consideration to whether it is desirable to insert further words into the *Aged*

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<sup>45</sup> Statement of Heila Brooks dated 22 April 2024 at [1].

<sup>46</sup> Statement of Heila Brooks dated 22 April 2024 at [6].

<sup>47</sup> Statement of Heila Brooks dated 22 April 2024 at [7].

<sup>48</sup> Statement of Heila Brooks dated 22 April 2024 at [8].

<sup>49</sup> Statement of Heila Brooks dated 22 April 2024 at [10].

<sup>50</sup> Statement of Heila Brooks dated 22 April 2024 at [9(b)].

<sup>51</sup> Statement of Heila Brooks dated 22 April 2024 at [9(c)].

<sup>52</sup> See, *e.g.*, the Lay Evidence Report dated 20 June 2022 at [96]. See also, again just *e.g.*, evidence of Johannes Brockhaus dated 08 December 2023 at PN4392 and 4411, evidence of Annie Butler dated 07 December 2023 at PN4137–4138, evidence of Robert Bonner dated 06 December 2023 at PN3025. See further submissions of the ANMF dated 17 August 2022 at [102(7)]–[102(9)], submissions of the ANMF dated 22 July 2022 at [105]–[108], [138], [451]–[459].

*Care Award* or the *Nurses Award* to make clearer that ENs may have supervision as part of their duties.

**D. *Third issue: existing relativities should be maintained in the Nurses Award***

**D.1 *The extent of automatic annual increments in the Nurses Award***

51. The Panel at [207] of the *Stage 3 Decision* said that the *Nurses Award* contains a classification description in which each classification allows for automatic annual increments in pay. This observation requires qualification.
52. To begin with, there is (of course) no automatic progression between EN, RN, nurse practitioner, *etc.* Progression there is based on attaining an additional qualification.
53. Turning now to progression within particular kinds of nurse, many such progressions are not automatic. For example, as for RNs, only levels 1, 2, and 3 have progression through pay points. Access to Levels 2 through to 5 is by appointment. Levels 4 and 5 have grades instead of pay point, which are not covered by cl 15.3(a). Appointment to a “*grade*” will depend upon the level of complexity associated with the duties described in the relevant position descriptor where the number of beds in a facility will be a relevant consideration. A RN does not progress through the different grades at level 4 and level 5 by reason of the passage of time.<sup>53</sup>
54. Further, the core of the *Nurses Award* classification structure involves differentiation between classification levels unrelated to the passage of time. In this respect:
  - (1) An EN may progress to become an RN completing an approved degree in nursing and becoming registered as such by the NMBA;
  - (2) An RN may progress to become a Nurse Practitioner by completing a Master’s degree and becoming registered by the NMBA as a Nurse Practitioner; and
  - (3) An RN may progress through the classification levels from level 1 through to level 5 by way of appointment through a selection process, or by reclassification from a lower level when she or he is required to perform the relevant duties of the level on a permanent basis.

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<sup>53</sup> Nurses Award cl A.5.4(c) and cl A.5.5(c).

55. Appointment to the different RN levels is aligned to the roles by which an employee at that level may also be known. Specifically:
- (1) an RN at level 2 may also be known as a “*Clinical nurse*”;<sup>54</sup>
  - (2) an RN at level 3 may also be known as a “*Clinical nurse consultant*”, “*Nurse manager*” or “*Nurse educator*”;<sup>55</sup>
  - (3) an RN at level 4 may also be known as a “*Assistant director of nursing (clinical)/(management)/(education)*”;<sup>56</sup> and
  - (4) an RN at level 5 may also be known as a “*Director of nursing*”.<sup>57</sup>
56. By way of example, an Assistant director of nursing will not progress to become a Director of nursing by reason of the passage of time. Rather, a Director of nursing will have been appointed as such and will perform the duties identified at cl A.5.5(d) and will perform duties, including:
- (1) being accountable for the standards of nursing care for the health unit and for coordination of the nursing service of the health unit;<sup>58</sup>
  - (2) providing leadership, direction and management of the nursing division of the health unit in accordance with policies, philosophies, objectives and goals established through consultation with staff and in accordance with the directions of the Board of Directors of the health unit;<sup>59</sup> and
  - (3) managing the budget of the nursing division of the health unit.<sup>60</sup>
57. The extent to which an employee may receive annual increments in pay within a classification level is also limited. Whilst a level 1 RN may progress through 8 pay points, an RN at level 2 and 3 will benefit from a maximum of four pay-point increments. For Nurse Practitioners, there are only two increments.

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<sup>54</sup> Nurses Award cl A.5.2(b).

<sup>55</sup> Nurses Award cl A.5.3(b).

<sup>56</sup> Nurses Award cl A.5.4(b).

<sup>57</sup> Nurses Award cl A.5.5(b).

<sup>58</sup> Nurses Award cl A.5.5(b) first dot-point.

<sup>59</sup> Nurses Award cl A.5.5(b) third dot-point.

<sup>60</sup> Nurses Award cl A.5.5(b) fifth dot-point.

58. The minimum rates for the different levels of RN reflect the increasing work value of higher classifications. In this respect:
- (1) the minimum rate for an RN level 2 (or Clinical nurse) is greater than the highest pay-point for a RN level 1 (RN 1.8);
  - (2) the minimum rate for an RN level 3 (or Clinical nurse consultant) is greater than the highest pay-point for an RN level 2 (RN 2.4); and
  - (3) the minimum rate for an RN level 4 (or Assistant director of nursing) is greater than the highest pay-point for a RN level 3 (RN 3.4).
59. There is some overlap of minimum rates for the different grades for Assistant directors of nursing and Directors of nursing at levels 4 and 5, reflecting the overlapping complexity associated with the duties of those roles.
60. The role of annual increments under the *Nurses Award* stands in stark contrast to the role of annual increments under the *Educational Services (Teachers) Award 2010* (“*EST Award*”) as was considered by the Full Bench in the *Teachers Decision*. The classification structure there under consideration was described at [67] of the *Teachers Decision* as follows:
- “Clause 14 of the EST Award deals with the classification structure in the award. There are 12 classification levels. There are no classification definitions as such since the classifications are based on annual progression...”
61. It was further recognised in the *Teachers Decision* at [68] that, due to changes to qualification requirements, a newly-qualified teacher would commence at the level 3 salary under the *EST Award*.
62. In the *Teachers Decision* at [647] the Full Bench found that that this classification structure under the EST Award was, “*improperly based on years of service rather than the essential elements of qualifications, displayed competence and acquired experience and responsibility*” and “*an anachronism in the context of the current statutory regime for the fixation of minimum rates*”. That finding would not be applied to the *Nurses Award* given the more limited role of annual increments under that award.
63. Further, the classification structure adopted for the *EST Award* in the *Teachers Decision* was described as “*anchored upon the professional career standards established by the [Australian Professional Standards for Teachers (“APST”)] and [...] tied to teacher*

registration (where applicable).”<sup>61</sup> Ultimately, this involved a five-level classification structure based on three different APST levels, “*Graduate teacher*”, “*Proficient teacher*”, and “*Highly Accomplished/ Lead Teacher*.” Two additional levels were established based on three and six years (respectively) of satisfactory service at the Proficient teacher level. Accordingly, the *EST Award* classification structure adopted in the *Teachers Decision* was a hybrid of professional career standards and time-based increments.

64. The classification structure under the *Nurses Award* is anchored in professional career standards by recognising the different classifications associated with ENs, RNs and NPs. The professional standards and registration system overseen by the NMBA under the National Law does not distinguish further within the classifications of ENs, RNs and NPs. However, the *Nurses Award* also recognises the different work value applicable to different levels of RN to which a nurse may be appointed. In addition to this, the *Nurses Award* recognises increasing work value within classifications by providing for some time-based progression.

## **D.2 Historical basis for existing classification structure**

65. As identified at [32] above, the classification structure for nurse under the *Nurses Award* was based *SA Private Sector Award* and evolved as a product of decades of industrial arbitration.
66. Historically, Principle 8 of the *Paid Rates Review Decision*<sup>62</sup> recognised that award classification increments would be retained where they had been included in the award pursuant to the relevant work value principle or where it could be established that the increments were inserted by the Commission on grounds of structural efficiency. That decision involved an assessment of work value for ENs and RNs, including under the *SA Private Sector Award*, in which the Full Bench determined as follows:<sup>63</sup>

“We are also satisfied that the incremental salary levels for nurses and enrolled nurses within the classification structures of the two nursing awards form part of the work value assessment of nurses' rates of pay conducted by Full Benches of the Commission in the development of professional rates for the nursing profession in federal awards. Accordingly, they are not affected by our

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<sup>61</sup> *Teachers Decision* at [653].

<sup>62</sup> Print Q7661, 20 October 1998 per Giudice J, Marsh and MacBean SDP, Smith and Larkin C (Statement of Kristen Wischer dated 14 September 2021, Attachment AH-16).

<sup>63</sup> *Paid Rates Review Decision* (Statement of Kristen Wischer dated 14 September 2021, Attachment AH-16 at page 30 of 41).

decision.”

67. Progression by annual increments, including under the *SA Private Sector Award*, was subsequently endorsed by a further Full Bench in the *South Australian Progression Determination Appeal*,<sup>64</sup> overturning a decision of a single Commissioner to reject a draft order to the effect that:<sup>65</sup>

“A4 Progression for enrolled general nurse and registered nurses levels 1, 2 and 3, shall be by annual increments, having regard to the acquisition and utilisation of skills and knowledge through experience in his or her practice setting(s) over such period. Progression for Registered and Enrolled Nurse shall also be subject to other relevant provisions as currently provided by this award.”

68. The ANMF now proposes a very minor adjustment to the relativities as between EN and RN classifications. That adjustment reflects the proposed minimum rate for an EN level 1 of \$1,376.50 per week as discussed at Part D above. That is, EN pay point 1 would be aligned with the figure stated in *Stage 3 Decision* at [205]—\$1,370.80. All EN classifications would retain their existing relativity to the EN pay point 1 classification. That would involve an adjustment of \$5.70 per week. This does not meaningfully disturb existing relativities.

### **D.3 Greater work value with increased experience**

69. All else being equal, the work of any worker, at any level, in any industry, will become more valuable as she or he gains experience in a role. It is appropriate (or at least not inappropriate) for a modern award, which necessarily is designed to establish a baseline rule (*i.e.*, to deal with the general case), to reflect this idea.
70. The evidence of Associate Professor Anne Junor recognised that the skills exercised by aged care workers will increase with experience. The Spotlight Tool itself was created to identify categories of commonly under-reported skills, and their elements, defined at five levels through which skills are extended or deepened on the basis of life and work experience.<sup>66</sup> Indeed, the definition of “*skill level*” applied by Dr Junor in her report is:

**“Skill level** - One of the five levels in the Spotlight framework, based on work process knowledge that applies and builds on prior qualifications or life and work experience, through stages of learning- and practice-based development

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<sup>64</sup> Print S7503, 28 June 2020 per Ross VP, Polites SDP and Merriman C (Statement of Kristen Wischer dated 14 September 2021, Attachment AH-19).

<sup>65</sup> *South Australian Progression Determination Appeal* at [5].

<sup>66</sup> Junor Report, Annexure 4, p 4.

of proficiency and expertise. (emphasis added)<sup>67</sup>

71. Dr Junor’s definition of “*expertise*” also highlights the interrelationship between “*skill*” and experience, as follows:

“**Expertise** - Level of knowledge/skill acquired through engagement in work tasks of increasing challenge and responsibility, leading to increasing influence in a community of practice. There may be a disconnect between hierarchies of formal authority and expertise. (emphasis added)”

72. In her review of literature on skill invisibility, under-recognition, under-valuation and gender, Dr Junor identifies one source of the under recognition of skill to be the under-recognition of qualifications, of skills acquired through experience, and of skills acquired through structured workplace learning.<sup>68</sup>
73. The Further Statement of Heila Brooks addresses the role of incremental progression under the *Nurses Award*. Ms Brooks is unaware of any objective mechanism which functions, or could function, as an alternative to experience, by which the attainment of increased skill and experience can be recognised.<sup>69</sup>
74. Ms Brooks also identifies that some RNs in aged care do not seek higher classifications (*i.e.*, to progress beyond RN level 1).<sup>70</sup> For other RNs, there may be no opportunity in their work setting for appointment to a higher level because of the staffing profile and arrangements.<sup>71</sup> Each year, these employees complete the professional development requirements for registration.<sup>72</sup> The increased work value arising from these employees’ additional experience and expertise will only be reflected by additional pay point increments. This may be contrasted with the position under the AST classification structure following the *Teachers Decision*, whereby a Proficient Teacher will progress through additional classification levels by the completion of three years and six years of satisfactory teaching service.<sup>73</sup>

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<sup>67</sup> Junor Report, Annexure 9, “Review of literature on skill invisibility, under-recognition, under-valuation and gender”, Glossary,

<sup>68</sup> Junor Report, Annexure 7, “Review of literature on skill invisibility, under-recognition, under-valuation and gender” [47], p 12.

<sup>69</sup> Statement of Heila Brooks dated 22 April 2024 at [13].

<sup>70</sup> Statement of Heila Brooks dated 22 April 2024 at [13].

<sup>71</sup> Statement of Heila Brooks dated 22 April 2024 at [14].

<sup>72</sup> Statement of Heila Brooks dated 22 April 2024 at [15].

<sup>73</sup> EST at Cl 14.1. See also EST cl 14.3(a) where “*satisfactory teaching service*” is defined to mean the maintenance of proficient accreditation/registration as a teacher, where applicable; and compliance with the requirements of the Australian Professional Standards for Teachers.



#### **D.4 Conclusion on the retention of existing relativities in the *Nurses Award***

75. In a perfect world, an award classification structure would reflect increased work value by simple, objectively identified parameters. As identified by the Panel in the *Stage 3 Decision* at [184], classification descriptors are not “*position descriptions*” of the type which might apply to individual employment arrangements. Rather:

“[t]heir purpose is to identify to which categories of employees the minimum pay rates prescribed by the award are payable. They are the means of expressing the legal prescription of the minimum pay obligations of employers and entitlements of employees. Except insofar as it is necessary to serve this purpose, there is no need for classification descriptors to give a total description of the skills, duties and incidents of the jobs to which they apply. Indeed, it is undesirable for this to be attempted. The changing nature of modern work means that a classification descriptor of this nature would rapidly become outdated. Further, the type of comprehensive description contemplated would be excessively lengthy and require complicated judgments to be formed as to how each employee is to be classified and paid, thus constituting an onerous regulatory burden on employers.”

76. The existing classification structure in the *Nurses Award* has evolved reflecting the nature of the profession, by recognising a variety of different objectively-identifiable criteria. These include: (1) different qualifications (*e.g.*, between EN and RN); (2) appointment into different positions (as outlined above); and (3) where these do not apply, but the practitioner has nevertheless gained valuable experience in the role, the passage of an identified period of time.

77. This classification structure, like the current structure under the *EST Award*, reflects a hybrid of professional career standards and time-based increments. It also provides for classifications based upon roles to which an employee might be appointed. By also providing for annual increments, it provides a proper reflection of increasing work value, including the proper recognition of “*invisible*” skills,<sup>74</sup> as will increase with experience acquired through engagement in work tasks.

78. The existing classification structure in the *Nurses Award* also provides an equitable basis to recognise different degrees of professional attainment, skill and responsibility. Annual progressions provide the only recognition of increasing work value for those employees who are unable (due to staffing profile and arrangements) or unwilling to obtain appointment to a higher classification.

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<sup>74</sup> See, *Stage 3 Decision* at [184]

79. RNs also operate across the health care system, in a number of different domains and within diverse settings. The use of annual increments, together with recognising different qualifications and appointment to different positions, provides an equitable basis to recognise and reward work value across this range of domains and settings. Whilst relevantly this proceeding pertains only to RN aged care employees under the *Nurses Award*, the ANMF has filed a further application to increase minimum rates for all classifications under the *Nurses Award* (AM2024/11). That further application identifies an intention to bring about an outcome where the rates of pay are the same for aged care, and non-aged-care, employees.<sup>75</sup> The retention of the existing classification structure would facilitate this occurring.
80. Once the key classification rate has been properly fixed (as discussed at Part B above), the second step under the C10 Metals Framework Alignment Approach involves other rates being set by applying the internal award relativities which have been established, agreed or maintained. Here, the Panel would not depart from that second step in properly setting minimum rates for nursing classifications under the *Nurses Award*, save for the minor adjustment arising from the rate for ENs identified in Part C above.

**E. *Fourth issue: grandparenting entitlements for AINs transferring to the Aged Care Award***

81. In the *Stage 3 Decision* at [191], the Panel said, in the context of deciding that AINs in aged care should be excised from the *Nurses Award*, as follows:

“There are some differences in conditions of employment as between the Nurses Award and the Aged Care Award, but the only difference of major significance is that employees covered by the Nurses Award are, by clause 22.2, entitled to an additional week’s annual leave. We will vary the Aged Care Award to ‘grandparent’ this benefit for any existing employee who is entitled to it.”

82. The ANMF agrees that cl 28.3 broadly achieves this objective in relation to the additional week’s annual leave, though proposes a minor drafting amendment which might clarify the clause’s intent.

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<sup>75</sup> Form F46 – Application to make, vary or revoke a modern award, application by the Australian Nursing and Midwifery Federation dated 9 February 2024 (AM2024/11), Annexure 1 at [9].

83. However, the clause which provides for the transitioning of AINs from the *Nurses Award* to the *Aged Care Award* is susceptible to misinterpretation. Cl I.2 in Sch I provides as follows:

“I.2 Translation arrangements for the Nurses Award 2020

An employee who was covered by the Nurses Award 2020 on XX MONTH 20XX [day before changes take effect] and who became covered by this award as a result of PRXXXXXX is classified as follows:

Previous classification	Translated classification
First year if less than 3 months' work experience in the industry	Aged care employee—direct care—level 1
First year if 3 months' or more work experience in the industry Second year Third year	Aged care employee—direct care—level 2
Experienced (the holder of a relevant Certificate III qualification)	Aged care employee—direct care—level 3

84. The difficulty is that the clause might be read as suggesting that the classification structure for people to whom it applies reaches its zenith at level 3. It is preferable to make clear that if, for example, a person obtains 4 years' post-qualification experience, or obtains a relevant Cert IV, that person is thereafter classified at level 4 or level 5 respectively. That could be achieved by modifying the drafting of cl I.2 as follows:

“I.2 Translation arrangements for the Nurses Award 2020

**(a)** Subject to clause I.2(b), an employee who was covered by the Nurses Award 2020 on XX MONTH 20XX [day before changes take effect] and who became covered by this award as a result of PRXXXXXX is classified as follows:

[retain table as in draft determination]

**(b)** For the avoidance of doubt, if an employee described in clause I.2(a) falls within a description in clauses B.2.4–B.2.6 (Aged care employee—direct care—level 4—Senior through to Aged care employee—direct care—level 6—Team Leader), the employee is classified in accordance with whichever of clauses B.2.4–B.2.6 is applicable, rather than in accordance with the table in clause I.2(b).

85. This ensures that, as with their PCW colleagues, AINs formerly classified under the *Nurses Award* will have the ability to access the career progression structure, above the Certificate III level, in the *Aged Care Award*.

**F. *Fifth issue: drafting is required to ensure that home-care AINs retain their interim increase***

86. Currently, AINs working in home care are covered by the *Nurses Award*. They are caught by the definition of “aged care employee” in cl 2 of the *Nurses Award* on the basis that they are “employee[s] engaged in the provision of ... services for an aged person in a private residence.”
87. The Full Bench has indicated in the *Stage 3 Decision* that it intends to remove aged-care AINs from the *Nurses Award* and insert them into the *Aged Care Award*. To effect that removal, the Full Bench proposes:
- (1) inserting a new cl 4.4 (providing that the *Nurses Award* does not cover employees working as AINs as defined in cl A.1 in the aged care industry);
  - (2) removing Part B.2 of Schedule B, which provided the rates of pay for AINs working in the aged care industry.
88. This approach has the intended effect for AINs working in residential aged care. But it does not work for home care AINs. That is because “aged care industry” is undefined in the *Nurses Award*, but in the *Aged Care Award* it is defined (in cl 3) so as only to include residential aged care (not home care). Accordingly;
- (1) home care AINs will not be removed from the *Nurses Award* (because they do not work in the “aged care industry” as defined in the *Aged Care Award*);
  - (2) but, because the rates set out in Part B 2 of the *Nurses Award* (which include the interim increase) will be removed, home care AINs will revert to the rates set out in Part B.1 (which, of course, have not been increased).
89. The result is that home care AINs will lose the fifteen per cent increase that they previously gained, based on work value reasons, in earlier stages of these proceedings, and will not gain the benefit of the work value findings made in Stage 3.
90. In short, whereas residential care PCWs covered by the *Aged Care Award*, residential care AINs transferring across to the *Aged Care Award*, and home care workers covered by the SCHCADS award, will all (after implementation of Stage 3) gain the increases set out at [197] and [200] of the *Stage 3 Decision* (i.e., between 17.3 and 28.5 per cent, depending on the classification and Award), home care AINS—whose position is

indistinguishable from those three other groups in terms of procedural history, and who have been the subject of the various stages of consideration and findings involved in these proceedings to date—will revert to a zero per cent increase. That is, they will lose the interim increase they have already been granted.

91. The ANMF assumes that this was not intended, and that the effect identified above is just the result of a drafting and definitional quirk. It can be fixed in three steps.

92. *First*, instead of cl 4.4 as set out in the draft *Nurses Award* determination, insert the below as cl 4.4:

“This award:

(a) does not cover nursing assistants who are aged care employees on the basis that they are engaged in the provision of 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;

(b) does cover nursing assistants who are aged-care employees on the basis that they are engaged in the provision of services for an aged person in a private residence.”

93. This does not change the effect of cl 4.4 (since home care AINs are already, as set out above, retained in the *Nurses Award*), but makes its effect clearer.

94. *Second*, insert a new definition in cl 2 as follows:

*“home care nursing assistant means a nursing assistant who is engaged in the provision of services for an aged person in a private residence.”*

95. *Third*, retain Part B.2 of the *Nurses Award*, with the Experienced (Certificate III) rate increased to match the Certificate III PCW rate in the *Aged Care Award* and retaining existing relativities, but modified so that it applies only to “*home care nursing assistants*” as defined. Consequential changes would also be required:

(1) to cl 15.1(a) and Sch B, Pt B.1.1, so that they apply to Nursing assistants other than home care nursing assistants;

(2) to cl 15.2(a) and Sch B Pt B.2.1, so as to retain the tables but applying only to home care nursing assistants;

96. It is acknowledged that effecting a final wage increase for home care AINs involves setting up a structure that differs from both the *Aged Care Award* and the *SCHCADS Award* (*i.e.*, because it retains the classification structure set out in cll 15.2(a) and

Pt B.2.1, albeit with increased rates). However, it is assumed that the Commission will regard that as being preferable to the alternative, which is mirroring the *Aged Care Award* structure, or the *SCHCADS Award* structure, in the *Nurses Award* for home care AINs. Mirroring in that way would (at least arguably) be in tension with the Panel’s rejection of the ANMF’s submission (*Stage 3 Decision* at [187]) that there should be aligned classification descriptors and pay rates for AINs and PCWs as between the *Nurses Award* and the *Aged Care Award*.

97. These three steps are, accordingly, set out in the ANMF’s marked-up version of the *Nurses Award* draft determination filed together herewith.

**G. *Sixth issue: a “standard rate” for direct care employees should be inserted into the Aged Care Award***

98. Presently (and in the draft determination), the *Aged Care Award* provides the following definition of “*standard rate*”, in cl 3.1:

“*standard rate* means the minimum wage for an Aged care employee—general—level 6 in clause 14.1.”

99. This is then picked up in cl 15.1(a) (adjustment of expense-related allowances), cl 15.3(b) (leading hand allowance), cl 15.5(a) (nauseous work allowance), and cl 22.9(d) (sleepovers).

100. In the same way, in the *Nurses Award*, “*standard rate*” is defined in cl 2 as follows:

“*standard rate* means the minimum weekly rate for a Registered nurse—other than aged care employee—level 1 Pay point 1 in clause 15.1(c)(i).”

101. That is then picked up in Sch C, cl C.1.1–C.1.2 for wage-related allowances, and C.2.2 for expense-related allowances.

102. The consequence of this drafting is that allowances are calculated, for direct-care workers, on the basis of a different classification structure than the one which applies to the relevant workers. As the ANMF submitted at Stage 2,<sup>76</sup> it is preferable that “*standard rate*” be drafted so as to pick up a default rate applicable to the relevant category of worker—*i.e.*, for a direct-care worker, a direct-care worker rate (rather than the general rate); for an aged-care RN, the aged-care RN rate (rather than the non-aged-care rate). That has been proposed in the draft determinations filed together herewith.

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<sup>76</sup> ANMF submissions dated 01 March 2023 at [9]–[12].

**H. CONCLUSION**

103. For the reasons identified above, and in the ANMF’s earlier submissions, the Panel would vary the *Nurses Award* and *Aged Care Award* in accordance with the draft determinations filed herewith, including by:

- (1) Aligning both the three-year and the four-year degree classifications with the C1(a) classification in the C10 Metals Framework at the rate of \$1,470.80 and omitting the four-year classification;
- (2) Aligning the EN pay point 1 classification with the Level 6 – Team Leader direct care employee classification in the *Aged Care Award* at the rate of \$1,370.80;
- (3) Retaining existing increments and relativities within the RN and EN classifications;
- (4) Varying the proposed drafting mechanism for transmitting AINs from the *Nurses Award* to the *Aged Care Award*;
- (5) Inserting provisions into the *Nurses Award* to ensure that home care AINs do not lose the benefit of the interim increase and receive a final increase consistent with the Panel’s finding in the *Stage 3 Decision*;
- (6) Making provision for a separate “*standard rate*” for direct care employees under the *Aged Care Award* and aged care employees under the *Nurses Award*;
- (7) Varying the classification descriptors in the *Aged Care Award* for “*aged care employees – direct care*” at level 5 and level 6 to ensure recognition of relevant qualifications.

**J C McKenna**

**J E Hartley**

*Counsel for the ANMF*

26 April 2024

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Gordon Legal

Solicitors for the ANMF

## DRAFT DETERMINATION

*Fair Work Act 2009*

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

**Health Services Union, Australian Nursing and Midwifery Federation, Virginia Ellis and ors—Work value case—Aged care industry**

**(AM2020/99 & AM2021/63)**

**AGED CARE AWARD 2010**

**[MA000018]**

Aged care industry

JUSTICE HATCHER, PRESIDENT

VICE PRESIDENT ASBURY

DEPUTY PRESIDENT O'NEILL

SYDNEY, XX MONTH 2024

PROFESSOR BAIRD

DR RISSE

***Applications to vary modern awards – work value – aged care industry – Aged Care Award 2010 – stage 3.***

A. Further to the Expert Panel decision issued by the Fair Work Commission on XX MONTH 20XX [[2024] FWCFB XXX], the above award is varied as follows:

1. By inserting the following definition in clause 3.1 in alphabetical order:

**aged care employee—direct care** is an employee whose primary responsibility is to directly provide:

(a) personal care services to residents under the supervision of a registered or enrolled nurse, or

(b) recreational/lifestyle activity services to residents;

including but not limited to undertaking the following duties:

- assisting with daily living activities;
- attending to personal hygiene, physical, administrative and cognitive needs;



- providing emotional care and social support;
- assisting with participation in social and recreational activities; and
- assisting with clinical care and provision of medical treatments and procedures.

2. By deleting the definition of “standard rate” in clause 3.1 and inserting the following:

**standard rate** means:

- (a) for employees other than aged care employees—direct care, the minimum wage for an Aged care employee—general—level 6 in clause 14.1;
- (b) for aged care employees—direct care, the minimum wage for an Aged care employee—direct care—level 5 in clause 14.3.

3. By deleting the table appearing in clause 14.1 and inserting the following:

<b>Classification</b>	<b>Per week</b>
	<b>\$</b>
Aged care employee—general—level 1	938.20
Aged care employee—general—level 2	975.40
Aged care employee—general—level 3	1012.90
Aged care employee—general—level 4	1024.90
Aged care employee—general—level 5	1059.60
Aged care employee—general—level 6	1116.60
Aged care employee—general—level 7	1136.70

4. By deleting the table appearing in clause 14.3 and inserting the following:

<b>Classification</b>	<b>Per week</b>
	<b>\$</b>
Aged care employee—direct care—level 1—Introductory	1101.50
Aged care employee—direct care—level 2—Direct Carer	1162.70
Aged care employee—direct care—level 3—Qualified	1223.90
Aged care employee—direct care—level 4—Senior	1272.90

Classification	Per week
	\$
Aged care employee—direct care—level 5—Specialist	1321.80
Aged care employee—direct care—level 6—Team Leader	1370.80

NOTE: See Schedule I—Classification Translation Arrangements for the classifications applicable to employees who were classified as an Aged care employee—direct care under this award on or before XX MONTH 20XX [day before Aged Care Award changes take effect] and employees covered by the Nurses Award 2020 on XX MONTH 20XX [day before Nurses Award changes take effect] who became covered by this award as a result of PRXXXXXX.

5. By inserting clause 28.2(c) as follows:

**(c)** Clause 28.2 does not apply to an employee subject to clause 28.3.

6. By renumbering clauses 28.3 to 28.8 as clauses 28.4 to 28.9.

7. By inserting a new clause 28.3 as follows:

**28.3 Quantum of annual leave—employees previously covered by the Nurses Award 2020**

**(a)** Clause 28.3 only applies to an employee who was covered by the Nurses Award 2020 on XX MONTH 20XX [day before changes take effect] and who became covered by this award as a result of PRXXXXXX.

**(b)** An employee subject to this clause is entitled to the same quantum of annual leave as if they were covered by the Nurses Award 2020.

NOTE: In addition to the entitlements in the NES, an employee under the Nurses Award 2020 is entitled to an additional week of annual leave on the same terms and conditions provided in the NES.

8. By deleting the words “Laundry hand”, “Cleaner”, “Food Services” and “Food services assistant” appearing in the table in clause B.1.2.

9. By deleting the table appearing in clause B.1.3 and inserting the following:

**General and administrative services****Food services**

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

Cook

Receptionist

Food services assistant

Pay clerk

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

Laundry hand

Cleaner

10. By deleting Schedule B.2 and inserting the following:

**B.2 Aged care employee—direct care****B.2.1 Aged care employee—direct care—level 1—Introductory**

An employee whose primary role is to provide direct care to residents and who has less than 3 months' industry experience as a direct care employee.

**B.2.2 Aged care employee—direct care—level 2—Direct Carer**

An employee whose primary role is to provide direct care to residents and who has more than 3 months' industry experience as a direct care employee.

**B.2.3 Aged care employee—direct care—level 3—Qualified**

An employee whose primary role is to provide direct care to residents and who has obtained a Certificate III in Individual Support (Ageing) or equivalent.

**B.2.4 Aged care employee—direct care—level 4—Senior**

An employee whose primary role is to provide direct care to residents and who has obtained a Certificate III in Individual Support or equivalent and has obtained 4 years' post-qualification industry experience as a direct care employee after XX MONTH 2024 [day the changes take effect].

**B.2.5 Aged care employee—direct care—level 5—Specialist**

An employee whose primary role is to provide direct care to residents and who has obtained a Certificate IV in Ageing Support or equivalent.

**B.2.6 Aged care employee—direct care—level 6—Team Leader**

A direct care employee who has obtained a Certificate IV in Ageing Support or equivalent and is required to supervise and train other direct care employees.

11. By inserting Schedule I—Classification Translation Arrangements as follows:

**Schedule I—Classification Translation Arrangements**

Schedule I specifies the classifications that apply to employees in the Aged care employee—direct care stream classified under the previous classification structure and employees

covered by the Nurses Award 2020 on XX MONTH 20XX [day before changes take effect] who became covered by this award as a result of PRXXXXXX.

### **I.1 Translation arrangements for the Aged Care Award 2010**

An employee who was classified as an Aged care employee—direct care under the Aged Care Award 2010 on or before XX MONTH 20XX [day before changes take effect] is classified as follows:

<b>Previous classification</b>	<b>Translated classification</b>
Aged care employee—direct care—level 1	Aged care employee—direct care—level 1
Aged care employee—direct care—level 2	Aged care employee—direct care—level 2
Aged care employee—direct care—level 3	
Aged care employee—direct care—level 4	Aged care employee—direct care—level 3*
Aged care employee—direct care—level 5 (without relevant Certificate IV qualification)	Aged care employee—direct care—level 4
Aged care employee—direct care—level 5 (with relevant Certificate IV qualification)	Aged care employee—direct care—level 5
Aged care employee—direct care—level 6	
Aged care employee—direct care—level 7	Aged care employee—direct care—level 6

\*NOTE: The requirement for 4 years’ post-qualification industry experience at Aged care employee—direct care—level 4 refers only to industry experience acquired after the XX MONTH 20XX [day the changes take effect].

### **I.2 Translation arrangements for the Nurses Award 2020**

(a) Subject to clause 1.2(b), an employee who was covered by the Nurses Award 2020 on XX MONTH 20XX [day before changes take effect] and who became covered by this award as a result of PRXXXXXX is classified as follows:

<b>Previous classification</b>	<b>Translated classification</b>
First year if less than 3 months’ work experience in the industry	Aged care employee—direct care—level 1
First year if 3 months’ or more work experience in the industry	Aged care employee—direct care—level 2
Second year	
Third year	

**Previous classification**

**Translated classification**

Experienced (the holder of a relevant Certificate III qualification)

Aged care employee—direct care—level 3

**(b)** For the avoidance of doubt, if an employee described in clause 1.2(a) falls within a description in clauses B.2.4–B.2.6 (Aged care employee—direct care—level 4—Senior through to Aged care employee—direct care—level 6—Team Leader), the employee is classified in accordance with whichever of clauses B.2.4–B.2.6 is applicable, rather than in accordance with the table in clause 1.2(a).

12. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation on XX MONTH 20XX. In accordance with s 166(5) of the Fair Work Act 2009 this determination does not take effect in relation to a particular employee until the start of the employee’s first full pay period that starts on or after XX MONTH 20XX.

PRESIDENT

## DRAFT DETERMINATION

*Fair Work Act 2009*

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

**Australian Nursing and Midwifery Federation—Work value case—Aged care industry  
(AM2021/63)**

**NURSES AWARD 2020**

[MA000034]

Health and welfare services

JUSTICE HATCHER, PRESIDENT

VICE PRESIDENT ASBURY

DEPUTY PRESIDENT O'NEILL

SYDNEY, XX MONTH 2024

PROFESSOR BAIRD

DR RISSE

***Applications to vary modern awards – work value – aged care industry – Nurses Award 2020 – stage 3.***

A. Further to the Expert Panel decision issued by the Fair Work Commission on XX MONTH 20XX [[2024] FWCFB XXX], the above award is varied as follows:

1. By inserting a definition of “home care nursing assistant” in clause 2, as follows:

**home care nursing assistant** means a nursing assistant who is engaged in the provision of services for an aged person in a private residence.

2. By amending the definition of “standard rate” in clause 2 so that it provides as follows:

**standard rate** means:

(a) for employees other than aged care employees, the minimum weekly rate for a Registered nurse-other than aged care employee-level 1 Pay point 1 in clause 15.1(c)(i); and

**Nurses Award 2020**

- (b)** for aged care employees means the minimum weekly rate for a Registered nurse—aged care employee—level 1 Pay point 1 in clause 15.2(b)(i).
- 3. By inserting a new clause 4.4 as follows:
- 4.4** This award:

  - (a)** does not cover nursing assistants who are aged care employees on the basis that they are engaged in the provision of 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;
  - (b)** does cover nursing assistants who are aged-care employees on the basis that they are engaged in the provision of services for an aged person in a private residence.
- 4. By renumbering clauses 4.4 to 4.7 as clauses 4.5 to 4.8.
- 5. By deleting the words “–other than aged care employees” appearing in the title of clause 15.1(a), and inserting the words “—other than home care nursing assistants”.
- 6. By deleting clause 15.2(a) and inserting, instead, the following clause 15.2(a):

  - (a) Nursing assistant—home care nursing assistants**

<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
1st year	1149.10	30.24
2nd year	1167.10	30.71
3rd year and thereafter	1185.80	31.21
Experienced (the holder of a relevant certificate III qualification)	1223.90	32.21

- 7. By deleting the tables in clause 15.2(b) and inserting the following:

Nurses Award 2020

(i) Student enrolled nurse

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Less than 21 years of age	1174.00	30.89
21 years of age and over	1232.20	32.43

(ii) Enrolled nurse

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Pay point 1	1370.80	36.07
Pay point 2	1389.00	36.55
Pay point 3	1407.50	37.04
Pay point 4	1427.70	37.57
Pay point 5	1442.10	37.95

8. By deleting the tables in clause 15.2(c) and inserting the following:

(i) Registered nurse—Levels 1–5

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
<b>Registered nurse—level 1</b>		
Pay point 1	1470.80	38.71
Pay point 2	1500.90	39.50



Nurses Award 2020

<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
Pay point 3	1537.80	40.47
Pay point 4	1578.70	41.54
Pay point 5	1627.10	42.82
Pay point 6	1674.30	44.06
Pay point 7	1722.70	45.33
Pay point 8 and thereafter	1767.50	46.51
<b>Registered nurse—level 2</b>		
Pay point 1	1814.30	47.74
Pay point 2	1843.20	48.51
Pay point 3	1875.20	49.35
Pay point 4 and thereafter	1905.90	50.16
<b>Registered nurse—level 3</b>		
Pay point 1	1967.30	51.77
Pay point 2	2003.40	52.72
Pay point 3	2038.00	53.63
Pay point 4 and thereafter	2074.50	54.59
<b>Registered nurse—level 4</b>		
Grade 1	2245.40	59.09
Grade 2	2406.30	63.32
Grade 3	2546.60	67.02
<b>Registered nurse—level 5</b>		

Nurses Award 2020

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Grade 1	2265.80	59.63
Grade 2	2386.10	62.79
Grade 3	2546.60	67.02
Grade 4	2705.40	71.19
Grade 5	2983.80	78.52
Grade 6	3264.80	85.92

(ii) Minimum entry rate

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Masters degree <sup>1</sup>	1588.60	41.81

<sup>1</sup> Progression from this entry rate will be to level 1—Registered nurse pay point 5.

(iii) Nurse practitioner—aged care employees

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
1st year	2263.80	59.57
2nd year	2331.00	61.34

NOTE: See Schedule B—Summary of Hourly Rates of Pay for a summary of hourly rates of pay, including overtime and penalty rates.

Nurses Award 2020

9. By inserting the words “for employees other than aged care employees” at the end of cl 17.2(a).
10. By inserting the words “other than an aged care employee” after the words “An on-call employee is paid to an employee” in clause 17.2(a)(i).
11. By inserting a new clause 17.2(b), as follows:

**(b) On-call allowance for aged care employees**

- (i) An on-call allowance is paid to an aged care employee who is required by the employer to be on-call at their private residence, or at any other mutually agreed place. The employee is entitled to receive the following additional amounts:

<b>Between rostered shifts or ordinary hours on:</b>	<b>\$ per 24-hour period or part thereof</b>
Monday to Friday inclusive	34.61
Saturday	52.13
Sunday, public holiday or non-rostered day	60.82

- (ii) For the purpose of clause 17.2(b) the whole of the on-call period is calculated according to the day on which the major portion of the on-call period falls.

12. In clause 19.8, by deleting “17.2(a)” and inserting “17.2”.
13. By deleting the words “—other than aged care employees” appearing in the title of clause B.1.1, and inserting the words “—other than home care nursing assistants”.
14. By deleting clause B.2.1 and inserting, instead, the following clause B.2.1:

Nurses Award 2020

**B.2.1 Nursing assistant—home care nursing assistants**

**(a) Full-time and part-time employees—ordinary and penalty rates**

	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>					
	<b>100%</b>	<b>112.5%</b>	<b>115%</b>	<b>150%</b>	<b>175%</b>	<b>200%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
1st year	30.24	34.02	34.78	45.36	52.92	60.48
2nd year	30.71	34.55	35.32	46.07	53.74	61.42
3rd year and thereafter	31.21	35.11	35.89	46.82	54.62	62.42
Experienced (the holder of a relevant certificate III qualification)	32.21	36.24	37.04	48.32	56.37	64.42

**(b) Full-time and part-time employees—overtime rates**

Nurses Award 2020

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
1st year	45.36	60.48	60.48	75.60
2nd year	46.07	61.42	61.42	76.78
3rd year and thereafter	46.82	62.42	62.42	78.03

Nurses Award 2020

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Experienced (the holder of a relevant certificate III qualification)	48.32	64.42	64.42	80.53

(c) Casual employees—ordinary and penalty rates

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>			<b>% of casual hourly rate<sup>1</sup></b>		
	<b>125%</b>	<b>137.5%</b>	<b>140%</b>	<b>150%</b>	<b>175%</b>	<b>200%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
1st year	37.80	41.58	42.34	56.70	66.15	75.60
2nd year	38.39	42.23	42.99	57.59	67.18	76.78
3rd year and thereafter	39.01	42.91	43.69	58.52	68.27	78.02
Experienced (the holder of a relevant certificate III qualification)	40.26	44.29	45.09	60.39	70.46	80.52

<sup>1</sup> The [casual hourly rate](#) is defined in clause 2—Definitions.

Nurses Award 2020

15. By deleting the tables in clause B.2.2 and inserting the following:

(a) Full-time and part-time employees—ordinary and penalty rates

	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate					
	100%	112.5%	115%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
<b>Student enrolled nurse</b>						
Less than 21 years of age	30.89	34.75	35.52	46.34	54.06	61.78
21 years of age and over	32.43	36.48	37.29	48.65	56.75	64.86
<b>Enrolled nurse</b>						
Pay point 1	36.07	40.58	41.48	54.11	63.12	72.14
Pay point 2	36.55	41.12	42.03	54.83	63.96	73.10
Pay point 3	37.04	41.67	42.60	55.56	64.82	74.08
Pay point 4	37.57	42.27	43.21	56.36	65.75	75.14
Pay point 5	37.95	42.69	43.64	56.93	66.41	75.90

Nurses Award 2020

(b) Full-time and part-time employees—overtime rates

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Student enrolled nurse</b>				
Less than 21 years of age	46.34	61.78	61.78	77.23
21 years of age and over	48.65	64.86	64.86	81.08
<b>Enrolled nurse</b>				
Pay point 1	54.11	72.14	72.14	90.18
Pay point 2	54.83	73.10	73.10	91.38
Pay point 3	55.56	74.08	74.08	92.60
Pay point 4	56.36	75.14	75.14	93.93
Pay point 5	56.93	75.90	75.90	94.88

(c) Casual employees—ordinary and penalty rates

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>			<b>% of casual hourly rate<sup>1</sup></b>		
	<b>125%</b>	<b>137.5%</b>	<b>140%</b>	<b>150%</b>	<b>175%</b>	<b>200%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Student enrolled nurse</b>						



**Nurses Award 2020**

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate			% of casual hourly rate <sup>1</sup>		
	125%	137.5%	140%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
Less than 21 years of age	38.61	42.47	43.25	57.92	67.57	77.22
21 years of age and over	40.54	44.59	45.40	60.81	70.95	81.08
<b>Enrolled nurse</b>						
Pay point 1	45.09	49.60	50.50	67.64	78.91	90.18
Pay point 2	45.69	50.26	51.17	68.54	79.96	91.38
Pay point 3	46.30	50.93	51.86	69.45	81.03	92.60
Pay point 4	46.96	51.66	52.60	70.44	82.18	93.92
Pay point 5	47.44	52.18	53.13	71.16	83.02	94.88

<sup>1</sup>The casual hourly rate is defined in clause 2—Definitions.

16. By deleting the tables in clause B.2.3 and inserting the following:

(a) **Full-time and part-time employees—ordinary and penalty rates**

Nurses Award 2020

	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>					
	<b>100%</b>	<b>112.5%</b>	<b>115%</b>	<b>150%</b>	<b>175%</b>	<b>200%</b>
	\$	\$	\$	\$	\$	\$
<b>Registered nurse—level 1</b>						
Pay point 1	38.71	43.55	44.52	58.07	67.74	77.42
Pay point 2	39.50	44.44	45.43	59.25	69.13	79.00
Pay point 3	40.47	45.53	46.54	60.71	70.82	80.94
Pay point 4	41.54	46.73	47.77	62.31	72.70	83.08
Pay point 5	42.82	48.17	49.24	64.23	74.94	85.64
Pay point 6	44.06	49.57	50.67	66.09	77.11	88.12
Pay point 7	45.33	51.00	52.13	68.00	79.33	90.66
Pay point 8 and thereafter	46.51	52.32	53.49	69.77	81.39	93.02
<b>Registered nurse—level 2</b>						
Pay point 1	47.74	53.71	54.90	71.61	83.55	95.48
Pay point 2	48.51	54.57	55.79	72.77	84.89	97.02
Pay point 3	49.35	55.52	56.75	74.03	86.36	98.70
Pay point 4 and thereafter	50.16	56.43	57.68	75.24	87.78	100.32
<b>Registered nurse—level 3</b>						

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	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>					
	<b>100%</b>	<b>112.5%</b>	<b>115%</b>	<b>150%</b>	<b>175%</b>	<b>200%</b>
	\$	\$	\$	\$	\$	\$
Pay point 1	51.77	58.24	59.54	77.66	90.60	103.54
Pay point 2	52.72	59.31	60.63	79.08	92.26	105.44
Pay point 3	53.63	60.33	61.67	80.45	93.85	107.26
Pay point 4 and thereafter	54.59	61.41	62.78	81.89	95.53	109.18
<b>Registered nurse—level 4<sup>1</sup></b>						
Grade 1	59.09	–	–	88.64	103.41	118.18
Grade 2	63.32	–	–	94.98	110.81	126.64
Grade 3	67.02	–	–	100.53	117.29	134.04
<b>Registered nurse—level 5<sup>1</sup></b>						
Grade 1	59.63	–	–	89.45	104.35	119.26
Grade 2	62.79	–	–	94.19	109.88	125.58
Grade 3	67.02	–	–	100.53	117.29	134.04
Grade 4	71.19	–	–	106.79	124.58	142.38
Grade 5	78.52	–	–	117.78	137.41	157.04
Grade 6	85.92	–	–	128.88	150.36	171.84
<b>Minimum entry rate</b>						
Masters degree	41.81	47.04	48.08	62.72	73.17	83.62

**Nurses Award 2020**

<sup>1</sup> Shiftwork loadings do not apply to Registered nurse levels 4 and 5 in accordance with clause 20.2(e).

**(c) Full-time and part-time employees—overtime rates**

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Registered nurse—level 1</b>				
Pay point 1	58.07	77.42	77.42	96.78
Pay point 2	59.25	79.00	79.00	98.75
Pay point 3	60.71	80.94	80.94	101.18
Pay point 4	62.31	83.08	83.08	103.85
Pay point 5	64.23	85.64	85.64	107.05
Pay point 6	66.09	88.12	88.12	110.15
Pay point 7	68.00	90.66	90.66	113.33
Pay point 8 and thereafter	69.77	93.02	93.02	116.28
<b>Registered nurse—level 2</b>				
Pay point 1	71.61	95.48	95.48	119.35
Pay point 2	72.77	97.02	97.02	121.28
Pay point 3	74.03	98.70	98.70	123.38

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	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Pay point 4 and thereafter	75.24	100.32	100.32	125.40
<b>Registered nurse—level 3</b>				
Pay point 1	77.66	103.54	103.54	129.43
Pay point 2	79.08	105.44	105.44	131.80
Pay point 3	80.45	107.26	107.26	134.08
Pay point 4 and thereafter	81.89	109.18	109.18	136.48
<b>Registered nurse—level 4<sup>1</sup></b>	–	–	–	–
<b>Registered nurse—level 5<sup>1</sup></b>	–	–	–	–
<b>Minimum entry rate</b>				
Masters degree	62.72	83.62	83.62	104.53

<sup>1</sup> Overtime rates do not apply to Registered nurse levels 4 and 5 in accordance with clause 19.1(b).

Nurses Award 2020

(a) Casual employees—ordinary and penalty rates

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate			% of casual hourly rate <sup>1</sup>		
	125%	137.5%	140%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
<b>Registered nurse—level 1</b>						
Pay point 1	48.39	53.23	54.19	72.59	84.68	96.78
Pay point 2	49.38	54.31	55.30	74.07	86.42	98.76
Pay point 3	50.59	55.65	56.66	75.89	88.53	101.18
Pay point 4	51.93	57.12	58.16	77.90	90.88	103.86
Pay point 5	53.53	58.88	59.95	80.30	93.68	107.06
Pay point 6	55.08	60.58	61.68	82.62	96.39	110.16
Pay point 7	56.66	62.33	63.46	84.99	99.16	113.32
Pay point 8 and thereafter	58.14	63.95	65.11	87.21	101.75	116.28
<b>Registered nurse—level 2</b>						
Pay point 1	59.68	65.64	66.84	89.52	104.44	119.36
Pay point 2	60.64	66.70	67.91	90.96	106.12	121.28
Pay point 3	61.69	67.86	69.09	92.54	107.96	123.38
Pay point 4 and thereafter	62.70	68.97	70.22	94.05	109.73	125.40

Nurses Award 2020

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate			% of casual hourly rate <sup>1</sup>		
	125%	137.5%	140%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
<b>Registered nurse— level 3</b>						
Pay point 1	64.71	71.18	72.48	97.07	113.24	129.42
Pay point 2	65.90	72.49	73.81	98.85	115.33	131.80
Pay point 3	67.04	73.74	75.08	100.56	117.32	134.08
Pay point 4 and thereafter	68.24	75.06	76.43	102.36	119.42	136.48
<b>Registered nurse— level 4<sup>2</sup></b>						
Grade 1	73.86	–	–	110.79	129.26	147.72
Grade 2	79.15	–	–	118.73	138.51	158.30
Grade 3	83.78	–	–	125.67	146.62	167.56
<b>Registered nurse— level 5<sup>2</sup></b>						
Grade 1	74.54	–	–	111.81	130.45	149.08
Grade 2	78.49	–	–	117.74	137.36	156.98
Grade 3	83.78	–	–	125.67	146.62	167.56
Grade 4	88.99	–	–	133.49	155.73	177.98
Grade 5	98.15	–	–	147.23	171.76	196.30
Grade 6	107.40	–	–	161.10	187.95	214.80

**Nurses Award 2020**

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate			% of casual hourly rate <sup>1</sup>		
	125%	137.5%	140%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
<b>Minimum entry rate</b>						
Masters degree	52.26	57.49	58.53	78.39	91.46	104.52

<sup>1</sup> The casual hourly rate is defined in clause 2—Definitions.

<sup>2</sup> Shiftwork loadings do not apply to Registered nurse levels 4 and 5 in accordance with clause 20.2(e).

17. By deleting the tables in clause B.2.4 and inserting the following:

**(a) Full-time and part-time employees—ordinary and penalty rates**

	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate					
	100%	112.5%	115%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
1st year	59.57	67.02	68.51	89.36	104.25	119.14
2nd year	61.34	69.01	70.54	92.01	107.35	122.68

**(b) Full-time and part-time employees—overtime rates**



Nurses Award 2020

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
1st year	89.36	119.14	119.14	148.93
2nd year	92.01	122.68	122.68	153.35

(c) Casual employees—ordinary and penalty rates

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>			<b>% of casual hourly rate<sup>1</sup></b>		
	<b>125%</b>	<b>137.5%</b>	<b>140%</b>	<b>150%</b>	<b>175%</b>	<b>200%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
1st year	74.46	81.91	83.40	111.69	130.31	148.92
2nd year	76.68	84.34	85.88	115.02	134.19	153.36

<sup>1</sup>The casual hourly rate is defined in clause 2—Definitions.

18. By deleting the following words in clause C.1.1: “as the minimum weekly rate for a Registered nurse—other than aged care employee—level 1, pay point 1 in clause 15.1(c)(i) = \$1084.10”.
19. By deleting the table in clause C.1.1 and inserting the following:

**Nurses Award 2020**

<b>Allowance</b>	<b>Clause</b>	<b>% of standard rate</b>	<b>\$</b>	<b>Payable</b>
On-call allowance for employees other than aged care employees—between rostered shifts or ordinary hours on—Monday to Friday inclusive	17.2(a)(i)	2.35	25.48	per 24-hour period or part thereof
On-call allowance for aged care employees—between rostered shifts or ordinary hours on—Monday to Friday inclusive	17.2(b)(i)	2.35	34.61	per 24-hour period or part thereof
On-call allowance for employees other than aged care employees—between rostered shifts or ordinary hours on—Saturday	17.2(a)(i)	3.54	38.38	per 24-hour period or part thereof
On-call allowance for aged care employees—between rostered shifts or ordinary hours on—Monday to Friday inclusive	17.2(b)(i)	3.54	52.13	per 24-hour period or part thereof
On-call allowance for employees other than aged care employees—between rostered shifts or ordinary hours on—Sunday, public holiday or non-rostered day	17.2(a)(i)	4.13	44.77	per 24-hour period or part thereof
On-call allowance for aged care employees—between rostered shifts or ordinary hours on—Monday to Friday inclusive	17.2(b)(i)	4.13	60.82	per 24-hour period or part thereof

20. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation on XX MONTH 20XX. In accordance with s 165(3) of the Fair Work Act 2009 this determination does not take effect in relation to a particular

**Nurses Award 2020**

employee until the start of the employee's first full pay period that starts on or after XX  
MONTH 20XX.

**PRESIDENT**

# **Aged Care Award 2010 – AM2020/99 and ors – Stage 3 markup**

This Fair Work Commission consolidated modern award incorporates all amendments up to and including 9 April 2024 ([PR771285](#)).

Clause(s) affected by the most recent variation(s):

21—Superannuation

Current review matter(s): [AM2014/47](#); [AM2014/190](#); [AM2014/196](#); [AM2014/197](#); [AM2014/251](#); [AM2014/300](#); [AM2014/301](#); [AM2015/1](#); [AM2015/2](#); [AM2016/8](#); [AM2016/15](#); [AM2016/17](#)

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## Part 1—Application and Operation

### 1. Title

This award is the *Aged Care Award 2010*.

### 2. Commencement and transitional

[Varied by [PR988396](#), [PR542138](#)]

2.1 This award commences on 1 January 2010.

2.2 The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment.

2.3 This award contains transitional arrangements which specify when particular parts of the award come into effect. Some of the transitional arrangements are in clauses in the main part of the award. There are also transitional arrangements in Schedule A. The arrangements in Schedule A deal with:

- minimum wages and piecework rates
- casual or part-time loadings
- Saturday, Sunday, public holiday, evening or other penalties
- shift allowances/penalties.

[2.4 varied by [PR542138](#) ppc 04Dec13]

2.4 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

[2.5 varied by [PR542138](#) ppc 04Dec13]

2.5 The Fair Work Commission may review the transitional arrangements in this award and make a determination varying the award.

[2.6 varied by [PR542138](#) ppc 04Dec13]

2.6 The Fair Work Commission may review the transitional arrangements:

- (a) on its own initiative; or
- (b) on application by an employer, employee, organisation or outworker entity covered by the modern award; or

## Aged Care Award 2010

- (c) on application by an organisation that is entitled to represent the industrial interests of one or more employers or employees that are covered by the modern award; or
- (d) in relation to outworker arrangements, on application by an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the arrangements relate.

### 3. Definitions and interpretation

[Varied by [PR995161](#), [PR994419](#), [PR997772](#), [PR503620](#), [PR509796](#), [PR544794](#), [PR545985](#), [PR733830](#); [PR751293](#)]

**3.1** In this award, unless the contrary intention appears:

[Definition of **Act** substituted by [PR994419](#) from 01Jan10]

**Act** means the *Fair Work Act 2009* (Cth)

[Definition of **adult apprentice** inserted by [PR544794](#) ppc 01Jan14]

**adult apprentice** means an apprentice who is 21 years of age or over at the commencement of their apprenticeship

**aged care employee—direct care** is an employee whose primary responsibility is to directly provide:

**(a)** personal care services to residents under the supervision of a registered or enrolled nurse, or

**(b)** recreational/lifestyle activity services to residents;

including but not limited to undertaking the following duties:

- assisting with daily living activities;
- attending to personal hygiene, physical, administrative and cognitive needs;
- providing emotional care and social support;
- assisting with participation in social and recreational activities; and
- assisting with clinical care and provision of medical treatments and procedures.

[Definition of **aged care industry** varied by [PR509796](#) ppc 23May11]

**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

[Definition of **agreement-based transitional instrument** inserted by [PR994419](#) from 01Jan10]

**agreement-based transitional instrument** has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

## Aged Care Award 2010

[Definition of **apprentice** inserted by [PR544794](#) ppc 01Jan14]

**apprentice** means an employee who is bound by a contract of training registered with the appropriate State or Territory training authority

[Definition of **award-based transitional instrument** inserted by [PR994419](#) from 01Jan10]

**award-based transitional instrument** has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **casual employee** inserted by [PR733830](#) from 27Sep21]

**casual employee** has the meaning given by section 15A of the [Act](#)

[Definition of **Commission** deleted by [PR994419](#) from 01Jan10]

[Definition of **day shift** inserted by [PR995161](#) ppc 23Mar10]

**day shift** means a shift worked between 6.00 am and 6.00 pm Monday to Friday

[Definition of **default fund employee** inserted by [PR545985](#) ppc 01Jan14]

**default fund employee** means an employee who has no chosen fund within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth)

[Definition of **defined benefit member** inserted by [PR545985](#) ppc 01Jan14]

**defined benefit member** has the meaning given by the *Superannuation Guarantee (Administration) Act 1992* (Cth)

[Definition of **Division 2B State award** inserted by [PR503620](#) ppc 01Jan11]

**Division 2B State award** has the meaning in Schedule 3A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **Division 2B State employment agreement** inserted by [PR503620](#) ppc 01Jan11]

**Division 2B State employment agreement** has the meaning in Schedule 3A of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **employee** substituted by [PR994419](#), [PR997772](#) from 01Jan10]

**employee** means national system employee within the meaning of the Act

[Definition of **employer** substituted by [PR994419](#), [PR997772](#) from 01Jan10]

**employer** means national system employer within the meaning of the Act

[Definition of **enterprise award** deleted by [PR994419](#) from 01Jan10]

[Definition of **enterprise award-based instrument** inserted by [PR994419](#) from 01Jan10]

**enterprise award-based instrument** has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

[Definition of **enterprise NAPSA** deleted by [PR994419](#) from 01Jan10]

[Definition of **exempt public sector superannuation scheme** inserted by [PR545985](#) ppc 01Jan14]

**exempt public sector superannuation scheme** has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)



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[Definition of **MySuper product** inserted by [PR545985](#) ppc 01Jan14]

**MySuper product** has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)

[Definition of NAPSA deleted by [PR994419](#) from 01Jan10]

[Definition of NES substituted by [PR994419](#) from 01Jan10]

NES means the [National Employment Standards](#) as contained in [sections 59 to 131](#) of the *Fair Work Act 2009* (Cth)

[Definition of **on-hire** inserted by [PR994419](#) from 01Jan10]

**on-hire** means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client

[Definition of **regular casual employee** inserted by [PR733830](#) from 27Sep21]

**regular casual employee** has the meaning given by section 12 of the [Act](#)

[Definition of **standard rate** varied by [PR751293](#) ppc 30Jun23]

**standard rate** means:

~~(a) for employees other than aged care employees—direct care, the minimum wage for an Aged care employee—general—level 6 in clause 14.1;~~

~~(a)(b) for aged care employees—direct care, the minimum wage for an Aged care employee—direct care—level 5 in clause 14.3.~~

[Definition of **transitional minimum wage instrument** inserted by [PR994419](#) from 01Jan10]

**transitional minimum wage instrument** has the meaning in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)

3.2 Where this award refers to a condition of employment provided for in the [NES](#), the [NES](#) definition applies.

## 4. Coverage

[Varied by [PR994419](#), [PR544794](#)]

4.1 This industry award covers employers throughout Australia in the aged care industry and their employees in the classifications listed in clause 14—Minimum weekly wages, to the exclusion of any other modern award.

4.2 The award does not cover an employee excluded from award coverage by the Act.

[4.3 substituted by [PR994419](#) from 01Jan10]

4.3 The award does not cover employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

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[4.4, 4.5 and 4.6 inserted by [PR994419](#) from 01Jan10]

**4.4** The award does not cover employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

**4.5** This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 4.1 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.

[4.6 substituted by [PR544794](#) ppc 01Jan14]

**4.6** This award covers employers which provide group training services for apprentices and trainees engaged in the industry and/or parts of industry set out at clause 4.1 and those apprentices and trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This clause operates subject to the exclusions from coverage in this award.

[4.4 renumbered as 4.7 by [PR994419](#) from 01Jan10]

**4.7** Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.

## **5. Access to the award and the National Employment Standards**

The employer must ensure that copies of this award and the [NES](#) are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

## **6. The National Employment Standards and this award**

The [NES](#) and this award contain the minimum conditions of employment for employees covered by this award.

## **7. Individual flexibility arrangements**

[Varied by [PR542138](#); 7—Award flexibility renamed and substituted by [PR610178](#) ppc 01Nov18]

**7.1** Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:

- (a) arrangements for when work is performed; or
- (b) overtime rates; or

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- (c) penalty rates; or
  - (d) allowances; or
  - (e) annual leave loading.
- 7.2 An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.
- 7.3 An agreement may only be made after the individual employee has commenced employment with the employer.
- 7.4 An employer who wishes to initiate the making of an agreement must:
  - (a) give the employee a written proposal; and
  - (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.
- 7.5 An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.
- 7.6 An agreement must do all of the following:
  - (a) state the names of the employer and the employee; and
  - (b) identify the award term, or award terms, the application of which is to be varied; and
  - (c) set out how the application of the award term, or each award term, is varied; and
  - (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
  - (e) state the date the agreement is to start.
- 7.7 An agreement must be:
  - (a) in writing; and
  - (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- 7.8 Except as provided in clause 7.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.
- 7.9 The employer must keep the agreement as a time and wages record and give a copy to the employee.
- 7.10 The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.
- 7.11 An agreement may be terminated:
  - (a) at any time, by written agreement between the employer and the employee; or

- (b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).

Note: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in s.144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see s.145 of the [Act](#)).

- 7.12 An agreement terminated as mentioned in clause 7.11(b) ceases to have effect at the end of the period of notice required under that clause.
- 7.13 The right to make an agreement under clause 7 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

## Part 2—Consultation and Dispute Resolution

### 8. Consultation about major workplace change

[8—Consultation regarding major workplace change renamed and substituted by [PR546288](#), 8—Consultation renamed and substituted by [PR610178](#) ppc 01Nov18]

- 8.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:
  - (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
  - (b) discuss with affected employees and their representatives (if any):
    - (i) the introduction of the changes; and
    - (ii) their likely effect on employees; and
    - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
  - (c) commence discussions as soon as practicable after a definite decision has been made.
- 8.2 For the purposes of the discussion under clause 8.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:
  - (a) their nature; and
  - (b) their expected effect on employees; and
  - (c) any other matters likely to affect employees.
- 8.3 Clause 8.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

- 8.4** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 8.1(b).
- 8.5** In clause 8:  
**significant effects**, on employees, includes any of the following:
- (a) termination of employment; or
  - (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
  - (c) loss of, or reduction in, job or promotion opportunities; or
  - (d) loss of, or reduction in, job tenure; or
  - (e) alteration of hours of work; or
  - (f) the need for employees to be retrained or transferred to other work or locations; or
  - (g) job restructuring.
- 8.6** Where this award makes provision for alteration of any of the matters defined at clause 8.5, such alteration is taken not to have significant effect.

**8A. Consultation about changes to rosters or hours of work**

[8A inserted by [PR610178](#) ppc 01Nov18]

- 8A.1** Clause 8A applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.
- 8A.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).
- 8A.3** For the purpose of the consultation, the employer must:
- (a) provide to the employees and representatives mentioned in clause 8A.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
  - (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.
- 8A.4** The employer must consider any views given under clause 8A.3(b).
- 8A.5** Clause 8A is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

## 9. Dispute resolution

[Varied by [PR994419](#), [PR542138](#); substituted by [PR610178](#) ppc 01Nov18; varied by [PR763212](#)]

- 9.1** Clause 9 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).
- 9.2** The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.
- 9.3** If the dispute is not resolved through discussion as mentioned in clause 9.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.
- 9.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 9.2 and 9.3, a party to the dispute may refer it to the Fair Work Commission.
- 9.5** The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- 9.6** If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the [Act](#) to use and that it considers appropriate for resolving the dispute.
- 9.7** A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 9.
- 9.8** While procedures are being followed under clause 9 in relation to a dispute:
- (a)** work must continue in accordance with this award and the [Act](#); and
  - (b)** an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 9.9** Clause 9.8 is subject to any applicable work health and safety legislation.

[Note 1 inserted by [PR763212](#) ppc 01Aug23]

NOTE 1: In addition to clause 9, a dispute resolution procedure for disputes regarding the [NES](#) entitlement to request flexible working arrangements is contained in section 65B of the [Act](#).

[Note 2 inserted by [PR763212](#) ppc 01Aug23]

NOTE 2: In addition to clause 9, a dispute resolution procedure for disputes regarding the [NES](#) entitlement to request an extension to unpaid parental leave is contained in section 76B of the [Act](#).

## Part 3—Types of Employment and Termination of Employment

### 10. Employment categories

[Varied by [PR995161](#), [PR502652](#), [PR700532](#), [PR723844](#), [PR733830](#)]

**10.1** Employees under this award will be employed in one of the following categories:

- (a) full-time;
- (b) part-time; or
- (c) casual.

At the time of engagement an employer will inform each employee whether they are employed on a full-time, part-time or casual basis. An employer may direct an employee to carry out such duties that are within the limits of the employee's skill, competence and training, consistent with the respective classification.

### 10.2 Full-time employees

A full-time employee is one who is engaged to work 38 hours per week or an average of 38 hours per week pursuant to clause 22.1 of this award.

### 10.3 Part-time employees

- (a) A part-time employee is an employee who is engaged to work less than full-time hours of an average of 38 hours per week and has reasonably predictable hours of work.
- (b) Before commencing employment, the employer and employee will agree in writing on a regular pattern of work including the number of hours to be worked each week, the days of the week the employee will work and the starting and finishing times each day.

[10.3(c) substituted by [PR995161](#) ppc 23Mar10]

- (c) Any agreed variation to the hours of work will be in writing.
- (d) The terms of this award will apply on a pro rata basis to part-time employees on the basis that the ordinary weekly hours for full-time employees are 38.

[10.3(e) replaced by [PR502652](#) from 01Jan10]

- (e) Payment in respect of personal/carer's leave (where an employee has accumulated an entitlement) for a part-time employee will be on a pro rata basis made according to the number of ordinary hours the employee would have worked on the day or days on which the leave was taken.

## 10.4 Casual employees

[10.4(a) substituted by [PR733830](#) from 27Sep21]

- (a) A casual employee may work up to and including 38 ordinary hours per week.

[10.4(b) varied by [PR723844](#) ppc 01Mar21]

- (b) A casual employee will be paid per ordinary hour worked at the rate of 1/38th of the weekly rate appropriate to the employee's classification. In addition, a loading of 25% of that rate will be paid instead of the paid leave entitlements accrued by full-time employees.

[10.4(c) inserted by [PR723844](#) ppc 01Mar21]

- (c) When a casual employee works overtime, they must be paid the overtime rates in clause 25.1(c).

## 10.5 Offers and requests for casual conversion

[10.5 inserted by [PR700532](#); substituted and renamed by [PR733830](#) from 27Sep21]

Offers and requests for conversion from casual employment to full-time or part-time employment are provided for in the [NES](#).

NOTE: Disputes about offers and requests for casual conversion under the [NES](#) are to be dealt with under clause 9—Dispute resolution.

## 11. Termination of employment

[11 substituted by [PR610178](#) ppc 01Nov18]

Note: The [NES](#) sets out requirements for notice of termination by an employer. See ss.117 and 123 of the [Act](#).

### 11.1 Notice of termination by an employee

- (a) This clause applies to all employees except those identified in ss.123(1) and 123(3) of the [Act](#).
- (b) An employee must give the employer notice of termination in accordance with **Table 1—Period of notice** of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

**Table 1—Period of notice**

<b>Column 1 Employee's period of continuous service with the employer at the end of the day the notice is given</b>	<b>Column 2 Period of notice</b>
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks



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Note: The notice of termination required to be given by an employee is the same as that required of an employer except that the employee does not have to give additional notice based on the age of the employee.

- (c) In paragraph (b) **continuous service** has the same meaning as in s.117 of the [Act](#).
- (d) If an employee who is at least 18 years old does not give the period of notice required under paragraph (b), then the employer may deduct from wages due to the employee under this award an amount that is no more than one week's wages for the employee.
- (e) If the employer has agreed to a shorter period of notice than that required under paragraph (b), then no deduction can be made under paragraph (d).
- (f) Any deduction made under paragraph (d) must not be unreasonable in the circumstances.

### 11.2 Job search entitlement

Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.

- 11.3 The time off under clause 11.2 is to be taken at times that are convenient to the employee after consultation with the employer.

## 12. Redundancy

[Varied by [PR994419](#), [PR503620](#), [PR561478](#); substituted by [PR706889](#) ppc 03May19]

NOTE: Redundancy pay is provided for in the [NES](#). See sections 119–123 of the [Act](#).

### 12.1 Transfer to lower paid duties on redundancy

- (a) Clause 12.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.
- (b) The employer may:
  - (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the [Act](#) as if it were a notice of termination given by the employer; or
  - (ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in paragraph (c).
- (c) If the employer acts as mentioned in paragraph (b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

## 12.2 Employee leaving during redundancy notice period

- (a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the [Act](#).
- (b) The employee is entitled to receive the benefits and payments they would have received under clause 12 or under sections 119–123 of the [Act](#) had they remained in employment until the expiry of the notice.
- (c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

## 12.3 Job search entitlement

- (a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the [Act](#) for the purpose of seeking other employment.
- (b) If an employee is allowed time off without loss of pay of more than one day under paragraph (a), the employee must, at the request of the employer, produce proof of attendance at an interview.
- (c) A statutory declaration is sufficient for the purpose of paragraph (b).
- (d) An employee who fails to produce proof when required under paragraph (b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clauses 11.2 and 11.3.

# Part 4—Minimum Wages and Related Matters

## 13. Classifications

[Varied by [PR988396](#), [PR509049](#)]

All employees covered by this award must be classified according to the structure and definitions set out in Schedule B—Classification Definitions. Employers must advise their employees in writing of their classification upon commencement and of any subsequent changes to their classification.

## 14. Minimum weekly wages

[14 substituted by [PR997899](#), [PR509049](#), [PR522880](#), [PR536683](#), [PR544794](#) ppc 01Jan14; varied by [PR551606](#), [PR559223](#), [PR566686](#), [PR579779](#), [PR529114](#), [PR606342](#), [PR707428](#), [PR718835](#), [PR729273](#), [PR733830](#), [PR740693](#), [PR751293](#), [PR762127](#)]

### 14.1 Aged care employee—general

[14.1 varied by [PR551606](#), [PR566686](#), [PR579779](#), [PR529114](#), [PR606342](#), [PR707428](#), [PR718835](#), [PR729273](#), [PR740693](#); renamed and substituted by [PR751293](#) ppc 30Jun23; varied by [PR762127](#) ppc 01Jul23]

The following minimum wages apply to employees in the classifications listed in clause B.1, other than senior food services employees paid in accordance with clause 14.2.

<u>Classification</u>	<u>Per week</u>
	\$
<a href="#">Aged care employee—general—level 1</a>	938.20
<a href="#">Aged care employee—general—level 2</a>	975.40
<a href="#">Aged care employee—general—level 3</a>	1012.90
<a href="#">Aged care employee—general—level 4</a>	1024.90
<a href="#">Aged care employee—general—level 5</a>	1059.60
<a href="#">Aged care employee—general—level 6</a>	1116.60
<a href="#">Aged care employee—general—level 7</a>	1136.70

<del>Classification</del>	<del>Per week</del>
	\$
<del><a href="#">Aged care employee—general—level 1</a></del>	910.90
<del><a href="#">Aged care employee—general—level 2</a></del>	947.00
<del><a href="#">Aged care employee—general—level 3</a></del>	983.40
<del><a href="#">Aged care employee—general—level 4</a></del>	995.00
<del><a href="#">Aged care employee—general—level 5</a></del>	1028.70
<del><a href="#">Aged care employee—general—level 6</a></del>	1084.10
<del><a href="#">Aged care employee—general—level 7</a></del>	1103.60

### 14.2 Aged care employee—general—most senior food services employee

[New 14.2 inserted by [PR751293](#) ppc 30Jun23; varied by [PR762127](#) ppc 01Jul23]

The following minimum wages apply to an employee in the classifications Aged care employee—general—levels 4 to 7 listed in clause B.1, if that employee is the single most senior food services employee engaged by any employer at the facility or site.

<b>Classification</b>	<b>Per week</b>
	\$
Aged care employee—general—level 4	1144.20

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<b>Classification</b>	<b>Per week</b>
	\$
Aged care employee—general—level 5	1183.00
Aged care employee—general—level 6	1246.80
Aged care employee—general—level 7	1269.10

**14.3 Aged care employee—direct care**

[New 14.3 inserted by [PR751293](#) ppc 30Jun23; varied by [PR762127](#) ppc 01Jul23]

The following minimum wages apply to employees in the classifications listed in clause B.2.

<u><b>Classification</b></u>	<u><b>Per week</b></u>
	<u>\$</u>
<u><a href="#">Aged care employee—direct care—level 1—Introductory</a></u>	<u><a href="#">1101.50</a></u>
<u><a href="#">Aged care employee—direct care—level 2—Direct Carer</a></u>	<u><a href="#">1162.70</a></u>
<u><a href="#">Aged care employee—direct care—level 3—Qualified</a></u>	<u><a href="#">1223.90</a></u>
<u><a href="#">Aged care employee—direct care—level 4—Senior</a></u>	<u><a href="#">1272.90</a></u>
<u><a href="#">Aged care employee—direct care—level 5—Specialist</a></u>	<u><a href="#">1321.80</a></u>
<u><a href="#">Aged care employee—direct care—level 6—Team Leader</a></u>	<u><a href="#">1370.80</a></u>

<b>Classification</b>	<b>Per week</b>
	\$
<del><a href="#">Aged care employee—direct care—level 1</a></del>	<del><a href="#">1047.60</a></del>
<del><a href="#">Aged care employee—direct care—level 2</a></del>	<del><a href="#">1089.00</a></del>
<del><a href="#">Aged care employee—direct care—level 3</a></del>	<del><a href="#">1130.90</a></del>
<del><a href="#">Aged care employee—direct care—level 4</a></del>	<del><a href="#">1144.20</a></del>
<del><a href="#">Aged care employee—direct care—level 5</a></del>	<del><a href="#">1183.00</a></del>
<del><a href="#">Aged care employee—direct care—level 6</a></del>	<del><a href="#">1246.80</a></del>
<del><a href="#">Aged care employee—direct care—level 7</a></del>	<del><a href="#">1269.10</a></del>

[NOTE: See Schedule I—Classification Translation Arrangements for the \*\*minimum rate of pay\*\* classifications applicable to employees who were classified as an Aged care employee—direct care under this award on or before XX MONTH 20XX \[day before Aged Care Award changes take effect\] and employees covered by the Nurses Award 2020 on XX MONTH 20XX \[day before Nurses Award changes take effect\] who became covered by this award as a result of PRXXXXXX.](#)

**14.4 Cooking apprentices**

[14.2 renumbered as 14.4 and varied by [PR751293](#) ppc 30Jun23]

An employee apprenticed in the cooking trade will be paid the percentage of the minimum wage for an aged care employee—general—level 4 in clause 14.1 set out in the following table:

<b>Year of apprenticeship</b>	<b>% of Level 4 rate for apprentices who have not completed year 12</b>	<b>% of Level 4 rate for apprentices who have completed year 12</b>
1st year	55	55
2nd year	65	65
3rd year	80	80
4th year	95	95

**14.5 Gardening apprentices**

[14.3 renumbered as 14.5 by [PR751293](#) ppc 30Jun23]

[14.5(a) varied by [PR751293](#) ppc 30Jun23]

(a) An employee apprenticed in the gardening and landscaping trade will be paid the percentage of the minimum wage for an aged care employee—general—level 4 in clause 14.1 set out in the following table:

<b>Year of apprenticeship</b>	<b>% of Level 4 rate for apprentices who have not completed year 12</b>	<b>% of Level 4 rate for apprentices who have completed year 12</b>
1st year	50	52.5
2nd year	60	65
3rd year	75	75
4th year	95	95

[14.5(b) varied by [PR751293](#) ppc 30Jun23]

(b) An employee apprenticed in the gardening and landscaping trade on or after 1 January 2015 will be paid the percentage of the minimum wage for an aged care employee—general—level 4 in clause 14.1 set out in the following table:

<b>Year of apprenticeship</b>	<b>% of Level 4 rate for apprentices who have not completed year 12</b>	<b>% of Level 4 rate for apprentices who have completed year 12</b>
1st year	50	55
2nd year	60	65
3rd year	75	75
4th year	95	95

## 14.6 Adult apprentices

[14.4 renumbered as 14.6 and varied by [PR751293](#) ppc 30Jun23]

[14.6(a) varied by [PR751293](#) ppc 30Jun23]

- (a) The minimum rate for an adult apprentice who commenced on or after 1 January 2014 and is in the first year of their apprenticeship must be 80% of the minimum wage for aged care employee—general—level 4 in clause 14.1, or the rate prescribed by clause 14.2 or 14.5 for the relevant year of the apprenticeship, whichever is the greater.
- (b) The minimum rate for an adult apprentice who commenced on or after 1 January 2014 and is in the second and subsequent years of their apprenticeship must be the rate for the lowest adult classification in clause 14.1 or the rate prescribed by the relevant apprenticeship clause 14.2 or 14.5 for the relevant year of the apprenticeship, whichever is the greater.

[14.6(c) varied by [PR733830](#) ppc 27Sep21; varied by [PR751293](#) ppc 30Jun23]

- (c) A person employed by an employer under this award immediately prior to entering into a training agreement as an adult apprentice with that employer must not suffer a reduction in their minimum wage by virtue of entering into the training agreement, provided that the person has been an employee in that enterprise for at least six months as a full-time employee or twelve months as a part-time or regular casual employee immediately prior to commencing the apprenticeship. For the purpose only of fixing a minimum wage, the adult apprentice must continue to receive the minimum wage that applies to the classification specified in clauses 14.1 to 14.3 in which the adult apprentice was engaged immediately prior to entering into the training agreement.

## 14.7 Apprentice conditions of employment

[14.5—Apprentice conditions of employment inserted by [PR559223](#); renumbered as 14.7 by [PR751293](#) ppc 30Jun23]

- (a) Except as provided in this clause or where otherwise stated, all conditions of employment specified in this award apply to apprentices.
- (b) Where an apprentice is required to attend block release training for training identified in or associated with their training contract, and such training requires an overnight stay, the employer must pay for the excess reasonable travel costs incurred by the apprentice in the course of travelling to and from such training. Provided that this clause will not apply where the apprentice could attend an alternative Registered Training Organisation (RTO) and the use of the more distant RTO is not agreed between the employer and the apprentice.
- (c) For the purposes of clause 14.7(b) above, excess reasonable travel costs include the total costs of reasonable transportation (including transportation of tools where required), accommodation costs incurred while travelling (where necessary) and reasonable expenses incurred while travelling, including meals, which exceed those incurred in travelling to and from work. For the purposes of this subclause, excess travel costs do not include payment for travelling time or expenses incurred while not travelling to and from block release training.

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- (d) The amount payable by an employer under clause 14.7(b) may be reduced by an amount the apprentice is eligible to receive for travel costs to attend block release training under a Government apprentice assistance scheme. This will only apply if an apprentice has either received such assistance or their employer has advised them in writing of the availability of such assistance.
- (e) All training fees charged by an RTO for prescribed courses and the cost of all prescribed textbooks (excluding those textbooks which are available in the employer's technical library) for the apprenticeship, which are paid by an apprentice, shall be reimbursed by the employer within six months of the commencement of the apprenticeship or the relevant stage of the apprenticeship, or within three months of the commencement of the training provided by the RTO, whichever is the later, unless there is unsatisfactory progress.
- (f) An employer may meet its obligations under 14.7(e) by paying any fees and/or cost of textbooks directly to the RTO.
- (g) An apprentice is entitled to be released from work without loss of continuity of employment and to payment of the appropriate wages to attend any training and assessment specified in, or associated with, the training contract.
- (h) Time spent by an apprentice in attending any training and/or assessment specified in, or associated with, the training contract is to be regarded as time worked for the employer for the purposes of calculating the apprentice's wages and determining the apprentice's employment conditions. This subclause operates subject to the provisions of Schedule E—School-based Apprentices.
- (i) No apprentice will, except in an emergency, work or be required to work overtime or shiftwork at times which would prevent their attendance at training consistent with their training contract.

## 15. Allowances

To view the current monetary amounts of work-related allowances refer to the [Allowances Sheet](#).

[Varied by [PR988396](#), [PR994419](#), [PR998128](#), [PR502624](#), [PR509171](#), [PR523001](#), [PR536804](#), [PR551727](#), [PR566828](#), [PR579523](#), [PR592276](#), [PR606500](#), [PR704095](#), [PR707625](#), [PR718990](#), [PR729458](#), [PR740866](#), [PR762290](#)]

### 15.1 Adjustment of expense related allowances

- (a) At the time of any adjustment to the [standard rate](#), each expense related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.

[15.1(b) substituted by [PR994419](#) from 01Jan10; varied by [PR523001](#) ppc 01Jul12]

- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

<b>Allowance</b>	<b>Applicable CPI figure</b>
Meal allowance	Take away and fast foods sub-group
Clothing and equipment allowance	Clothing and footwear group
Tool allowance	Tools and equipment for house and garden component of the household appliances, utensils and tools sub-group
Vehicle allowance	Private motoring sub-group

## 15.2 Clothing and equipment

[15.2(c) varied by [PR502624](#) from 01Jan10]

- (a) Employees required by the employer to wear uniforms will be supplied with an adequate number of uniforms appropriate to the occupation free of cost to employees. Such items are to remain the property of the employer and be laundered and maintained by such employer free of cost to the employee.
- (b) Instead of the provision of such uniforms, the employer may, by agreement with the employee, pay such employee a uniform allowance at the rate of \$1.23 per shift or part thereof on duty or \$6.24 per week, whichever is the lesser amount. Where such employee's uniforms are not laundered by or at the expense of the employer, the employee will be paid a laundry allowance of \$0.32 per shift or part thereof on duty or \$1.49 per week, whichever is the lesser amount.
- (c) The uniform allowance, but not the laundry allowance, will be paid during all absences on paid leave, except absences on long service leave and absence on personal/carer's leave beyond 21 days. Where, prior to the taking of leave, an employee was paid a uniform allowance other than at the weekly rate, the rate to be paid during absence on leave will be the average of the allowance paid during the four weeks immediately preceding the taking of leave.
- (d) Where an employer requires an employee to wear rubber gloves, special clothing or where safety equipment is required for the work performed by an employee, the employer must reimburse the employee for the cost of purchasing such special clothing or safety equipment, except where such clothing or equipment is provided by the employer.

## 15.3 Leading hand allowance

- (a) A leading hand is an employee who is placed in charge of not less than two other employees of a substantially similar classification, but does not include any employee whose classification denotes supervisory responsibility.

[15.3(b) varied by [PR994419](#) from 01Jan10]

- (b) A leading hand will be paid a weekly allowance of the amount specified by the item number in accordance with the following scale:

<b>Leading hand in charge of:</b>	<b>% of <u>standard rate</u></b>
2-5 other employees	2.67
6-10 other employees	3.81



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Leading hand in charge of:	% of <u>standard rate</u>
11-15 other employees	4.81
16 or more other employees	5.88

- (c) This allowance will be part of salary for all purposes of this award.
- (d) An employee who works less than 38 hours per week will be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to 38 ordinary hours.

### 15.4 Meal allowance

[15.4(a) varied by [PR998128](#), [PR509171](#), [PR523001](#), [PR536804](#), [PR551727](#), [PR566828](#), [PR579523](#), [PR592276](#), [PR606500](#), [PR704095](#), [PR707625](#), [PR718990](#), [PR729458](#), [PR740866](#), [PR762290](#) ppc 01Jul23]

- (a) An employee will be supplied with an adequate meal where an employer has adequate cooking and dining facilities or be paid a meal allowance of \$15.20 in addition to any overtime payment as follows:
  - (i) when required to work after the usual finishing hour of work beyond one hour or, in the case of shiftworkers, when the overtime work on any shift exceeds one hour.

[15.4(a)(ii) varied by [PR718990](#), [PR729458](#), [PR740866](#), [PR762290](#) ppc 01Jul23]

- (ii) Provided that where such overtime work exceeds four hours a further meal allowance of \$13.70 will be paid.
- (b) Clause 15.4(a) will not apply when an employee could reasonably return home for a meal within the meal break.
- (c) On request meal allowance will be paid on the same day as overtime is worked.

### 15.5 Nauseous work allowance

- (a) An allowance of 0.05% of the standard rate per hour or part thereof will be paid to an employee in any classification if they are engaged in handling linen of a nauseous nature other than linen sealed in airtight containers and/or for work which is of an unusually dirty or offensive nature having regard to the duty normally performed by such employee in such classification. Any employee who is entitled to be paid an allowance will be paid a minimum sum of 0.27% of the standard rate for work performed in any week.
- (b) Notwithstanding the provisions of clause 15.5(a), a nauseous allowance is not payable by an employer who, at 1 January 2010, was not obliged to pay such an allowance under the terms of an award based transitional instrument. This subclause will only operate until 1 January 2011.

### 15.6 Tool allowance

[15.6 varied by [PR998128](#), [PR579523](#), [PR592276](#), [PR718990](#), [PR729458](#), [PR740866](#), [PR762290](#) ppc 01Jul23]

A tool allowance of \$13.11 per week for the supply and maintenance of tools will be paid to chefs and cooks who are not provided with all necessary tools by the employer.

## 15.7 Travelling, transport and fares

[15.7(a) varied by [PR523001](#), [PR536804](#), [PR551727](#), [PR718990](#), [PR740866](#), [PR762290](#) ppc 01Jul23]

- (a) An employee required and authorised to use their own motor vehicle in the course of their duties will be paid an allowance of not less than \$0.96 per kilometre.
- (b) When an employee is involved in travelling on duty, if the employer cannot provide the appropriate transport, all reasonably incurred expenses in respect to fares, meals and accommodation will be met by the employer on production of receipted account(s) or other evidence acceptable to the employer.
- (c) Provided further that the employee will not be entitled to reimbursement for expenses referred to in clause 15.7(b) which exceed the mode of transport, meals or the standard of accommodation agreed with the employer for these purposes.

## 16. District allowances

[Varied by [PR994419](#), [PR503620](#); deleted by [PR561478](#) ppc 05Mar15]

## 17. Payment of wages

[Varied by [PR721749](#)]

[Paragraph numbered as 17.1 by [PR994419](#) from 01Jan10]

**17.1** Wages are to be paid weekly or fortnightly.

### 17.2 Method of payment

[17.1 renumbered as 17.2 by [PR994419](#) from 01Jan10]

Subject to clause 17.4, by no later than payday, wages must be paid by cash or electronic funds transfer, the latter into the bank or financial institutional account nominated by the employee.

### 17.3 Payment on termination of employment

[17.2 renumbered as 17.3 by [PR994419](#) from 01Jan10; 17.3—Termination renamed and substituted by [PR721749](#) ppc 26Aug20]

- (a) When notice of termination of employment has been given by an employee in accordance with clause 11.1, or an employee's services have been terminated by an employer who has provided them with notice in accordance with the [NES](#), payment of all wages and other monies owing to an employee will be made to the employee by no later than the last day of the formal notice period.
- (b) In all other circumstances, the employer must pay all wages and other monies owing to an employee by no later than 7 days after the day on which the employee's employment terminates.
- (c) The requirement to pay wages and other amounts under clauses 17.3(a) and (b) is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

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NOTE 1: Section 117(2) of the [Act](#) provides that an employer must not terminate an employee's employment unless the employer has given the required minimum period of notice or "has paid" to the employee payment instead of giving them notice.

NOTE 2: Clause 17.3(c) allows the Commission to make an order delaying the requirement to make a payment under clause 17.3(a) or 17.3(b). For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

NOTE 3: State and Territory long service leave laws or long service leave entitlements under section 113 of the [Act](#), may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

### 17.4 Delay

[17.3 renumbered as 17.4 by [PR994419](#) from 01Jan10]

Notwithstanding the above, an employer will not be held liable for any unforeseen event outside the control of the employer which prevents the employer's ability to meet the requirements of this clause, for example bank error or delay.

### 18. Accident pay

[Varied by [PR994419](#), [PR503620](#); deleted by [PR561478](#) ppc 05Mar15]

### 19. Supported wage system

[Varied by [PR988396](#)]

See Schedule C

### 20. National training wage

[Varied by [PR988396](#); substituted by [PR593814](#) ppc 01Jul17; varied by [PR606342](#), [PR707428](#), [PR720159](#), [PR718835](#), [PR723827](#), [PR729273](#), [PR740693](#), [PR762127](#)]

[20.1 varied by [PR720159](#) ppc 18Jun20]

**20.1** Schedule E to the [Miscellaneous Award 2020](#) sets out minimum wage rates and conditions for employees undertaking traineeships.

[20.2 varied by [PR606342](#), [PR707428](#), [PR720159](#) ppc 18Jun20, [PR723827](#), [PR729273](#), [PR740693](#), [PR762127](#) ppc 01Jul23]

**20.2** This award incorporates the terms of Schedule E to the [Miscellaneous Award 2020](#) as at 1 July 2023. Provided that any reference to "this award" in Schedule E to the [Miscellaneous Award 2020](#) is to be read as referring to the *Aged Care Award 2010* and not the [Miscellaneous Award 2020](#).

[20.3 inserted by [PR718835](#) ppc 01Jul20; deleted by [PR723827](#) ppc 01Nov20]

## 21. Superannuation

[Varied by [PR990530](#), [PR995161](#), [PR994419](#), [PR526089](#), [PR530211](#), [PR533378](#), [PR545985](#), [PR771285](#)]

### 21.1 Superannuation legislation

[21.1 substituted by [PR771285](#) ppc 09Apr24]

- (a) The [NES](#) and Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deal with the superannuation rights and obligations of employers and employees.
- (b) The rights and obligations in clause 21 supplement those in superannuation legislation and the [NES](#).

NOTE: Under superannuation legislation:

- (a) Individual employees generally have the opportunity to choose their own superannuation fund.
- (b) If a new employee does not choose a superannuation fund, the employer must ask the Australian Taxation Office (ATO) whether the employee is an existing member of a stapled superannuation fund and, if stapled fund details are provided by the ATO, make contributions to the stapled fund.
- (c) If an employee does not choose a superannuation fund and does not have a stapled fund, the choice of superannuation fund requirements will be satisfied by contributions made to a superannuation fund nominated in the award covering the employee, provided the fund is able to accept contributions for the benefit of the employee.
- (d) A fund may not be able to accept contributions for the benefit of an employee if the employee would be a new member of the fund's MySuper product and the MySuper product is closed to new members because it has failed the performance tests of Australian Prudential Regulation Authority (APRA) for 2 consecutive years.

### 21.2 Employer contributions

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

### 21.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same

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superannuation fund as the employer makes the superannuation contributions provided for in clause 21.2.

- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 21.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 21.3(a) or (b) was made.

### 21.4 Superannuation fund

[21.4 varied by [PR994419](#), [PR771285](#) ppc 09Apr24]

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 21.2 to another superannuation fund, the employer must make the superannuation contributions provided for in clause 21.2 and pay any amount authorised under clauses 21.3(a) or 21.3(b) to one of the following superannuation funds or its successor, provided that, in respect of new employees, the fund is able to accept new beneficiaries:

- (a) First State Super;
- (b) Health Industry Plan (HIP);
- (c) Health Employees Superannuation Trust of Australia (HESTA);

[21.4(d) deleted by [PR545985](#) ppc 01Jan14]

[21.4(e) substituted by [PR533378](#) ppc 22Jan13; renumbered as 21.4(d) by [PR545985](#) ppc 01Jan14]

- (d) Catholic Super (CSF);

[21.4(f) renumbered as 21.4(e) by [PR545985](#) ppc 01Jan14]

- (e) Mercy Super;

[21.4(g) renumbered as 21.4(f) by [PR545985](#) ppc 01Jan14]

- (f) Sunsuper;

[21.4(h) renumbered as 21.4(g) by [PR545985](#) ppc 01Jan14]

- (g) Tasplan;

[21.4(i) substituted by [PR530211](#) ppc 26Oct12; renumbered as 21.4(h) by [PR545985](#) ppc 01Jan14]

- (h) CareSuper;

[21.4(j) varied by [PR995161](#) ppc 23Mar10, [PR526089](#) ppc 09Jul12; renumbered as 21.4(i) by [PR545985](#) ppc 01Jan14]

- (i) NGS Super;

[21.4(k) inserted by [PR995161](#) ppc 23Mar10; renumbered as 21.4(j) by [PR545985](#) ppc 01Jan14]

- (j) AustralianSuper;

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[21.4(k) renumbered as 21.4(l) by [PR995161](#), 21.4(l) renumbered as 21.4(k) and varied by [PR545985](#) ppc 01Jan14]

- (k) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector scheme; or

[New 21.4(l) inserted by [PR545985](#) ppc 01Jan14]

- (l) a superannuation fund or scheme which the employee is a defined benefit member of.

## Part 5—Hours of Work and Related Matters

### 22. Ordinary hours of work and rostering

[Varied by [PR995161](#), [PR994419](#), [PR509796](#), [PR700643](#), [PR713505](#)]

#### 22.1 Ordinary hours of work

The ordinary hours of work will be 38 hours per week, or an average of 38 hours per week worked over 76 hours per fortnight or 114 hours per 21 days or 152 hours per four week period, and will be worked either:

- (a) in a period of 28 calendar days of not more than 20 work days in a roster cycle;
- (b) in a period of 28 calendar days of not more than 19 work days in a roster cycle, with the twentieth day taken as an accrued paid day off (ADO); or
- (c) eight hours on a day shift or 10 hours on a night shift.

#### 22.2 Span of hours

- (a) The ordinary hours of work for a day worker will be worked between 6.00 am and 6.00 pm Monday to Friday.

[22.2(b) varied by [PR994419](#) from 01Jan10]

- (b) A shiftworker is an employee who is regularly rostered to work their ordinary hours outside the ordinary hours of work of a day worker, as defined in clause 22.2(a).

#### 22.3 Rostered days off

Employees, other than a casual employee, will be free from duty for not less than two full days in each week or four full days in each fortnight or eight full days in each 28 day cycle. Where practicable, days off will be consecutive.

#### 22.4 Rest breaks between rostered work

- (a) An employee will be allowed a break of not less than 10 hours between the termination of one shift or period of duty and the commencement of another.
- (b) By mutual agreement, the 10 hour rest break may be reduced to eight hours.

**22.5 Accumulation and taking of accrued days off (ADOs)**

- (a) This clause will only apply to full-time employees.
- (b) Where an employee is entitled to an ADO in accordance with the arrangement of ordinary hours of work as set out in clause 22.1, ADOs will be taken within 12 months of the date on which the first full ADO accrued.
- (c) Where an employee's employment terminates for any reason, accumulated ADOs will be paid to the employee at ordinary rates.
- (d) The taking of an employee's ADO will be determined, by mutual agreement between the employee and the employer, having regard to the needs of the place of employment or sections thereof. Such ADO will, where practicable, be consecutive with the rostered days off prescribed in clause 22.3 above. ADOs will not be rostered on public holidays.

**22.6 Rosters**

- (a) The ordinary hours of work for each employee will be displayed on a roster in a place conveniently accessible to employees. Such roster will be displayed at least two weeks prior to the commencing date of the first working period in any roster subject to clause 22.6(b) below.

[22.6(b) deleted by [PR509796](#) ppc 23May11]

[22.6(c) renumbered as 22.6(b) by [PR509796](#) ppc 23May11]

- (b) It is not obligatory for the employer to display any roster of the ordinary hours of work of casual or relieving staff.

[22.6(d) renumbered as 22.6(c) by [PR509796](#) ppc 23May11]

- (c) Seven days' notice will be given of a change in a roster. However, a roster may be altered at any time to enable the service of the organisation to be carried on where another employee is absent from duty on account of illness or in an emergency.

[22.6(e) renumbered as 22.6(d) by [PR509796](#) ppc 23May11]

- (d) This clause will not apply where the only change to the roster of a part-time employee is the mutually agreed addition of extra hours to be worked such that the part-time employee still has two rostered days off in that week or four rostered days off in that fortnight, as the case may be.

[22.6(f) renumbered as 22.6(e) by [PR509796](#) ppc 23May11]

- (e) Where practicable, ADOs will be displayed on the roster.

[New 22.6(f) inserted by [PR700643](#) ppc 01Oct18]

- (f) Rostering arrangements and changes to rosters may be communicated by telephone, direct contact, mail, email, facsimile or any electronic means of communication.

[22.6(g) renumbered as 22.6(f) by [PR509796](#), 22.6(f) renumbered as 22.6(g) by [PR700643](#) ppc 01Oct18]

- (g) This clause will not apply to hostel supervisors.

## 22.7 Minimum engagements

- (a) Full-time employees will receive a minimum payment of four hours for each engagement in respect of ordinary hours of work.

[22.7(b) substituted by [PR509796](#) ppc 23May11]

- (b) Permanent part-time and casual employees will receive a minimum payment of two hours for each engagement.

[22.7(c) varied by [PR994419](#); deleted by [PR509796](#) ppc 23May11]

[22.7(d) renumbered as 22.7(c) by [PR509796](#) ppc 23May11]

- (c) Subject to clause 22.8, except for meal breaks, the hours of work on any day will be continuous.

## 22.8 Broken shifts

With respect to broken shifts:

- (a) **Broken shift** for the purposes of this clause means a shift worked by a casual or permanent part-time employee that includes breaks (other than a meal break) totalling not more than four hours and where the span of hours is not more than 12 hours.

[22.8(b) varied by [PR995161](#) ppc 23Mar10]

- (b) A broken shift may be worked where there is mutual agreement between the employer and employee to work the broken shift.

[22.8(c) varied by [PR994419](#) from 01Jan10]

- (c) Payment for a broken shift will be at ordinary pay with penalty rates and shift allowances in accordance with clauses 25—Overtime penalty rates and 26—Shiftwork, with shift allowances being determined by the commencing time of the broken shift.
- (d) All work performed beyond the maximum span of 12 hours for a broken shift will be paid at double time.
- (e) An employee must receive a minimum break of 10 hours between broken shifts rostered on successive days.

[22.8(f) inserted by [PR713505](#) ppc 25Oct19]

- (f) Each portion of the shift must meet the minimum engagement requirements in clause 22.7(b).

## 22.9 Sleepovers

Employees may, in addition to normal rostered shifts, be required to sleepover. A **sleepover** means sleeping in at night in order to be on call for emergencies.

The following conditions will apply to each night of sleepover:

- (a) The span for a sleepover will be not less than eight hours and not more than 10 hours on any one night.



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- (b)** Employees will be provided with free board and lodging for each night on which they are required to sleepover.
- (c)** Employees will be provided with a separate room with a bed and use of staff facilities or client facilities where applicable.

[22.9(d) varied by [PR994419](#) from 01Jan10]

- (d)** In addition to the provision of free board and lodging for sleepovers, the employee will be entitled to a sleepover allowance of 5.2% of the [standard rate](#) for each night on which they sleep over.
- (e)** No work other than that of an emergency nature will be required to be performed during any sleepover. For the purposes of this clause an emergency is any unplanned occurrence or event requiring prompt action.
- (f)** An employee directed to perform work other than that of an emergency nature during any sleepover will be paid the appropriate hourly rate from the start of the sleepover to the end of the non-emergency work, or from the start of the non-emergency work to the end of the sleepover, whichever is the lesser, in addition to the sleepover allowance in clause 22.9(d).
- (g)** All time worked during any sleepover will count as time worked and be paid for in accordance with the following provisions:
  - (i)** All time worked by full-time employees during any sleepover will be paid for at overtime rates.
  - (ii)** All time worked by permanent part-time employees during any sleepover will be paid for at ordinary pay plus applicable shift and weekend penalties; provided that, if the total number of hours worked on that day exceeds the number of hours worked by full-time employees, or 11 hours where there are no such full-time employees, then the excess hours worked on that day will be paid for at overtime rates; and provided further that if the total number of hours worked in the week exceeds 38 hours, or exceeds 76 hours in the fortnight, then the excess hours worked in that week or fortnight will be paid for at overtime rates.
  - (iii)** All time worked by casual employees during any sleepover will be paid for at ordinary pay plus applicable shift and weekend penalties; provided that if the total number of hours worked in the week exceeds 38 hours, or exceeds 76 hours in the fortnight, then the excess hours worked in that week or fortnight will be paid for at overtime rates.
  - (iv)** And provided further that where the employee does not have eight consecutive hours off duty between ordinary rostered duty on successive days, then the provisions of clause 22.9(j) will apply.
- (h)** A sleepover may be rostered to commence immediately at the conclusion of the employee's shift and continuous with that shift; and/or immediately prior to the employee's shift and continuous with that shift, and not otherwise.
- (i)** No employee will be required to sleepover during any part of their rostered days off or ADOs.

- (j) An employee (whether a full-time employee, permanent part-time employee or casual employee) who performs so much work during sleepover periods between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift that they have not had at least eight consecutive hours off duty between these times will, subject to this clause, be released after completion of such work until they have had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If, on the instruction of the employer, such an employee resumes or continues to work without having eight consecutive hours off duty, the employee will be paid at double the appropriate rate until they are released from duty for eight consecutive hours and will be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (k) Casual employees may only be used for sleepovers when full-time employees or permanent part-time employees are not available for that duty. In no case will casual employees be used exclusively, or almost exclusively, for sleepovers.

Nothing in this clause will preclude the employer from rostering an employee to work shiftwork instead of undertaking sleepovers.

## **23. Saturday and Sunday work**

[Varied by [PR995161](#), [PR713505](#)]

- 23.1** Employees whose ordinary working hours include work on a Saturday and/or Sunday, will be paid for ordinary hours worked between midnight on Friday and midnight on Saturday at the rate of time and a half, and for ordinary hours worked between midnight on Saturday and midnight on Sunday at the rate of time and three quarters. These extra rates will be in substitution for and not cumulative upon the shift premiums prescribed in clause 26—Shiftwork.

[23.2 substituted by [PR995161](#), [PR713505](#) ppc 01Jul20]

- 23.2** A casual employee who works on a weekend will be paid the following rates:
- (a) between midnight Friday and midnight Saturday – 175% of the ordinary hourly rate; and
  - (b) between midnight Saturday and midnight Sunday – 200% of the ordinary hourly rate.

[23.3 inserted by [PR713505](#) ppc 01Jul20]

**23.3** The rates prescribed in clause 23.2 will be in substitution for and not cumulative upon the casual loading prescribed in clause 10.4(b).

## **24. Breaks**

[Varied by [PR995161](#)]

### **24.1 Meal breaks**

- (a) Each employee who works in excess of five hours will be entitled to an unpaid meal break of not less than 30 minutes and not more than 60 minutes duration, to be taken at a mutually agreed time after commencing work.

[24.1(b) varied by [PR994419](#); substituted by [PR995161](#) ppc 23Mar10]

- (b) Where an employee is required to remain available to attend to duty or is on duty during their meal break, the employee will be paid at overtime rates for all time worked from the commencement of that meal break until such time that a meal break free from duty is taken by the employee or the employee's shift ends (whichever occurs first). Whilst payment will be calculated at overtime rates, the time worked until the meal break is taken will be regarded and count as an employee's ordinary time.

### **24.2 Tea breaks**

- (a) Two separate 10 minute intervals (in addition to meal breaks) will be allowed to each employee on duty during each ordinary shift of 7.6 hours or more.
- (b) Where less than 7.6 ordinary hours are worked, employees will be allowed one 10 minute interval in each four hour period.
- (c) Subject to mutual agreement, such intervals may alternatively be taken as one 20 minute interval.
- (d) Tea breaks will count as time worked.

## **25. Overtime penalty rates**

[Varied by [PR995161](#), [PR994419](#), [PR995661](#), [PR584066](#), [PR723844](#), [PR763212](#)]

### **25.1 Overtime rates**

#### **(a) Full-time employees**

[25.1(a) substituted by [PR723844](#) ppc 01Mar21]

- (i) A full-time employee will be paid the following for all work done in addition to their rostered ordinary hours on any day:
  - (A) for all authorised overtime on Monday to Friday, payment will be made at the rate of **150%** of the hourly rate (plus any all-purpose allowance payable) for the first two hours and **200%** after two hours;

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- (B) for all authorised overtime on a Saturday or Sunday, payment will be made at the rate of **200%** of the hourly rate (plus any all-purpose allowance payable); and
  - (C) for all authorised overtime on a public holiday, payment will be made at the rate of **250%** of the hourly rate (plus any all-purpose allowance payable).
- (ii) Overtime rates under this clause will be in substitution for, and not cumulative upon, the shift premiums prescribed in clause 26.1.

### (b) Part-time employees

[25.1(b) renamed by [PR995161](#); renamed and substituted by [PR723844](#) ppc 01Mar21]

- (i) All time worked by a part-time employee in excess of 38 hours per week or 76 per fortnight will be paid at the following rates:
  - (A) Monday to Friday—**150%** of the hourly rate (plus any all-purpose allowance payable) for the first two hours and **200%** of the hourly rate (plus any all-purpose allowance payable) after two hours;
  - (B) Saturday and Sunday—**200%** of the hourly rate (plus any all-purpose allowance payable); and
  - (C) Public holidays—**250%** of the hourly rate (plus any all-purpose allowance payable).
- (ii) All time worked by a part-time employee which exceeds 10 hours per day, will be paid for at the following rates:
  - (A) Monday to Saturday—**150%** of the hourly rate (plus any all-purpose allowance payable) for the first two hours and **200%** of the hourly rate (plus any all-purpose allowance payable) after two hours;
  - (B) Sunday—**200%** of the hourly rate (plus any all-purpose allowance payable); and
  - (C) Public holidays—**250%** of the hourly rate (plus any all-purpose allowance payable).
- (iii) All time worked in excess of a part-time employee's rostered hours on any one day (unless an agreement has been entered into under clause 10.3(c)), will be overtime and paid at the rates prescribed by clause 25.1(b)(i).

### (c) Casual employees

[25.1(c) varied by [PR995161](#); deleted by [PR584066](#) ppc 22Aug16]

[New 25.1(c) inserted by [PR723844](#) ppc 01Mar21]

- (i) A casual employee will be paid for all time worked in excess of 38 hours per week or 76 hours per fortnight at the following rates:
  - (A) Monday to Friday—**187.5%** of the hourly rate (plus any all-purpose allowance payable) for the first two hours and **250%** of the hourly rate (plus any all-purpose allowance payable) after two hours;

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- (B) Saturday and Sunday—**250%** of the hourly rate (plus any all-purpose allowance payable); and
  - (C) Public holidays—**312.5%** of the hourly rate (plus any all-purpose allowance payable).
- (ii) A casual employee will be paid the following rates for all time worked in excess of 10 hours per day:
- (A) Monday to Saturday—**187.5%** of the hourly rate (plus any all-purpose allowance payable) for the first two hours and **250%** of the hourly rate (plus any all-purpose allowance payable) after two hours;
  - (B) Sunday—**250%** of the hourly rate (plus any all-purpose allowance payable); and
  - (C) Public holidays—**312.5%** of the hourly rate (plus any all-purpose allowance payable).

NOTE: The overtime rates for casual employees have been calculated by adding the casual loading prescribed by clause 10.4(b) to the hourly rate (plus any all-purpose allowance payable) before applying the overtime rates for full-time and part-time employees prescribed by clauses 25.1(a) and 25.1(b).

### (d) Rest period after overtime

[25.1(d) renumbered as 25.1(c) by [PR584066](#) ppc 22Aug16; 25.1(c) renumbered as 25.1(d) by [PR723844](#) ppc 01Mar21]

- (i) An employee, other than a casual, who works so much overtime between the termination of their ordinary work on any day or shift and the commencement of their ordinary work on the next day or shift, that they have not had at least 10 consecutive hours off duty between those times, will be released after completion of such overtime until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.

[25.1(d)(ii) varied by [PR723844](#) ppc 01Mar21]

- (ii) If on the instructions of the employer, such an employee resumes or continues work without having had 10 consecutive hours off duty, they will be paid at the rate of **200%** of the hourly rate (plus any all-purpose allowance payable) until they are released from duty for such rest period and they will then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absence.

### (e) Recall to work overtime

[25.1(e) renumbered as 25.1(d) by [PR584066](#) ppc 22Aug16; 25.1(d) renumbered as 25.1(e) by [PR723844](#) ppc 01Mar21]

An employee recalled to work overtime after leaving the employer's premises will be paid for a minimum of four hours' work at the appropriate rate for each time so recalled. If the work required is completed in less than four hours, the employee will be released from duty.

**(f) Rest break during overtime**

[25.1(f) renumbered as 25.1(e) by [PR584066](#) ppc 22Aug16; 25.1(e) renumbered as 25.1(f) by [PR723844](#) ppc 01Mar21]

- (i) An employee recalled to work overtime after leaving the employer's premises and who is required to work for more than four hours will be allowed 20 minutes for the partaking of a meal and a further 20 minutes after each subsequent four hours overtime; all such time will be counted as time worked.

[25.1(f)(ii) varied by [PR994419](#) from 01Jan10]

- (ii) The meals referred to in clause 25.1(f)(i) will be allowed to the employee free of charge. Where the facility is unable to provide such meals, a meal allowance, as prescribed in clause 15.4 will be paid to the employee concerned.

**25.2 Time off instead of payment for overtime**

[25.2 inserted by [PR584066](#) ppc 22Aug16]

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 25.2.
- (c) An agreement must state each of the following:
  - (i) the number of overtime hours to which it applies and when those hours were worked;
  - (ii) that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
  - (iii) that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
  - (iv) that any payment mentioned in subparagraph (iii) must be made in the next pay period following the request.

Note: An example of the type of agreement required by this clause is set out at Schedule H. There is no requirement to use the form of agreement set out at Schedule H. An agreement under clause 25.2 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

- (d) The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 25.2 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e) Time off must be taken:

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- (i) within the period of 6 months after the overtime is worked; and
  - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (f) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 25.2 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h) The employer must keep a copy of any agreement under clause 25.2 as an employee record.
- (i) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (j) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 25.2 will apply, including the requirement for separate written agreements under paragraph (b) for overtime that has been worked.

[Note varied by [PR763212](#) ppc 01Aug23]

Note: If an employee makes a request under section 65 of the [Act](#) for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65A(3) of the [Act](#)).

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 25.2 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 25.2.

## 26. Shiftwork

[Varied by [PR995161](#)]

### 26.1 Shift allowances and penalty rates

[26.1 varied by [PR995161](#) ppc 23Mar10]

Employees working afternoon or night shift will be paid the following percentages in addition to the ordinary rate for such shift. Provided that employees who work less



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than 38 hours per week will only be entitled to the additional rates where their shift commence prior to 6.00 am or finish subsequent to 6.00 pm.

- (a) Afternoon shift commencing at 10.00 am and before 1.00 pm—10% of the ordinary hourly rate
- (b) Afternoon shift commencing at 1.00 pm and before 4.00 pm—12.5% of the ordinary hourly rate
- (c) Night shift commencing at 4.00 pm and before 4.00 am—15% of the ordinary hourly rate
- (d) Night shift commencing at 4.00 am and before 6.00 am—10% of the ordinary hourly rate

[26.2 inserted by [PR995161](#) ppc 23Mar10]

**26.2** An employee entitled to a shift allowance under clause 26.1, will be paid the shift allowance for the entire shift.

[26.3 inserted by [PR995161](#) ppc 23Mar10]

**26.3** For the purposes of clause 26.1, “ordinary hourly rate” means the appropriate weekly rate divided by 38.

## **27. Higher duties**

**27.1** An employee engaged in any duties carrying a higher wage rate than the classification in which they are ordinarily employed in any one day or shift will be paid at the higher wage rate for:

- (a) the time so worked for two hours or less; or
- (b) a full day or shift where the time so worked exceeds two hours.

## **27A. Requests for flexible working arrangements**

[27A inserted by [PR701412](#) ppc 01Dec18; substituted by [PR763212](#) ppc 01Aug23]

Requests for flexible working arrangements are provided for in the [NES](#).

NOTE: Disputes about requests for flexible working arrangements may be dealt with under clause 9—Dispute resolution and/or under section 65B of the [Act](#).

## **Part 6—Leave and Public Holidays**

### **28. Annual leave**

[Varied by [PR994419](#), [PR995161](#), [PR997021](#), [PR582952](#)]

[Preamble numbered as 28.1 by [PR994419](#) from 01Jan10]

**28.1** Annual leave is provided for in the [NES](#). This clause contains additional provisions.



## 28.2 Quantum of annual leave

[28.1 renumbered as 28.2 by [PR994419](#) ppc 01Jan10; 28.2 substituted by [PR997021](#) from 01Jan10]

- (a) For the purposes of the [NES](#) a shiftworker is defined as:
- (i) an employee who is regularly rostered to work their ordinary hours outside the ordinary hours of work as a day worker as defined in clause 22.2(a); and/or
  - (ii) an employee who works for more than four ordinary hours on 10 or more weekends.

[\(b\)](#) For the purpose of the clause 28.2(a), a weekend means work in ordinary time on a Saturday and/or a Sunday in any one calendar week.

[28.1(c) inserted by [PR995161](#); 28.2(c) deleted by [PR582952](#) ppc 29Jul16]

[\(c\)](#) Clause 28.2 does not apply to an employee subject to clause 28.3.

## 28.3 Quantum of annual leave—employees previously covered by the Nurses Award 2020

[\(a\)](#) Clause 28.3 only applies to an employee who was covered by the Nurses Award 2020 on XX MONTH 20XX [day before changes take effect] and who became covered by this award as a result of PRXXXXXX.

[\(b\)](#) An employee subject to this clause is entitled to the same quantum of annual leave as if they were covered by the Nurses Award 2020.

NOTE: In addition to the entitlements in the NES, an employee under the Nurses Award 2020 is entitled to an additional week of annual leave on the same terms and conditions **provided in the NES.**

## ~~28.3~~28.4 Annual leave loading

[28.2 renumbered as 28.3 by [PR994419](#) from 01Jan10]

- (a) In addition to their ordinary pay, an employee, other than a shiftworker, will be paid an annual leave loading of 17.5 % of their ordinary rate of pay.
- (b) Shiftworkers, in addition to their ordinary pay, will be paid the higher of:
- (i) annual leave loading of 17.5% of their ordinary rate of pay; or
  - (ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.

## ~~28.4~~28.5 Annual leave in advance

[28.4 inserted by [PR582952](#) ppc 29Jul16]

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:

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- (i) state the amount of leave to be taken in advance and the date on which the leave is to be commence; and
- (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

Note: An example of the type of agreement required by clause 28.5 is set out at Schedule F. There is no requirement to use the form of agreement set out at Schedule F.

- (c) The employer must keep a copy of any agreement under clause 28.5 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 28.5, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

### **28.528.6 Cashing out of annual leave**

[28.5 inserted by [PR582952](#) ppc 29Jul16]

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 28.6.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 28.6.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 28.6 must state:
  - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
  - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 28.6 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 28.6 as an employee record.

Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 28.6.

Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 28.6.

Note 3: An example of the type of agreement required by clause 28.6 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G.

### **28.628.7 Excessive leave accruals: general provision**

[28.6 inserted by [PR582952](#) ppc 29Jul16]

Note: Clauses 28.7 to 28.9 contain provisions, additional to the National Employment Standards, about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the Fair Work Act.

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave (or 10 weeks' paid annual leave for a shiftworker, as defined by clause 28.2(a)).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 28.8 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 28.9 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

### **28.728.8 Excessive leave accruals: direction by employer that leave be taken**

[28.7 inserted by [PR582952](#) ppc 29Jul16]

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 28.7(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under paragraph (a):
  - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 28.7, 28.8 or 28.9 or otherwise agreed by the employer and employee) are taken into account; and
  - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
  - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and

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- (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under paragraph (a) that is in effect.
- (d) An employee to whom a direction has been given under paragraph (a) may request to take a period of paid annual leave as if the direction had not been given.

Note 1: Paid annual leave arising from a request mentioned in paragraph (d) may result in the direction ceasing to have effect. See clause 28.8(b)(i).

Note 2: Under section 88(2) of the Fair Work Act, the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

### **28.828.9 Excessive leave accruals: request by employee for leave**

[28.8 inserted by [PR582952](#); substituted by [PR582984](#) ppc 29Jul17]

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 28.7(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under paragraph (a) if:
  - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
  - (ii) the employee has not been given a direction under clause 28.8(a) that, when any other paid annual leave arrangements (whether made under clause 28.7, 28.8 or 28.9 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under paragraph (a) must not:
  - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 28.7, 28.8 or 28.9 or otherwise agreed by the employer and employee) are taken into account; or
  - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
  - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
  - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under paragraph (a) more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker, as defined by clause 28.2(a)) in any period of 12 months.

- (e) The employer must grant paid annual leave requested by a notice under paragraph (a).

## 29. Public holidays

[Varied by [PR995161](#), [PR559823](#), [PR561875](#), [PR713505](#); [PR747559](#)]

[Paragraph numbered as 29.1 by [PR994419](#) from 01Jan10]

**29.1** Public holidays are provided for in the [NES](#). This clause contains additional provisions.

### 29.2 Payment for working on a public holiday

[29.1 renumbered as 29.2 by [PR994419](#) from 01Jan10]

#### (a) Full-time day workers

[29.2(a) varied by [PR995161](#) ppc 23Mar10; corrected by [PR559823](#) ppc 23Mar10, [PR561875](#) ppc 23Mar10]

A full-time employee who will, in addition to their ordinary pay for work performed on a public holiday, elect to receive one of the following:

- (i) payment of an additional sum equal to 150% for hours worked; or

[29.2(a)(ii) varied by [PR747559](#) ppc 14Nov22]

- (ii) have the same number of hours worked added to their annual leave.

- The election in clauses 29.2(a)(i) and (ii) will be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer.
- A full-time employee who does not work on a public holiday or part-day public holiday will be paid their ordinary pay for that day or part-day.
- Payments under this clause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been on a public holiday.

#### (b) Part-time employees

- (i) A part-time employee will only be entitled to payment for those public holidays that fall on days they are normally rostered to work.

- (ii) A part-time employee will, in addition to their ordinary pay for work performed on a public holiday, elect to receive one of the following:

- payment of an additional sum equal to 150% for hours worked; or
- have the same number of hours worked added to their annual leave.

- (iii) The election in clause 29.2(b)(ii) will be made on the commencement of employment and then on the anniversary date each year. The employee may not alter such election during the year except with the agreement of the employer.

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[29.2(b)(iv) varied by [PR747559](#) ppc 14Nov22]

- (iv) A part-time employee who is rostered off on a public holiday they would ordinarily work will be paid their ordinary pay for that day or part-day.
- (v) Payments under this clause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.

[29.2(c) substituted by [PR713505](#) ppc 01Jul20]

### (c) Casual employees

- (i) A casual employee will be paid only for those public holidays they work at 275% of the ordinary hourly rate for hours worked.
- (ii) The rates prescribed in clause 29.2(c)(i) will be in substitution for and not cumulative upon the casual loading prescribed in clause 10.4(b) and weekend rates prescribed in clause 23.2.
- (iii) Payments under this clause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.

## 30. Personal/carer's leave and compassionate leave

Personal/carer's leave and compassionate leave are provided for in the [NES](#).

### 30A. Parental leave and related entitlements

[30A inserted by [PR763212](#) ppc 01Aug23]

Parental leave and related entitlements are provided for in the [NES](#).

NOTE: Disputes about requests for extensions to unpaid parental leave may be dealt with under clause 9—Dispute resolution and/or under section 76B of the [Act](#).

## 31. Community service leave

Community service leave is provided for in the [NES](#).

## 32. Ceremonial leave

An employee who is legitimately required by Aboriginal tradition to be absent from work for Aboriginal ceremonial purposes will be entitled to up to 10 working days unpaid leave in any one year, with the approval of the employer.

### 33. Family and domestic violence leave

[33—Leave to deal with Family and Domestic Violence renamed and substituted by [PR740267](#); 33—Unpaid family and domestic violence leave renamed and substituted by [PR750406](#) ppc 15Mar23]

Family and domestic violence leave is provided for in the [NES](#).

NOTE 1: Information provided to employers concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers are subject to confidentiality requirements regarding the handling of this information under section 106C of the [Act](#) and requirements as to what can be reported on payslips pursuant to regulations 3.47 and 3.48 of the *Fair Work Regulations 2009*.

NOTE 2: Depending upon the circumstances, evidence that would satisfy a reasonable person of the employee's need to take family and domestic violence leave may include a document issued by the police service, a court or family violence support service, or a statutory declaration.

## Schedule A—Transitional Provisions

[Sched A inserted by [PR988396](#) ppc 01Jan10; varied by [PR994419](#), [PR503620](#)]

### A.1 General

**A.1.1** The provisions of this schedule deal with minimum obligations only.

[A.1.2 substituted by [PR994419](#) from 01Jan10]

**A.1.2** The provisions of this schedule are to be applied:

- (a) when there is a difference, in money or percentage terms, between a provision in a relevant transitional minimum wage instrument (including the transitional default casual loading) or award-based transitional instrument on the one hand and an equivalent provision in this award on the other;
- (b) when a loading or penalty in a relevant transitional minimum wage instrument or award-based transitional instrument has no equivalent provision in this award;
- (c) when a loading or penalty in this award has no equivalent provision in a relevant transitional minimum wage instrument or award-based transitional instrument; or
- (d) when there is a loading or penalty in this award but there is no relevant transitional minimum wage instrument or award-based transitional instrument.

### A.2 Minimum wages – existing minimum wage lower

**A.2.1** The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,

[A.2.1(b) substituted by [PR994419](#) from 01Jan10]

- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage lower than that in this award for any classification of employee.

**A.2.2** In this clause minimum wage includes:

- (a) a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;
- (b) a piecework rate; and
- (c) any applicable industry allowance.

**A.2.3** Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.



## Aged Care Award 2010

**A.2.4** The difference between the minimum wage for the classification in this award and the minimum wage in clause A.2.3 is referred to as the transitional amount.

**A.2.5** From the following dates the employer must pay no less than the minimum wage for the classification in this award minus the specified proportion of the transitional amount:

**First full pay period on or after**

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

**A.2.6** The employer must apply any increase in minimum wages in this award resulting from an annual wage review.

**A.2.7** These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

### **A.3 Minimum wages – existing minimum wage higher**

**A.3.1** The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

(a) was obliged,

[A.3.1(b) substituted by [PR994419](#) from 01Jan10]

(b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or

(c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by a transitional minimum wage instrument and/or an award-based transitional instrument to pay a minimum wage higher than that in this award for any classification of employee.

**A.3.2** In this clause minimum wage includes:

(a) a minimum wage for a junior employee, an employee to whom training arrangements apply and an employee with a disability;

(b) a piecework rate; and

(c) any applicable industry allowance.

**A.3.3** Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the minimum wage in the relevant transitional minimum wage instrument and/or award-based transitional instrument for the classification concerned.

**A.3.4** The difference between the minimum wage for the classification in this award and the minimum wage in clause A.3.3 is referred to as the transitional amount.

## Aged Care Award 2010

**A.3.5** From the following dates the employer must pay no less than the minimum wage for the classification in this award plus the specified proportion of the transitional amount:

**First full pay period on or after**

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

**A.3.6** The employer must apply any increase in minimum wages in this award resulting from an annual wage review. If the transitional amount is equal to or less than any increase in minimum wages resulting from the 2010 annual wage review the transitional amount is to be set off against the increase and the other provisions of this clause will not apply.

**A.3.7** These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

### **A.4 Loadings and penalty rates**

For the purposes of this schedule loading or penalty means a:

- casual or part-time loading;
- Saturday, Sunday, public holiday, evening or other penalty;
- shift allowance/penalty.

### **A.5 Loadings and penalty rates – existing loading or penalty rate lower**

[A.5.1 substituted by [PR994419](#) from 01Jan10]

**A.5.1** The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by the terms of a transitional minimum wage instrument or an award-based transitional instrument to pay a particular loading or penalty at a lower rate than the equivalent loading or penalty in this award for any classification of employee.

[A.5.2 substituted by [PR994419](#) from 01Jan10]

**A.5.2** Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the loading or penalty in the relevant transitional minimum wage instrument or award-based transitional instrument for the classification concerned.

**A.5.3** The difference between the loading or penalty in this award and the rate in clause A.5.2 is referred to as the transitional percentage.

## Aged Care Award 2010

**A.5.4** From the following dates the employer must pay no less than the loading or penalty in this award minus the specified proportion of the transitional percentage:

**First full pay period on or after**

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

**A.5.5** These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

### **A.6 Loadings and penalty rates – existing loading or penalty rate higher**

[A.6.1 substituted by [PR994419](#) from 01Jan10]

**A.6.1** The following transitional arrangements apply to an employer which, immediately prior to 1 January 2010:

- (a) was obliged,
- (b) but for the operation of an agreement-based transitional instrument or an enterprise agreement would have been obliged, or
- (c) if it had been an employer in the industry or of the occupations covered by this award would have been obliged

by the terms of a transitional minimum wage instrument or an award-based transitional instrument to pay a particular loading or penalty at a higher rate than the equivalent loading or penalty in this award, or to pay a particular loading or penalty and there is no equivalent loading or penalty in this award, for any classification of employee.

[A.6.2 substituted by [PR994419](#) from 01Jan10]

**A.6.2** Prior to the first full pay period on or after 1 July 2010 the employer must pay no less than the loading or penalty in the relevant transitional minimum wage instrument or award-based transitional instrument.

[A.6.3 substituted by [PR994419](#) from 01Jan10]

**A.6.3** The difference between the loading or penalty in this award and the rate in clause A.6.2 is referred to as the transitional percentage. Where there is no equivalent loading or penalty in this award, the transitional percentage is the rate in A.6.2.

**A.6.4** From the following dates the employer must pay no less than the loading or penalty in this award plus the specified proportion of the transitional percentage:

**First full pay period on or after**

1 July 2010	80%
1 July 2011	60%
1 July 2012	40%
1 July 2013	20%

**A.6.5** These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

**A.7 Loadings and penalty rates – no existing loading or penalty rate**

[A.7.1 substituted by [PR994419](#) from 01Jan10]

**A.7.1** The following transitional arrangements apply to an employer not covered by clause A.5 or A.6 in relation to a particular loading or penalty in this award.

**A.7.2** Prior to the first full pay period on or after 1 July 2010 the employer need not pay the loading or penalty in this award.

[A.7.3 substituted by [PR994419](#) from 01Jan10]

**A.7.3** From the following dates the employer must pay no less than the following percentage of the loading or penalty in this award:

**First full pay period on or after**

1 July 2010	20%
1 July 2011	40%
1 July 2012	60%
1 July 2013	80%

**A.7.4** These provisions cease to operate from the beginning of the first full pay period on or after 1 July 2014.

**A.8 Former Division 2B employers**

[A.8 inserted by [PR503620](#) ppc 01Jan11]

**A.8.1** This clause applies to an employer which, immediately prior to 1 January 2011, was covered by a Division 2B State award.

**A.8.2** All of the terms of a Division 2B State award applying to a Division 2B employer are continued in effect until the end of the full pay period commencing before 1 February 2011.

**A.8.3** Subject to this clause, from the first full pay period commencing on or after 1 February 2011 a Division 2B employer must pay no less than the minimum wages, loadings and penalty rates which it would be required to pay under this Schedule if it had been a national system employer immediately prior to 1 January 2010.

**A.8.4** Despite clause A.8.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was lower than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay more than the minimum wage, loading or penalty rate in this award.

**A.8.5** Despite clause A.8.3, where a minimum wage, loading or penalty rate in a Division 2B State award immediately prior to 1 February 2011 was higher than the corresponding minimum wage, loading or penalty rate in this award, nothing in this Schedule requires a Division 2B employer to pay less than the minimum wage, loading or penalty rate in this award.

**Aged Care Award 2010**

- A.8.6** In relation to a Division 2B employer this Schedule commences to operate from the beginning of the first full pay period on or after 1 January 2011 and ceases to operate from the beginning of the first full pay period on or after 1 July 2014.

## Schedule B—Classification Definitions

[Sched A renumbered as Sched B by [PR988396](#); varied by [PR997254](#), [PR713505](#); substituted by [PR751293](#) ppc 30Jun23]

Note: Any dispute about the classification of a particular employee may be referred to the Fair Work Commission in accordance with clause 9 of this award.

### B.1 Aged care employee—general

NOTE: Minimum wages for the classifications listed in clause B.1 are provided in clause 14.1, however, as set out in clause 14.2, a higher rate applies for Aged care employee—general—levels 4 to 7 if that employee is the single most senior food services employee engaged by any employer at the facility or site.

#### B.1.1 Aged care employee—general—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:

<b>General and administrative services</b>	<b>Food services</b>
General clerk	Food services assistant
Laundry hand	
Cleaner	
Assistant gardener	

#### B.1.2 Aged care employee—general—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:

<b>General and administrative services</b>	<del>Food services</del>
General clerk/Typist (between 3 months' and less than 1 year's service)	<del>Food services assistant</del>
<del>Laundry hand</del>	
<del>Cleaner</del>	
Gardener (non-trade)	
Maintenance/Handyperson (unqualified)	
Driver (less than 3 ton)	

### **B.1.3 Aged care employee—general—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:

<b>General and administrative services</b>	<b>Food services</b>
General clerk/Typist (second and subsequent years of service)	Cook
Receptionist	<a href="#">Food services assistant</a>
Pay clerk	
Driver (less than 3 ton) who is required to hold a St John Ambulance first aid certificate	
<a href="#">Laundry hand</a>	
<a href="#">Cleaner</a>	

### **B.1.4 Aged care employee—general—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;

### Aged Care Award 2010

- 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.

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)

### **B.1.5 Aged care employee—general—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

### **B.1.6 Aged care employee—general—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;



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- 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:

<b>General and administrative services</b>	<b>Food services</b>
Maintenance tradesperson (advanced)	Senior chef
Gardener (advanced)	

### **B.1.7 Aged care employee—general—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:

<b>General and administrative services</b>	<b>Food services</b>
Clerical supervisor	Chef /Food services supervisor
Interpreter (qualified)	
Gardener superintendent	
General services supervisor	

## **B.2 Aged care employee—direct care**

### **B.2.1 Aged care employee—direct care—level 1—Introductory**

An employee whose primary role is to provide direct care to residents and who has less than 3 months' industry experience as a direct care employee.

**B.2.2 Aged care employee—direct care—level 2—Direct Carer**

An employee whose primary role is to provide direct care to residents and who has more than 3 months' industry experience as a direct care employee.

**B.2.3 Aged care employee—direct care—level 3—Qualified**

An employee whose primary role is to provide direct care to residents and who has obtained a Certificate III in Individual Support (Ageing) or equivalent.

**B.2.4 Aged care employee—direct care—level 4—Senior**

An employee whose primary role is to provide direct care to residents and who has obtained a Certificate III in Individual Support or equivalent and has obtained 4 years' post-qualification industry experience as a direct care employee after XX MONTH 2024 [day the changes take effect].

**B.2.5 Aged care employee—direct care—level 5—Specialist**

An employee whose primary role is to provide direct care to residents and who has obtained a Certificate IV in Ageing Support or equivalent ~~as a requirement for the performance of their duties by the employer.~~

**B.2.6 Aged care employee—direct care—level 6—Team Leader**

A direct care employee who has obtained a Certificate IV in Ageing Support or equivalent ~~as a requirement for the performance of their duties by the employer~~ and is required to supervise and train other direct care employees.

**B.2.1—Aged care employee—direct care—level 1**

~~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:~~

~~**Personal care**~~

~~No indicative task~~

**B.2.2—Aged care employee—direct care—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:~~

~~**Personal care**~~

~~Personal care worker grade 1~~

~~**B.2.3 Aged care employee – direct care – level 3**~~

~~An employee at this level:~~

- ~~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.~~

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

~~**Personal care**~~

~~Personal care worker grade 2~~

~~Recreational/Lifestyle activities officer (unqualified)~~

~~**B.2.4 Aged care employee – direct care – 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;~~
- ~~requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience; and~~
- ~~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:~~

~~**Personal care**~~

~~Personal care worker grade 3~~

~~**B.2.5 Aged care employee – direct care – level 5**~~

~~An employee at this level:~~

## Aged Care Award 2010

- ~~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.~~

Indicative tasks performed at this level are:

### **Personal care**

~~Personal care worker grade 4~~

## **B.2.6—Aged care employee—direct care—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 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:

### **Personal care**

~~No indicative task~~

## **B.2.7—Aged care employee—direct care—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;~~

## Aged Care Award 2010

- ~~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:~~

### ~~Personal care~~

~~Personal care worker grade 5~~

## Schedule C—Supported Wage System

[Sched B renumbered as Sched C by [PR988396](#) ppc 01Jan10]

[Varied by [PR994419](#), [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR542138](#), [PR551831](#), [PR568050](#), [PR581528](#), [PR592689](#), [PR606630](#), [PR709080](#), [PR719661](#), [PR729672](#), [PR742256](#), [PR762969](#)]

**C.1** This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award.

[C.2 varied by [PR568050](#) ppc 01Jul15]

**C.2** In this schedule:

**approved assessor** means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

**assessment instrument** means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

**disability support pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme

**relevant minimum wage** means the minimum wage prescribed in this award for the class of work for which an employee is engaged

**supported wage system** means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: [www.jobaccess.gov.au](http://www.jobaccess.gov.au)

**SWS wage assessment agreement** means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

### **C.3 Eligibility criteria**

**C.3.1** Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

**C.3.2** This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

## **C.4 Supported wage rates**

**C.4.1** Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

<b>Assessed capacity (clause C.5)</b>	<b>Relevant minimum wage</b>
%	%
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

[C.4.2 varied by [PR994419](#), [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR551831](#), [PR568050](#), [PR581528](#), [PR592689](#), [PR606630](#), [PR709080](#), [PR719661](#), [PR729672](#), [PR742256](#), [PR762969](#) ppc 01Jul23]

**C.4.2** Provided that the minimum amount payable must be not less than \$102 per week.

**C.4.3** Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.

## **C.5 Assessment of capacity**

**C.5.1** For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

**C.5.2** All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

## **C.6 Lodgement of SWS wage assessment agreement**

[C.6.1 varied by [PR994419](#), [PR542138](#) ppc 04Dec13]

**C.6.1** All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

[C.6.2 varied by [PR994419](#), [PR542138](#) ppc 04Dec13]

**C.6.2** All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

## **C.7 Review of assessment**

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

## **C.8 Other terms and conditions of employment**

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

## **C.9 Workplace adjustment**

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

## **C.10 Trial period**

**C.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

**C.10.2** During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

[C.10.3 varied by [PR994419](#), [PR998748](#), [PR510670](#), [PR525068](#), [PR537893](#), [PR551831](#), [PR568050](#), [PR581528](#), [PR592689](#), [PR606630](#), [PR709080](#), [PR719661](#), [PR729672](#), [PR742256](#), [PR762969](#) ppc 01Jul23]

**C.10.3** The minimum amount payable to the employee during the trial period must be no less than \$102 per week.

**C.10.4** Work trials should include induction or training as appropriate to the job being trialled.

**C.10.5** Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause C.5.



**Schedule D—National Training Wage**

[Schedule D inserted by [PR994419](#) ppc 1Jan10; varied by [PR997899](#), [PR509049](#), [PR522880](#), [PR536683](#), [PR545787](#), [PR551606](#), [PR566686](#), [PR579779](#); deleted by [PR593814](#) ppc 01Jul17]

[Schedule E—Part-day Public Holidays deleted by [PR747559](#) ppc 14Nov22]

## Schedule E—School-based Apprentices

[Schedule F—School based Apprentices inserted by [PR544794](#) ppc 01Jan14; renumbered as Schedule E by [PR747559](#) ppc 14Nov22]

- E.1** This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.
- E.2** A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the relevant State or Territory authority.
- E.3** The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- E.4** For the purposes of clause E.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is 25% of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.
- E.5** A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.
- E.6** For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- E.7** The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed six years.
- E.8** School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each two years of employment as an apprentice or at the rate of competency-based progression, if provided for in this award.
- E.9** The apprentice wage scales are based on a standard full-time apprenticeship of four years (unless the apprenticeship is of three years duration) or stages of competency based progression, if provided for in this award. The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.
- E.10** If an apprentice converts from school-based to full-time, the successful completion of competencies (if provided for in this award) and all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.
- E.11** School-based apprentices are entitled pro rata to all of the other conditions in this award.

## Schedule F—Agreement to Take Annual Leave in Advance

[Schedule G—Agreement to Take Annual Leave in Advance inserted by [PR582952](#) ppc 29Jul16; renumbered as Schedule F by [PR747559](#) ppc 14Nov22]

Link to PDF copy of [Agreement to Take Annual Leave in Advance](#).

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

**The employer and employee agree that the employee will take a period of paid annual leave before the employee has accrued an entitlement to the leave:**

The amount of leave to be taken in advance is: \_\_\_\_ hours/days

The leave in advance will commence on: \_\_\_\_ / \_\_\_\_ /20 \_\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_ / \_\_\_\_ /20 \_\_\_\_

Name of employer  
representative: \_\_\_\_\_

Signature of employer  
representative: \_\_\_\_\_

Date signed: \_\_\_\_ / \_\_\_\_ /20 \_\_\_\_

*[If the employee is under 18 years of age - include:]*

**I agree that:**

**if, on termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken under this agreement, then the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.**

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_ / \_\_\_\_ /20 \_\_\_\_

## Schedule G—Agreement to Cash Out Annual Leave

[Schedule H—Agreement to Cash Out Annual Leave inserted by [PR582952](#) ppc 29Jul16; renumbered as Schedule H by [PR747559](#) ppc 14Nov22]

Link to PDF copy of [Agreement to Cash Out Annual Leave](#).

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

### The employer and employee agree to the employee cashing out a particular amount of the employee's accrued paid annual leave:

The amount of leave to be cashed out is: \_\_\_\_ hours/days

The payment to be made to the employee for the leave is: \$ \_\_\_\_\_ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

*Include if the employee is under 18 years of age:*

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

## Schedule H—Agreement for Time Off Instead of Payment for Overtime

[Schedule I—Agreement for Time Off Instead of Payment for Overtime inserted by [PR584066](#) ppc 22Aug16; renumbered as Schedule H by [PR747559](#) ppc 14Nov22]

Link to PDF copy of [Agreement for Time Off Instead of Payment for Overtime](#).

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

**The employer and employee agree that the employee may take time off instead of being paid for the following amount of overtime that has been worked by the employee:**

Date and time overtime started: \_\_\_ / \_\_\_ /20 \_\_\_ am/pm

Date and time overtime ended: \_\_\_ / \_\_\_ /20 \_\_\_ am/pm

Amount of overtime worked: \_\_\_\_\_ hours and \_\_\_\_\_ minutes

**The employer and employee further agree that, if requested by the employee at any time, the employer must pay the employee for overtime covered by this agreement but not taken as time off. Payment must be made at the overtime rate applying to the overtime when worked and must be made in the next pay period following the request.**

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_ / \_\_\_ /20 \_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_ / \_\_\_ /20 \_\_\_

**Schedule I—Classification Translation Arrangements**

Schedule I specifies the classifications ~~and minimum rates of pay~~ that apply to employees in the Aged care employee—direct care stream classified under the previous classification structure and employees covered by the Nurses Award 2020 on XX MONTH 20XX [day before changes take effect] who became covered by this award as a result of PRXXXXXX.

**I.1 Translation arrangements for the Aged Care Award 2010**

An employee who was classified as an Aged care employee—direct care under the Aged Care Award 2010 on or before XX MONTH 20XX [day before changes take effect] is classified as follows:

<b><u>Previous classification</u></b>	<b><u>Translated classification</u></b>
<u>Aged care employee—direct care—level 1</u>	<u>Aged care employee—direct care—level 1</u>
<u>Aged care employee—direct care—level 2</u>	<u>Aged care employee—direct care—level 2</u>
<u>Aged care employee—direct care—level 3</u>	
<u>Aged care employee—direct care—level 4</u>	<u>Aged care employee—direct care—level 3*</u>
<u>Aged care employee—direct care—level 5 (without relevant Certificate IV qualification)</u>	<u>Aged care employee—direct care—level 4</u>
<u>Aged care employee—direct care—level 5 (with relevant Certificate IV qualification)</u>	<u>Aged care employee—direct care—level 5</u>
<u>Aged care employee—direct care—level 6</u>	
<u>Aged care employee—direct care—level 7</u>	<u>Aged care employee—direct care—level 6</u>

\*NOTE: The requirement for 4 years’ post-qualification industry experience at Aged care employee—direct care—level 4 refers only to industry experience acquired after the XX MONTH 20XX [day the changes take effect].

**I.2 Translation arrangements for the Nurses Award 2020**

(a) ~~Subject to clause I.2(b), a~~An employee who was covered by the Nurses Award 2020 on XX MONTH 20XX [day before changes take effect] and who became covered by this award as a result of PRXXXXXX is classified as follows:

<b><u>Previous classification</u></b>	<b><u>Translated classification</u></b>
<u>First year if less than 3 months’ work experience in the industry</u>	<u>Aged care employee—direct care—level 1</u>
<u>First year if 3 months’ or more work experience in the industry</u>	<u>Aged care employee—direct care—level 2</u>
<u>Second year</u>	
<u>Third year</u>	
<u>Experienced (the holder of a relevant Certificate III qualification)</u>	<u>Aged care employee—direct care—level 3</u>

**Aged Care Award 2010**

**(b)** For the avoidance of doubt, if an employee described in clause I.2(a) falls within a description in clauses B.2.4–B.2.6 (Aged care employee—direct care—level 4—Senior through to Aged care employee—direct care—level 6—Team Leader), the employee is classified in accordance with whichever of clauses B.2.4–B.2.6 is applicable, rather than in accordance with the table in clause I.2(a).

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**Aged Care Award 2010**

[Schedule X—Additional Measures During the COVID-19 Pandemic inserted by [PR718141](#) ppc 08Apr20; varied by [PR720633](#); corrected by [PR720662](#); varied by [PR721438](#), [PR724065](#), [PR728136](#), [PR736911](#), [PR743810](#), deleted by [PR748510](#) ppc 01Jan23]

[Schedule Y—Industry Specific Measures During the COVID-19 Pandemic deleted by [PR728137](#) ppc 26Mar21]



# **Nurses Award 2020 – AM2020/99 and ors – Stage 3 markup**

This Fair Work Commission consolidated modern award incorporates all amendments up to and including 9 April 2024 ([PR771302](#)).

Clause(s) affected by the most recent variation(s):

18—Superannuation

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[Varied by [PR746868](#), [PR747351](#), [PR750511](#)]

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## Part 1—Application and Operation of this Award

### 1. Title and commencement

- 1.1 This award is the *Nurses Award 2020*.
- 1.2 This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.
- 1.3 A variation to this award this does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.

### 2. Definitions

[Varied by [PR733887](#), [PR751294](#)]

In this award, unless the contrary intention appears:

**Act** means the *Fair Work Act 2009* (Cth).

**ADO** means accrued day off.

**afternoon shift** means any shift commencing not earlier than 12.00 noon and finishing after 6.00 pm on the same day.

[Definition of **aged care employee** inserted by [PR751294](#) ppc 30Jun23]

**aged care employee** means an employee engaged in the provision of:

- 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; or
- services for an aged person in a private residence.

[Definition of **casual employee** inserted by [PR733887](#) from 27Sep21]

**casual employee** has the meaning given by section 15A of the [Act](#).

**casual hourly rate** has the meaning given in clause 11.1.

**defined benefit member** has the meaning given by the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**employee** means national system employee within the meaning of the [Act](#).

**employer** means national system employer within the meaning of the [Act](#).

**exempt public sector superannuation scheme** has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth).

**health industry** has the meaning given in clause 4.2.

**home care nursing assistant** means a nursing assistant who is engaged in the provision of services for an aged person in a private residence.

**MySuper product** has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth).

NES means the [National Employment Standards](#) as contained in [sections 59 to 131](#) of the [Act](#).

**night shift** means any shift commencing on or after 6.00 pm and finishing before 7.30 am on the following day.

**on-hire** means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client.

[Definition of **standard rate** varied by [PR751294](#) ppc 30Jun23]

**standard rate** means:

**(a)** for employees other than aged care employees, the minimum weekly rate for a Registered nurse—other than aged care employee—level 1 Pay point 1 in clause 15.1(c)(i); and

**(a)(b)** for aged care employees means the minimum weekly rate for a Registered nurse—aged care employee—level 1 Pay point 1 in clause 15.2(c)(i).

**shiftworker** means an employee who is regularly rostered to work their ordinary hours of work outside the span of hours of a day worker as defined in clause 13.1(a).

### 3. The National Employment Standards and this award

3.1 The [National Employment Standards](#) (NES) and this award contain the minimum conditions of employment for employees covered by this award.

3.2 Where this award refers to a condition of employment provided for in the [NES](#), the [NES](#) definition applies.

3.3 The employer must ensure that copies of this award and the [NES](#) are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

### 4. Coverage

4.1 This occupational award covers:

## Nurses Award 2020

- (a) employers throughout Australia in the health industry and their employees in the classifications listed in Schedule A—Classification Definitions to the exclusion of any other modern award; and
- (b) employers who employ a nurse/midwife, principally engaged in nursing/midwifery duties comprehended by the classifications listed in Schedule A—Classification Definitions.

**4.2 Health industry** means employers in the business and/or activity of providing health and medical services and who employ nurses and persons who directly assist nurses in the provision of nursing care and nursing services.

4.3 This award does not cover employers who employ nurses in primary or secondary schools.

4.4 This award:

~~(a) does not cover employees working as nursing assistants as defined in clause A.1 in the aged care industry who are aged care employees on the basis that they are engaged in the provision of 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;~~

~~(a)(b) does cover nursing assistants who are aged-care employees on the basis that they are engaged in the provision of services for an aged person in a private residence.~~

4.34.5 This award covers any employer which supplies on-hire employees in classifications set out in Schedule A—Classification Definitions and those on-hire employees, if the employer is not covered by another modern award containing a classification which is more appropriate to the work performed by the employee. Clause 4.5 operates subject to the exclusions from coverage in this award.

4.44.6 This award covers employers which provide group training services for trainees engaged in any of the classifications set out in Schedule A—Classification Definitions and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. Clause 4.6 operates subject to the exclusions from coverage in this award.

4.54.7 This award does not cover:

- (a) employees excluded from award coverage by the [Act](#);
- (b) employees who are covered by a modern enterprise award or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or
- (c) employees who are covered by a State reference public sector modern award or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

**4.64.8** Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

## **5. Individual flexibility arrangements**

**5.1** Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:

- (a) arrangements for when work is performed; or
- (b) overtime rates; or
- (c) penalty rates; or
- (d) allowances; or
- (e) annual leave loading.

**5.2** An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.

**5.3** An agreement may only be made after the individual employee has commenced employment with the employer.

**5.4** An employer who wishes to initiate the making of an agreement must:

- (a) give the employee a written proposal; and
- (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.

**5.5** An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.

**5.6** An agreement must do all of the following:

- (a) state the names of the employer and the employee; and
- (b) identify the award term, or award terms, the application of which is to be varied; and
- (c) set out how the application of the award term, or each award term, is varied; and
- (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
- (e) state the date the agreement is to start.

- 5.7 An agreement must be:
- (a) in writing; and
  - (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- 5.8 Except as provided in clause 5.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.
- 5.9 The employer must keep the agreement as a time and wages record and give a copy to the employee.
- 5.10 The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.
- 5.11 An agreement may be terminated:
- (a) at any time, by written agreement between the employer and the employee; or
  - (b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).

NOTE: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in section 144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see section 145 of the [Act](#)).

- 5.12 An agreement terminated as mentioned in clause 5.11(b) ceases to have effect at the end of the period of notice required under that clause.
- 5.13 The right to make an agreement under clause 5 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

## 6. Requests for flexible working arrangements

[6 substituted by [PR763231](#) ppc 01Aug23]

Requests for flexible working arrangements are provided for in the [NES](#).

NOTE: Disputes about requests for flexible working arrangements may be dealt with under clause 31—Dispute resolution and/or under section 65B of the [Act](#).

## 7. Facilitative provisions

- 7.1 A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or

an employer and the majority of employees in the enterprise or part of the enterprise concerned.

7.2 Facilitative provisions in this award are contained in the following clauses:

Clause	Provision	Agreement between an employer and:
14.2(b)	Paid tea breaks	An individual
16	Payment of wages	An individual or a majority of employees
19.3	Time off instead of payment for overtime	An individual
22.11	Annual leave in advance	An individual
22.12	Cashing out of annual leave	An individual
28.3	Public holiday substitution	An individual
28.6	Additional leave days by mutual agreement	An individual

## Part 2—Types of Employment and Classifications

### 8. Types of employment

8.1 Employees under this award will be employed in one of the following categories:

- (a) full-time;
- (b) part-time; or
- (c) casual.

8.2 At the time of engagement an employer will inform each employee whether they are to be employed on a full-time, part-time or casual basis. An employer may direct an employee to carry out such duties that are within the limits of the employee's skill, competence and training, consistent with the respective classification.

### 9. Full-time employees

9.1 A full-time employee is engaged to work:

- (a) 38 hours per week; or
- (b) an average of 38 hours per week in accordance with clause 13.1 of this award.



## **10. Part-time employees**

- 10.1** A part-time employee is engaged to work less than an average of 38 ordinary hours per week and has reasonably predictable hours of work.
- 10.2** Before commencing part-time employment, the employer and employee will agree in writing to the guaranteed minimum number of hours to be worked and the rostering arrangements which will apply to those hours.
- 10.3** The terms of the agreement in clause 10.2 may be varied by agreement and recorded in writing.
- 10.4** The terms of this award will apply on a pro rata basis to part-time employees on the basis that the ordinary weekly hours for full-time employees are 38.

## **11. Casual employees**

[Varied by [PR733887](#), [PR743421](#)]

[11.1 deleted by [PR733887](#) from 27Sep21]

### **11.1 Casual loading**

[11.2 renumbered as 11.1 by [PR733887](#) from 27Sep21, substituted by [PR743421](#) ppc 11Jul22]

For each ordinary hour worked, a casual employee must be paid the following:

- (a) the minimum hourly rate applicable to their classification and pay point; and
- (b) a loading of **25%** of the minimum hourly rate applicable to their classification and pay point.

This is the casual hourly rate.

[11.3 renumbered as 11.2 by [PR733887](#) from 27Sep21]

- 11.2** When a casual employee works overtime, they must be paid the overtime rates in clause 19.2.

[11.4 renumbered as 11.3 by [PR733887](#) from 27Sep21]

- 11.3** A casual employee will be paid a minimum of 2 hours' pay for each engagement.

[11.5 renumbered as 11.4 by [PR733887](#) from 27Sep21]

- 11.4** A casual employee will be paid shiftwork loadings prescribed in clause 20—Shiftwork calculated on the minimum hourly rate of pay applicable to their classification and pay point (i.e. excluding the casual loading) with the casual loading prescribed in clause 11.1(b) then added to the penalty rate of pay.

## 11.5 Right to request casual conversion

[11.6 renumbered as 11.15 and renamed and substituted by [PR733887](#) from 27Sep21]

Offers and requests for conversion from casual employment to full-time or part-time employment are provided for in the [NES](#).

NOTE: Disputes about offers and requests for casual conversion under the [NES](#) are to be dealt with under clause 31—Dispute resolution.

## 12. Classifications

12.1 A description of the classifications under this award is set out in Schedule A—Classification Definitions.

12.2 Employers must advise their employees in writing of their classification upon commencement and of any subsequent changes to their classification.

## Part 3—Hours of Work

### 13. Ordinary hours of work and rostering arrangements

#### 13.1 Ordinary hours and roster cycles

(a) **Span of hours—day worker**

Ordinary hours of work for a **day worker** are worked between 6.00 am and 6.00 pm, Monday to Friday.

(b) A **shiftworker** is an employee who is regularly rostered to work their ordinary hours of work outside the span of hours of a day worker as defined in clause 13.1(a).

(c) The ordinary hours of work for a full-time employee will be:

(i) 38 hours per week; or

(ii) 76 hours per fortnight; or

(iii) 152 hours over 28 days.

(d) The shift length or ordinary hours of work per day will be a maximum of 10 hours exclusive of meal breaks.

(e) An accrued day off (ADO) system of work may be implemented where a full-time employee works no more than 19 days in a 4 week period of 152 hours.

(f) Each employee must be free from duty for not less than:

(i) 2 full days in each week; or

(ii) 4 full days in each fortnight; or

## Nurses Award 2020

- (iii) 8 full days in each 28-day cycle.
- (g) Where practicable, days off referred to in clause 13.1(f) must be consecutive.
- (h) For the purposes of clauses 13.1(f) and 13.1(g), duty includes time an employee is on-call.
- (i) The hours of work will be continuous, except for meal breaks. Except for the regular changeover of shifts, an employee will not be required to work more than one shift in each 24 hours.

### 13.2 Rostering

- (a) Employees will work in accordance with a weekly or fortnightly roster fixed by the employer.
- (b) The roster will set out employees' daily ordinary working hours and starting and finishing times.
- (c) The roster will be displayed in a place conveniently accessible to employees at least 7 days before the commencement of the roster period.
- (d) Unless the employer otherwise agrees, an employee desiring a roster change will give 7 days' notice except where the employee is ill or in an emergency.
- (e) Subject to clause 13.2(f), 7 days' notice of a change of roster will be given by the employer to an employee.
- (f) The employer may alter a roster at any time to enable the functions of the hospital or facility to be carried out where another employee is absent from work pursuant to clauses 23—Ceremonial leave, 25—Personal/carer's leave and compassionate leave and 27—Family and domestic violence leave, or in an emergency. Where any such alteration requires an employee working on a day which would otherwise have been the employee's day off, an alternative day off will be taken at an agreed time.

### 13.3 Accumulation and taking of accrued days off (ADOs)

- (a) Where a full-time employee is entitled to an ADO, in accordance with the arrangement of ordinary hours of work as set out in clause 13, the ADO will be taken within 12 months of the date on which the first full ADO accrued.
- (b) With the consent of the employer, ADOs may be accumulated up to a maximum of 5 in any one year.
- (c) An employee will be paid for any accumulated ADOs, at ordinary rates, on the termination of their employment for any reason.

### 13.4 Rest breaks between rostered work

- (a) An employee will be allowed a rest break of 10 hours between the completion of one ordinary work period or shift and the commencement of another work period or shift.

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- (b) By mutual agreement between the employer and employee, the 10 hour rest break may be reduced to 8 hours.
- (c) If, on the instruction of the employer, an employee resumes or continues to work without having had 10 consecutive hours off duty, or 8 hours as agreed, they will be paid at the rate of **200%** of the minimum hourly rate applicable to their classification and pay point (or **200%** of the casual hourly rate in the case of a casual employee) until released from duty for such period.

### **14. Breaks**

#### **14.1 Unpaid meal breaks**

- (a) An employee who works in excess of 5 hours will be entitled to an unpaid meal break of 30 to 60 minutes. Such meal break will be taken between the 4<sup>th</sup> and the 6<sup>th</sup> hour after beginning work, where reasonably practicable. Provided that, by agreement of an individual employee, an employee who works shifts of 6 hours or less may forfeit the meal break.
- (b) Where an employee is required to be on duty during a meal break, the employee will be paid overtime for all time worked until the meal break is taken.
- (c) Where an employee is required by the employer to remain available during a meal break, but is free from duty, the employee will be paid at ordinary rates for a 30 minute meal break. This period will not count as time worked when calculating ordinary hours for the purposes of overtime or penalties. If the employee is recalled to perform duty during this period the employee will be paid overtime for all time worked until the balance of the meal break is taken.

#### **14.2 Paid tea breaks**

- (a) Every employee will be entitled to a paid 10 minute tea break in each 4 hours worked at a time to be agreed between the employee and employer.
- (b) Subject to agreement between the employer and employee, two 10 minute tea breaks may be taken as one 20 minute tea break.
- (c) Tea breaks will count as time worked.

## Part 4—Wages and Allowances

### 15. Minimum rates

[Varied by [PR740715](#), [PR751294](#), [PR762144](#)]

#### 15.1 Minimum rates for employees other than aged care employees

[15.1 substituted by [PR751294](#) ppc 30Jun23]

An employer must pay employees, other than aged care employees, the following minimum rates for ordinary hours worked by the employee.

(a) **Nursing assistant—~~other than home care nursing assistants—other than aged care employees~~**

[15.2 varied by [PR740715](#); renamed and renumbered as 15.1(a) by [PR751294](#) ppc 30Jun23; 15.1(a) varied by [PR762144](#) ppc 01Jul23]

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
1st year	934.20	24.58
2nd year	948.80	24.97
3rd year and thereafter	964.00	25.37
Experienced (the holder of a relevant certificate III qualification)	995.00	26.18

(b) **Enrolled nurses—other than aged care employees**

[15.3 renamed and renumbered as 15.1(b) by [PR751294](#) ppc 30Jun23]

(i) **Student enrolled nurse**

[15.3(a) varied by [PR740715](#); renumbered as 15.1(b)(i) by [PR751294](#) ppc 30Jun23; 15.1(b)(i) varied by [PR762144](#) ppc 01Jul23]

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Less than 21 years of age	867.90	22.84
21 years of age and over	910.90	23.97

(ii) **Enrolled nurse**

[15.3(b) varied by [PR740715](#); renumbered as 15.1(b)(ii) by [PR751294](#) ppc 30Jun23; 15.1(b)(ii) varied by [PR762144](#) ppc 01Jul23]

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<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	\$	\$
Pay point 1	1013.40	26.67
Pay point 2	1026.80	27.02
Pay point 3	1040.50	27.38
Pay point 4	1055.50	27.78
Pay point 5	1066.10	28.06

**(c) Registered nurses—other than aged care employees**

[15.4 renamed and renumbered as 15.1(c) by [PR751294](#) ppc 30Jun23]

**(i) Registered nurse—Levels 1–5**

[15.4(a) varied by [PR740715](#); renumbered as 15.1(c)(i) by [PR751294](#) ppc 30Jun23; 15.1(c)(i) varied by [PR762144](#) ppc 01Jul23]

<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	\$	\$
<b>Registered nurse—level 1</b>		
Pay point 1	1084.10	28.53
Pay point 2	1106.40	29.12
Pay point 3	1133.50	29.83
Pay point 4	1163.70	30.62
Pay point 5	1199.40	31.56
Pay point 6	1234.10	32.48
Pay point 7	1269.80	33.42
Pay point 8 and thereafter	1302.80	34.28
<b>Registered nurse—level 2</b>		
Pay point 1	1337.40	35.19
Pay point 2	1358.70	35.76
Pay point 3	1382.30	36.38
Pay point 4 and thereafter	1404.90	36.97
<b>Registered nurse—level 3</b>		
Pay point 1	1450.10	38.16
Pay point 2	1476.80	38.86

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<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
Pay point 3	1502.30	39.53
Pay point 4 and thereafter	1529.30	40.24
<b>Registered nurse—level 4</b>		
Grade 1	1655.10	43.56
Grade 2	1773.70	46.68
Grade 3	1877.20	49.40
<b>Registered nurse—level 5</b>		
Grade 1	1670.20	43.95
Grade 2	1758.80	46.28
Grade 3	1877.20	49.40
Grade 4	1994.20	52.48
Grade 5	2199.50	57.88
Grade 6	2406.60	63.33

**(ii) Minimum entry rate**

[15.4(b) varied by [PR740715](#); renumbered as 15.1(c)(ii) by [PR751294](#) ppc 30Jun23; 15.1(c)(ii) varied by [PR762144](#) ppc 01Jul23]

<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
4 year degree <sup>1</sup>	1132.10	29.79
Masters degree <sup>1</sup>	1171.10	30.82

<sup>1</sup> Progression from these entry rates will be to level 1—Registered nurse pay point 4 and 5 respectively.

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**(d) Nurse practitioner—other than aged care employees**

[15.5 varied by [PR740715](#); renamed and renumbered as 15.1(d) by [PR751294](#) ppc 30Jun23; 15.1(d) varied by [PR762144](#) ppc 01Jul23]

<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
1st year	1668.70	43.91
2nd year	1718.30	45.22

**(e) Occupational health nurses**

[15.6 varied by [PR740715](#); renumbered as 15.1(e) by [PR751294](#) ppc 30Jun23; 15.1(e) varied by [PR762144](#) ppc 01Jul23]

<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
<b>Occupational health nurse—level 1</b>		
Pay point 1	1163.70	30.62
Pay point 2	1199.40	31.56
Pay point 3	1234.10	32.48
Pay point 4	1269.80	33.42
Pay point 5	1302.80	34.28
<b>Occupational health nurse—level 2</b>		
Pay point 1	1337.40	35.19
Pay point 2	1358.70	35.76
Pay point 3	1382.30	36.38
Pay point 4	1404.90	36.97
<b>Senior occupational health clinical nurse</b>	1404.90	36.97
<b>Occupational health nurse—level 3</b>		
Pay point 1	1450.10	38.16
Pay point 2	1476.80	38.86
Pay point 3	1502.30	39.53
Pay point 4 and thereafter	1529.30	40.24



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NOTE: See Schedule B—Summary of Hourly Rates of Pay for a summary of hourly rates of pay, including overtime and penalty rates.

**15.2 Minimum rates for aged care employees**

[New 15.2 inserted by [PR751294](#) ppc 30Jun23]

An employer must pay aged care employees, as defined in clause 2—Definitions, the following minimum rates for ordinary hours worked by the employee.

**~~(a) Nursing assistant—aged care employees~~**

~~[15.2(a) varied by [PR762144](#) ppc 01Jul23]~~

<del>Employee classification</del>	<del>Minimum weekly rate (full-time employee)</del>	<del>Minimum hourly rate</del>
	<del>\$</del>	<del>\$</del>
<del>1st year</del>	<del>1074.30</del>	<del>28.27</del>
<del>2nd year</del>	<del>1091.10</del>	<del>28.71</del>
<del>3rd year and thereafter</del>	<del>1108.60</del>	<del>29.17</del>
<del>Experienced (the holder of a relevant certificate III qualification)</del>	<del>1144.20</del>	<del>30.11</del>

**(a) Nursing assistant—home care nursing assistants**

<u>Employee classification</u>	<u>Minimum weekly rate (full-time employee)</u>	<u>Minimum hourly rate</u>
	<u>\$</u>	<u>\$</u>
<u>1st year</u>	<u>1149.10</u>	<u>30.24</u>
<u>2nd year</u>	<u>1167.10</u>	<u>30.71</u>
<u>3rd year and thereafter</u>	<u>1185.80</u>	<u>31.21</u>
<u>Experienced (the holder of a relevant certificate III qualification)</u>	<u>1223.90</u>	<u>32.21</u>

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**(b) Enrolled Nurses—aged care employees**

**(i) Student enrolled nurse**

[15.2(b)(i) varied by [PR762144](#) ppc 01Jul23]

<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
Less than 21 years of age	<del>1174.00</del> <u>998.10</u>	<del>30.89</del> <u>26.27</u>
21 years of age and over	<del>1232.20</del> <u>1047.60</u>	<del>32.43</del> <u>27.57</u>

**(ii) Enrolled nurse**

[15.2(b)(ii) varied by [PR762144](#) ppc 01Jul23]

<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
Pay point 1	<del>1370.80</del> <u>1165.40</u>	<del>36.07</del> <u>30.67</u>
Pay point 2	<del>1389.00</del> <u>1180.90</u>	<del>36.55</del> <u>31.08</u>
Pay point 3	<del>1407.50</del> <u>1196.60</u>	<del>37.04</del> <u>31.49</u>
Pay point 4	<del>1427.70</del> <u>1213.80</u>	<del>37.57</del> <u>31.94</u>
Pay point 5	<del>1442.10</del> <u>1226.00</u>	<del>37.95</del> <u>32.26</u>

**(c) Registered nurses—aged care employees**

**(i) Registered nurse—Levels 1–5**

[15.2(c)(i) varied by [PR762144](#) ppc 01Jul23]

<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
<b>Registered nurse—level 1</b>		
Pay point 1	<del>1470.80</del> <u>1246.80</u>	<del>38.71</del> <u>32.81</u>
Pay point 2	<del>1500.90</del> <u>1272.30</u>	<del>39.50</del> <u>33.48</u>
Pay point 3	<del>1537.80</del> <u>1303.60</u>	<del>40.47</del> <u>34.31</u>
Pay point 4	<del>1578.70</del> <u>1338.30</u>	<del>41.54</del> <u>35.22</u>

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<b>Employee classification</b>	<b>Minimum weekly rate (full-time employee)</b>	<b>Minimum hourly rate</b>
	<b>\$</b>	<b>\$</b>
Pay point 5	<u>1627.10</u> 1379.30	<u>42.82</u> 36.30
Pay point 6	<u>1674.30</u> 1419.30	<u>44.06</u> 37.35
Pay point 7	<u>1722.70</u> 1460.30	<u>45.33</u> 38.43
Pay point 8 and thereafter	<u>1767.50</u> 1498.30	<u>46.51</u> 39.43
<b>Registered nurse—level 2</b>		
Pay point 1	<u>1814.30</u> 1538.00	<u>47.74</u> 40.47
Pay point 2	<u>1843.20</u> 1562.50	<u>48.51</u> 41.12
Pay point 3	<u>1875.20</u> 1589.60	<u>49.35</u> 41.83
Pay point 4 and thereafter	<u>1905.90</u> 1615.60	<u>50.16</u> 42.52
<b>Registered nurse—level 3</b>		
Pay point 1	<u>1967.30</u> 1667.70	<u>51.77</u> 43.89
Pay point 2	<u>2003.40</u> 1698.30	<u>52.72</u> 44.69
Pay point 3	<u>2038.00</u> 1727.60	<u>53.63</u> 45.46
Pay point 4 and thereafter	<u>2074.50</u> 1758.60	<u>54.59</u> 46.28
<b>Registered nurse—level 4</b>		
Grade 1	<u>2245.40</u> 1903.40	<u>59.09</u> 50.09
Grade 2	<u>2406.30</u> 2039.80	<u>63.32</u> 53.68
Grade 3	<u>2546.60</u> 2158.80	<u>67.02</u> 56.81
<b>Registered nurse—level 5</b>		
Grade 1	<u>2265.80</u> 1920.70	<u>59.63</u> 50.54
Grade 2	<u>2386.10</u> 2022.70	<u>62.79</u> 53.23
Grade 3	<u>2546.60</u> 2158.80	<u>67.02</u> 56.81
Grade 4	<u>2705.40</u> 2293.40	<u>71.19</u> 60.35
Grade 5	<u>2983.80</u> 2529.40	<u>78.52</u> 66.56
Grade 6	<u>3264.80</u> 2767.60	<u>85.92</u> 72.83

**(ii) Minimum entry rate**

[15.2(c)(ii) varied by [PR762144](#) ppc 01Jul23]

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
<del>4-year degree<sup>+</sup></del>	<del>1301.90</del>	<del>34.26</del>
Masters degree <sup>1</sup>	<del>1588.60</del> 1346.70	<del>41.81</del> 35.44

<sup>1</sup> Progression from ~~these~~this entry rates will be to level 1—Registered nurse pay point ~~4 and 5~~respectively.

**(d) Nurse practitioner—aged care employees**

[15.2(d) varied by [PR762144](#) ppc 01Jul23]

Employee classification	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
1st year	<del>2263.80</del> 1919.00	<del>59.57</del> 50.50
2nd year	<del>2331.00</del> 1976.00	<del>61.34</del> 52.00

NOTE: See Schedule B—Summary of Hourly Rates of Pay for a summary of hourly rates of pay, including overtime and penalty rates.

**15.3 Progression through pay points**

[15.7 renumbered as 15.3 by [PR751294](#) ppc 30Jun23]

- (a) Progression will be:
  - (i) for full-time employees – by annual movement; or
  - (ii) for part-time or casual employees – 1786 hours of experience.
- (b) Progression to the next pay point for all classifications for which there is more than one pay point will have regard to:
  - (i) the acquisition and use of skills described in the definitions contained in Schedule A—Classification Definitions; and
  - (ii) knowledge gained through experience in the practice settings over such a period.

## 15.4 Higher duties

[15.8 renumbered as 15.4 by [PR751294](#) ppc 30Jun23]

- (a) An employee, who is required to relieve another employee in a higher classification than the one in which they are ordinarily employed for 3 days or more will be paid at the higher classification rate.
- (b) Higher duties allowance does not apply to Registered nurse levels 4 and 5.

## 16. Payment of wages

NOTE: Regulations 3.33(3) and 3.46(1)(g) of *Fair Work Regulations 2009* set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid.

- 16.1 Wages must be paid fortnightly unless otherwise mutually agreed up to a monthly maximum period.
- 16.2 Employees will be paid by cash, cheque or electronic funds transfer, as determined by the employer, into the bank or financial institution account nominated by the employee.
- 16.3 **Payment on termination of employment**

- (a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:
  - (i) the employee's wages owing for any complete or incomplete pay period up to the end of the day of termination; and
  - (ii) all other amounts that are due to the employee, including under this award and the [NES](#).
- (b) The requirement to pay wages and other amounts under clause 16.3(a) is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

NOTE 1: Section 117(2) of the [Act](#) provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

NOTE 2: Clause 16.3(b) allows the Commission to make an order delaying the requirement to make a payment under this clause. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

NOTE 3: State and Territory long service leave laws or long service leave entitlements under section 113 of the [Act](#), may require an employer to pay an employee for accrued

long service leave on the day on which the employee’s employment terminates or shortly after.

**17. Allowances**

[Varied by [PR740715](#), [PR740883](#), [PR762144](#), [PR762307](#)]

NOTE: Regulations 3.33(3) and 3.46(1)(g) of *Fair Work Regulations 2009* set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid.

**17.1** Employers must pay to an employee the allowances the employee is entitled to under clause 17.

Allowances under clause 17 do not apply to employees classified at Registered nurse levels 4 or 5.

NOTE: See Schedule C—Summary of Monetary allowances for a summary of monetary allowances and method of adjustment.

**17.2 Wage-related allowances**

**(a) On-call allowance for employees other than aged care employees**

[17.2(a)(i) varied by [PR740715](#), [PR762144](#) ppc 01Jul23]

(i) An on-call allowance is paid to an employee other than an aged care employee who is required by the employer to be on-call at their private residence, or at any other mutually agreed place. The employee is entitled to receive the following additional amounts:

<b>Between rostered shifts or ordinary hours on:</b>	<b>\$ per 24-hour period or part thereof</b>
Monday to Friday inclusive	25.48
Saturday	38.38
Sunday, public holiday or non-rostered day	44.77

(ii) For the purpose of clause 17.2(a) the whole of the on-call period is calculated according to the day on which the major portion of the on-call period falls.

**(b) On-call allowance for aged care employees**

(i) An on-call allowance is paid to an aged care employee who is required by the employer to be on-call at their private residence, or at any other mutually agreed place. The employee is entitled to receive the following additional amounts:

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<u>Between rostered shifts or ordinary hours on:</u>	<u>\$ per 24-hour period or part thereof</u>
<u>Monday to Friday inclusive</u>	<u>34.61</u>
<u>Saturday</u>	<u>52.13</u>
<u>Sunday, public holiday or non-rostered day</u>	<u>60.82</u>

(ii) For the purpose of clause 17.2(b) the whole of the on-call period is calculated according to the day on which the major portion of the on-call period falls.

**17.3 Expense-related allowances**

**(a) Clothing and equipment**

(i) Employees required by the employer to wear uniforms will be supplied with an adequate number of uniforms appropriate to the occupation free of cost. Uniforms are to remain the property of the employer and be laundered and maintained by the employer free of cost to the employee.

**(ii) Uniform allowance**

Instead of the provision of such uniforms, the employer may pay an employee a uniform allowance of:

- \$1.23 per shift or part thereof on duty; or
- \$6.24 per week,

whichever is the lesser amount.

**(iii) Laundry allowance**

Where an employee's uniforms are not laundered by or at the expense of the employer, the employee will be paid a laundry allowance of:

- \$0.32 per shift or part thereof on duty; or
- \$1.49 per week,

whichever is the lesser amount.

(iv) The uniform allowance, but not the laundry allowance, will be paid during all absences on paid leave, except absences on long service leave and absence on personal/carer's leave beyond 21 days. Where, prior to the taking of leave, an employee was paid a uniform allowance other than at the weekly rate, the rate to be paid during absence on leave will be the average of the allowance paid during the 4 weeks immediately preceding the taking of leave.

**(b) Meal allowances**

[17.3(b)(i) varied by [PR740883](#), [PR762307](#) ppc 01Jul23]

- (i) When required to work overtime after the usual finishing hour of work beyond one hour or, in the case of shiftworkers, when the overtime work on any shift exceeds one hour, an employee will be:
- supplied with an adequate meal where an employer has adequate cooking and dining facilities; or
  - paid a meal allowance of **\$15.20**.

[17.3(b)(ii) varied by [PR740883](#), [PR762307](#) ppc 01Jul23]

- (ii) In addition to the allowance provided for in clause 17.3(b)(i), where overtime work exceeds 4 hours a further meal allowance of **\$13.70** will be paid.
- (iii) Clauses 17.3(b)(i) and 17.3(b)(ii) will not apply when an employee could reasonably return home for a meal within the meal break.
- (iv) On request the meal allowance will be paid on the same day as overtime is worked.

**(c) Travelling, transport and fares**

[17.3(c)(i) varied by [PR740883](#), [PR762307](#) ppc 01Jul23]

- (i) An employee required and authorised to use their own motor vehicle in the course of their duties will be paid an allowance of not less than **\$0.96** per kilometre.
- (ii) When an employee is involved in travelling on duty, and the employer cannot provide the appropriate transport, all reasonably incurred expenses in respect to fares, meals and accommodation will be met by the employer on production of receipted account(s) or other evidence acceptable to the employer.
- (iii) The employee will not be entitled to reimbursement for expenses referred to in clause 17.3(c)(ii) which exceed the mode of transport, meals or the standard of accommodation agreed with the employer for these purposes.

**18. Superannuation**

[Varied by [PR771302](#)]

**18.1 Superannuation legislation**

[18.1 substituted by [PR771302](#) ppc 09Apr24]

- (a) The [NES](#) and Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993*



(Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deal with the superannuation rights and obligations of employers and employees.

- (b) The rights and obligations in clause 18 supplement those in superannuation legislation and the [NES](#).

NOTE: Under superannuation legislation:

- (a) Individual employees generally have the opportunity to choose their own superannuation fund.
- (b) If a new employee does not choose a superannuation fund, the employer must ask the Australian Taxation Office (ATO) whether the employee is an existing member of a stapled superannuation fund and, if stapled fund details are provided by the ATO, make contributions to the stapled fund.
- (c) If an employee does not choose a superannuation fund and does not have a stapled fund, the choice of superannuation fund requirements will be satisfied by contributions made to a superannuation fund nominated in the award covering the employee, provided the fund is able to accept contributions for the benefit of the employee.
- (d) A fund may not be able to accept contributions for the benefit of an employee if the employee would be a new member of the fund's MySuper product and the MySuper product is closed to new members because it has failed the performance tests of Australian Prudential Regulation Authority (APRA) for 2 consecutive years.

## **18.2 Employer contributions**

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

## **18.3 Voluntary employee contributions**

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 18.2.
- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 18.3(a) or 18.3(b) no later than 28 days after the end of the month in which the deduction authorised under clauses 18.3(a) or 18.3(b) was made.

## 18.4 Superannuation fund

[18.4 varied by [PR771302](#) ppc 09Apr24]

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 18.2 to another superannuation fund, the employer must make the superannuation contributions provided for in clause 18.2 and pay any amount authorised under clauses 18.3(a) or 18.3(b) to one of the following superannuation funds or its successor, provided that, in respect of new employees, the fund is able to accept new beneficiaries:

- (a) First State Super;
- (b) Health Industry Plan (HIP);
- (c) Health Employees Superannuation Trust of Australia (HESTA);
- (d) Catholic Super (CSF);
- (e) Mercy Super;
- (f) Sunsuper;
- (g) Tasplan;
- (h) CareSuper;
- (i) NGS Super;
- (j) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or
- (k) a superannuation fund or scheme which the employee is a defined benefit member of.

## Part 5—Overtime and Penalty Rates

### 19. Overtime

[Varied by [PR734867](#), [PR763231](#)]

#### 19.1 Overtime rates—full-time and part-time employees

- (a) Hours worked by full-time and part-time employees in excess of the ordinary hours on any day or shift prescribed in clause 13—Ordinary hours of work are to be paid as follows:
  - (i) Monday to Saturday (inclusive)—**150%** of the minimum hourly rate applicable to their classification and pay point for the first 2 hours and **200%** after 2 hours;

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- (ii) Sunday—**200%** of the minimum hourly rate applicable to their classification and pay point; and
  - (iii) Public holidays—**250%** of the minimum hourly rate applicable to their classification and pay point.
- (b) Overtime rates as prescribed in clause 19.1(a) do not apply to Registered nurse levels 4 and 5.
- (c) Overtime rates under clause 19 will be in substitution for and not cumulative upon the shiftwork loadings and weekend penalty rates prescribed in clause 20—Shiftwork and clause 21—Saturday and Sunday work.
- (d) **Part-time employees**
- All time worked by part-time employees in excess of the rostered daily ordinary full-time hours will be overtime and will be paid as prescribed in clause 19.1(a).

### 19.2 Overtime rates—casual employees

- (a) Hours worked by casual employees in excess of the ordinary hours on any day or shift prescribed in clause 13—Ordinary hours of work are to be paid as follows:
- (i) Monday to Saturday (inclusive)—**150%** of the casual hourly rate for the first 2 hours and **200%** after 2 hours;
  - (ii) Sunday—**200%** of the casual hourly rate; and
  - (iii) Public holidays—**250%** of the casual hourly rate.

[19.2(b) varied by [PR734867](#) ppc 14Oct21]

- (b) Overtime rates as prescribed in clause 19.2(a) do not apply to Registered nurse levels 4 and 5.
- (c) Overtime rates under clause 19 will be in substitution for and not cumulative upon the shiftwork loadings and weekend penalty rates prescribed in clause 20—Shiftwork and clause 21—Saturday and Sunday work.

### 19.3 Time off instead of payment for overtime

- (a) An employee and employer may agree to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made.

EXAMPLE: By making an agreement under clause 19.3 an employee who worked 2 overtime hours at **150%** of the minimum hourly rate applicable to their classification and pay point (**150%** of the casual hourly rate in the case of a casual employee) is entitled to 3 hours' time off.

- (c) Time off must be taken:

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- (i) within the period of 6 months after the overtime is worked; and
  - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (d) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 19.3 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (e) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 19.3(c), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (f) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (g) An employee may, under section 65 of the [Act](#), request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 19.3 will apply for overtime that has been worked.

[Note varied by [PR763231](#) ppc 01Aug23]

NOTE: If an employee makes a request under section 65 of the [Act](#) for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65A(3) of the [Act](#)).

- (h) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 19.3 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

NOTE: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 19.3.

### 19.4 Rest period after overtime

- (a) When overtime work is necessary, it will, wherever reasonably practicable, be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days or shifts, including overtime.
- (b) An employee, other than a casual employee, who works so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day, that they have not had at least 10 consecutive hours off duty between those times, will be released after completion of such overtime, until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

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- (c) If, on the instruction of the employer, an employee resumes or continues to work without having had 10 consecutive hours off duty, they will be paid at the rate of **200%** of the minimum hourly rate applicable to their classification and pay point (or **200%** of the casual hourly rate in the case of a casual employee) until released from duty for such period. The employee will then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during the absence.

### **19.5 Paid rest break during overtime**

An employee working overtime will take a paid rest break of 20 minutes after each 4 hours of overtime worked if required to continue to work after the break.

### **19.6 Recall to work when on-call**

- (a) An employee who is required to be on-call and who is recalled to work at the workplace will be paid for a minimum of 3 hours' work at the appropriate overtime rate.
- (b) An employee who is required to be on-call and who is required to perform work by the employer via telephone or other electronic communication away from the workplace will be paid at the appropriate overtime rate for a minimum of one hour's work. Multiple electronic requests made and concluded within the same hour shall be compensated within the same one hour's overtime payment. Time worked beyond one hour will be rounded to the nearest 15 minutes.

### **19.7 Recall to work when not on-call**

- (a) An employee who is not required to be on-call and who is recalled to work at the workplace after leaving the employer's premises will be paid for a minimum of 3 hours' work at the appropriate overtime rate.
- (b) An employee who is not required to be on-call and who is required to perform work by the employer via telephone or other electronic communication away from the workplace will be paid at the appropriate overtime rate for a minimum of one hour's work. Multiple electronic requests made and concluded within the same hour shall be compensated within the same one hour's overtime payment. Time worked beyond one hour will be rounded to the nearest 15 minutes.
- (c) Except as provided in clause 19.7(d) the time spent travelling to and from the place of duty will be deemed to be time worked.
- (d) Where an employee is recalled within 3 hours of their rostered commencement time, and the employee remains at work, only the time spent in travelling to work will be included with the actual time worked for the purposes of the overtime payment.
- (e) An employee who is recalled to work will not be obliged to work for 3 hours if the work for which the employee was recalled is completed within a shorter period.
- (f) If an employee is recalled to work, the employee will be provided with transport to and from their home or will be refunded the cost of such transport.

**19.8 On-call allowance**

An employee who is required to be on-call may be entitled to an allowance in accordance with clause ~~17.2-17.2(a)~~.

**20. Shiftwork**

**20.1** For the purposes of clause 20:

- (a) **Afternoon shift** means any shift commencing not earlier than 12.00 noon and finishing after 6.00 pm on the same day; and
- (b) **Night shift** means any shift commencing on or after 6.00 pm and finishing before 7.30 am on the following day.

**20.2 Shiftwork loading**

- (a) Where an employee works a rostered afternoon shift between Monday and Friday, the employee will be paid a loading of **12.5%** of the minimum hourly rate applicable to their classification and pay point.
- (b) Where an employee works a rostered night shift between Monday and Friday, the employee will be paid a loading of **15%** of the minimum hourly rate applicable to their classification and pay point.
- (c) The provisions of clause 20 do not apply where an employee commences their ordinary hours of work after 12.00 noon and completes those hours at or before 6.00 pm on that day.
- (d) The shiftwork loadings prescribed in clause 20 will not apply to shiftwork performed by an employee on Saturday, Sunday or public holiday where the payment prescribed by clause 21—Saturday and Sunday work and clause 28—Public holidays applies.
- (e) The provisions of clause 20 will not apply to Registered nurse levels 4 and 5.

**21. Saturday and Sunday work**

**21.1** Where an employee is rostered to work ordinary hours between midnight Friday and midnight Saturday, the employee will be paid **150%** of the minimum hourly rate applicable to their classification and pay point (**150%** of the casual hourly rate in the case of casual employees) for the hours worked during this period.

**21.2** Where an employee is rostered to work ordinary hours between midnight Saturday and midnight Sunday, the employee will be paid **175%** of the minimum hourly rate applicable to their classification and pay point (**175%** of the casual hourly rate in the case of a casual employee) for the hours worked during this period.

## Part 6—Leave and Public Holidays

### 22. Annual leave

[Varied by [PR751057](#)]

22.1 Annual leave is provided for in the [NES](#).

#### 22.2 Quantum of annual leave

- (a) In addition to the entitlements in the [NES](#), an employee is entitled to an additional week of annual leave on the same terms and conditions.
- (b) A **shiftworker**, for the purposes of the additional week's annual leave provided by the [NES](#), is an employee who:
  - (i) is regularly rostered over 7 days of the week; and
  - (ii) regularly works on weekends.
- (c) To avoid any doubt, this means that an employee who is not a shiftworker for the purposes of clause 22.2(b) above is entitled to 5 weeks of paid annual leave for each year of service with their employer, and an employee who is a shiftworker for the purposes of clause 22.2(b) above is entitled to 6 weeks of paid annual leave for each year of service with their employer.

#### 22.3 Payment for annual leave

Before going on annual leave, an employee will be paid the amount of wages they would have received for ordinary time worked had they not been on leave during that period.

NOTE: Where an employee is receiving over-award payments such that the employee's base rate of pay is higher than the rate specified under this award, the employee is entitled to receive the higher rate while on a period of paid annual leave (see sections 16 and 90 of the [Act](#)).

#### 22.4 Electronic funds transfer (EFT) payment of annual leave

Despite anything else in clause 22, an employee paid by electronic funds transfer (EFT) may be paid in accordance with their usual pay cycle while on paid annual leave.

#### 22.5 Annual leave loading

For the period of annual leave in addition to their ordinary pay:

- (a) an employee, other than a shiftworker, will be paid an annual leave loading of **17.5%** of their ordinary pay on a maximum of 152 hours/4 weeks' annual leave per annum;
- (b) a shiftworker will be paid the higher of:
  - (i) an annual leave loading of **17.5%** of ordinary pay; or

- (ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.

## 22.6 Payment of annual leave on termination

On the termination of their employment, an employee will be paid their untaken annual leave and pro rata leave.

## 22.7 Direction to take annual leave during shutdown – medical practices

[22.7 renamed and substituted by [PR751057](#) ppc 01May23]

- (a) Clause 22.7 applies if an employer:
  - (i) intends to shut down all or part of its operation for a particular period (**temporary shutdown period**); and
  - (ii) wishes to require affected employees to take paid annual leave during that period.
- (b) The employer must give the affected employees 28 days' written notice of a temporary shutdown period, or any shorter period agreed between the employer and the majority of relevant employees.
- (c) The employer must give written notice of a temporary shutdown period to any employee who is engaged after the notice is given under clause 22.7(b) and who will be affected by that period, as soon as reasonably practicable after the employee is engaged.
- (d) The employer may direct the employee to take a period of paid annual leave to which the employee has accrued an entitlement during a temporary shutdown period.
- (e) A direction by the employer under clause 22.7(d):
  - (i) must be in writing; and
  - (ii) must be reasonable.
- (f) The employee must take paid annual leave in accordance with a direction under clause 22.7(d).
- (g) In respect of any part of a temporary shutdown period which is not the subject of a direction under clause 22.7(d), an employer and employee may agree, in writing, for the employee to take leave without pay during that part of the temporary shutdown.
- (h) An employee may take annual leave in advance during a temporary shutdown period in accordance with an agreement under clause 22.11.
- (i) In determining the amount of paid annual leave to which an employee has accrued an entitlement, any period of paid annual leave taken in advance by the employee, in accordance with an agreement under clause 22.11, to which an entitlement has not been accrued, is to be taken into account.



- (j) Clauses 22.8 to 22.10 do not apply to a period of annual leave that an employee is required to take during a temporary shutdown period in accordance with clause 22.7.

## **22.8 Excessive leave accruals: general provision**

NOTE: Clauses 22.8 to 22.10 contain provisions, additional to the [NES](#), about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the [Act](#).

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 10 weeks' paid annual leave (or 12 weeks' paid annual leave for a shiftworker, as defined by clause 22.2(b)).
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 22.9 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 22.10 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

## **22.9 Excessive leave accruals: direction by employer that leave be taken**

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 22.8(b) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under clause 22.9(a):
  - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 22.8, 22.9 or 22.10 or otherwise agreed by the employer and employee) are taken into account; and
  - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
  - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under clause 22.9(a) that is in effect.

- (d) An employee to whom a direction has been given under clause 22.9(a) may request to take a period of paid annual leave as if the direction had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in clause 22.9(d) may result in the direction ceasing to have effect. See clause 22.9(b)(i).

NOTE 2: Under section 88(2) of the [Act](#), the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

## **22.10 Excessive leave accruals: request by employee for leave**

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 22.8(b) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under clause 22.10(a) if:
  - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
  - (ii) the employee has not been given a direction under clause 22.9(a) that, when any other paid annual leave arrangements (whether made under clause 22.8, 22.9 or 22.10 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under clause 22.10(a) must not:
  - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 22.8, 22.9 or 22.10 or otherwise agreed by the employer and employee) are taken into account; or
  - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
  - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
  - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under clause 22.10(a) more than 5 weeks' paid annual leave (or 6 weeks' paid annual leave for a shiftworker, as defined by clause 22.2(b)) in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under clause 22.10(a).

**22.11 Annual leave in advance**

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
  - (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
  - (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

NOTE: An example of the type of agreement required by clause 22.11 is set out at Schedule D—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule D—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 22.11 as an employee record.
- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 22.11, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

**22.12 Cashing out of annual leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 22.12.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 22.12.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 22.12 must state:
  - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
  - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 22.12 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.

- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 22.12 as an employee record.

NOTE 1: Under section 344 of the [Act](#), an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 22.12.

NOTE 2: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 22.12.

NOTE 3: An example of the type of agreement required by clause 22.12 is set out at Schedule E—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule E—Agreement to Cash Out Annual Leave.

## **23. Ceremonial leave**

An employee who is legitimately required by Aboriginal or Torres Strait Islander tradition to be absent from work for ceremonial purposes will be entitled to up to 10 working days' unpaid leave in any one year, with the approval of the employer.

## **24. Parental leave and related entitlements**

[24 varied by [PR763231](#) ppc 01Aug23]

Parental leave and related entitlements are provided for in the [NES](#).

NOTE: Disputes about requests for extensions to unpaid parental leave may be dealt with under clause 31—Dispute resolution and/or under section 76B of the [Act](#).

## **25. Personal/carer's leave and compassionate leave**

Personal/carer's leave and compassionate leave are provided for in the [NES](#).

## **26. Community service leave**

Community service leave is provided for in the [NES](#).

## 27. Family and domestic violence leave

[27—Unpaid family and domestic violence leave renamed and substituted by [PR750511](#) ppc 15Mar23]

Family and domestic violence leave is provided for in the [NES](#).

NOTE 1: Information provided to employers concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers are subject to confidentiality requirements regarding the handling of this information under section 106C of the [Act](#) and requirements as to what can be reported on payslips pursuant to regulations 3.47 and 3.48 of the *Fair Work Regulations 2009*.

NOTE 2: Depending upon the circumstances, evidence that would satisfy a reasonable person of the employee's need to take family and domestic violence leave may include a document issued by the police service, a court or family violence support service, or a statutory declaration.

## 28. Public holidays

[Varied by [PR743421](#), [PR747351](#)]

**28.1** Public holiday entitlements are provided for in the [NES](#).

### 28.2 Payment for work done on public holidays

- (a) All work done by an employee during their ordinary shifts on a public holiday, including a substituted day, will be paid at:
  - (i) For a full-time and part-time employee, **200%** of the minimum hourly rate applicable to their classification and pay point.
  - (ii) For a casual employee, **200%** of the casual hourly rate.
- (b) Businesses that operate 7 days a week shall recognise work performed on 25 December which falls on a Saturday or Sunday and, where because of substitution, is not a public holiday within the meaning of the [NES](#) with the Saturday or Sunday payment (as appropriate) plus an additional loading of **50%** of the employee's minimum hourly rate applicable to their classification and pay point (or **50%** of the casual hourly rate in the case of a casual employee) for the hours worked on that day. All work performed on the substitute day by an employee will receive an additional loading of **50%** of the employee's minimum hourly rate applicable to their classification and pay point (or **50%** of the casual hourly rate in the case of a casual employee) for the hours worked on that day instead of the rate referred to in clause 28.2(a).

### 28.3 Public holiday substitution

- (a) An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the [NES](#).
- (b) An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the [NES](#).

## 28.4 Public holidays occurring on rostered days off

[Paragraph in 28.4 renumbered as 28.4(a) by [PR747351](#) ppc 14Nov22]

- (a) All full-time employees will receive a day's ordinary pay for public holidays that occur on their rostered day off except where the public holidays fall on Saturday or Sunday with respect to Monday to Friday employees.

[28.4(b) inserted by [PR747351](#) ppc 14Nov22]

- (b) If a public holiday is a part-day public holiday, then clause 28.4(a) applies on a pro-rata basis for the number of ordinary hours on the part-day public holiday.

## 28.5 Accrued days off on public holidays

[28.5 varied by [PR743421](#), substituted by [PR747351](#) ppc 14Nov22]

Where an employee's accrued day off falls on a public holiday, another day or part-day, determined by the employer, will be taken instead. Where practical the alternative day or part-day off will be taken within the same 4 or 5 week work cycle.

## 28.6 Additional leave days by mutual agreement

- (a) Instead of being paid **200%** of the minimum hourly rate applicable to their classification and pay point under clause 28.2(a), where the employer and employee mutually agree in writing at the time the public holiday is worked, an employee may be paid their ordinary rate of pay for time worked on a public holiday and have the same number of hours worked accrued, to be taken as leave. This leave may be taken in conjunction with a period of annual leave.
- (b) Payment for any days taken as leave, accrued in accordance with clause 28.6(a) will be at the employee's ordinary rate of pay, excluding shiftwork loadings and/or weekend penalty rates and annual leave loading.
- (c) The taking of any additional days accrued as leave in accordance with 28.6(a) will be by mutual agreement between the employer and employee, provided that such agreement will not be unreasonably withheld.
- (d) Subject to clause 28.6(e), any untaken additional days accrued as leave in accordance with clause 28.6(a) will be paid out to the employee upon termination of employment.
- (e) Any additional days accrued as leave in accordance with clause 28.6(a) will not be considered annual or personal/carer's leave for any purpose.
- (f) Clause 28.6 will not apply to casual employees.

[28.7 deleted by [PR747351](#) ppc 14Nov22]

## Part 7—Consultation and Dispute Resolution

### 29. Consultation about major workplace change

29.1 If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
- (b) discuss with affected employees and their representatives (if any):
  - (i) the introduction of the changes; and
  - (ii) their likely effect on employees; and
  - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
- (c) commence discussions as soon as practicable after a definite decision has been made.

29.2 For the purposes of the discussion under clause 29.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:

- (a) their nature; and
- (b) their expected effect on employees; and
- (c) any other matters likely to affect employees.

29.3 Clause 29.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

29.4 The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 29.1(b).

29.5 In clause 29 **significant effects**, on employees, includes any of the following:

- (a) termination of employment; or
- (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or
- (c) loss of, or reduction in, job or promotion opportunities; or
- (d) loss of, or reduction in, job tenure; or
- (e) alteration of hours of work; or

- (f) the need for employees to be retrained or transferred to other work or locations;  
or
- (g) job restructuring.

**29.6** Where this award makes provision for alteration of any of the matters defined at clause 29.5, such alteration is taken not to have significant effect.

## **30. Consultation about changes to rosters or hours of work**

**30.1** Clause 30 applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.

**30.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).

**30.3** For the purpose of the consultation, the employer must:

- (a) provide to the employees and representatives mentioned in clause 30.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
- (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.

**30.4** The employer must consider any views given under clause 30.3(b).

**30.5** Clause 30 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

## **31. Dispute resolution**

[Varied by [PR763231](#)]

**31.1** Clause 31 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).

**31.2** The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

**31.3** If the dispute is not resolved through discussion as mentioned in clause 31.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.

**31.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 31.2 and 31.3, a party to the dispute may refer it to the Fair Work Commission.



- 31.5** The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- 31.6** If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the [Act](#) to use and that it considers appropriate for resolving the dispute.
- 31.7** A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 31.
- 31.8** While procedures are being followed under clause 31 in relation to a dispute:
- (a)** work must continue in accordance with this award and the [Act](#); and
  - (b)** an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 31.9** Clause 31.8 is subject to any applicable work health and safety legislation.

[Note 1 inserted by [PR763231](#) ppc 01Aug23]

NOTE 1: In addition to clause 31, a dispute resolution procedure for disputes regarding the [NES](#) entitlement to request flexible working arrangements is contained in section 65B of the [Act](#).

[Note 2 inserted by [PR763231](#) ppc 01Aug23]

NOTE 2: In addition to clause 31, a dispute resolution procedure for disputes regarding the [NES](#) entitlement to request an extension to unpaid parental leave is contained in section 76B of the [Act](#).

## **Part 8—Termination of Employment and Redundancy**

### **32. Termination of employment**

NOTE: The [NES](#) sets out requirements for notice of termination by an employer. See sections 117 and 123 of the [Act](#).

#### **32.1 Notice of termination by an employee**

- (a)** Clause 32.1 applies to all employees except those identified in sections 123(1) and 123(3) of the [Act](#).

- (b) An employee must give the employer notice of termination in accordance with **Table 1—Period of notice** of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

**Table 1—Period of notice**

<b>Column 1</b> <b>Employee’s period of continuous service with the employer at the end of the day the notice is given</b>	<b>Column 2</b> <b>Period of notice</b>
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

NOTE: The notice of termination required to be given by an employee is the same as that required of an employer except that the employee does not have to give additional notice based on the age of the employee.

- (c) In clause 32.1(b) **continuous service** has the same meaning as in section 117 of the [Act](#).
- (d) If an employee who is at least 18 years old does not give the period of notice required under clause 32.1(b), then the employer may deduct from wages due to the employee under this award an amount that is no more than one week’s wages for the employee.
- (e) If the employer has agreed to a shorter period of notice than that required under clause 32.1(b), then no deduction can be made under clause 32.1(d).
- (f) Any deduction made under clause 32.1(d) must not be unreasonable in the circumstances.

### **32.2 Job search entitlement**

- (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- (b) The time off under clause 32.2 is to be taken at times that are convenient to the employee after consultation with the employer.

## **33. Redundancy**

NOTE: Redundancy pay is provided for in the [NES](#). See sections 119 to 123 of the [Act](#).

### **33.1 Transfer to lower paid duties on redundancy**

- (a) Clause 33.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.

- (b) The employer may:
  - (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the [Act](#) as if it were a notice of termination given by the employer; or
  - (ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 33.1(c).
- (c) If the employer acts as mentioned in clause 33.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances, shift rates and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

### **33.2 Employee leaving during redundancy notice period**

- (a) An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the [Act](#).
- (b) The employee is entitled to receive the benefits and payments they would have received under clause 33 or under sections 119 to 123 of the [Act](#) had they remained in employment until the expiry of the notice.
- (c) However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

### **33.3 Job search entitlement**

- (a) Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the [Act](#) for the purpose of seeking other employment.
- (b) If an employee is allowed time off without loss of pay of more than one day under clause 33.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.
- (c) A statutory declaration is sufficient for the purpose of clause 33.3(b).
- (d) An employee who fails to produce proof when required under clause 33.3(b) is not entitled to be paid for the time off.
- (e) This entitlement applies instead of clause 32.2.

## Schedule A—Classification Definitions

### A.1 Nursing assistant

**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.

### A.2 Nursing care

**Nursing care** means:

- 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 clause A.5.
- For the purposes of this award nursing care also includes care provided by midwives.

### A.3 Student enrolled nurse

**Student enrolled nurse** means a student undertaking study to become an enrolled nurse.

### A.4 Enrolled nurses

#### A.4.1 Enrolled nurse—pay point 1

- (a) Pay point 1 refers to the pay point to which an enrolled nurse (EN) has been appointed.
- (b) An employee will be appointed based on training and experience including:
  - having satisfactorily completed a hospital based course of training in nursing of not more than 12 months duration leading to enrolment as an EN; or
  - having satisfactorily completed a course of training of 12 months duration in a specified branch of nursing leading to enrolment on a register or roll maintained by the Nursing and Midwifery Board of Australia or its successor; and
  - having practical experience of up to but not more than 12 months in the provision of nursing care and/or services, and, the undertaking of in-service training, subject to its provision by the employing agency, from time to time.
- (c) **Skill indicators**
  - The employee has limited or no practical experience of current situations; and

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- The employee exercises limited discretionary judgment, not yet developed by practical experience.

### A.4.2 Enrolled nurse—pay point 2

- (a) Pay point 2 refers to the pay point to which an EN has been appointed.
- (b) An employee will be appointed to this pay point based on training and experience including:
- having satisfactorily completed a hospital based course of general training in nursing of more than 12 months duration and/or 500 hours or more theory content or a course accredited at advanced certificate, diploma or advanced diploma level leading to enrolment as an EN; or
  - not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for pay point 1; and
  - the undertaking of in-service training, subject to its provision by the employing agency, from time to time.

(c) **Skill indicators**

The employee is required to demonstrate some of the following in the performance of their work:

- a developing ability to recognise changes required in nursing activity and in consultation with the RN, implement and record such changes, as necessary;
- an ability to relate theoretical concepts to practice; and/or
- requiring assistance in complex situations and in determining priorities.

### A.4.3 Enrolled nurse—pay point 3

- (a) Pay point 3 refers to the pay point to which an EN has been appointed.
- (b) An employee will be appointed to this pay point based on training and experience including:
- not more than one further year of practical experience in the provision of nursing care and/or services, in addition to the experience, skill and knowledge requirements specified for pay point 2; and
  - the undertaking of in-service training, subject to its provision by the employing agency, from time to time.

(c) **Skill indicators**

The employee is required to demonstrate some of the following in the performance of their work:

- an ability to organise, practise and complete nursing functions in stable situations with limited direct supervision;

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- observation and assessment skills to recognise and report deviations from stable conditions;
- flexibility in the capacity to undertake work across the broad range of nursing activity and/or competency in a specialised area of practice; and/or
- communication and interpersonal skills to assist in meeting psycho-social needs of individuals/groups.

### A.4.4 Enrolled nurse—pay point 4

- (a) Pay point 4 refers to the pay point to which an EN has been appointed.
- (b) An employee will be appointed to this pay point based on training and experience including:
- not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for pay point 3; and
  - the undertaking of in-service training, subject to its provision by the employing agency, from time to time.

(c) **Skill indicators**

The employee is required to demonstrate some of the following in the performance of their work:

- speed and flexibility in accurate decision making;
- organisation of own workload and ability to set own priorities with minimal direct supervision;
- observation and assessment skills to recognise and report deviations from stable conditions across a broad range of patient and/or service needs; and/or
- communication and interpersonal skills to meet psychosocial needs of individual/groups.

### A.4.5 Enrolled nurse—pay point 5

- (a) Pay point 5 refers to the pay point to which an EN has been appointed.
- (b) An employee will be appointed to this pay point based on training and experience including:
- not more than one further year of practical experience in the provision of nursing care and/or services in addition to the experience, skill and knowledge requirements specified for pay point 4; and
  - the undertaking of relevant in-service training, subject to its provision by the employing agency, from time to time.

**(c) Skill indicators**

The employee is required to demonstrate some of the following in the performance of their work:

- contributes information in assisting the RN with development of nursing strategies/improvements within the employee's own practice setting and/or nursing team, as necessary;
- responds to situations in less stable and/or changed circumstances resulting in positive outcomes, with minimal direct supervision; and
- efficiency and sound judgment in identifying situations requiring assistance from an RN.

**A.5 Registered nurses**

**A.5.1 Registered nurse—level 1 (RN1)**

- (a)** An employee at this level performs their duties:
- (i)** according to their level of competence; and
  - (ii)** under the general guidance of, or with general access to, a more competent registered nurse (RN) who provides work related support and direction.
- (b)** An employee at this level is required to perform general nursing duties which include substantially, but are not confined to:
- delivering direct and comprehensive nursing care and individual case management to patients or clients within the practice setting;
  - coordinating services, including those of other disciplines or agencies, to individual patients or clients within the practice setting;
  - providing education, counselling and group work services orientated towards the promotion of health status improvement of patients and clients within the practice setting;
  - providing support, direction and education to newer or less experienced staff, including EN's, and student EN's and student nurses;
  - accepting accountability for the employee's own standards of nursing care and service delivery; and
  - participating in action research and policy development within the practice setting.

**A.5.2 Registered nurse—level 2 (RN2)**

- (a)** An employee at this level:
- (i)** holds any other qualification required for working in the employee's particular practice setting; and

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- (ii) is appointed as such by a selection process or by reclassification from a lower level when the employee is required to perform the duties detailed in clause A.5.2 on a continuing basis.
- (b) An employee at this level may also be known as a Clinical nurse.
- (c) In addition to the duties of an RN1, an employee at this level is required, to perform duties delegated by a Clinical nurse consultant or any higher level classification.

Duties of a **Clinical nurse** will substantially include, but are not confined to:

- delivering direct and comprehensive nursing care and individual case management to a specific group of patients or clients in a particular area of nursing practice within the practice setting;
- providing support, direction, orientation and education to RN1's, EN's, student nurses and student EN's;
- being responsible for planning and coordinating services relating to a particular group of clients or patients in the practice setting, as delegated by the Clinical nurse consultant;
- acting as a role model in the provision of holistic care to patients or clients in the practice setting; and
- assisting in the management of action research projects, and participating in quality assurance programs and policy development within the practice setting.

### A.5.3 Registered nurse—level 3 (RN3)

- (a) An employee at this level:
  - (i) holds any other qualification required for working in the employee's particular practice setting; and
  - (ii) is appointed as such by a selection process or by reclassification from a lower level when that the employee is required to perform the duties detailed in clause A.5.3 on a continuing basis.
- (b) An employee at this level may also be known as a Clinical nurse consultant, Nurse manager or Nurse educator.
- (c) In addition to the duties of an RN2, an employee at this level will perform the following duties in accordance with practice settings and patient or client groups:
  - (i) Duties of a **Clinical nurse consultant** will substantially include, but are not confined to:
    - providing leadership and role modelling, in collaboration with others including the Nurse manager and the Nurse educator, particularly in the areas of action research and quality assurance programs;
    - staff and patient/client education;



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- staff selection, management, development and appraisal;
  - participating in policy development and implementation;
  - acting as a consultant on request in the employee's own area of proficiency; for the purpose of facilitating the provision of quality nursing care;
  - delivering direct and comprehensive nursing care to a specific group of patients or clients with complex nursing care needs, in a particular area of nursing practice within a practice setting;
  - coordinating, and ensuring the maintenance of standards of the nursing care of a specific group or population of patients or clients within a practice setting; and
  - coordinating or managing nursing or multidisciplinary service teams providing acute nursing and community services.
- (ii) Duties of a **Nurse manager** will substantially include, but are not confined to:
- providing leadership and role modelling, in collaboration with others including the Clinical nurse consultant and the Nurse educator, particularly in the areas of action research and quality assurance programs;
  - staff selection and education;
  - allocation and rostering of staff;
  - occupational health;
  - initiation and evaluation of research related to staff and resource management;
  - participating in policy development and implementation;
  - acting as a consultant on request in the employee's own area of proficiency (for the purpose of facilitating the provision of quality nursing care);
  - being accountable for the management of human and material resources within a specified span of control, including the development and evaluation of staffing methodologies; and
  - managing financial matters, budget preparation and cost control in respect of nursing within that span of control.
- (iii) Duties of a **Nurse educator** will substantially include, but are not confined to:
- providing leadership and role modelling, in collaboration with others including the Clinical nurse consultant and the Nurse manager, particularly in the areas of action research;

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- implementation and evaluation of staff education and development programs;
- staff selection;
- implementation and evaluation of patient or client education programs;
- participating in policy development and implementation;
- acting as a consultant on request in the employee's own area of proficiency (for the purpose of facilitating the provision of quality nursing care); and
- being accountable for the assessment, planning, implementation and evaluation of nursing education and staff development programs for a specified population.

### A.5.4 Registered nurse—level 4 (RN4)

- (a) An employee at this level:
- (i) holds any other qualification required for working in the employee's particular practice setting; and
  - (ii) is appointed as such by a selection process or by reclassification from a lower level when the employee is required to perform the duties detailed in clause A.5.4 on a continuing basis.
- (b) An employee at this level may also be known as an Assistant director of nursing (clinical), Assistant director of nursing (management), or Assistant director of nursing (education).
- (c) Appointment at a particular grade at this level will depend upon the level of complexity associated with the duties described in clause A.5.4. In this connection the number of beds in a facility will be a relevant consideration.
- (d) In addition to the duties of an RN3, an employee at this level will perform the following duties:
- (i) Duties of an **Assistant director of nursing (clinical)** will substantially include, but are not confined to:
    - providing leadership and role modelling, in collaboration with others including the Assistant director of nursing (management) and Assistant director of nursing (education), particularly in the areas of selection of staff within the employee's area of responsibility;
    - provision of appropriate education programs, coordination and promotion of clinical research projects;
    - participating as a member of the nursing executive team;
    - contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;

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- managing the activities of, and providing leadership, coordination and support to, a specified group of Clinical nurse consultants;
  - being accountable for the establishment, implementation and evaluation of systems to ensure the standard of nursing care for a specified span of control;
  - being accountable for the development, implementation and evaluation of patterns of patient care for a specified span of control;
  - being accountable for clinical operational planning and decision making for a specified span of control; and
  - being accountable for appropriate clinical standards, through quality assurance programs, for a specified span of control.
- (ii) Duties of an **Assistant director of nursing (management)** will substantially include, but are not confined to:
- providing leadership and role modelling, in collaboration with others including the Assistant director of nursing (clinical) and Assistant director of nursing (education), particularly in the areas of selection of staff within the employee's area of responsibility;
  - coordination and promotion of nursing management research projects;
  - participating as a member of the nursing executive team;
  - contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;
  - managing the activities of, and providing leadership, coordination and support to, a specified group of Nurse managers;
  - being accountable for the effective and efficient management of human and material resources within a specified span of control;
  - being accountable for the development and coordination of nursing management systems within a specified span of control; and
  - being accountable for the structural elements of quality assurance for a specified span of control.
- (iii) Duties of an **Assistant director of nursing (education)** will substantially include, but are not confined to:
- providing leadership and role modelling, in conjunction with others including the Assistant director of nursing (clinical) and the Assistant director of nursing (management), particularly in the areas of selection of staff within the employee's area of responsibility;
  - coordination and promotion of nurse education research projects;

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- participating as a member of the nursing executive team, and contributing to the development of nursing and health unit policy for the purpose of facilitating the provision of quality nursing care;
- managing the activities of, and providing leadership, coordination and support to a specific group of Nurse educators;
- being accountable for the standards and effective coordination of education programs for a specified population;
- being accountable for the development, implementation and evaluation of education and staff development programs for a specified population;
- being accountable for the management of educational resources including their financial management and budgeting control; and
- undertaking career counselling for nursing staff.

### **A.5.5 Registered nurse level 5—(RN5)**

- (a) An employee at this level:
- (i) holds any other qualification required for working in the employee's particular practice setting; and
  - (ii) is appointed as such by a selection process or by reclassification from a lower level when the employee is required to perform the duties detailed in clause A.5.5 on a continuing basis.
- (b) An employee at this level may also be known as a Director of nursing.
- (c) Appointment at a particular grade at this level will depend upon the level of complexity associated with the duties described in clause A.5.5. In this connection the number of beds in a facility will be a relevant consideration.
- (d) In addition to the duties of an RN4, an employee at this level will perform the following duties:
- being accountable for the standards of nursing care for the health unit and for coordination of the nursing service of the health unit;
  - participating as a member of the executive of the health unit, being accountable to the executive for the development and evaluation of nursing policy, and generally contributing to the development of health unit policy;
  - providing leadership, direction and management of the nursing division of the health unit in accordance with policies, philosophies, objectives and goals established through consultation with staff and in accordance with the directions of the Board of Directors of the health unit;
  - providing leadership and role modelling, in collaboration with others, particularly in the areas of staff selection, promotion of participative decision making and decentralisation of nursing management and generally advocating for the interests of nursing to the executive team of the health unit;

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- managing the budget of the nursing division of the health unit;
- ensuring that nursing services meeting changing needs of clients or patients through proper strategic planning; and
- complying, and ensuring the compliance of others, with the code of ethics and legal requirements of the nursing profession.

### **A.6 Occupational health nurses**

The duties and responsibilities of Occupational health nurses include, but are not necessarily confined to:

- the maintenance of appropriate records relating to the activities of the occupational health unit and services to clients;
- the rehabilitation of injured workers;
- preventative action in relation to occupational hazards that may lead to injury and/or illness;
- immediate and continuing treatment of occupational injuries and/or illness;
- health promotion; and
- the counselling of clients on health related matters.

#### **A.6.1 Occupational health nurse—level 1**

An employee at this level:

- (a) is an RN with at least 4 years post registration experience; and
- (b) performs duties in relation to occupational health consistent with:
  - giving direct nursing care to a group of clients;
  - assessing nursing care needs of clients; and
  - participating in provision of education to clients.

#### **A.6.2 Occupational health clinical nurse—level 2**

- (a) An employee at this level:
  - (i) is an RN with at least 4 years post registration experience; and
  - (ii) performs duties in connection with occupational health which are more complex than the duties performed by an Occupational health nurse level 1.
- (b) Appointment to level 2 of this salary structure is only upon successful completion of a relevant post-registration qualification to this field of employment.

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- (c) Payment at this level will commence when the employer receives reasonable proof from the employee that the qualification has been obtained. The onus of proof rests with the employee.
- (d) The duties of an employee at this level may include, but are not necessarily confined to:
  - the prevention of injury/illness;
  - rehabilitation; and
  - occupational hazard identification.

### **A.6.3 Senior occupational health clinical nurse**

An employee at this level is an RN with at least 5 years post registration experience who:

- coordinates the occupational health nursing service; and
- provides support and direction to 4 or less Occupational health nurses and/or Occupational health clinical nurses.

### **A.6.4 Occupational health nurse consultant—level 3**

An employee at this level is an RN with at least 5 years post registration experience who:

- coordinates the Occupational health nursing services; and
- provides support and direction to 5 or more Occupational nurses and/or Occupational health clinical nurses.

## **A.7 Nurse Practitioner**

- (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.

### **A.7.2 Role of a licensed Nurse practitioner**

- (a) The nurse practitioner is able to assess and manage the care of clients/residents using nursing knowledge and skills. It is dynamic practice that incorporates application of high level knowledge and skills, beyond that required of a registered nurse/midwife in extended practice across stable, unpredictable and complex situations.

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- (b) The nurse practitioner role is grounded in the nursing profession's values, knowledge, theories and practice and provides innovative and flexible health care delivery that complements other health care providers.

### A.7.3 Scope of practice

- (a) The scope of practice of the Nurse practitioner is determined by the context in which:
  - (i) the nurse practitioner is authorised to practice. The nurse practitioner therefore remains accountable for the practice for which they directed; and
  - (ii) the professional efficacy whereby practice is structured in a nursing model and enhanced by autonomy and accountability.
- (b) The Nurse practitioner is authorised to directly refer clients/residents to other health professionals, prescribe medications and order diagnostic investigations including pathology and plain screen x-rays.
- (c) Nurse practitioners exhibit clinical leadership that influences and progresses clinical care, policy and collaboration through all levels of health service.

## Schedule B—Summary of Hourly Rates of Pay

[Varied by [PR740715](#), [PR751294](#), [PR762144](#)]

### B.1 Summary of hourly rates of pay for employees other than aged care employees

[New B.1 inserted by [PR751294](#) ppc 30Jun23]

#### B.1.1 Nursing assistant—~~other than home care nursing assistants~~—~~other than aged care employees~~

[B.1 renamed and renumbered as B.1.1 by [PR751294](#) ppc 30Jun23]

##### (a) Full-time and part-time employees—ordinary and penalty rates

[B.1.1 varied by [PR740715](#); renumbered as B.1.1(a) by [PR751294](#) ppc 30Jun23; B.1.1(a) varied by [PR762144](#) ppc 01Jul23]

	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>					
	<b>100%</b>	<b>112.5%</b>	<b>115%</b>	<b>150%</b>	<b>175%</b>	<b>200%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
1st year	24.58	27.65	28.27	36.87	43.02	49.16
2nd year	24.97	28.09	28.72	37.46	43.70	49.94
3rd year and thereafter	25.37	28.54	29.18	38.06	44.40	50.74
Experienced (the holder of a relevant certificate III qualification)	26.18	29.45	30.11	39.27	45.82	52.36

##### (b) Full-time and part-time employees—overtime rates

[B.1.2 varied by [PR740715](#); renumbered as B.1.1(b) by [PR751294](#) ppc 30Jun23; B.1.1(b) varied by [PR762144](#) ppc 01Jul23]

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
1st year	36.87	49.16	49.16	61.45
2nd year	37.46	49.94	49.94	62.43
3rd year and thereafter	38.06	50.74	50.74	63.43



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	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Experienced (the holder of a relevant certificate III qualification)	39.27	52.36	52.36	65.45

**(c) Casual employees—ordinary and penalty rates**

[B.1.3 varied by [PR740715](#); renumbered as B.1.1(c) by [PR751294](#) ppc 30Jun23; B.1.1(c) varied by [PR762144](#) ppc 01Jul23]

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate			% of casual hourly rate <sup>1</sup>		
	125%	137.5%	140%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
1st year	30.73	33.80	34.41	46.10	53.78	61.46
2nd year	31.21	34.33	34.96	46.82	54.62	62.42
3rd year and thereafter	31.71	34.88	35.52	47.57	55.49	63.42
Experienced (the holder of a relevant certificate III qualification)	32.73	36.00	36.65	49.10	57.28	65.46

<sup>1</sup> The [casual hourly rate](#) is defined in clause 2—Definitions.

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**B.1.2 Enrolled nurses—other than aged care employees**

[B.2 renamed and renumbered as B.1.2 by [PR751294](#) ppc 30Jun23]

**(a) Full-time and part-time employees—ordinary and penalty rates**

[B.2.1 varied by [PR740715](#); renumbered as B.1.2(a) by [PR751294](#) ppc 30Jun23; B.1.2(a) varied by [PR762144](#) ppc 01Jul23]

	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>					
	<b>100%</b>	<b>112.5%</b>	<b>115%</b>	<b>150%</b>	<b>175%</b>	<b>200%</b>
	\$	\$	\$	\$	\$	\$
<b>Student enrolled nurse</b>						
Less than 21 years	22.84	25.70	26.27	34.26	39.97	45.68
21 years and over	23.97	26.97	27.57	35.96	41.95	47.94
<b>Enrolled nurse</b>						
Pay point 1	26.67	30.00	30.67	40.01	46.67	53.34
Pay point 2	27.02	30.40	31.07	40.53	47.29	54.04
Pay point 3	27.38	30.80	31.49	41.07	47.92	54.76
Pay point 4	27.78	31.25	31.95	41.67	48.62	55.56
Pay point 5	28.06	31.57	32.27	42.09	49.11	56.12

**(b) Full-time and part-time employees—overtime rates**

[B.2.2 varied by [PR740715](#); renumbered as B.1.2(b) by [PR751294](#) ppc 30Jun23; B.1.2(b) varied by [PR762144](#) ppc 01Jul23]

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	\$	\$	\$	\$
<b>Student enrolled nurse</b>				
Less than 21 years	34.26	45.68	45.68	57.10
21 years and over	35.96	47.94	47.94	59.93
<b>Enrolled nurse</b>				
Pay point 1	40.01	53.34	53.34	66.68
Pay point 2	40.53	54.04	54.04	67.55

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	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Pay point 3	41.07	54.76	54.76	68.45
Pay point 4	41.67	55.56	55.56	69.45
Pay point 5	42.09	56.12	56.12	70.15

**(c) Casual employees—ordinary and penalty rates**

[B.2.3 varied by [PR740715](#); renumbered as B.1.2(c) by [PR751294](#) ppc 30Jun23; B.1.2(c) varied by [PR762144](#) ppc 01Jul23]

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>			<b>% of casual hourly rate<sup>1</sup></b>		
	<b>125%</b>	<b>137.5%</b>	<b>140%</b>	<b>150%</b>	<b>175%</b>	<b>200%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Student enrolled nurse</b>						
Less than 21 years	28.55	31.41	31.98	42.83	49.96	57.10
21 years and over	29.96	32.96	33.56	44.94	52.43	59.92
<b>Enrolled nurse</b>						
Pay point 1	33.34	36.67	37.34	50.01	58.35	66.68
Pay point 2	33.78	37.15	37.83	50.67	59.12	67.56
Pay point 3	34.23	37.65	38.33	51.35	59.90	68.46
Pay point 4	34.73	38.20	38.89	52.10	60.78	69.46
Pay point 5	35.08	38.58	39.28	52.62	61.39	70.16

<sup>1</sup> The [casual hourly rate](#) is defined in clause 2—Definitions.

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**B.1.3 Registered nurses—other than aged care employees**

[B.3 renamed and renumbered as B.1.3 by [PR751294](#) ppc 30Jun23]

**(a) Full-time and part-time employees—ordinary and penalty rates**

[B.3.1 varied by [PR740715](#); renumbered as B.1.3(a) by [PR751294](#) ppc 30Jun23; B.1.3(a) varied by [PR762144](#) ppc 01Jul23]

	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>					
	<b>100%</b>	<b>112.5%</b>	<b>115%</b>	<b>150%</b>	<b>175%</b>	<b>200%</b>
	\$	\$	\$	\$	\$	\$
<b>Registered nurse—level 1</b>						
Pay point 1	28.53	32.10	32.81	42.80	49.93	57.06
Pay point 2	29.12	32.76	33.49	43.68	50.96	58.24
Pay point 3	29.83	33.56	34.30	44.75	52.20	59.66
Pay point 4	30.62	34.45	35.21	45.93	53.59	61.24
Pay point 5	31.56	35.51	36.29	47.34	55.23	63.12
Pay point 6	32.48	36.54	37.35	48.72	56.84	64.96
Pay point 7	33.42	37.60	38.43	50.13	58.49	66.84
Pay point 8 and thereafter	34.28	38.57	39.42	51.42	59.99	68.56
<b>Registered nurse—level 2</b>						
Pay point 1	35.19	39.59	40.47	52.79	61.58	70.38
Pay point 2	35.76	40.23	41.12	53.64	62.58	71.52
Pay point 3	36.38	40.93	41.84	54.57	63.67	72.76
Pay point 4 and thereafter	36.97	41.59	42.52	55.46	64.70	73.94
<b>Registered nurse—level 3</b>						
Pay point 1	38.16	42.93	43.88	57.24	66.78	76.32
Pay point 2	38.86	43.72	44.69	58.29	68.01	77.72
Pay point 3	39.53	44.47	45.46	59.30	69.18	79.06
Pay point 4 and thereafter	40.24	45.27	46.28	60.36	70.42	80.48

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	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>					
	<b>100%</b>	<b>112.5%</b>	<b>115%</b>	<b>150%</b>	<b>175%</b>	<b>200%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Registered nurse—level 4<sup>1</sup></b>						
Grade 1	43.56	–	–	65.34	76.23	87.12
Grade 2	46.68	–	–	70.02	81.69	93.36
Grade 3	49.40	–	–	74.10	86.45	98.80
<b>Registered nurse—level 5<sup>1</sup></b>						
Grade 1	43.95	–	–	65.93	76.91	87.90
Grade 2	46.28	–	–	69.42	80.99	92.56
Grade 3	49.40	–	–	74.10	86.45	98.80
Grade 4	52.48	–	–	78.72	91.84	104.96
Grade 5	57.88	–	–	86.82	101.29	115.76
Grade 6	63.33	–	–	95.00	110.83	126.66
<b>Minimum entry rates</b>						
4 year degree	29.79	33.51	34.26	44.69	52.13	59.58
Masters degree	30.82	34.67	35.44	46.23	53.94	61.64

<sup>1</sup> Shiftwork loadings do not apply to Registered nurse levels 4 and 5 in accordance with clause 20.2(e).

**(b) Full-time and part-time employees—overtime rates**

[B.3.2 varied by [PR740715](#); renumbered as B.1.3(b) by [PR751294](#) ppc 30Jun23; B.1.3(b) varied by [PR762144](#) ppc 01Jul23]

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Registered nurse—level 1</b>				
Pay point 1	42.80	57.06	57.06	71.33
Pay point 2	43.68	58.24	58.24	72.80

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	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Pay point 3	44.75	59.66	59.66	74.58
Pay point 4	45.93	61.24	61.24	76.55
Pay point 5	47.34	63.12	63.12	78.90
Pay point 6	48.72	64.96	64.96	81.20
Pay point 7	50.13	66.84	66.84	83.55
Pay point 8 and thereafter	51.42	68.56	68.56	85.70
<b>Registered nurse— level 2</b>				
Pay point 1	52.79	70.38	70.38	87.98
Pay point 2	53.64	71.52	71.52	89.40
Pay point 3	54.57	72.76	72.76	90.95
Pay point 4 and thereafter	55.46	73.94	73.94	92.43
<b>Registered nurse— level 3</b>				
Pay point 1	57.24	76.32	76.32	95.40
Pay point 2	58.29	77.72	77.72	97.15
Pay point 3	59.30	79.06	79.06	98.83
Pay point 4 and thereafter	60.36	80.48	80.48	100.60
<b>Registered nurse— level 4<sup>1</sup></b>	—	—	—	—
<b>Registered nurse— level 5<sup>1</sup></b>	—	—	—	—
<b>Minimum entry rates</b>				
4 year degree	44.69	59.58	59.58	74.48
Masters degree	46.23	61.64	61.64	77.05

<sup>1</sup> Overtime rates do not apply to Registered nurse levels 4 and 5 in accordance with clause 19.1(b).

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(c) Casual employees—ordinary and penalty rates

[B.3.3 varied by [PR740715](#); renumbered as B.1.3(c) by [PR751294](#) ppc 30Jun23; B.1.3(c) varied by [PR762144](#) ppc 01Jul23]

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate			% of casual hourly rate <sup>1</sup>		
	125%	137.5%	140%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
<b>Registered nurse—level 1</b>						
Pay point 1	35.66	39.23	39.94	53.49	62.41	71.32
Pay point 2	36.40	40.04	40.77	54.60	63.70	72.80
Pay point 3	37.29	41.02	41.76	55.94	65.26	74.58
Pay point 4	38.28	42.10	42.87	57.42	66.99	76.56
Pay point 5	39.45	43.40	44.18	59.18	69.04	78.90
Pay point 6	40.60	44.66	45.47	60.90	71.05	81.20
Pay point 7	41.78	45.95	46.79	62.67	73.12	83.56
Pay point 8 and thereafter	42.85	47.14	47.99	64.28	74.99	85.70
<b>Registered nurse—level 2</b>						
Pay point 1	43.99	48.39	49.27	65.99	76.98	87.98
Pay point 2	44.70	49.17	50.06	67.05	78.23	89.40
Pay point 3	45.48	50.02	50.93	68.22	79.59	90.96
Pay point 4 and thereafter	46.21	50.83	51.76	69.32	80.87	92.42
<b>Registered nurse—level 3</b>						
Pay point 1	47.70	52.47	53.42	71.55	83.48	95.40
Pay point 2	48.58	53.43	54.40	72.87	85.02	97.16
Pay point 3	49.41	54.35	55.34	74.12	86.47	98.82
Pay point 4 and thereafter	50.30	55.33	56.34	75.45	88.03	100.60
<b>Registered nurse—level 4<sup>2</sup></b>						
Grade 1	54.45	—	—	81.68	95.29	108.90

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	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate			% of casual hourly rate <sup>1</sup>		
	125%	137.5%	140%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
Grade 2	58.35	–	–	87.53	102.11	116.70
Grade 3	61.75	–	–	92.63	108.06	123.50
<b>Registered nurse— level 5<sup>2</sup></b>						
Grade 1	54.94	–	–	82.41	96.15	109.88
Grade 2	57.85	–	–	86.78	101.24	115.70
Grade 3	61.75	–	–	92.63	108.06	123.50
Grade 4	65.60	–	–	98.40	114.80	131.20
Grade 5	72.35	–	–	108.53	126.61	144.70
Grade 6	79.16	–	–	118.74	138.53	158.32
<b>Minimum entry rates</b>						
4 year degree	37.24	40.96	41.71	55.86	65.17	74.48
Masters degree	38.53	42.38	43.15	57.80	67.43	77.06

<sup>1</sup> The [casual hourly rate](#) is defined in clause 2—Definitions.

<sup>2</sup> Shiftwork loadings do not apply to Registered nurse levels 4 and 5 in accordance with clause 20.2(e).

**B.1.4 Nurse practitioner—other than aged care employees**

[B.4 renamed and renumbered as B.1.4 by [PR751294](#) ppc 30Jun23]

**(a) Full-time and part-time employees—ordinary and penalty rates**

[B.4.1 varied by [PR740715](#); renumbered as B.1.4(a) by [PR751294](#) ppc 30Jun23; B.1.4(a) varied by [PR762144](#) ppc 01Jul23]

	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate					
	100%	112.5%	115%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
1st year	43.91	49.40	50.50	65.87	76.84	87.82



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	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>					
	100%	112.5%	115%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
2nd year	45.22	50.87	52.00	67.83	79.14	90.44

**(b) Full-time and part-time employees—overtime rates**

[B.4.2 varied by [PR740715](#); renumbered as B.1.4(b) by [PR751294](#) ppc 30Jun2; B.1.4(b) varied by [PR762144](#) ppc 01Jul23]

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	<b>% of minimum hourly rate</b>			
	150%	200%	200%	250%
	\$	\$	\$	\$
1st year	65.87	87.82	87.82	109.78
2nd year	67.83	90.44	90.44	113.05

**(c) Casual employees—ordinary and penalty rates**

[B.4.3 varied by [PR740715](#); renumbered as B.1.4(c) by [PR751294](#) ppc 30Jun23; B.1.4(c) varied by [PR762144](#) ppc 01Jul23]

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>			<b>% of casual hourly rate<sup>1</sup></b>		
	125%	137.5%	140%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
1st year	54.89	60.38	61.47	82.34	96.06	109.78
2nd year	56.53	62.18	63.31	84.80	98.93	113.06

<sup>1</sup> The [casual hourly rate](#) is defined in clause 2—Definitions.

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**B.1.5 Occupational health nurse**

[B.5 renumbered as B.1.5 by [PR751294](#) ppc 30Jun23]

**(a) Full-time and part-time employees—ordinary and penalty rates**

[B.5.1 varied by [PR740715](#); renumbered as B.1.5(a) by [PR751294](#) ppc 30Jun23; B.1.5(a) varied by [PR762144](#) ppc 01Jul23]

	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
% of minimum hourly rate						
	100%	112.5%	115%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
<b>Occupational health nurse—level 1</b>						
Pay point 1	30.62	34.45	35.21	45.93	53.59	61.24
Pay point 2	31.56	35.51	36.29	47.34	55.23	63.12
Pay point 3	32.48	36.54	37.35	48.72	56.84	64.96
Pay point 4	33.42	37.60	38.43	50.13	58.49	66.84
Pay point 5	34.28	38.57	39.42	51.42	59.99	68.56
<b>Occupational health nurse—level 2</b>						
Pay point 1	35.19	39.59	40.47	52.79	61.58	70.38
Pay point 2	35.76	40.23	41.12	53.64	62.58	71.52
Pay point 3	36.38	40.93	41.84	54.57	63.67	72.76
Pay point 4	36.97	41.59	42.52	55.46	64.70	73.94
<b>Senior occupational health clinical nurse</b>	36.97	41.59	42.52	55.46	64.70	73.94
<b>Occupational health nurse—level 3</b>						
Pay point 1	38.16	42.93	43.88	57.24	66.78	76.32
Pay point 2	38.86	43.72	44.69	58.29	68.01	77.72
Pay point 3	39.53	44.47	45.46	59.30	69.18	79.06
Pay point 4 and thereafter	40.24	45.27	46.28	60.36	70.42	80.48

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**(b) Full-time and part-time employees—overtime rates**

[B.5.2 varied by [PR740715](#); renumbered as B.1.5(b) by [PR751294](#) ppc 30Jun23; B.1.5(b) varied by [PR762144](#) ppc 01Jul23]

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
<b>Occupational health nurse—level 1</b>				
Pay point 1	45.93	61.24	61.24	76.55
Pay point 2	47.34	63.12	63.12	78.90
Pay point 3	48.72	64.96	64.96	81.20
Pay point 4	50.13	66.84	66.84	83.55
Pay point 5	51.42	68.56	68.56	85.70
<b>Occupational health nurse—level 2</b>				
Pay point 1	52.79	70.38	70.38	87.98
Pay point 2	53.64	71.52	71.52	89.40
Pay point 3	54.57	72.76	72.76	90.95
Pay point 4	55.46	73.94	73.94	92.43
<b>Senior occupational health clinical nurse</b>	55.46	73.94	73.94	92.43
<b>Occupational health nurse—level 3</b>				
Pay point 1	57.24	76.32	76.32	95.40
Pay point 2	58.29	77.72	77.72	97.15
Pay point 3	59.30	79.06	79.06	98.83
Pay point 4 and thereafter	60.36	80.48	80.48	100.60

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(c) Casual employees—ordinary and penalty rates

[B.5.3 varied by [PR740715](#); renumbered as B.1.5(c) by [PR751294](#) ppc 30Jun23; B.1.5(c) varied by [PR762144](#) ppc 01Jul23]

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate			% of casual hourly rate <sup>1</sup>		
	125%	137.5%	140%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
<b>Occupational health nurse—level 1</b>						
Pay point 1	38.28	42.10	42.87	57.42	66.99	76.56
Pay point 2	39.45	43.40	44.18	59.18	69.04	78.90
Pay point 3	40.60	44.66	45.47	60.90	71.05	81.20
Pay point 4	41.78	45.95	46.79	62.67	73.12	83.56
Pay point 5	42.85	47.14	47.99	64.28	74.99	85.70
<b>Occupational health nurse—level 2</b>						
Pay point 1	43.99	48.39	49.27	65.99	76.98	87.98
Pay point 2	44.70	49.17	50.06	67.05	78.23	89.40
Pay point 3	45.48	50.02	50.93	68.22	79.59	90.96
Pay point 4	46.21	50.83	51.76	69.32	80.87	92.42
<b>Senior occupational health clinical nurse</b>	46.21	50.83	51.76	69.32	80.87	92.42
<b>Occupational health nurse—level 3</b>						
Pay point 1	47.70	52.47	53.42	71.55	83.48	95.40
Pay point 2	48.58	53.43	54.40	72.87	85.02	97.16
Pay point 3	49.41	54.35	55.34	74.12	86.47	98.82
Pay point 4 and thereafter	50.30	55.33	56.34	75.45	88.03	100.60

<sup>1</sup> The [casual hourly rate](#) is defined in clause 2—Definitions.

**B.2 Summary of hourly rates of pay for aged care employees**

[New B.2 inserted by [PR751294](#) ppc 30Jun23]

**~~B.2.1—Nursing assistant—aged care employees~~**

**~~(a)—Full-time and part-time employees—ordinary and penalty rates~~**

[~~B.2.1(a) varied by [PR762144](#) ppe 01Jul23~~]

	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
<b>% of minimum hourly rate</b>						
	100%	112.5%	115%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
1st year	28.27	31.80	32.51	42.41	49.47	56.54
2nd year	28.71	32.30	33.02	43.07	50.24	57.42
3rd year and thereafter	29.17	32.82	33.55	43.76	51.05	58.34
Experienced (the holder of a relevant certificate III qualification)	30.11	33.87	34.63	45.17	52.69	60.22

**~~(b)—Full-time and part-time employees—overtime rates~~**

[~~B.2.1(b) varied by [PR762144](#) ppe 01Jul23~~]

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
<b>% of minimum hourly rate</b>				
	150%	200%	200%	250%
	\$	\$	\$	\$
1st year	42.41	56.54	56.54	70.68

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	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
2nd year	43.07	57.42	57.42	71.78
3rd year and thereafter	43.76	58.34	58.34	72.93
Experienced (the holder of a relevant certificate-III qualification)	45.17	60.22	60.22	75.28

**(e) Casual employees—ordinary and penalty rates**

[B.2.1(e) varied by PR762144 ppe 01Jul23]

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate			% of casual hourly rate <sup>†</sup>		
	125%	137.5%	140%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
1st year	35.34	38.87	39.58	53.01	61.85	70.68
2nd year	35.89	39.48	40.19	53.84	62.81	71.78
3rd year and thereafter	36.46	40.11	40.84	54.69	63.81	72.92
Experienced (the holder of a relevant certificate III qualification)	37.64	41.40	42.15	56.46	65.87	75.28

<sup>†</sup>The casual hourly rate is defined in clause 2—Definitions.

**B.2.1 Nursing assistant—home care nursing assistants**

**(a) Full-time and part-time employees—ordinary and penalty rates**

	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate					
	100%	112.5%	115%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
1st year	30.24	34.02	34.78	45.36	52.92	60.48
2nd year	30.71	34.55	35.32	46.07	53.74	61.42
3rd year and thereafter	31.21	35.11	35.89	46.82	54.62	62.42
Experienced (the holder of a relevant certificate III qualification)	32.21	36.24	37.04	48.32	56.37	64.42

**(b) Full-time and part-time employees—overtime rates**

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	<u>Monday to Saturday</u>		<u>Sunday</u>	<u>Public holiday</u>
	<u>First 2 hours</u>	<u>After 2 hours</u>		
	<u>% of minimum hourly rate</u>			
	<u>150%</u>	<u>200%</u>	<u>200%</u>	<u>250%</u>
	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>
<u>1st year</u>	<u>45.36</u>	<u>60.48</u>	<u>60.48</u>	<u>75.60</u>
<u>2nd year</u>	<u>46.07</u>	<u>61.42</u>	<u>61.42</u>	<u>76.78</u>
<u>3rd year and thereafter</u>	<u>46.82</u>	<u>62.42</u>	<u>62.42</u>	<u>78.03</u>



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	<u>Monday to Saturday</u>		<u>Sunday</u>	<u>Public holiday</u>
	<u>First 2 hours</u>	<u>After 2 hours</u>		
	<u>% of minimum hourly rate</u>			
	<u>150%</u>	<u>200%</u>	<u>200%</u>	<u>250%</u>
	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>
<u>Experienced (the holder of a relevant certificate III qualification)</u>	<u>48.32</u>	<u>64.42</u>	<u>64.42</u>	<u>80.53</u>

**(c) Casual employees—ordinary and penalty rates**

	<u>Casual hourly rate</u>	<u>Monday to Friday</u>		<u>Saturday</u>	<u>Sunday</u>	<u>Public holiday</u>
		<u>Afternoon shift</u>	<u>Night shift</u>			
	<u>% of minimum hourly rate</u>			<u>% of casual hourly rate<sup>1</sup></u>		
	<u>125%</u>	<u>137.5%</u>	<u>140%</u>	<u>150%</u>	<u>175%</u>	<u>200%</u>
	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>	<u>\$</u>
<u>1st year</u>	<u>37.80</u>	<u>41.58</u>	<u>42.34</u>	<u>56.70</u>	<u>66.15</u>	<u>75.60</u>
<u>2nd year</u>	<u>38.39</u>	<u>42.23</u>	<u>42.99</u>	<u>57.59</u>	<u>67.18</u>	<u>76.78</u>
<u>3rd year and thereafter</u>	<u>39.01</u>	<u>42.91</u>	<u>43.69</u>	<u>58.52</u>	<u>68.27</u>	<u>78.02</u>
<u>Experienced (the holder of a relevant certificate III qualification)</u>	<u>40.26</u>	<u>44.29</u>	<u>45.09</u>	<u>60.39</u>	<u>70.46</u>	<u>80.52</u>

<sup>1</sup> The casual hourly rate is defined in clause 2—Definitions.

**B.2.2 Enrolled nurses—aged care employees**

**(a) Full-time and part-time employees—ordinary and penalty rates**

Nurses Award 2020

[B.2.2(a) varied by [PR762144](#) ppc 01Jul23]

	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>					
	<b>100%</b>	<b>112.5%</b>	<b>115%</b>	<b>150%</b>	<b>175%</b>	<b>200%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Student enrolled nurse</b>						
Less than 21 years of age	<u>30.89</u> <u>26.27</u>	<u>34.75</u> <u>29.55</u>	<u>35.52</u> <u>30.21</u>	<u>46.34</u> <u>39.41</u>	<u>54.06</u> <u>45.97</u>	<u>61.78</u> <u>52.54</u>
21 years of age and over	<u>32.43</u> <u>27.57</u>	<u>36.48</u> <u>31.02</u>	<u>37.29</u> <u>31.71</u>	<u>48.65</u> <u>41.36</u>	<u>56.75</u> <u>48.25</u>	<u>64.86</u> <u>55.14</u>
<b>Enrolled nurse</b>						
Pay point 1	<u>36.07</u> <u>30.67</u>	<u>40.58</u> <u>34.50</u>	<u>41.48</u> <u>35.27</u>	<u>54.11</u> <u>46.01</u>	<u>63.12</u> <u>53.67</u>	<u>72.14</u> <u>61.34</u>
Pay point 2	<u>36.55</u> <u>31.08</u>	<u>41.12</u> <u>34.97</u>	<u>42.03</u> <u>35.74</u>	<u>54.83</u> <u>46.62</u>	<u>63.96</u> <u>54.39</u>	<u>73.10</u> <u>62.16</u>
Pay point 3	<u>37.04</u> <u>31.49</u>	<u>41.67</u> <u>35.43</u>	<u>42.60</u> <u>36.21</u>	<u>55.56</u> <u>47.24</u>	<u>64.82</u> <u>55.11</u>	<u>74.08</u> <u>62.98</u>
Pay point 4	<u>37.57</u> <u>31.94</u>	<u>42.27</u> <u>35.93</u>	<u>43.21</u> <u>36.73</u>	<u>56.36</u> <u>47.91</u>	<u>65.75</u> <u>55.90</u>	<u>75.14</u> <u>63.88</u>
Pay point 5	<u>37.95</u> <u>32.26</u>	<u>42.69</u> <u>36.29</u>	<u>43.64</u> <u>37.10</u>	<u>56.93</u> <u>48.39</u>	<u>66.41</u> <u>56.46</u>	<u>75.90</u> <u>64.52</u>

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**(b) Full-time and part-time employees—overtime rates**

[B.2.2(b) varied by [PR762144](#) ppc 01Jul23]

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
% of minimum hourly rate				
	150%	200%	200%	250%
	\$	\$	\$	\$
<b>Student enrolled nurse</b>				
Less than 21 years of age	<u>46.3439.41</u>	<u>61.7852.54</u>	<u>61.7852.54</u>	<u>77.2365.68</u>
21 years of age and over	<u>48.6541.36</u>	<u>64.8655.14</u>	<u>64.8655.14</u>	<u>81.0868.93</u>
<b>Enrolled nurse</b>				
Pay point 1	<u>54.1146.01</u>	<u>72.1461.34</u>	<u>72.1461.34</u>	<u>90.1876.68</u>
Pay point 2	<u>54.8346.62</u>	<u>73.1062.16</u>	<u>73.1062.16</u>	<u>91.3877.70</u>
Pay point 3	<u>55.5647.24</u>	<u>74.0862.98</u>	<u>74.0862.98</u>	<u>92.6078.73</u>
Pay point 4	<u>56.3647.91</u>	<u>75.1463.88</u>	<u>75.1463.88</u>	<u>93.9379.85</u>
Pay point 5	<u>56.9348.39</u>	<u>75.9064.52</u>	<u>75.9064.52</u>	<u>94.8880.65</u>

**(c) Casual employees—ordinary and penalty rates**

[B.2.2(c) varied by [PR762144](#) ppc 01Jul23]

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
% of minimum hourly rate				% of casual hourly rate <sup>1</sup>		
	125%	137.5%	140%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
<b>Student enrolled nurse</b>						
Less than 21 years of age	<u>38.6132.84</u>	<u>42.4736.12</u>	<u>43.2536.78</u>	<u>57.9249.26</u>	<u>67.5757.47</u>	<u>77.2265.68</u>
21 years of age and over	<u>40.5434.46</u>	<u>44.5937.91</u>	<u>45.4038.60</u>	<u>60.8151.69</u>	<u>70.9560.31</u>	<u>81.0868.92</u>
<b>Enrolled nurse</b>						
Pay point 1	<u>45.0938.34</u>	<u>49.6042.17</u>	<u>50.5042.94</u>	<u>67.6457.51</u>	<u>78.9167.10</u>	<u>90.1876.68</u>
Pay point 2	<u>45.6938.85</u>	<u>50.2642.74</u>	<u>51.1743.51</u>	<u>68.5458.28</u>	<u>79.9667.99</u>	<u>91.3877.70</u>

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	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate			% of casual hourly rate <sup>1</sup>		
	125%	137.5%	140%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
Pay point 3	<u>46.3039.36</u>	<u>50.9343.30</u>	<u>51.8644.09</u>	<u>69.4559.04</u>	<u>81.0368.88</u>	<u>92.6078.72</u>
Pay point 4	<u>46.9639.93</u>	<u>51.6643.92</u>	<u>52.6044.72</u>	<u>70.4459.90</u>	<u>82.1869.88</u>	<u>93.9279.86</u>
Pay point 5	<u>47.4440.33</u>	<u>52.1844.36</u>	<u>53.1345.16</u>	<u>71.1660.50</u>	<u>83.0270.58</u>	<u>94.8880.66</u>

<sup>1</sup> The [casual hourly rate](#) is defined in clause 2—Definitions.

**B.2.3 Registered nurses—aged care employees**

**(a) Full-time and part-time employees—ordinary and penalty rates**

[B.2.3(a) varied by [PR762144](#) ppc 01Jul23]

	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate					
	100%	112.5%	115%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
<b>Registered nurse—level 1</b>						
Pay point 1	<u>38.7132.81</u>	<u>43.5536.91</u>	<u>44.5237.73</u>	<u>58.0749.22</u>	<u>67.7457.42</u>	<u>77.4265.62</u>
Pay point 2	<u>39.5033.48</u>	<u>44.4437.67</u>	<u>45.4338.50</u>	<u>59.2550.22</u>	<u>69.1358.59</u>	<u>79.0066.96</u>
Pay point 3	<u>40.4734.31</u>	<u>45.5338.60</u>	<u>46.5439.46</u>	<u>60.7151.47</u>	<u>70.8260.04</u>	<u>80.9468.62</u>
Pay point 4	<u>41.5435.22</u>	<u>46.7339.62</u>	<u>47.7740.50</u>	<u>62.3152.83</u>	<u>72.7061.64</u>	<u>83.0870.44</u>
Pay point 5	<u>42.8236.30</u>	<u>48.1740.84</u>	<u>49.2441.75</u>	<u>64.2354.45</u>	<u>74.9463.53</u>	<u>85.6472.60</u>
Pay point 6	<u>44.0637.35</u>	<u>49.5742.02</u>	<u>50.6742.95</u>	<u>66.0956.03</u>	<u>77.1165.36</u>	<u>88.1274.70</u>
Pay point 7	<u>45.3338.43</u>	<u>51.0043.23</u>	<u>52.1344.19</u>	<u>68.0057.65</u>	<u>79.3367.25</u>	<u>90.6676.86</u>
Pay point 8 and thereafter	<u>46.5139.43</u>	<u>52.3244.36</u>	<u>53.4945.34</u>	<u>69.7759.15</u>	<u>81.3969.00</u>	<u>93.0278.86</u>
<b>Registered nurse—level 2</b>						
Pay point 1	<u>47.7440.47</u>	<u>53.7145.53</u>	<u>54.9046.54</u>	<u>71.6160.71</u>	<u>83.5570.82</u>	<u>95.4880.94</u>
Pay point 2	<u>48.5141.12</u>	<u>54.5746.26</u>	<u>55.7947.29</u>	<u>72.7761.68</u>	<u>84.8971.96</u>	<u>97.0282.24</u>
Pay point 3	<u>49.3541.83</u>	<u>55.5247.06</u>	<u>56.7548.10</u>	<u>74.0362.75</u>	<u>86.3673.20</u>	<u>98.7083.66</u>

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	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
% of minimum hourly rate						
	100%	112.5%	115%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
Pay point 4 and thereafter	<u>50.1642.52</u>	<u>56.4347.84</u>	<u>57.6848.90</u>	<u>75.2463.78</u>	<u>87.7874.41</u>	<u>100.3285.04</u>
<b>Registered nurse—level 3</b>						
Pay point 1	<u>51.7743.89</u>	<u>58.2449.38</u>	<u>59.5450.47</u>	<u>77.6665.84</u>	<u>90.6076.81</u>	<u>103.5487.78</u>
Pay point 2	<u>52.7244.69</u>	<u>59.3150.28</u>	<u>60.6351.39</u>	<u>79.0867.04</u>	<u>92.2678.21</u>	<u>105.4489.38</u>
Pay point 3	<u>53.6345.46</u>	<u>60.3351.14</u>	<u>61.6752.28</u>	<u>80.4568.19</u>	<u>93.8579.56</u>	<u>107.2690.92</u>
Pay point 4 and thereafter	<u>54.5946.28</u>	<u>61.4152.07</u>	<u>62.7853.22</u>	<u>81.8969.42</u>	<u>95.5380.99</u>	<u>109.1892.56</u>
<b>Registered nurse—level 4<sup>1</sup></b>						
Grade 1	<u>59.0950.09</u>	—	—	<u>88.6475.14</u>	<u>103.4187.66</u>	<u>118.18100.18</u>
Grade 2	<u>63.3253.68</u>	—	—	<u>94.9880.52</u>	<u>110.8193.94</u>	<u>126.64107.36</u>
Grade 3	<u>67.0256.81</u>	—	—	<u>100.5385.22</u>	<u>117.2999.42</u>	<u>134.04113.62</u>
<b>Registered nurse—level 5<sup>1</sup></b>						
Grade 1	<u>59.6350.54</u>	—	—	<u>89.4575.81</u>	<u>104.3588.45</u>	<u>119.26101.08</u>
Grade 2	<u>62.7953.23</u>	—	—	<u>94.1979.85</u>	<u>109.8893.15</u>	<u>125.58106.46</u>
Grade 3	<u>67.0256.81</u>	—	—	<u>100.5385.22</u>	<u>117.2999.42</u>	<u>134.04113.62</u>
Grade 4	<u>71.1960.35</u>	—	—	<u>106.7990.53</u>	<u>124.58105.61</u>	<u>142.38120.70</u>
Grade 5	<u>78.5266.56</u>	—	—	<u>117.7899.84</u>	<u>137.41116.48</u>	<u>157.04133.12</u>
Grade 6	<u>85.9272.83</u>	—	—	<u>128.88109.25</u>	<u>150.36127.45</u>	<u>171.84145.66</u>
<b>Minimum entry rates</b>						
4 year degree	34.26	38.54	39.40	51.39	59.96	68.52
Masters degree	<u>41.8135.44</u>	<u>47.0439.87</u>	<u>48.0840.76</u>	<u>62.7253.16</u>	<u>73.1762.02</u>	<u>83.6270.88</u>

<sup>1</sup> Shiftwork loadings do not apply to Registered nurse levels 4 and 5 in accordance with clause 20.2(e).

**(b) Full-time and part-time employees—overtime rates**

Nurses Award 2020

[B.2.3(b) varied by [PR762144](#) ppc 01Jul23]

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Registered nurse— level 1</b>				
Pay point 1	<u>58.0749.22</u>	<u>77.4265.62</u>	<u>77.4265.62</u>	<u>96.7882.03</u>
Pay point 2	<u>59.2550.22</u>	<u>79.0066.96</u>	<u>79.0066.96</u>	<u>98.7583.70</u>
Pay point 3	<u>60.7151.47</u>	<u>80.9468.62</u>	<u>80.9468.62</u>	<u>101.1885.78</u>
Pay point 4	<u>62.3152.83</u>	<u>83.0870.44</u>	<u>83.0870.44</u>	<u>103.8588.05</u>
Pay point 5	<u>64.2354.45</u>	<u>85.6472.60</u>	<u>85.6472.60</u>	<u>107.0590.75</u>
Pay point 6	<u>66.0956.03</u>	<u>88.1274.70</u>	<u>88.1274.70</u>	<u>110.1593.38</u>
Pay point 7	<u>68.0057.65</u>	<u>90.6676.86</u>	<u>90.6676.86</u>	<u>113.3396.08</u>
Pay point 8 and thereafter	<u>69.7759.15</u>	<u>93.0278.86</u>	<u>93.0278.86</u>	<u>116.2898.58</u>
<b>Registered nurse— level 2</b>				
Pay point 1	<u>71.6160.71</u>	<u>95.4880.94</u>	<u>95.4880.94</u>	<u>119.35101.18</u>
Pay point 2	<u>72.7761.68</u>	<u>97.0282.24</u>	<u>97.0282.24</u>	<u>121.28102.80</u>
Pay point 3	<u>74.0362.75</u>	<u>98.7083.66</u>	<u>98.7083.66</u>	<u>123.38104.58</u>
Pay point 4 and thereafter	<u>75.2463.78</u>	<u>100.3285.04</u>	<u>100.3285.04</u>	<u>125.40106.30</u>
<b>Registered nurse— level 3</b>				
Pay point 1	<u>77.6665.84</u>	<u>103.5487.78</u>	<u>103.5487.78</u>	<u>129.43109.73</u>
Pay point 2	<u>79.0867.04</u>	<u>105.4489.38</u>	<u>105.4489.38</u>	<u>131.80111.73</u>
Pay point 3	<u>80.4568.19</u>	<u>107.2690.92</u>	<u>107.2690.92</u>	<u>134.08113.65</u>
Pay point 4 and thereafter	<u>81.8969.42</u>	<u>109.1892.56</u>	<u>109.1892.56</u>	<u>136.48115.70</u>
<b>Registered nurse— level 4<sup>1</sup></b>	—	—	—	—
<b>Registered nurse— level 5<sup>1</sup></b>	—	—	—	—
<b>Minimum entry rates</b>				
<b>4 year degree</b>	<u>51.39</u>	<u>68.52</u>	<u>68.52</u>	<u>85.65</u>

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	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Masters degree	<u>62.7253.16</u>	<u>83.6270.88</u>	<u>83.6270.88</u>	<u>104.5388.60</u>

<sup>1</sup> Overtime rates do not apply to Registered nurse levels 4 and 5 in accordance with clause 19.1(b).

**(c) Casual employees—ordinary and penalty rates**

[B.2.3(c) varied by [PR762144](#) ppc 01Jul23]

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>			<b>% of casual hourly rate<sup>1</sup></b>		
	<b>125%</b>	<b>137.5%</b>	<b>140%</b>	<b>150%</b>	<b>175%</b>	<b>200%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
<b>Registered nurse—level 1</b>						
Pay point 1	<u>48.3941.01</u>	<u>53.2345.11</u>	<u>54.1945.93</u>	<u>72.5961.52</u>	<u>84.6871.77</u>	<u>96.7882.02</u>
Pay point 2	<u>49.3841.85</u>	<u>54.3146.04</u>	<u>55.3046.87</u>	<u>74.0762.78</u>	<u>86.4273.24</u>	<u>98.7683.70</u>
Pay point 3	<u>50.5942.89</u>	<u>55.6547.18</u>	<u>56.6648.03</u>	<u>75.8964.34</u>	<u>88.5375.06</u>	<u>101.1885.78</u>
Pay point 4	<u>51.9344.03</u>	<u>57.1248.43</u>	<u>58.1649.31</u>	<u>77.9066.05</u>	<u>90.8877.05</u>	<u>103.8688.06</u>
Pay point 5	<u>53.5345.38</u>	<u>58.8849.91</u>	<u>59.9550.82</u>	<u>80.3068.07</u>	<u>93.6879.42</u>	<u>107.0690.76</u>
Pay point 6	<u>55.0846.69</u>	<u>60.5851.36</u>	<u>61.6852.29</u>	<u>82.6270.04</u>	<u>96.3981.71</u>	<u>110.1693.38</u>
Pay point 7	<u>56.6648.04</u>	<u>62.3352.84</u>	<u>63.4653.80</u>	<u>84.9972.06</u>	<u>99.1684.07</u>	<u>113.3296.08</u>
Pay point 8 and thereafter	<u>58.1449.29</u>	<u>63.9554.22</u>	<u>65.1155.20</u>	<u>87.2173.94</u>	<u>101.7586.26</u>	<u>116.2898.58</u>
<b>Registered nurse—level 2</b>						
Pay point 1	<u>59.6850.59</u>	<u>65.6455.65</u>	<u>66.8456.66</u>	<u>89.5275.89</u>	<u>104.4488.53</u>	<u>119.36101.18</u>
Pay point 2	<u>60.6451.40</u>	<u>66.7056.54</u>	<u>67.9157.57</u>	<u>90.9677.10</u>	<u>106.1289.95</u>	<u>121.28102.80</u>
Pay point 3	<u>61.6952.29</u>	<u>67.8657.52</u>	<u>69.0958.56</u>	<u>92.5478.44</u>	<u>107.9691.51</u>	<u>123.38104.58</u>
Pay point 4 and thereafter	<u>62.7053.15</u>	<u>68.9758.47</u>	<u>70.2259.53</u>	<u>94.0579.73</u>	<u>109.7393.01</u>	<u>125.40106.30</u>
<b>Registered nurse—level 3</b>						

Nurses Award 2020

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	% of minimum hourly rate			% of casual hourly rate <sup>1</sup>		
	125%	137.5%	140%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
Pay point 1	<u>64.71</u> <u>54.86</u>	<u>71.18</u> <u>60.35</u>	<u>72.48</u> <u>61.45</u>	<u>97.07</u> <u>82.29</u>	<u>113.24</u> <u>96.01</u>	<u>129.42</u> <u>109.72</u>
Pay point 2	<u>65.90</u> <u>55.86</u>	<u>72.49</u> <u>61.45</u>	<u>73.81</u> <u>62.57</u>	<u>98.85</u> <u>83.79</u>	<u>115.33</u> <u>97.76</u>	<u>131.80</u> <u>111.72</u>
Pay point 3	<u>67.04</u> <u>56.83</u>	<u>73.74</u> <u>62.51</u>	<u>75.08</u> <u>63.64</u>	<u>100.56</u> <u>85.25</u>	<u>117.32</u> <u>99.45</u>	<u>134.08</u> <u>113.66</u>
Pay point 4 and thereafter	<u>68.24</u> <u>57.85</u>	<u>75.06</u> <u>63.64</u>	<u>76.43</u> <u>64.79</u>	<u>102.36</u> <u>86.78</u>	<u>119.42</u> <u>101.24</u>	<u>136.48</u> <u>115.70</u>
<b>Registered nurse— level 4<sup>2</sup></b>						
Grade 1	<u>73.86</u> <u>62.61</u>	—	—	<u>110.79</u> <u>93.92</u>	<u>129.26</u> <u>109.57</u>	<u>147.72</u> <u>125.22</u>
Grade 2	<u>79.15</u> <u>67.10</u>	—	—	<u>118.73</u> <u>100.65</u>	<u>138.51</u> <u>117.43</u>	<u>158.30</u> <u>134.20</u>
Grade 3	<u>83.78</u> <u>71.01</u>	—	—	<u>125.67</u> <u>106.52</u>	<u>146.62</u> <u>124.27</u>	<u>167.56</u> <u>142.02</u>
<b>Registered nurse— level 5<sup>2</sup></b>						
Grade 1	<u>74.54</u> <u>63.18</u>	—	—	<u>111.81</u> <u>94.77</u>	<u>130.45</u> <u>110.57</u>	<u>149.08</u> <u>126.36</u>
Grade 2	<u>78.49</u> <u>66.54</u>	—	—	<u>117.74</u> <u>99.81</u>	<u>137.36</u> <u>116.45</u>	<u>156.98</u> <u>133.08</u>
Grade 3	<u>83.78</u> <u>71.01</u>	—	—	<u>125.67</u> <u>106.52</u>	<u>146.62</u> <u>124.27</u>	<u>167.56</u> <u>142.02</u>
Grade 4	<u>88.99</u> <u>75.44</u>	—	—	<u>133.49</u> <u>113.16</u>	<u>155.73</u> <u>132.02</u>	<u>177.98</u> <u>150.88</u>
Grade 5	<u>98.15</u> <u>83.20</u>	—	—	<u>147.23</u> <u>124.80</u>	<u>171.76</u> <u>145.60</u>	<u>196.30</u> <u>166.40</u>
Grade 6	<u>107.40</u> <u>91.04</u>	—	—	<u>161.10</u> <u>136.56</u>	<u>187.95</u> <u>159.32</u>	<u>214.80</u> <u>182.08</u>
<b>Minimum entry rates</b>						
4-year degree	42.83	47.11	47.96	64.25	74.95	85.66
Masters degree	<u>52.26</u> <u>44.30</u>	<u>57.49</u> <u>48.73</u>	<u>58.53</u> <u>49.62</u>	<u>78.39</u> <u>66.45</u>	<u>91.46</u> <u>77.53</u>	<u>104.52</u> <u>88.60</u>

<sup>1</sup> The [casual hourly rate](#) is defined in clause 2—Definitions.

<sup>2</sup> Shiftwork loadings do not apply to Registered nurse levels 4 and 5 in accordance with clause 20.2(e).



**B.2.4 Nurse practitioner—aged care employees**

**(a) Full-time and part-time employees—ordinary and penalty rates**

[B.2.4(a) varied by [PR762144](#) ppc 01Jul23]

	Minimum hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>					
	100%	112.5%	115%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
1st year	<u>59.57</u> <del>50.50</del>	<u>67.02</u> <del>56.81</del>	<u>68.51</u> <del>58.08</del>	<u>89.36</u> <del>75.75</del>	<u>104.25</u> <del>88.38</del>	<u>119.14</u> <del>101.00</del>
2nd year	<u>61.34</u> <del>52.00</del>	<u>69.01</u> <del>58.50</del>	<u>70.54</u> <del>59.80</del>	<u>92.01</u> <del>78.00</del>	<u>107.35</u> <del>91.00</del>	<u>122.68</u> <del>104.00</del>

**(b) Full-time and part-time employees—overtime rates**

[B.2.4(b) varied by [PR762144](#) ppc 01Jul23]

	Monday to Saturday		Sunday	Public holiday
	First 2 hours	After 2 hours		
	<b>% of minimum hourly rate</b>			
	150%	200%	200%	250%
	\$	\$	\$	\$
1st year	<u>89.36</u> <del>75.75</del>	<u>119.14</u> <del>101.00</del>	<u>119.14</u> <del>101.00</del>	<u>148.93</u> <del>126.25</del>
2nd year	<u>92.01</u> <del>78.00</del>	<u>122.68</u> <del>104.00</del>	<u>122.68</u> <del>104.00</del>	<u>153.35</u> <del>130.00</del>

**(c) Casual employees—ordinary and penalty rates**

[B.2.4(c) varied by [PR762144](#) ppc 01Jul23]

	Casual hourly rate	Monday to Friday		Saturday	Sunday	Public holiday
		Afternoon shift	Night shift			
	<b>% of minimum hourly rate</b>			<b>% of casual hourly rate<sup>1</sup></b>		
	125%	137.5%	140%	150%	175%	200%
	\$	\$	\$	\$	\$	\$
1st year	<u>74.46</u> <del>63.13</del>	<u>81.91</u> <del>69.44</del>	<u>83.40</u> <del>70.70</del>	<u>111.69</u> <del>94.70</del>	<u>130.31</u> <del>110.48</del>	<u>148.92</u> <del>126.26</del>
2nd year	<u>76.68</u> <del>65.00</del>	<u>84.34</u> <del>71.50</del>	<u>85.88</u> <del>72.80</del>	<u>115.02</u> <del>97.50</del>	<u>134.19</u> <del>113.75</del>	<u>153.36</u> <del>130.00</del>

<sup>1</sup> The [casual hourly rate](#) is defined in clause 2—Definitions.

## Schedule C—Summary of Monetary allowances

[Varied by [PR740883](#), [PR740715](#), [PR750784](#), [PR751294](#), [PR762144](#), [PR762307](#)]

See clause 17—Allowances for full details of allowances payable under this award.

### C.1 Wage-related allowances

[C.1.1 varied by [PR740715](#), [PR751294](#) ppc 30Jun23; varied by [PR762144](#) ppc 01Jul23]

C.1.1 The wage-related allowances in this award are based on the [standard rate](#) as defined in clause 2—Definitions ~~as the minimum weekly rate for a Registered nurse—other than aged care employee level 1, pay point 1 in clause 15.1(e)(i) = \$1084.10.~~

Allowance	Clause	% of standard rate	\$	Payable
On-call allowance <del>for employees other than aged care employees</del> —between rostered shifts or ordinary hours on—Monday to Friday inclusive	17.2(a)(i)	2.35	25.48	per 24-hour period or part thereof
<del>On-call allowance for aged care employees—between rostered shifts or ordinary hours on—Monday to Friday inclusive</del>	<del>17.2(b)(i)</del>	<del>2.35</del>	<del>34.61</del>	<del>per 24-hour period or part thereof</del>
On-call allowance <del>for employees other than aged care employees</del> —between rostered shifts or ordinary hours on—Saturday	17.2(a)(i)	3.54	38.38	per 24-hour period or part thereof
<del>On-call allowance for aged care employees—between rostered shifts or ordinary hours on—Monday to Friday inclusive</del>	<del>17.2(b)(i)</del>	<del>3.54</del>	<del>52.13</del>	<del>per 24-hour period or part thereof</del>
On-call allowance <del>for employees other than aged care employees</del> —between rostered shifts or ordinary hours on—Sunday, public holiday or non-rostered day	17.2(a)(i)	4.13	44.77	per 24-hour period or part thereof
<del>On-call allowance for aged care employees—between rostered shifts or ordinary</del>	<del>17.2(b)(i)</del>	<del>4.13</del>	<del>60.82</del>	<del>per 24-hour period or part thereof</del>

## Nurses Award 2020

Allowance	Clause	% of standard rate	\$	Payable
<u>hours on—Monday to Friday inclusive</u>				

### C.1.2 Automatic adjustment of wage-related allowances

[C.1.2 renamed and substituted by [PR750784](#) ppc 15Mar23]

The amount of each wage-related allowance is the percentage of the [standard rate](#) specified for the allowance and will automatically adjust to reflect the specified percentage when the [standard rate](#) is varied.

## C.2 Expense-related allowances

[C.2.1 varied by [PR740883](#), [PR762307](#) ppc 01Jul23]

**C.2.1** The following expense-related allowances will be payable to employees in accordance with clause 17.3:

Allowance	Clause	\$	Payable
Uniform allowance, the lesser of— per shift or part thereof	17.3(a)(ii)	1.23	per shift or part thereof
Uniform allowance, the lesser of— per week	17.3(a)(ii)	6.24	per week
Laundry allowance, the lesser of— per shift or part thereof	17.3(a)(iii)	0.32	per shift or part thereof
Laundry allowance, the lesser of— per week	17.3(a)(iii)	1.49	per week
Meal allowances—overtime	17.3(b)(i)	15.20	per occasion
Meal allowances—further meal allowance where overtime exceeds 4 hours	17.3(b)(ii)	13.70	per occasion
Travelling, transport and fares— own vehicle	17.3(c)(i)	0.96	per km

### C.2.2 Adjustment of expense-related allowances

- (a) At the time of any adjustment to the [standard rate](#), each expense-related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

**Nurses Award 2020**

<b>Allowance</b>	<b>Applicable Consumer Price Index figure</b>
Meal allowance	Take-away and fast foods sub-group
Clothing and equipment allowance	Clothing and footwear group
Vehicle allowance	Private motoring sub-group

### Schedule D—Agreement to Take Annual Leave in Advance

Link to PDF copy of [Agreement to Take Annual Leave in Advance](#).

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

The employer and employee agree that the employee will take a period of paid annual leave before the employee has accrued an entitlement to the leave:

The amount of leave to be taken in advance is: \_\_\_\_ hours/days

The leave in advance will commence on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

[If the employee is under 18 years of age - include:]

I agree that:

if, on termination of the employee’s employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken under this agreement, then the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

## Schedule E—Agreement to Cash Out Annual Leave

Link to PDF copy of [Agreement to Cash Out Annual Leave](#).

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

The employer and employee agree to the employee cashing out a particular amount of the employee's accrued paid annual leave:

The amount of leave to be cashed out is: \_\_\_\_ hours/days

The payment to be made to the employee for the leave is: \$\_\_\_\_\_ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

Include if the employee is under 18 years of age:

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_\_/\_\_\_\_/20\_\_\_\_

[Schedule F—Part-day Public Holidays deleted by [PR747351](#) ppc 14Nov22]

[Schedule X—Additional Measures During the COVID-19 Pandemic varied by [PR736911](#); deleted by [PR746868](#) ppc 17Oct22]

## IN THE FAIR WORK COMMISSION

**Matter No:** AM2020/99, AM2021/63 & AM2021/65

**Re Application by:** Australian Nursing and Midwifery Federation and others

### STATEMENT OF TANYA VOGT

I, Tanya Vogt of [REDACTED] Majura, Canberra Airport ACT 2609 state as follows:

#### Qualifications and Work Experience

1. I am the Chief Executive Officer of the Australian Nursing & Midwifery Accreditation Council (**ANMAC**). I took up the appointment in February 2024.
2. I am a registered nurse having been first registered in 1991. I hold a Bachelor of Health Science (Nursing), a Diploma of Nursing and a Bachelor of Laws.
3. Prior to my present position I was the Executive Officer of the Nursing and Midwifery Board of Australia (**NMBA**). I held that position from 2014 until 2024. I was employed by the Australian Health Practitioner Regulation Agency (**AHPRA**) from the establishment of the National Registration and Accreditation Scheme that regulates nurses under the *Health Practitioner Regulation National Law Act 2009* (**National Law**). Prior to taking up the position with AHPRA and the NMBA I was employed in the Department of Health in Victoria in a policy role.

#### Australian Nursing & Midwifery Accreditation Council

4. ANMAC is the external accreditation authority appointed by the NMBA to assess and accredit Nursing and Midwifery education programs leading to eligibility to apply for registration or endorsement with the NMBA under Australia's National Registration and Accreditation Scheme.

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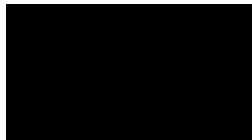
5. ANMAC, as an external accreditation entity, is responsible for developing accreditation standards for approval by the NMBA. The arrangements to regulate the accreditation of education programs are captured under the National Law.
6. To become a registered nurse in Australia an individual must complete a program of study accredited by ANMAC and approved by the NMBA.
7. Section 4(3) of the National Law sets out the objectives of the National Registration and Accreditation Scheme for health practitioners. The first of the scheme's six objectives is:
  - a. To provide for the protection of the public by ensuring that only health practitioners who are suitably trained and qualified to practice in a competent and ethical matter are registered.
8. ANMAC accredits programs of study by reference to the NMBA approved accreditation standards. The current standards for programs leading to registration as a registered nurse must provide foundational person centred, integrated theoretical and practice-based knowledge of care across the human lifespan and across all body systems and includes the requirement for a minimum of 800 hours professional experience placement linked to learning objectives of the program. While the accreditation standards do not expressly prescribe the length of the program to be delivered, as a matter of practice the overwhelming majority of programs accredited by ANMAC are delivered over three years.
9. Around 38 university or higher education providers have programs accredited by ANMAC and approved by the NMBA for registration as a registered nurse. Of those institutions, 36 offer three year Bachelor of Nursing Degrees. The others are Curtin University that offer a program over 3 and a half years and Western Sydney over 4 years.
10. The delivery of accredited and approved programs over four years has the effect that the program is less intense. The ANMAC/NMBA accredited/approved program requirements do not differ from those delivered in the three-year programs.
11. Some universities and higher education providers also offer an ANMAC/NMBA accredited course as part of a dual degree program. For example, some institutions offer a Bachelor of Nursing/Bachelor of Midwifery, or a Bachelor of Nursing/Bachelor of Public Health. Those programs are generally delivered over four years full-time.



### **The Preparation for Registered Nursing Practice**

12. Satisfactory completion of a degree that meets the ANMAC accreditation standards as approved by the NMBA constitutes preparation for nursing practice. It provides a foundation across the broad spectrum of nursing practice enabling the development of the nurses' scope of practice along their professional journey. This further development of registered nurses' scope of practice may involve increased specialisation in very specific field or enhanced scope in an area such as primary care or aged care.
13. In view of the breadth of learning and professional experience placement requirements of a program that meets the accreditation standards, in my view it would not be possible or feasible to deliver a program in under three years. This is subject to the qualification that there are two-year Masters degree programs that have been accredited by ANMAC for candidates already holding an associated first degree, or as an accelerated two year program for persons already registered as enrolled nurses.
14. In summary, the overwhelming majority of applicants for registration as registered nurses do so on the basis of the completion of a three-year bachelors level degree and as such it can be readily regarded as the benchmark professional qualification for registration by the NMBA as a registered nurse.

Tanya Vogt



Date:

23 April 2024

## IN THE FAIR WORK COMMISSION

Matter No.: AM2020/99, AM 2021/63 & AM2021/65

Re Applications by Australian Nursing and Midwifery Federation and others

### FURTHER STATEMENT OF JULIANNE BRYCE

I, Julianne Bryce of [REDACTED] Melbourne in the State of Victoria say:

1. I am a member of the Australian Nursing and Midwifery Federation (**ANMF**) and I make this statement based on my experience as a registered nurse in the nursing profession and an employee of the ANMF. I have held the position of Senior Federal Professional Officer of the ANMF since December 2008.
2. This statement is to be read together with my previous statements in these matters dated 29 October 2021 (**first statement**) and 1 November 2023 (**second statement**) adopting the definitions used therein.
3. Further to point 5 in my second statement, registered nurses almost universally complete a 3-year Bachelor of Nursing degree through a higher education provider to meet the Nursing and Midwifery Board of Australia (**NMBA**) *Registered nurse standards for practice* required for registration, or a program of equivalent value in terms of content. For example, the University of Technology Sydney offers a 2-year Bachelor of Nursing Accelerated Course (Enrolled Nurses), whereby an enrolled nurse with at least 12 months of relevant experience will have access to this shorter course, essentially in recognition of course credit towards what would otherwise be a 3-year degree program.
4. A small number of registered nurses complete a double degree over 4 to 5 years, which includes a 3-year nursing degree combined with another Bachelor degree in a complementary area of practice such as midwifery, paramedicine, business administration, psychological science, public health and health promotion, behavioural science, creative intelligence, arts, international studies or languages and culture.
5. A small number of registered nurses complete a 2-year Master of Nursing (graduate entry) as their entry to practice qualification leading to initial registration.
6. Higher education providers in Australia generally do not offer a 4-year undergraduate qualification solely in nursing. Western Sydney University, in addition to offering a three-

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year Bachelor of Nursing also offers an equivalent Bachelor of Nursing as an online program over a 4 year period. Curtin University also offers a Bachelor of Science (Nursing) over a 3.5-year period. The course content for these degrees meets the accreditation standard requirements for the 3-year undergraduate degree but delivered across a longer period.

7. Where a student of nursing completes a 4 to 5-year double degree program, the course components for the standard 3-year Bachelor of Nursing are completed with the remaining course components contributing to the complementary area of practice referred to in paragraph 3 above.
8. All entry to practice programs leading to initial registration as a nurse or midwife are accredited by Australian Nursing and Midwifery Accreditation Council (**ANMAC**) and approved by the NMBA.
9. ANMAC accredits and the NMBA approves programs of study that lead to initial registration as a registered nurse. These programs of study are subsequently published on the NMBA website.
10. As at the date of providing this statement, the NMBA website lists 74 approved courses that lead to initial registration as a registered nurse,<sup>1</sup> 42 of which are the standard undergraduate Bachelor programs. Of these, two courses are provided over a period longer than three-years as discussed above at [6]. One program offered by Torrens University is delivered in 30 months because this program is taught in trimesters (teaching across more of the calendar year). Three other Bachelor programs are offered by Flinders University, the University of Technology Sydney and the University of the Sunshine Coast over two-years where credit is given for prior study. A further 19 of the approved courses are an undergraduate double degree program, and 13 are the 2 -year Master of Nursing via the graduate entry pathway.<sup>2</sup>

Julianne Bryce

26 April 2024

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<sup>1</sup> The NMBA website lists a total of 77 courses separately, however, three of these appear to be duplicate listings:

1. The University of Sydney's Bachelor of Nursing/Bachelor of Languages and Culture
2. The University of the Sunshine Coast's Bachelor of Nursing Science
3. The University of the Sunshine Coast's Bachelor of Nursing Science (Graduate Entry)

<sup>2</sup> [https://www.ahpra.gov.au/accreditation/approved-programs-of-study.aspx?ref=nurse&type=general&div=registered%20nurse%20%28division%201%29&\\_gl=1\\*1tpyf43\\*\\_ga\\*MTEwNzE1ODU1LjE2OTQwNzAwNzc.\\*\\_ga\\_F1G6LRCHZB\\*MTcxMzMzNDUzNS4yLjEuMTcxMzMzNDU2My4wLjAuMA..](https://www.ahpra.gov.au/accreditation/approved-programs-of-study.aspx?ref=nurse&type=general&div=registered%20nurse%20%28division%201%29&_gl=1*1tpyf43*_ga*MTEwNzE1ODU1LjE2OTQwNzAwNzc.*_ga_F1G6LRCHZB*MTcxMzMzNDUzNS4yLjEuMTcxMzMzNDU2My4wLjAuMA..)

## IN THE FAIR WORK COMMISSION

**Matter No:** AM2020/99, AM2021/63 & AM2021/65

**Re Application by:** Australian Nursing and Midwifery Federation and others

### FURTHER STATEMENT OF HEILA BROOKS

I, Heila Brooks of [REDACTED] Wangaratta, Victoria 3677, say:

#### Work history and qualifications

1. I have made a previous statement in this matter, dated 15 September 2023. That summarised my employment background and qualifications, and addressed infection prevention and control. I repeat paragraphs 1–6 of that statement in relation to my background and qualifications. I remain employed as the Care Manager at St Catherine's Hostel at 59-69 Ryley Street, Wangaratta, Victoria 3677, which is a senior management position, akin to a Director of Nursing position.

#### Registered nurses: degree qualification

2. The *Nurses Award 2020* provides for a Registered Nurse (**RN**) minimum entry rate for a four year degree. Progression from the four-year degree entry rate is to pay point 4 within the RN Level 1 classification structure.
3. In my experience, the four-year degree entry rate is not applied in the residential aged care sector. My understanding is that this is because of the following reasons:
  - (a) There is no accredited four-year nursing degree leading to registration and entry to the profession;
  - (b) The registration standard for an RN is a three-year degree;
  - (c) Registration as an RN on the basis of three-year degree prepares the employee for practise in the profession and the delivery of nursing care; and

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	Email:	<a href="mailto:nwhite@gordonlegal.com.au">nwhite@gordonlegal.com.au</a>

- (d) The practice requirements/competencies and scope of practice in accordance with Australian Health Practitioners Regulation Authority (**AHPRA**) do not differentiate between different degree lengths for RNs.
4. In employing RNs, we at St Catherine's do not differentiate between 3 year or 4 year degrees. We employ based on "*registration*" and suitability for the role. An RN is an RN. The roles in the facility do not differentiate between holders of 3 and 4 year degrees. We do not have different position descriptions for RNs with 3 year degree and RNs with 4 year degrees. The expectations in relation to practice standards are the same. That is, we have the same expectation of all RNs, on account of their registration.
5. I do not recall any RN presenting for employment on the basis of a 4 year degree in the course of my professional career. A RN duly registered with a 3 year degree as well as a second degree qualification relevant to their practice setting (achieved over four years) could be appointed to the advanced increment in the Award.

#### **EN Enrolled Nurse Supervision**

6. Enrolled Nurses (**ENs**) are part of the nursing team in aged care residential settings. In that context ENs provide guidance and supervision to personal care workers (**PCWs**) in relation to the delivery of care.
7. Because of the scope of their educational preparation, all ENs are equipped to supervise and assist PCWs in all aspects of the care PCWs deliver. A central role of the EN in aged care is providing oversight and assistance to PCWs in respect of the care needs of residents not requiring the involvement of an EN or RN.
8. As a registered health care practitioner, an EN (including an entry level EN) in the aged care sector is expected to be able to do the following:
- (a) Assist the RN in the supervision of PCWs, including orientation and providing day-to-day supervision as relevant to EN scope of practice.
  - (b) Provide clinical support for PCW staff. This may be in the form of demonstrating correct technique for care procedures, or coaching.
  - (c) Act as a resource to PCW staff, for example through the development of a portfolio role such as continence management, or area of special interest.
  - (d) Follow directions of the Care Manager/RN in the undertaking of any specialised nursing care requirements.

9. PCWs differ significantly in that:
  - (a) PCWs are not registered health care practitioner.
  - (b) PCWs can be appointed team leaders with some supervisory duties, but the ENs responsibilities noted above are a basic expectation of the EN role.
  - (c) The PCW reports to the RN through the EN when the EN is rostered. It is a requirement and expectation of the EN to supervise and provide clinical support to the PCW (even if the PCW holds a team leader role).
10. The Nursing and Midwifery Board of Australia has published Standards of Practice for ENs.. Standard 3 provides: "Accepts accountability and responsibility for own actions"; and Indicator 3.8 for the Standard states as follows:

*"Provides support and supervision to assistants in nursing (however titled) and to others providing care, such as EN students, to ensure care is provided as outlined within the plan of care and according to institutional policies, protocols and guidelines."*
11. The EN retains responsibility for her/his actions and remains accountable in providing delegated nursing care. The Standards of Practice for ENs provide the framework of expectations for ENs practice and are referenced by employers, regulatory agencies and nurses themselves.
12. In the aged care setting, RNs rely heavily on ENs for consistent supervision of PCWs throughout ENs' shifts. It is an innate part of the role. In the event a PCW is in a team leader role, but with an EN on duty, the EN by the very nature of their position (and in accordance with their registration) maintains a supervisory role over the (team leader) PCW in respect of care-related activities.

### **Incremental progression**

13. Some RNs do not seek higher classifications (*i.e.*, above RN level 1) involving greater supervisory responsibilities and requiring appointment. RN classification levels above level 1 require appointment. I am not aware of any objective mechanism which functions, or could function, as an alternative to experience, by which the attainment of increased skill and expertise can be recognised.

14. For other RNs, there may be no opportunity in their work setting for appointment to a higher level because of the staffing profile and arrangements. As a consequence, a way of recognising and rewarding increased expertise and capacity achieved over time is incremental progression. Again, I am unaware of any alternative. From an employer's perspective, identifying criteria other than experience by which RNs would gain an entitlement to increased remuneration and recognition for their work would be difficult.
15. Annual AHPRA registration requirements include RNs certifying completion of yearly professional development activities.

Heila Brooks

DATE: 22 April 2024

Aged care direct carers	Per week	Hourly rate	Current relativity to L4		Per week	Hourly rate	New relativity to L3	Increase
Aged care employee—direct care—level 1	1047.60	27.57	91.6%	level 1—Introductory	1101.50	28.99	90.0%	5.15%
Aged care employee—direct care—level 2	1089.00	28.66	95.2%	level 2—Direct Carer	1162.70	30.60	95.0%	6.77%
Aged care employee—direct care—level 3	1130.90	29.76	98.8%		1162.70	30.60	95.0%	2.81%
Aged care employee—direct care—level 4	1144.20	30.11	100.0%	level 3—Qualified	1223.90	32.21	100.0%	6.97%
Aged care employee—direct care—level 5	1183.00	31.13	103.4%	level 4—Senior	1272.90	33.50	104.0%	7.60%
Aged care employee—direct care—level 6	1246.80	32.81	109.0%	level 5—Specialist	1321.80	34.78	108.0%	6.02%
Aged care employee—direct care—level 7	1269.10	33.40	110.9%	level 6—Team Leader	1370.80	36.07	112.0%	8.01%

Home care nursing assistants	Per week	Hourly rate	Current relativity to Exp		Per week	Hourly rate	Current relativity to Exp	Increase
Home care nursing assistant—1st year	1074.30	28.27	93.9%		1149.10	30.24	93.9%	6.96%
Home care nursing assistant—2nd year	1091.10	28.71	95.4%		1167.10	30.71	95.4%	6.97%
Home care nursing assistant—3rd year	1108.60	29.17	96.9%		1185.80	31.21	96.9%	6.96%
Home care nursing assistant—Experienced (Cert III)	1144.20	30.11	100.0%		1223.90	32.21	100.0%	6.97%

Enrolled Nurses	Per week	Hourly rate	Current relativity to EN1		Per week	Hourly rate	New relativity to EN1	Increase
Student enrolled nurse—less than 21 years of age	998.10	26.27	85.6%		1174.00	30.89	85.6%	17.62%
Student enrolled nurse—21 years of age and over	1047.60	27.57	89.9%		1232.20	32.43	89.9%	17.62%
Enrolled nurse—pay point 1	1165.40	30.67	100.0%		1370.80	36.07	100.0%	17.62%
Enrolled nurse—pay point 2	1180.90	31.08	101.3%		1389.00	36.55	101.3%	17.62%
Enrolled nurse—pay point 3	1196.60	31.49	102.7%		1407.50	37.04	102.7%	17.62%
Enrolled nurse—pay point 4	1213.80	31.94	104.2%		1427.70	37.57	104.2%	17.62%
Enrolled nurse—pay point 5	1226.00	32.26	105.2%		1442.10	37.95	105.2%	17.63%

Registered nurses & nurse practitioners	Per week	Hourly rate	Current relativity to R1.1		Per week	Hourly rate	New relativity to R1.1	Increase
Registered nurse—level 1—pay point 1	1246.80	32.81	100.0%		1470.80	38.71	100.0%	17.97%
Registered nurse—level 1—pay point 2	1272.30	33.48	102.0%		1500.90	39.50	102.0%	17.97%
Registered nurse—level 1—pay point 3	1303.60	34.31	104.6%		1537.80	40.47	104.6%	17.97%
Registered nurse—level 1—pay point 4	1338.30	35.22	107.3%		1578.70	41.54	107.3%	17.96%
Registered nurse—level 1—pay point 5	1379.30	36.30	110.6%		1627.10	42.82	110.6%	17.97%
Registered nurse—level 1—pay point 6	1419.30	37.35	113.8%		1674.30	44.06	113.8%	17.97%
Registered nurse—level 1—pay point 7	1460.30	38.43	117.1%		1722.70	45.33	117.1%	17.97%
Registered nurse—level 1—pay point 8	1498.30	39.43	120.2%		1767.50	46.51	120.2%	17.97%
Registered nurse—level 2—pay point 1	1538.00	40.47	123.4%		1814.30	47.74	123.4%	17.96%
Registered nurse—level 2—pay point 2	1562.50	41.12	125.3%		1843.20	48.51	125.3%	17.96%
Registered nurse—level 2—pay point 3	1589.60	41.83	127.5%		1875.20	49.35	127.5%	17.97%
Registered nurse—level 2—pay point 4	1615.60	42.52	129.6%		1905.90	50.16	129.6%	17.97%
Registered nurse—level 3—pay point 1	1667.70	43.89	133.8%		1967.30	51.77	133.8%	17.96%
Registered nurse—level 3—pay point 2	1698.30	44.69	136.2%		2003.40	52.72	136.2%	17.97%
Registered nurse—level 3—pay point 3	1727.60	45.46	138.6%		2038.00	53.63	138.6%	17.97%
Registered nurse—level 3—pay point 4	1758.60	46.28	141.0%		2074.50	54.59	141.0%	17.96%
Registered nurse—level 4—pay point 1	1903.40	50.09	152.7%		2245.40	59.09	152.7%	17.97%
Registered nurse—level 4—pay point 2	2039.80	53.68	163.6%		2406.30	63.32	163.6%	17.97%
Registered nurse—level 4—pay point 3	2158.80	56.81	173.1%		2546.60	67.02	173.1%	17.96%
Registered nurse—level 5—pay point 1	1920.70	50.54	154.1%		2265.80	59.63	154.1%	17.97%
Registered nurse—level 5—pay point 2	2022.70	53.23	162.2%		2386.10	62.79	162.2%	17.97%
Registered nurse—level 5—pay point 3	2158.80	56.81	173.1%		2546.60	67.02	173.1%	17.96%
Registered nurse—level 5—pay point 4	2293.40	60.35	183.9%		2705.40	71.19	183.9%	17.96%
Registered nurse—level 5—pay point 5	2529.40	66.56	202.9%		2983.80	78.52	202.9%	17.96%
Registered nurse—level 5—pay point 6	2767.60	72.83	222.0%		3264.80	85.92	222.0%	17.97%
Registered nurse—Masters degree	1346.70	35.44	108.0%		1588.60	41.81	108.0%	17.96%
Nurse practitioner—1st year	1919.00	50.50	153.9%		2263.80	59.57	153.9%	17.97%
Nurse practitioner—2nd year	1976.00	52.00	158.5%		2331.00	61.34	158.5%	17.97%

ORDINARY AND PENALTY RATES

OVERTIME RATES

CASUAL ORDINARY AND PENALTY RATES

100%	112.50%	115%	150%	175%	200%	150%	200%	200%	250%	Mini	Mini	Mini	Casual	Casual	Casual
100%	112.50%	115%	150%	175%	200%	150%	200%	200%	250%	125.0%	137.5%	140.0%	150.0%	175.0%	200.0%
30.24	34.02	34.78	45.36	52.92	60.48	45.36	60.48	60.48	75.60	37.80	41.58	42.34	56.70	66.15	75.60
30.71	34.55	35.32	46.07	53.74	61.42	46.07	61.42	61.42	76.78	38.39	42.23	42.99	57.59	67.18	76.78
31.21	35.11	35.89	46.82	54.62	62.42	46.82	62.42	62.42	78.03	39.01	42.91	43.69	58.52	68.27	78.02
32.21	36.24	37.04	48.32	56.37	64.42	48.32	64.42	64.42	80.53	40.26	44.29	45.09	60.39	70.46	80.52
100%	112.50%	115%	150%	175%	200%	150%	200%	200%	250%	Mini <th>Mini</th> <th>Mini</th> <th>Casual</th> <th>Casual</th> <th>Casual</th>	Mini	Mini	Casual	Casual	Casual
100%	112.50%	115%	150%	175%	200%	150%	200%	200%	250%	125.0%	137.5%	140.0%	150.0%	175.0%	200.0%
30.89	34.75	35.52	46.34	54.06	61.78	46.34	61.78	61.78	77.23	38.61	42.47	43.25	57.92	67.57	77.22
32.43	36.48	37.29	48.65	56.75	64.86	48.65	64.86	64.86	81.08	40.54	44.59	45.40	60.81	70.95	81.08
36.07	40.58	41.48	54.11	63.12	72.14	54.11	72.14	72.14	90.18	45.09	49.60	50.50	67.64	78.91	90.18
36.55	41.12	42.03	54.83	63.96	73.10	54.83	73.10	73.10	91.38	45.69	50.26	51.17	68.54	79.96	91.38
37.04	41.67	42.60	55.56	64.82	74.08	55.56	74.08	74.08	92.60	46.30	50.93	51.86	69.45	81.03	92.60
37.57	42.27	43.21	56.36	65.75	75.14	56.36	75.14	75.14	93.93	46.96	51.66	52.60	70.44	82.18	93.92
37.95	42.69	43.64	56.93	66.41	75.90	56.93	75.90	75.90	94.88	47.44	52.18	53.13	71.16	83.02	94.88
100%	112.50%	115%	150%	175%	200%	150%	200%	200%	250%	Mini <th>Mini</th> <th>Mini</th> <th>Casual</th> <th>Casual</th> <th>Casual</th>	Mini	Mini	Casual	Casual	Casual
100%	112.50%	115%	150%	175%	200%	150%	200%	200%	250%	125.0%	137.5%	140.0%	150.0%	175.0%	200.0%
38.71	43.55	44.52	58.07	67.74	77.42	58.07	77.42	77.42	96.78	48.39	53.23	54.19	72.59	84.68	96.78
39.50	44.44	45.43	59.25	69.13	79.00	59.25	79.00	79.00	98.75	49.38	54.31	55.30	74.07	86.42	98.75
40.47	45.53	46.54	60.71	70.82	80.94	60.71	80.94	80.94	101.18	50.59	55.65	56.66	75.89	88.53	101.18
41.54	46.73	47.77	62.31	72.70	83.08	62.31	83.08	83.08	103.85	51.93	57.12	58.16	77.90	90.88	103.86
42.82	48.17	49.24	64.23	74.94	85.64	64.23	85.64	85.64	107.05	53.53	58.88	59.95	80.30	93.68	107.06
44.06	49.57	50.67	66.09	77.11	88.12	66.09	88.12	88.12	110.15	55.08	60.58	61.68	82.62	96.39	110.16
45.33	51.00	52.13	68.00	79.33	90.66	68.00	90.66	90.66	113.33	56.66	62.33	63.46	84.99	99.16	113.32
46.51	52.32	53.49	69.77	81.39	93.02	69.77	93.02	93.02	116.28	58.14	63.95	65.11	87.21	101.75	116.28
47.74	53.71	54.90	71.61	83.55	95.48	71.61	95.48	95.48	119.35	59.68	65.64	66.84	89.52	104.44	119.36
48.51	54.57	55.79	72.77	84.89	97.02	72.77	97.02	97.02	121.28	60.64	66.70	67.91	90.96	106.12	121.28
49.35	55.52	56.75	74.03	86.36	98.70	74.03	98.70	98.70	123.38	61.69	67.86	69.09	92.54	107.96	123.38
50.16	56.43	57.68	75.24	87.78	100.32	75.24	100.32	100.32	125.40	62.70	68.97	70.22	94.05	109.73	125.40
51.77	58.24	59.54	77.66	90.60	103.54	77.66	103.54	103.54	129.43	64.71	71.18	72.48	97.07	113.24	129.42
52.72	59.31	60.63	79.08	92.26	105.44	79.08	105.44	105.44	131.80	65.90	72.49	73.81	98.85	115.33	131.80
53.63	60.33	61.67	80.45	93.85	107.26	80.45	107.26	107.26	134.08	67.04	73.74	75.08	100.56	117.32	134.08
54.59	61.41	62.78	81.89	95.53	109.18	81.89	109.18	109.18	136.48	68.24	75.06	76.43	102.36	119.42	136.48
59.09	-	-	88.64	103.41	118.18	88.64	118.18	118.18	147.73	73.86	-	-	110.79	129.26	147.72
63.32	-	-	94.98	110.81	126.64	94.98	126.64	126.64	158.30	79.15	-	-	118.73	138.51	158.30
67.02	-	-	100.53	117.29	134.04	100.53	134.04	134.04	167.55	83.78	-	-	125.67	146.62	167.56
59.63	-	-	89.45	104.35	119.26	89.45	119.26	119.26	149.08	74.5					



**FAIR WORK COMMISSION**

**AM2021/63; AM2024/11**

**APPLICATIONS BY AUSTRALIAN NURSING AND MIDWIFERY FEDERATION**

**SUBMISSIONS IN REPLY TO THE ANMF**

**AGED & COMMUNITY CARE PROVIDERS ASSOCIATION LTD**

**AUSTRALIAN BUSINESS INDUSTRIAL**

**(“THE JOINT EMPLOYERS”)**

**16 MAY 2024**

## BACKGROUND

1. On 4 April 2024, Justice Hatcher gave directions in the Work Value Case – Nurses and midwives (**the Directions**). Three questions were posed to the Australian Nursing and Midwifery Federation (**ANMF**):
  - (a) *“whether the registered nurse level 1, year 1 benchmark minimum rate of pay (aligned with classification C1(a) in the C10 Metals Framework) should apply to a registered nurse holding a three-year or a four-year university degree (refer paragraph [204] of the Stage 3 decision [2024] FWCFB 150)” (the RN issue);*
  - (b) *“which enrolled nurse classification should correspond to the new Level 6 – Team Leader direct care employee classification in the Aged Care Award 2010 (refer paragraph [205] of the Stage 3 decision)” (the EN issue); and*
  - (c) *“what the minimum rate increments within each classification of registered and enrolled nurses, and the relativities between those classifications, should be, including the relativity between a registered nurse holding a three-year university degree and one holding a four-year university degree (refer paragraph [207(1)] of the Stage 3 decision)” (the minimum rate increments and relativities issue).<sup>1</sup>*
2. The ANMF filed a response to those questions on 26 April 2024 (**the ANMF Submissions**), together with evidence in support.<sup>2</sup>
3. Pursuant to Item 4 of the Directions, we file submissions in reply to the ANMF Submissions.<sup>3</sup> This submission addresses three issues:
  - (a) the RN issue;
  - (b) the EN issue; and
  - (c) the minimum rate increments and relativities issue.

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<sup>1</sup> Directions - AM2021/63; AM2024/11 (Justice Hatcher, 4 April 2024) at [3].

<sup>2</sup> Statement of Julianne Bryce dated 26 April 2024; Statement of Tanya Vogt dated 23 April 2024; Statement of Heila Brooks dated 22 April 2024; an Excel spreadsheet showing the calculations feeding into the various relativities and rates of pay that were used to populate the rates in the Nurses Award.

<sup>3</sup> Directions - AM2021/63; AM2024/11 (Justice Hatcher, 4 April 2024) at [4]. It is noted that the ANMF Submission also addresses the draft determinations per the invitation to comment in the *Stage 3 Decision* [2024] FWCFB 150 at [279]. No reply is made with respect to those submissions.

## SUMMARY OF POSITION

4. If the Expert Panel adopt the reasoning in *Teachers* that classifications primarily based on periods of service are inappropriate to place in a modern award, then the Expert Panel will need to consider changes to some parts of the EN and RN classification structures that reasonably appear to reflect this.
5. Having said this we also accept the implicit reasoning in *Teachers* that certain periods of time (such as 3-4 years) do allow employees to gain a level of increased competence and proficiency that could enliven work value considerations.
6. Such an approach is consistent with the *Stage 3 Decision* as it applies to the direct care employee—level 4—senior classification, where a period of 4 years' post-qualification industry experience has been taken to reflect a material change in applied competence and proficiency to enliven work value considerations.
7. In considering any potential changes to the EN and RN classification structure concerning annual service-based increments, the notion in paragraph [5] and [6] above should be considered.

## THE RN ISSUE

8. The position set out at paragraph [3] of the ANMF Submissions is a joint position of the Joint Employers and the ANMF.

## THE EN ISSUE

9. The position set out at paragraphs [5]-[6] of the ANMF Submissions is a joint position of the Joint Employers and the ANMF.
10. We are still working through potential language in the EN classification definitions to give effect to that position.<sup>4</sup>
11. We are seeking to ensure that the notion of “*supervision*” is broad enough to comprehend ‘*general supervision*’ of PCWs in addition to the limited notion of technical ‘*clinical supervision*’ which is consistent with the *Stage 3 Decision*.
12. Three observations are made:

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<sup>4</sup> See ANMF Submissions at [6].

- (a) It is not controversial that the EN works under the indirect or direct supervision of the RN. This is expressly referred to in both the classification definitions of the EN<sup>5</sup> and RN.<sup>6</sup>
- (b) It is not controversial that ENs may provide support and supervision to direct care employees.<sup>7</sup> That supervision is “*general*” in that it is focused upon ensuring care is provided in accordance with the care plan, established protocols and guidelines. This may be contrasted with the supervisory role of the RN as “*clinical leader*”<sup>8</sup> – who has “*ultimate supervisory responsibility*”.<sup>9</sup>
- (c) The reference to “*under the supervision*” of an EN in the new definition of “*aged care employee—direct care*” captures the prospect for that general category of supervision.<sup>10</sup> There is no equivalent reference in the *Nurses Award*.

## THE MINIMUM RATE INCREMENTS AND RELATIVITIES ISSUE

### Relevant principles

13. The Expert Panel has made two observations about the classification structure in the *Nurses Award*:
- (a) “*each classification allows for automatic annual increments in pay*”; and
  - (b) “*classifications of this type*” have been held to be “*an anachronism in the context of the current statutory regime for the fixation of minimum wage rates*”.<sup>11</sup>

<sup>5</sup> For example, an EN pay point 3, 4 and 5 refer to “*limited direct supervision*” and “*minimal direct supervision*”.

<sup>6</sup> See example, *Nurses Award 2020*, Sch A, clause A.5.1(b).

<sup>7</sup> See *Stage 3 Decision* [2024] FWCFB 150 at [226]. See generally, *Stage 3 Decision* [2024] FWCFB 150 at [179]-[180], [193]. See example, Report to the Full Bench (Commissioner O’Neill, 20 June 2022) at [97]. See also Nursing and Midwifery Board of Australia, *Enrolled Nurse Standards for Practice* (1 January 2016) at [3.8].

<sup>8</sup> See generally, *Stage 1 Decision* [2022] FWCFB 200 at [647], [739].

<sup>9</sup> *Stage 3 Decision* [2024] FWCFB 150 at [188].

<sup>10</sup> See Draft Determination Aged Care Award (published 15 March 2024).

<sup>11</sup> *Stage 3 Decision* [2024] FWCFB 150 at [207(1)], citing *Application by Independent Education Union of Australia* [2021] FWCFB 2051 at [647] (**Teachers**).

14. Since pre-modernisation, a classification structure based on “*service increments*” has been categorically held to be “*inappropriate*”.<sup>12</sup> The observations of the Australian Industrial Relations Commission are instructive:
- (a) “*increments which are not based on work value should not appear in minimum rates awards*”;
  - (b) “[i]n our view the abolition of advancement between **pay points based primarily on service** is also consistent with increased flexibility and the encouragement of agreement making”;
  - (c) “[w]hen the Commission is fixing appropriate minimum rates in awards which contain increments it will be necessary, **subject to exceptions**, to make arrangements for increments to be phased out”;
  - (d) “[a]dditional payments which are geared **primarily to length of employment** are not consistent with properly fixed minimum rates because they are not based on work value”; and
  - (e) “[w]here the relevant award **does not make progression through the incremental scale dependent on changed work value**, the incremental payments cannot be treated as part of the minimum rate. Where it can be demonstrated, however, that incremental payments were included in the award pursuant to the relevant work value principle or on grounds of structural efficiency and work value, the retention of such payments is permissible”.<sup>13</sup>
15. In *Teachers*, the Full Bench held that retaining a classification structure “*based on years of service rather than the essential elements of qualifications, displayed competence and acquired experience and responsibility*” is problematic and inappropriate.<sup>14</sup>
16. This said, a certain level of experience in an occupation will usually lead to an incrementally higher level of applied competence which may have work value relevance after a period of years, even if the nominal role of the employee has not changed.

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<sup>12</sup> See *Paid Rates Review Decision* [1998] AIRC 1413, 123 IR 240, Print Q7661; *Teachers* [2021] FWCFB 2051 at [647].

<sup>13</sup> *Paid Rates Review Decision* [1998] AIRC 1413, 123 IR 240, Print Q7661 (emphasis and underlining added).

<sup>14</sup> *Teachers* [2021] FWCFB 2051 at [647].

17. However, the reasoning in *Teachers* makes it clear that evidence must be adduced to suggest that the work value of a particular role *increases* year by year.<sup>15</sup> Absent such evidence it is not appropriate, as suggested by the ANMF, to simply maintain yearly increments “*to reflect this idea*” of general increase in work value year-to-year:<sup>16</sup> to do so would be entirely contrary to the reasoning in *Teachers*.
18. The *Stage 3 Decision* held that the pay rates in the *Nurses Award* were not properly fixed minimum rates because of the principles set out in the *Paid Rates Review Decision* and the *ACT Child Care Decision*.<sup>17</sup> The conclusion was also supported by reference to the historical development of the *Nurses Award 2010*.<sup>18</sup>
19. Reference to the historical development of the *Nurses Award 2010* does not support a conclusion that the incremental scale of pay points for each RN level are based on applied competence or acquiring experience and responsibility occasioning a discernible change in work value akin to a new classification.
20. It is even less clear with respect to the EN structure.<sup>19</sup>
21. None of the findings in the *Stage 1 Decision* or the *Stage 3 Decision* support a conclusion that the work value of an EN, RN or NP increases years by year simply by the effluxion of time; after 365 days.
22. Further, in contrast to the 4-years’ post qualification marker for direct care employees<sup>20</sup> – no equivalent marker was identified with respect to ENs or RNs.<sup>21</sup>

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<sup>15</sup> *Teachers* [2021] FWCFB 2051 at [647].

<sup>16</sup> See ANMF Submission at [69].

<sup>17</sup> *Stage 3 Decision* [2024] FWCFB 150 at [135].

<sup>18</sup> *Stage 3 Decision* [2024] FWCFB 150 at [207(2)], [111]-[135]. See also *Stage 1 Decision* [2022] FWCFB 200 at [942]-[955].

<sup>19</sup> See *Stage 3 Decision* [2024] FWCFB 150 at [111]-[135].

<sup>20</sup> See *Stage 3 Decision* [2024] FWCFB 150 at [195]: that marker recognises “*that such a period of industry experience carries with it an enhancement in work value through the on-the-job acquisition of additional skills, experience, responsibilities and judgment*”.

<sup>21</sup> The Stage 1 evidence consisted of 3 ENs, 5 RNs and 2 NPs, that evidence does not support a conclusion that the year-to-year progressions are based on displayed competence and acquired experience and responsibility. See ENs: See Witness Statement of Suzanne Hewson, dated 6 May 2022; Witness statement of Wendy Knights, dated 6 May 2022; Witness statement of Patricia McLean, dated 6 May 2022; RNs: See Witness Statement of Irene McInerney, dated 29 October 2021; Witness Statement of Jocelyn Hofman dated 29 October 2021; Witness Statement of Lisa Bayram dated 29 October 2021; Witness Statement of Maree

23. There is no proper basis in principle, nor an exception enlivened by reference to the evidence, to justify annual increments in the classification structure of the *Nurses Award*. Assuming that the Commission accept the reasoning in *Teachers*, the following features of the *Nurses Award* would need to be removed or changed:
- (a) the pay points for the EN;<sup>22</sup>
  - (b) the pay points for RN 1 to RN 3;<sup>23</sup> and
  - (c) the grades for RN 4 and RN 5.<sup>24</sup>
24. Having said this, as we advocated throughout the case in respect of personal care workers, we do accept that after a period of time, such as 3-4 years, ENs and RNs will demonstrate greater competency and proficiency through having practically applied their competence in the workplace setting and this should reasonably be factored into any reconsideration of the structure.

#### **Progression through the incremental scale not dependent on changed work value**

25. Advancement between pay points for ENs and RNs is primarily determined “*by annual movement*”:<sup>25</sup> an anachronistic device carried over from the public sector.<sup>26</sup> That is supported by the construction of the progression clause.
26. The progression clause provides:

*“15.3 Progression through pay points*

*(a) Progression will be:*

*(i) for full-time employees – by annual movement; or*

*(ii) for part-time or casual employees – 1786 hours of experience.*

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Bernoth dated 29 October 2021; Witness Statement of Pauline Breen, dated 29 October 2021; NPs: See Statement of Stephen Voogt, dated 9 May 2022; Statement of Hazel Bucher, dated 9 May 2022.

<sup>22</sup> See *Nurses Award 2020*, clause 15.1(a)(ii); clause 15.2(b)(ii); Sch A, clauses A.4.1-A.4.5.

<sup>23</sup> See *Nurses Award 2020*, clause 15.1(c)(i), clause 15.2(c)(i); Sch A, clauses A.5.1-A.5.5.

<sup>24</sup> See *Nurses Award 2020*, clause 15.1(c)(i), clause 15.2(c)(i); Sch A, clauses A.5.1-A.5.5.

<sup>25</sup> *Nurses Award 2020*, clause 15.3(a). See generally, *Teachers* [2021] FWCFB 2051 at [647].

<sup>26</sup> See generally, *Teachers* [2021] FWCFB 2051 at [647].

(b) Progression to the next pay point for all classifications for which there is more than one pay point will have regard to:

(i) the acquisition and use of skills described in the definitions contained in Schedule A—Classification Definitions; and”

(ii) knowledge gained through experience in the practice settings over such a period.

27. The reference to “have regard to” the acquisition and use of skills (etc) in clause 15.3(b), does not make progression through the incremental scale *dependent* on changed work value. Based on its construction, at its highest, clause 15.3(b) identifies an issue for the employer to consider: it is not a determinative factor.
28. The purely time-based nature of the consideration in clause 15.3(b) is even more clear when applying it to pay point progression for each level of RN. For example, RN 2 has pay points 1 to 5. The *appointment* to RN 2 is informed by the acquisition and use of skills described in the definitions contained in Schedule A—Classification Definitions at clause A.5.2. Such that, all persons classified at RN 2 should already meet the definition at clause A.5.2. Therefore, having regard to the classification definition of RN 2 cannot practically or meaningfully inform progression through pay points 1 to 5. It is the annual movement referred to in clause 15.2(a) that is the determinative factor.
29. Clause 15.3 in the *Nurses Award* may be distinguished from the progression clause in the *SCHADS Award* that stipulates ‘*eligibility*’ for progression from one pay point to the next within a level requires the employee to have “*demonstrated competency and satisfactory performance over a minimum period of 12 months*”.<sup>27</sup> Whilst there is an indication of the likely duration to attain such competency, progression can only occur with “*demonstrated competency and satisfactory performance*” (emphasis added): there must be a discernible change in the application of competence (demonstrated increase in proficiency) to occasion an increase in work value (as opposed to mere regard).
30. The time-based nature of progression through pay points in the *Nurses Award* is also apparent on the face of both the EN and RN classification structure, which we turn to below.

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<sup>27</sup> *SCHADS Award 2010*, cl 13.3(a).



### **An analysis of the EN structure**

31. The EN structure is an amalgam of time served and some averment to skills. An analysis of the existing structure demonstrates the material differentiator between pay points is time served.
32. Two concerning features are highlighted:
  - (a) Each pay point stipulates that “*appointment*” to the next level is available based on an effluxion of no more than 12 months. The appointment appears to be mandated once a certain amount of time is completed. See example, EN pay point 2:
    - (i) “*An employee will be appointed to this pay point...*”; and
    - (ii) “*not more than one further year of practical experience in the provision of nursing care*”.<sup>28</sup>
  - (b) There does not appear to be a true differentiation in skill indicators between the pay points. As indicated by the following:
    - (i) An EN is only required to “*demonstrate some*” of the skills listed.<sup>29</sup> There is no definitive number or specific type of skill indicators identified as unique or mandatory for appointment.
    - (ii) The skill indicators listed at EN pay points 3, 4 and 5 appear to be expectations that align squarely with the EN Standards of Practice – which apply to all qualified ENs. For example, having regard to the indicators of an EN’s compliance with Standard 1,<sup>30</sup> which include:

A provide nursing care according to the agreed plan of care, professional standards, workplace policies and procedural guidelines;<sup>31</sup>

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<sup>28</sup> *Nurses Award 2020*, clause A.4.2(b) (emphasis added).

<sup>29</sup> *Nurses Award 2020*, clauses A.4.2 to A.4.5.

<sup>30</sup> Nursing and Midwifery Board of Australia, *Enrolled Nurse Standards for Practice* (1 January 2016).

<sup>31</sup> Nursing and Midwifery Board of Australia, *Enrolled Nurse Standards for Practice* (1 January 2016) at [1.4].

- B identity and clarify their responsibilities for aspects of delegate care working in collaboration with the RN and multidisciplinary health care team;<sup>32</sup> and
- C recognise their own limitations in practice and competence and seek guidance from the RN and help as necessary,<sup>33</sup>

the skill indicator of “*an ability to organise, practise and complete nursing functions in stable situations with limited direct supervision*” hardly seems *uniquely* indicative of an EN pay point 3.<sup>34</sup>

### ***An analysis of the RN structure***

33. Two features of the RN structure require separate consideration:
- (a) movement between the classification levels (**the levels**); and
  - (b) movement between the pay points and grades within each level (**the increments**).

#### **The levels**

34. Progression from RN level 1 to each subsequent level appears to be by “*appointment*”. By contrast to the EN structure, this is truly discretionary. For example, RN level 3 “*is appointed as such by a selection process or by reclassification...*”.<sup>35</sup>
35. The levels appear to refer to specialised forms of nursing activity. For example:
- (a) RN level 2 – clinical nurse;
  - (b) RN level 3 – clinical nurse consultant, nurse manager, nurse educator; and
  - (c) RN level 4 – assistant director of nursing (clinical), assistant director of nursing (management), assistant director of nursing (education).

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<sup>32</sup> Nursing and Midwifery Board of Australia, *Enrolled Nurse Standards for Practice* (1 January 2016) at [1.5].

<sup>33</sup> *Ibid* at [1.6].

<sup>34</sup> *Nurses Award 2020*, cl A.4.3(c). See also Report to the Full Bench (Commissioner O’Neill, 20 June 2022) at [96]-[99]. See example, Witness Statement of Suzanne Hewson, dated 6 May 2022 at [17].

<sup>35</sup> *Nurses Award 2020*, Sch A, clause A.5.3(a)(ii).

36. Putting aside pay points, each level has a clear set of competencies, experience and responsibilities that must be acquired to be appointed/reclassified at a particular level. That “*appointment*” is not based on time served.
37. Broadly, the structure of “*levels*” within the RN structure is not problematic.

### **The increments**

38. The primary concern arising from the RN structure is the basis for the movement between the pay points and grades within each level: they are entirely time-based increments.
39. The onus falls on the ANMF to demonstrate that automatic annual increments within each level are dependent on distinct changed work value. This has not occurred to date.
40. The evidence identified by the ANMF fails to identify any compelling basis to retain the annual increments for either ENs or RNs.<sup>36</sup> Four observations are made:
- (a) It is not disputed that the Junor Report has relevance to “*work value*” – this was a finding of the Full Bench in the *Stage 1 Decision*. However, absent specific consideration of the basis for progression from pay point 1 to pay point 2, etc – the evidence relating to identification of “*invisible skills*” for an EN or RN (or, as the ANMF put it “*the interrelationship between ‘skill’ and experience*”<sup>37</sup>) is of little assistance to the question presently before the Expert Panel.
  - (b) Associate Professor Junor’s analysis of the different “*invisible skills*” associated with RN1, RN2, RN3, etc is also of no utility to the question presently before the Commission. This is because the analysis is limited to the consideration of “*invisible skills*” for each RN “**level**”: the evidence does not identify any discernible change in competency that justifies the basis for maintaining yearly increments (i.e. the pay points or grades for each RN level).<sup>38</sup>
  - (c) Annexure 9 of the Junor Report does not assist the Commission to differentiate between shifts in competency (or other increases in work value) between EN

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<sup>36</sup> See ANMF Submissions at [69]-[74], citing Junor Report, Annexures 4 and 9.

<sup>37</sup> ANMF Submissions at [71].

<sup>38</sup> See, Junor Report, pages 29-31.

pay points 1 to 5 or the pay points and grades for RN levels 1 to 5. This is because:

- (i) it is a *review of literature* on skill invisibility, under-recognition, under-valuation and gender. It does not grapple with the specific classifications in the *Nurses Award* and, more importantly, it does not address the question of progression between pay points;<sup>39</sup> and
  - (ii) Associate Professor Junor also acknowledges that she cannot “*comment authoritatively on current wage relativities in the aged care sector, or on wage movements over time*” – nor does she attempt to.<sup>40</sup>
- (d) The evidence of Helia Brooks does not address the incremental pay point scales for RN level 1 (etc). The reference to “*incremental progression*” at paragraphs [13] and [14] of her statement concerns progression between *levels* not *pay points*.
41. The ANMF Submissions do not appear to address the question of progression through pay points within the *Nurses Award*. The basis for that approach is tied to the historical development of the *Nurses Award*.<sup>41</sup> Historical decisions to maintain relativities should be approached with caution given the lack of reasoning provided (see example, “*within the acceptable range of relativities*”).<sup>42</sup>
42. The notion that there is something quantifiable about a 12-month anniversary is not currently supported by evidence and better considered as being grounded in old public sector practice.
43. The analysis above at paragraphs [25] to [30] highlights the limited work to be done by the reference to “*skills*” in clause 15.3(b) in the *Nurses Award*.
44. Further, in circumstances where the Expert Panel have held that the minimum rates in the *Nurses Award* were never properly set and were also infected by gender-based

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<sup>39</sup> See Junor Report, Annexure A.

<sup>40</sup> See Junor Report, page 63 at [244].

<sup>41</sup> See ANMF Submissions at [65]-[68].

<sup>42</sup> *Paid Rates Review Decision* [1998] AIRC 1413, 123 IR 240, Print Q7661; *Stage 3 Decision* [2024] FWCFB 150 at [111]-[135].

undervaluation, it would certainly defy the odds if the pay points carried over for ENs and RNs were not impacted.

### Answering the question posed by the Expert Panel

45. To answer the question posed by the minimum rate increments and relativities issue:
- (a) The pay points within the EN classification structure are based primarily on years of service.<sup>43</sup> They are not consistent with properly fixed minimum rates because they are not based on identified work value increase milestones.
  - (b) The pay points within each level of RN (including the 'grades' for RN 4 and 5) are entirely based on years of service rather than the essential elements of qualifications, applied competence and acquired experience and responsibility.<sup>44</sup>
46. If the Expert Panel were minded to vary the time-based increments in the *Nurses Award*, the following matters are noted:
- (a) section 139(1)(a) of the *Fair Work Act 2009* (Cth) reinforces the inappropriateness of annual time-based increments within modern awards; and
  - (b) clause 15.3 of the *Nurses Award* would benefit from amendment to ensure reference to the anachronistic practice of time-based progression is removed from the award.
47. If the Expert Panel affirm the proposition that time-based increments are not appropriate for modern awards adopting *Teachers*, the Expert Panel will need to make some changes to the EN and RN classification structures because certain elements of the current structures are primarily time based.

### For the Joint Employers

#### **Nigel Ward**

CEO + Director

Australian Business Lawyers & Advisors

#### **Alana Rafter**

Senior Associate

Australian Business Lawyers & Advisors

**16 May 2024**

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<sup>43</sup> See *Nurses Award 2020*, clause 15.1(a)(ii); clause 15.2(b)(ii); Sch A, clauses A.4.1-A.4.5.

<sup>44</sup> See *Nurses Award 2020*, clause 15.1(c)(i), clause 15.2(c)(i); Sch A, clauses A.5.1-A.5.5.

**IN THE FAIR WORK COMMISSION  
REGISTRY: MELBOURNE**

**MATTER No:** AM2021/63, AM2020/99, AM2021/65 and AM2024/11

**Applications by Australian Nursing and Midwifery Federation**

**THE AUSTRALIAN PRIVATE HOSPITALS ASSOCIATION, CATHOLIC HEALTH AUSTRALIA,  
DAY HOSPITALS AUSTRALIA AND HEALTHSCOPE'S OUTLINE OF SUBMISSIONS  
REGARDING MATTERS ARISING FROM THE AGED CARE AWARD 2010 [2024] FWCFB 150**

**Introduction**

1. These submissions are made on behalf of the Australian Private Hospitals Association (**APHA**), Catholic Health Australia (**CHA**), Day Hospitals Australia (**DHA**) Healthscope Operations Pty Limited and the Adelaide Community Health Care Alliance (**Private Sector Employers**) pursuant to order 4 of the directions of Justice Hatcher, President, dated 4 April 2024, regarding the material filed by the Australian Nursing and Midwifery Federation (**ANMF**) on 26 April 2024 concerning outstanding issues arising from the *Aged Care Award 2010 [2024]* FWCFB 150 (**Stage 3 Decision**).
2. These submissions also address procedural matters relevant to the report back listed for Friday, 17 May 2024 regarding the case management of the applications to increase the minimum wage rate of aged care sector employers (**Aged Care Application**)<sup>1</sup> and the application by the ANMF to increase the minimum rates for all classifications under the *Nurses Award 2020 (Nurses Award) (Broader Nurses Application)*.
3. Each of the APHA, CHA and DHA are industry associations representing private hospitals and day hospitals. APHA members, including Ramsay Health Care, operate 154 private hospitals and 146 day hospitals across Australia. CHA members, include Little Company of Mary (Calvary Health Care), St Vincent's Health Australia, St John of God and Mater Misericordiae, among many others. CHA members operate 63 private hospitals and 19 public hospitals across Australia. DHA represents many day hospital operators, including Macquarie Health

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<sup>1</sup> Application by the Health Services Union and a number of individuals to vary the *Aged Care Award 2010* (AM2020/99); Application by the ANMF to vary the *Aged Care Award* and the *Nurses Award 2020* (AM2021/63) and Application by the HSU to vary the *Social, Community, Home Care and Disability Services Industry Award 2010* (AM2021/65).

**Lodged by:** The Australian Private Hospitals Association, Catholic Health Australia, Day Hospitals Australia and Healthscope

**Telephone:** 02 9921 8580

**Address for Service:**  
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and Icon. These associations collectively represent almost every provider of hospital and health care services outside of the public health system in each State and Territory.

### **Stage 3 Decision**

4. The Full Bench in the *Stage 3 Decision* identified the following three outstanding issues regarding the classification structure and minimum rates of pay for nurses in aged care:
  - (a) whether the benchmark minimum rate of pay should apply to a nurse with a three or four year degree;
  - (b) which enrolled nurse classification should correspond to the new Level 6 – Team Leader direct care worker; and
  - (c) the minimum rate increments for registered and enrolled nurses and the relativities between classifications.<sup>2</sup>
5. The Full Bench deferred the finalisation of these three outstanding issues for reasons including the “*risk that the finalisation of a new classification and pay structure for aged care nurses only in this proceeding would establish a fait accompli in respect of all other nurses, and their employers, covered by the Nurses Award, without interested parties being given an opportunity to be heard.*”<sup>3</sup>
6. At the conference of interested parties held before the President, Hatcher J, on 4 April 2024, Hatcher J raised with the interested parties the issue of the potential “*fait accompli*” for nurses other than aged care nurses covered by the Nurses Award and two considerations that needed to be balanced: *first*, that there had been a decision in principle to increase wages for nurses in aged care based upon work value findings and, *second*, the issue of timing.<sup>4</sup> Hatcher J recognised that there is some scope to defer finalising the aged care matter if the Nurses Award can be modified or reformed but that the work value case in respect of nurses generally should not significantly delay wage increases for nurses in aged care.<sup>5</sup>
7. Following the conference, Hatcher J directed:
  - (a) the ANMF to serve on the interested parties a without prejudice document setting out its proposed classification structure in the Nurses Award and the appropriate minimum rates of pay for each classification; and

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<sup>2</sup> *Stage 3 Decision* at [204], [205] and [207(1)].

<sup>3</sup> *Ibid* at [207(2)].

<sup>4</sup> Transcript, 4 April 2024, PN 34.

<sup>5</sup> *Ibid* at PN 35-36.

- (b) the ANMF and interested parties to exchange materials in relation to the three outstanding issues referred to paragraphs 204, 205 and 207(1) of the *Stage 3 Decision*.
8. The ANMF has served the without prejudice document and materials in respect of the issues arising from the *Stage 3 Decision* (and four other issues identified in its written submissions).
  9. Having regard to the materials filed by the ANMF, the observations of the Full Bench and the matters ventilated at the conference on 4 April 2024, the Private Sector Employers are concerned to ensure that they have had a proper opportunity to be heard on the impact of the *Stage 3 Decision* on other nursing settings and to avoid the “*fait accompli*” foreshadowed by the Full Bench in the *Stage 3 Decision* and Hatcher J at the conference on 4 April 2024.
  10. Given the nature of the Aged Care Application, the *Stage 3 Decision* was appropriately focused on the work value reasons for the nursing profession (and other employees) in aged care. There has not yet been a work value case in respect of nurses in any setting other than aged care. Given the diversity of settings in which nurses are employed, there are likely to be fundamental differences in work value and considerations relevant to the modern awards objectives between aged care and other nursing settings. In these circumstances, it is necessary to first determine the extent to which the outstanding issues for determination in the Aged Care Application will impact other nursing settings prior to the finalisation of those issues.

**Proposed approach to case management**

11. Balancing the above considerations, the Private Sector Employers propose that the Aged Care Application be listed for a hearing to determine:
  - (a) the outstanding issues arising from the *Stage 3 Decision* for registered and enrolled nurses in aged care; and
  - (b) the extent to which those outstanding issues have flow on effects for nurses in settings other than aged care.
12. If the Full Bench accepts the relevant distinction between aged care and other settings, the Private Sector Employers would seek the modification of the proposed classification structure to take into account its application to nurses in other settings. Alternatively, if such modification is not capable of being resolved in the proposed hearing, a separate classification structure in the Nurses Award ought be established for nurses working in aged care on the basis that the classification structure for other nurses under the Nurses Award will be the subject of further determination as part of the Broader Nurses Application.



13. The Private Sector Employers have prepared a proposed timetable for the programming of the proposed hearing on the discrete issues identified above in the Aged Care Application (see Annexure). The proposed timetable is intended to ensure that the outstanding discrete issues arising from the *Stage 3 Decision* are determined in respect of aged care nurses in a timely manner, aligning with the timing of the Commonwealth's funding commitment in respect of wage increases for other aged care workers, being 50% by 1 January 2025 and the remaining 50% in January 2026.<sup>6</sup> Such an approach is consistent with the Commission's obligations under s 577(1)(a) and (b) of the *Fair Work Act 2009* (Cth) to perform its functions and exercise its powers in a manner that is fair, just and quick.

### **Conclusion**

14. For the reasons outlined above, the Private Sector Employers seek that the matters proceed as outlined above and the directions in the Annexure be made in the Aged Care Application.

**16 May 2024**

**CHRIS O'GRADY KC  
FRANCESKA LEONCIO**

**Counsel for the Australian Private Hospitals Association, Catholic Health Australia,  
Day Hospitals Australia, Healthscope Operations Pty Limited and  
the Adelaide Community Health Care Alliance**

**MinterEllison  
Solicitors for the Australian Private Hospitals Association, Catholic Health Australia,  
Day Hospitals Australia and Healthscope Operations Pty Limited and  
the Adelaide Community Health Care Alliance**

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<sup>6</sup> Commonwealth's Submissions concerning Operative Date and Phasing In dated 12 April 2024, [3].

## ANNEXURE

1. Any interested parties are to file, by email to [awards@fwc.gov.au](mailto:awards@fwc.gov.au) submissions and evidence in relation to:
  - a. The outstanding issues arising from the *Aged Care Award 2010* [2024] FWCFB 150 for registered and enrolled nurses in aged care settings; and
  - b. the extent to which those outstanding issues have flow on effects for registered and enrolled nurses in settings other than aged careby **5:00pm (AEST) on Friday, 12 July 2024.**
2. The Applicant is to file, by email to [awards@fwc.gov.au](mailto:awards@fwc.gov.au), submissions and evidence in response to the material filed pursuant to item 1 of these directions by **5:00pm (AEST) on Friday, 16 August 2024.**
3. The Aged Care Application be listed before a Full Bench for hearing of the matters outlined in item 1 of these directions on a date after **9 September 2024.**

18 July 2024

Gordon  
Legal

IT'S PERSONAL

Nicholas White

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Associate to the Hon. Justice Hatcher, President  
Fair Work Commission

By email: [Chambers.Hatcher.J@fwc.gov.au](mailto:Chambers.Hatcher.J@fwc.gov.au)

Dear Associate

***Re Applications by the Australian Nursing and Midwifery Federation to vary the Nurses Award 2020 (AM2021/63 and AM2024/11)***

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On 8 July 2024, the Commission directed that issues of classifications, rates of pay, operative date and phasing-in in respect of registered and enrolled nurses in the aged care sector, and any other matters necessary to give effect to the Stage 3 Aged Care decision ([2024] FWCFB 150), be dealt with in a separate hearing on 17 to 19 September 2024.

The ANMF previously filed submissions on 10 May 2024, addressing the operative date and phasing-in of increases for classifications of aged care employees under the *Aged Care Award 2020* and the *Nurses Award 2020* (“**the submissions of 10 May 2024**”). The position adopted by the ANMF in those submissions was that:

“... final minimum wage increases for classifications of "Aged care employee - direct care" under the Aged Care Award and aged care employees under the Nurses Award would operate, in full, from 30 June 2024. In the event that no determination regarding wage increases for aged care employees under the Nurses Award has been made by 30 June 2024, such increases would operate immediately upon a determination being made.”

On 27 June 2024, the Commission published a decision ([2024] FWCFB 298) determining the approach to the operative date and phasing-in of minimum wage increases for relevant aged care classifications, other than registered and enrolled nurses.

Consistent with the Commission’s decision relating to other classifications of aged care workers, the revised position of the ANMF with respect to the operative date and phasing-in of minimum wage increases for registered and enrolled nurses in the aged care sector is that:

1. it would occur in two tranches in accordance with the methodology identified at [18] of [2024] FWCFB 298;
2. the operative date for the first tranche of increases would be 1 January 2025; and
3. the operative date for the second tranche of increases would be 1 October 2025.

This involves some modification of the position articulated in the ANMF's submissions of 10 May 2024, in view of developments after the date of those submissions. The ANMF otherwise continues to rely on its submissions of 10 May 2024 in support of the position outlined above.

The ANMF thought it desirable to indicate its position so that other parties might have the opportunity of addressing it in their submissions to be filed pursuant to Order 2 of the Commission's directions made 8 July 2024. The representatives of other active parties are copied to this correspondence.

Yours faithfully



Nicholas White

Partner

Accredited Specialist (Workplace Relations)

**GORDON LEGAL**

**FAIR WORK COMMISSION**

**AM2021/63; AM2024/11**

**APPLICATIONS BY AUSTRALIAN NURSING AND MIDWIFERY FEDERATION**

**RESPONSE TO IDENTIFIED ISSUES**

**AGED & COMMUNITY CARE PROVIDERS ASSOCIATION LTD**

**AUSTRALIAN BUSINESS INDUSTRIAL**

**(“THE JOINT EMPLOYERS”)**

**26 AUGUST 2024**

## 1. BACKGROUND

- 1.1 On 8 July 2024, Justice Hatcher gave directions in the Work Value Case – Nurses and midwives (**the Directions**) concerning issues in respect of registered and enrolled nurses in the aged care sector, namely:
- (a) classifications;
  - (b) rates of pay;
  - (c) operative date and phasing-in; and
  - (d) any other matters necessary to give effect to the *Stage 3 Aged Care decision* [2024] FWCFB 150, (collectively, **the identified issues**).
- 1.2 On 16 May 2024, the Joint Employers filed submissions addressing the identified issues (save for operative date and phasing-in) (see **Annexure A**).
- 1.3 This submission addresses two topics: operative date and phasing-in and transitional arrangements. It is to be read in conjunction with the submissions in Annexure A.

## 2. OPERATIVE DATE AND PHASING-IN

- 2.1 Section 166(1) of the *Fair Work Act 2009* (Cth) (**FW Act**) provides that the standard date of operation for variation determinations is 1 July in the next financial year after a determination is made. The relevant principles as to this provision are set out in the *Stage 1 Decision – Aged Care*.<sup>1</sup>
- 2.2 Assuming a final determination is published before 1 July 2025, the likely ‘*default date*’ for a determination varying the minimum wage rates and classification structure of the *Nurses Award* will be 1 July 2025 (**the default date**). The default date may be displaced if the Commission is satisfied that it is appropriate to do so.<sup>2</sup>
- 2.3 Whilst noting the Commission is yet to publish a draft (or final) determination in these proceedings, two factors are identified as essential to the Commission’s considerations about operative date and phasing-in:
- (a) the financial viability of the aged care sector (**the Sector**), in particular:
    - (i) the impact of no additional Commonwealth funding;
    - (ii) the uncertainty around whether or not providers paying above-award can absorb increases;
  - (b) the importance of ensuring aged care providers in both residential aged care and home care have sufficient time to prepare for the implementation of any variations to the *Nurses Award*.
- 2.4 Both factors are considered in turn below.

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<sup>1</sup> *Stage 1 Decision – Aged Care* [2022] FWCFB 200 at [976]-[990]; see also *Stage 2 Decision – Aged Care* [2023] FWCFB 93 at [405].

<sup>2</sup> *Fair Work Act 2009* (Cth) s 166(2).

### 3. FACTOR 1: THE FINANCIAL VIABILITY OF THE SECTOR

#### Overview

- 3.1 The evidence before the Commission throughout the Aged Care proceedings has consistently addressed the vulnerable financial position of the Sector absent funding.<sup>3</sup>
- 3.2 The Sector lacks the economic framework of other industries in that it cannot respond to major cost pressures by increasing prices or simply reducing labour to save costs.
- 3.3 In the *Stage 1 Decision*, the Full Bench observed:
- “...the Commonwealth is the principal funder in the aged care sector. Absent additional Commonwealth funding, the cost to business of increasing aged care sector minimum wages is likely to be substantial, depending on the quantum and phasing of wage increases.”*<sup>4</sup>
- 3.4 In Stage 3 of the Aged Care proceedings, the fragility of the Sector was once again reinforced by the expert evidence from Stuart Hutcheon, Managing Partner at StewartBrown. Mr Hutcheon prepared an expert report entitled: *“ACCPA Expert Witness Report: Financial Effect of FWC Award Increase” (the Report)*.<sup>5</sup> Mr Hutcheon concluded the current financial position and sustainability of the Sector to be *“at a very vulnerable level”*.<sup>6</sup>
- 3.5 That conclusion was underscored by the following findings:
- (a) residential aged care has experienced significant operating losses over the last four years with the operating deficit for the 2022-23 financial year of \$1.05 billion (\$16.54 per bed day);<sup>7</sup> and

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<sup>3</sup> See Stage 2 – Aged Care evidence: Witness Statements of Grant Corderoy of StewartBrown, Johannes Brockhaus of Buckland Aged Care Services, Michelle Jenkins of Community Vision Australia and James Shaw of Royal Freemasons’ Benevolent Institution (filed 9 February 2023); Stage 3 evidence: Witness Statement of Stuart Hutcheon dated 31 October 2023; Transcript of Proceedings – AM2020/99, 8 December 2023, PN4542-PN4543 (evidence of Chris Mamarelis: *“we’re very reliant on Government Funding to support that, we’re a not-for-profit”*).

<sup>4</sup> *Stage 1 Decision – Aged Care* [2022] FWCFB 200 at [904].

<sup>5</sup> Witness Statement of Stuart Hutcheon dated 31 October 2023, Annexure SH-3. Mr Hutcheon was also required for cross-examination: Transcript of Proceedings – AM2020/99, 7 December 2023, PN3057-PN3334.

<sup>6</sup> Witness Statement of Stuart Hutcheon dated 31 October 2023, Annexure SH-3, page 1.

<sup>7</sup> *Ibid* Annexure SH-3, pages 1, 6.



- (b) home care operating results have declined to a marginal level and were \$3.14 per client day.<sup>8</sup>

**Expert evidence suggests the Sector will not have the ability to absorb unfunded increases to the wages of ENs, RNs and NPs**

3.6 Mr Hutcheon analysed the ability of the Sector to absorb an 18.11% increase to the staffing costs of ENs, RNs and NPs without full funding by the Commonwealth.<sup>9</sup>

3.7 As to the impact on the Sector, Mr Hutcheon's findings were:

*“• \$1,074 million increase in staffing costs*

*• \$858 million increase in residential staffing costs and \$216 million increase in home care staffing costs. The variance in \$ terms is due to the higher quantum of residential staffing costs, but the overall financial effect will be similar in percentage terms for both segments*

*• The impact on home care is different to the extent that the price charged to the consumer (care recipient) will be required to be increased to meet the increased staff costs and this will introduce a possible time lag issue for home care that is not present for residential care even if funding is aligned to the increase*

*• For-profit (private) Providers will have a slighter higher impact due to the requirement to remit payroll tax. In an aggregate sense, Table 3 shows the impact for each segment”<sup>10</sup>*

3.8 Turning to further specific impacts arising from a 18.11% increase not fully funded by the Commonwealth, Mr Hutcheon's findings include:

(a) *“for residential aged care the FY23 average operating deficit of \$16.54 per bed day would deteriorate to a deficit \$29.05 per bed day”<sup>11</sup> and*

(a) *“for home care the FY23 average operating surplus of \$3.14 per client day would deteriorate to a marginal surplus of \$0.99 per client day”<sup>12</sup>*

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<sup>8</sup> Ibid Annexure SH-3, pages 1, 7.

<sup>9</sup> Ibid Annexure SH-3, page 10.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid Annexure SH-3, page 10-11.

3.9 Mr Hutcheon concluded: “[t]he ability for the aged care sector to financially tolerate a 18.11% award increase that is not fully funded by the Federal Government is virtually nil”.<sup>13</sup>

3.10 That evidence supports a conclusion that absent the increases being fully funded by the Commonwealth the Sector will not have the ability to absorb the increases.

### **Nursing employees in aged care and above award payments**

3.11 The evidence across the Aged Care proceedings demonstrates that a significant portion of employees working in aged care are covered by enterprise agreements and that nursing employees in aged care may be described as not award-reliant, with the majority covered by an enterprise agreement being paid above award minimum rates. As a general proposition, even when nursing employees are not paid under an enterprise agreement, they are paid above award minimum rates.

3.12 The following evidence was cited in the *Stage 1 Decision*:

- (a) Modelling from Department of Health and Aged Care (**DoHAC**) indicated that 86% of all nursing employees working in aged care are covered by an enterprise agreement.<sup>14</sup>
- (b) “Almost half of ENs covered by the Nurses Award (48 per cent) were classified as Enrolled nurse—pay point 4 or 5, while just over half of RNs were classified as levels 1 and 2. However, only 14.3 per cent of in-scope employees covered by the Nurses Award were estimated to be award-reliant.”<sup>15</sup>
- (c) “Uniting NSW.ACT notes that under its Enterprise Agreement it pays ‘well above’ award rates, and points out that experienced RNs in residential care are paid 40 per cent above the award, while PCWs are paid 10 per cent above the award. Uniting NSW.ACT submits that with the current funding available it is not able to further increase wages and experiences difficulty maintaining the current rates.”<sup>16</sup>

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<sup>13</sup> Ibid Annexure SH-3, page 10.

<sup>14</sup> See *Stage 1 Decision – Aged Care* [2022] FWCFB 200 at [471]; Commonwealth submission dated 8 August 2022 at [21], Appendix B at [18]-[24]. In submissions filed by the Commonwealth, it was noted that an estimated 46% were observed to be on nominally expired enterprise agreements, with wages dropping back to award levels: Commonwealth submission dated 8 August 2022 at [21], Appendix B at [22].

<sup>15</sup> *Stage 1 Decision – Aged Care* [2022] FWCFB 200 at [471], citing Commonwealth submission dated 8 August 2022 Appendix B at [21]. Joint Employers submissions dated 22 July 2022 at [23.11]–[23.12]

<sup>16</sup> *Stage 1 Decision – Aged Care* [2022] FWCFB 200 at [314].

3.13 Whilst in the *Annual Wage Review 2023-24*, RNs were described as an occupation that is “*significantly reliant upon award rates of pay for pay setting*” (with 39.6% of the workforce relying on the *Nurses Award*),<sup>17</sup> that data concerned the “*Medical and Other Health Care Services*” industry. It does not provide an accurate representation of ‘award reliance’ for RNs working in aged care.

### **Absorption**

3.14 It is currently not clear if funding arrangements proposed by the Commonwealth will permit absorption or if aged care providers will be obliged to pass on an increase.

3.15 In relation to the first round of aged care work value increases, the DoHAC provided the following guidance:

*“Providers must pass on all the additional funding allocated to wage increases to their workers in the form of an increase in wages. Where a provider pays above the minimum award rates, the additional funding should be passed on in line with the guidance in the Tables below.”*<sup>18</sup>

3.16 Further, all for profit and not-for-profit providers of residential care and home care packages were required “*to attest in the Quarterly Financial Report that all funding provided to implement the 15% wage increase is passed through to workers*”.<sup>19</sup>

3.17 In circumstances where many “*nurses*” are paid above award rates, if it comes to pass that employers are permitted to absorb the funded increase, the effect of an increase to the minimum award wages of ENs and RNs is likely to have a modest economic impact. However, if providers were either required to pass on the funded increase or if, in order to maintain a competitive position in the market, employers chose to pass on the funded increase – that will have a material economic impact on the Sector.

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<sup>17</sup> *Annual Wage Review 2023-24* [2024] FWCFB 3500 at [96], citing Natasha Cortis et al, UNSW Social Policy Research Centre, *Gender-based Occupational Segregation: A National Data Profile* (Final Report, 6 November 2023).

<sup>18</sup> Department of Health and Aged Care, “*Aged Care Worker Wages: Guidance for aged care providers on the provision of funding relating to Stage 2 of the Fair Work Commission Aged Care Work Value Case*” (June 2023) 3 <<https://www.health.gov.au/sites/default/files/2023-06/aged-care-worker-wages-guidance-document.pdf>> (see **Annexure B**).

<sup>19</sup> Department of Health and Aged Care, “*Aged Care Worker Wages: Guidance for aged care providers on the provision of funding relating to Stage 2 of the Fair Work Commission Aged Care Work Value Case*” (June 2023) 4.

#### 4. FACTOR 2: TIME IS REQUIRED TO PREPARE FOR IMPLEMENTATION OF ANY VARIATIONS

4.1 Aged care providers operating in residential aged care and home care require time to ensure all essential preparatory steps and necessary communications are made and received prior to the operative date of any variations to the *Nurses Award*.

4.2 That preparation includes:

- (a) confirming and securing funding, which is dependent upon steps being taken by the Commonwealth;
- (b) communications to all affected nursing employees about the nature of the variations to be implemented.

4.3 Importantly, as set out below, the timing with respect to that preparation is impacted by multiple factors that are beyond the control and remit of the aged care provider.

##### **Residential aged care**

4.4 Starting with the question of funding, the action required to affect implementation of increases to minimum award wages inevitably takes time because:

- (a) it is necessary to ensure that increased funding is distributed accurately and that there are appropriate accountability mechanisms in relation to the expenditure of additional funding;
- (b) the Australian National Aged Care Classification (**AN-NAC**) funding model is not automatically re-assessed by the Independent Health and Aged Care Pricing Authority (**IHACPA**) to include wage increases determined by the Commission – the Commonwealth must direct that assessment to occur and the timing of that direction (assuming it is provided at all) will be critical to the availability of any funding;<sup>20</sup>
- (c) the calculation of the actual rate of any increases for nursing employees working in aged care based on independent pricing advice from the IHACPA is a comprehensive, complicated and lengthy undertaking (with the duration expected to take months as opposed to weeks);<sup>21</sup>

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<sup>20</sup> See generally, IHACPA, “*Background*” (Website) <<https://www.ihacpa.gov.au/aged-care/background>>.

<sup>21</sup> See, for example, the re-assessment of the AN-NAC funding following the Annual Wage Review decision for a 5.75% award wage increase (which took effect on 1 July 2023) was not fully completed until around December 2023. See Department of Health and Aged Care, “*Funding higher wages in*

- (d) the implementation of any subordinate legislation necessary to affect the increases for nursing employees working in aged care is developed and in place ahead of the operative date; and
- (e) relevant information and communications technology changes required to implement the increased funding must be correctly developed and in place ahead of the operative date.

4.5 Importantly, providers may be grappling with material changes to the classification structure and will require time to consider any transitional arrangements and conduct financial analysis. That analysis will also be relevant to communications sent out to employees about the implementation and impact of the variations on their employment.

### **Home care**

4.6 The following factors necessitate that sufficient time be provided to home care providers that employ ENs and RNs:

- (a) The Commonwealth must once again confirm the mechanism by which funding will be provided to home care operators (i.e. to the home care operators directly or through the home care package). Whilst the Commonwealth indicated in the Aged Care proceedings that it will likely adopt the same funding practices as occurred with the first aged care work value increases, that is not a guarantee.<sup>22</sup> Anticipatory statements do not enable home care providers to take any meaningful preparatory steps: a clear and fixed outline of the commitment is required.
- (b) Subject to the funding arrangements determined by the Commonwealth (including with respect to absorption practices), home care providers will need to determine whether any adjustments to home care package agreements are required.
- (c) Further, if the funding is to be provided via the home care packages, it is crucial that the Commonwealth communicates with all home care package recipients regarding the increase in funding for their packages and the linkage of this to any further increases announced by the Commission.

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*residential aged care*" (Website) <<https://www.health.gov.au/our-work/AN-ACC/funding-higher-wages-in-residential-aged-care>>.

<sup>22</sup> See example, Commonwealth's Submissions concerning operative date and phasing in (filed 12 April 2024) at [8], [8.1].

- (d) Home care operators require time to procure this change in service pricing by a change to the home care agreement with the clients. Providers cannot make changes to home care agreements without informed consent and agreement from care recipients.<sup>23</sup> Further, clients may be less receptive to participation in this process given the frequency of changes arising from decisions of the Commission that have (and will likely continue in the near future) to necessitate entering a new agreement. For example:
- (i) the annual wage review decisions commencing from the beginning of the first full pay period after 1 July 2024 (and 1 July 2025);
  - (ii) the first tranche of Stage 3 increases commencing from the beginning of the first full pay period after 1 January 2025;
  - (iii) the second tranche of the Stage 3 increases commencing from the beginning of the first full pay period after 1 October 2025; and
  - (iv) subject to a future determination of the Commission – any increases to the minimum award wages of ENs and RNs.

Absent securing that agreement, two consequences may arise:

- (v) even with alignment to Commonwealth funding, home care providers could be required to pay any further increases without the ability to recover costs from the increased package funding; and/or
- (vi) the client may simply use any allotted government funding to acquire additional services at the original pricing as contracted with the operator.

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<sup>23</sup> Department of Health and Aged Care, “*Aged care worker wage rise – Home Care Packages Program*” (Provider Fact Sheet, June 2023) 4 (see **Annexure C**).

## 5. TRANSITIONAL ARRANGEMENTS

- 5.1 As with the draft determinations published on 12 March 2024, any subsequent draft or final determination should include a table or provisions setting out transitional arrangements with respect to further changes to the *Nurses Award*. This step will provide certainty and, in particular, minimise disputes arising from changes to the EN or RN classification structures.

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# Aged Care Worker Wages

Guidance for aged care providers on the provision of funding relating to Stage 2 of the Fair Work Commission Aged Care Work Value Case



## Better and fairer wages for aged care workers

With the Australian Government's commitment of \$11.3 billion to support increased wages to the aged care sector, it is vitally important that the aged care workers covered by the Stage 2 Decision of the Work Value Case receive the full benefit of this funding and the aged care sector can attract and retain a skilled workforce.

A valued workforce with the right skills and knowledge is critical to reform the aged care system so older Australians are front and centre. This starts with fair wages for workers, a supportive workplace and recognition of the complex, often undervalued work involved.

A more skilled and diverse workforce will deliver safe, consistent, high-quality aged care services, for in-home care recipients and aged care residents. Building our aged care workforce will help the sector deliver 24/7 registered nurse care, increased care minutes for residents, culturally safe practices and increased system transparency.

In addition, a valued and happy workforce means workers are more likely to stay in their workplace for longer, in turn improving compliance outcomes and (for residential aged care providers) star ratings, and ultimately provide better outcomes for the older people at the centre of aged care.

The Government is funding the outcome of the Fair Work Commission (FWC) Aged Care Work Value Case, including the FWC Stages 1 and 2 decisions to provide a 15% interim increase to the minimum award wages for the following classifications: registered nurses (including nurse practitioners), enrolled nurses (including student enrolled nurses), assistants in nursing, personal care workers, head chefs/head cooks, recreational activities officers (lifestyle workers) and home care workers. This represents the highest ever wage increase for the sector supported by Government.

## Awards being increased

From the first full pay period on or after 30 June 2023, minimum award wages will increase by 15% in residential aged care for workers who are paid under the Aged Care Award and the Nurses Award in relation to the following occupations - personal care workers, recreational activities officers, head chefs and cooks (one FTE per service), assistants in nursing, enrolled nurses, registered nurses (including nurse practitioners).

From the first full pay period on or after 30 June 2023, minimum award wages will increase by 15% for home care employees working in aged care, classified under Schedule E of the *Social, Community, Home Care and Disability Services (SCHADS) Award 2010*.

Employers are legally obliged to comply with the new minimum award rates from the first full pay period on or after the 30 June 2023 under the Fair Work Act.

## Utilisation of additional funding

Providers must pass on all the additional funding allocated to wage increases to their workers in the form of an increase in wages. Where a provider pays above the minimum award rates, the additional funding should be passed on in line with the guidance in the Tables below.

Funding should not be used for short-term localised incentives which apply to only some staff in a particular area/s of labour shortage. Any short-term incentives should be funded from the provider's own resources.

The Government's investment in wages must be passed on for the full benefit of workers, noting the funding includes provision for on-costs.

The Department of Health and Aged Care (department) encourages providers to understand the amount of their funding that should be allocated to the wage increase, by using the department's AN-ACC funding estimation tool (for residential providers) and by using the Tables included in this guidance. Should providers be unable to determine the funding that should be allocated to the wage increase, they can contact the department for assistance.

### Residential aged care providers

For residential aged care providers this consists of \$22.76 (or about 63% of the increase) of the \$36.30 increase in the AN-ACC price for 2023-24 as recommended by the Independent Health and Aged Care Pricing Authority. This funding increase supports higher wages for registered nurses, enrolled nurses, personal care workers and lifestyle workers (including on-costs).

The new hotelling supplement includes \$0.36 per resident per day to support higher wages for head chefs and cooks (including on-costs).

Providers can estimate their AN-ACC funding increase, and associated care minutes targets for 1 October 2023, using the online AN-ACC funding and care minutes estimator.

Further information is provided on the department's website at the 'Funding higher wages in residential aged care' page.

## Home care providers

For home care providers, the Home Care Package subsidy and some supplements will be increased by 11.9% (including annual indexation) to support home care providers to pay higher wages to their workers<sup>1</sup>.

Further information is provided on the department's website at the 'Wage subsidy increase in the Home Care Packages Program' page.

## Guidance for aged care providers

This guidance has been developed by the department in consultation with unions and the Aged & Community Care Providers Association (ACCPA) and guides how much providers who currently pay above minimum award wages should increase wages by for those workers based on their award classification or equivalent Enterprise Agreement classification.

This guidance relates to mainstream residential aged care and the Home Care Packages Program.

The Tables below provide the difference in dollar terms between the current award rate and the new award rate for the worker's award classification (see the last column 'Additional amount payable'). This additional amount payable is what the Government expects providers to pass on to workers where those workers are already paid above minimum award rates.

A standardised approach via this guidance provides a reference for enterprise agreement negotiations.

Providers can pay over and above the amounts set out in this guidance and the Government expects the usual enterprise bargaining to occur, with periodic wage increases drawn from the provider's funding as in past years.

## Accountability for passing on funding

For profit and not-for-profit providers of residential care and home care packages will need to attest in the Quarterly Financial Report that all funding provided to implement the 15% wage increase is passed through to workers.

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<sup>1</sup> The 2023 indexation of the Home Care Packages program is made up of the standard cost indexation plus an increase for the impact of the FWC on the in-scope wages. The standard indexation was 3.3% and the FWC increase 8.3% of the total cost base (15% of the in-scope wages). This method used to increase package amounts was to increase rates by 3.3% and then increase that amount by 8.3% (3.3% increased by 8.3% is 11.9 %).

The attestation will seek confirmation from providers that they have passed on all funding that is identified as being for the purposes of the wage increase to workers as increases in their wages, taking into consideration this guidance.

For providers who are actively working with the department on financial viability matters, please contact the department for advice via [ACFM@health.gov.au](mailto:ACFM@health.gov.au).

Providers are required by law to provide accurate information to the Commonwealth.

From Quarter 4 2023-24, the Quarterly Financial Report will also collect additional information regarding wages, including the minimum and maximum wage rates for direct care workers as well as information on the primary way workers are being paid (i.e. Award, Enterprise Agreement, Individual Agreement)

Sector trends will be monitored and published through the Quarterly Financial Snapshot. The department will closely monitor providers' expenditure on labour costs and identify trends in this spending over time.

Service level expenditure on labour and wages will be published from January 2024, as part of a broad suite of expenditure reporting on My Aged Care.

The department will work with the employer peaks and unions to follow up worker complaints.

## **Annual Wage Review increases to minimum wages**

The Annual Wage Review Decision was announced on 2 June 2023, with the FWC announcing that minimum award rates will be increased by 5.75%. This AWR increase is in addition to the 15% interim increase.

For residential aged care, the price of \$243.10 includes an estimate of wage indexation for 2023-24 for all workers funded through AN-ACC. For the home care packages program, the 11.9% subsidy increase includes indexation for all workers. The Tables below relate to the 15% increase only. The dollar gap is calculated on the difference between the current minimum award rate and the 15% increase to those rates.

## Next steps

The Government expects that providers will engage with workers and employee representatives as a matter of priority to communicate the amount of funding received and the proposed allocation to wages and on costs, based on information given to them by the department.

Providers will need to communicate to individual workers regarding their individual wage increases. This should include a letter or email setting out their old rate and the new rate resulting from the application of the funding.

The Government also urges providers, as far as possible, to undertake workforce communications in consultation with unions and other employee representatives. Where appropriate this should involve joint communications, including paid workplace meetings. Some aged care workers may have expectations that will receive a full 15% on top of enterprise agreement rates, this is not the case and this will need effective management in the workplace.

Providers should build in these additional increases into enterprise bargaining or interim agreements such as a Memorandum of Understanding as soon as practicable. Providers with existing enterprise agreements that do not expire in the near future (and after agreeing a new wage schedule with unions) are encouraged to propose a variation of the agreement to their workers pursuant to the provisions of the Fair Work Act.

## Table 1: New minimum award rates – residential aged care

[Fair Work Commission Determination – PR751293 – Aged Care Award](#)

[Fair Work Commission Determination – PR751294 – Nurses Award](#)

<b>Classification under the <i>Aged Care Award 2010</i></b>	<b>Current hourly award rate (From the first full pay period on or after 1 July 2022)</b>	<b>New hourly award rate (From the first full pay period on or after 30 June 2023)</b>	<b>Additional amount payable from the first full pay period on or after 30 June 2023 (Difference between the current and new hourly award rates)</b>
Aged care employee – direct care – level 1	\$22.67	\$26.07	\$3.40
Aged care employee – direct care – level 2	\$23.57	\$27.10	\$3.53
Aged care employee – direct care – level 3	\$24.47	\$28.14	\$3.67
Aged care employee – direct care – level 4	\$24.76	\$28.47	\$3.71
Aged care employee – direct care – level 5	\$25.60	\$29.44	\$3.84
Aged care employee – direct care – level 6	\$26.98	\$31.03	\$4.05
Aged care employee – direct care – level 7	\$27.46	\$31.58	\$4.12
<b>Head chefs/Head cooks*</b>			

Aged care employee – general – level 4	\$24.76	\$28.47	\$3.71
Aged care employee – general – level 5	\$25.60	\$29.44	\$3.84
Aged care employee – general – level 6	\$26.98	\$31.03	\$4.05
Aged care employee – general – level 7	\$27.46	\$31.58	\$4.12

\*Applies to the most senior chef or cook engaged in a facility

## Table 2: Nursing classifications – aged care employees

<b>Classification under the <i>Nurses Award 2020</i></b>	<b>Current hourly award rate (From the first full pay period on or after 1 July 2022)</b>	<b>New hourly award rate (From the first full pay period on or after 30 June 2023)</b>	<b>Additional amount payable from the first full pay period on or after 30 June 2023 (Difference between the current and new hourly award rates)</b>
<b>Nursing Assistant /Assistant in Nursing</b>			
1st year	\$23.25	\$26.73	\$3.48
2nd year	\$23.61	\$27.15	\$3.54
3rd year and thereafter	\$23.99	\$27.59	\$3.60

Experienced (the holder of a relevant certificate III qualification)	\$24.76	\$28.47	\$3.71
<b>Student Enrolled Nurse</b>			
Less than 21 years of age	\$21.60	\$24.84	\$3.24
21 years of age and over	\$22.67	\$26.07	\$3.40
<b>Enrolled Nurses</b>			
Pay point 1	\$25.22	\$29.00	\$3.78
Pay point 2	\$25.55	\$29.39	\$3.84
Pay point 3	\$25.89	\$29.78	\$3.89
Pay point 4	\$26.27	\$30.21	\$3.94
Pay point 5	\$26.53	\$30.51	\$3.98
<b>Registered Nurse – Level 1</b>			
Pay point 1	\$26.98	\$31.03	\$4.05
Pay point 2	\$27.53	\$31.66	\$4.13
Pay point 3	\$28.21	\$32.44	\$4.23
Pay point 4	\$28.96	\$33.30	\$4.34
Pay point 5	\$29.85	\$34.32	\$4.47



Pay point 6	\$30.71	\$35.32	\$4.61
Pay point 7	\$31.60	\$36.34	\$4.74
Pay point 8 and thereafter	\$32.42	\$37.28	\$4.86
<b>Registered Nurse – Level 2</b>			
Pay point 1	\$33.28	\$38.27	\$4.99
Pay point 2	\$33.81	\$38.88	\$5.07
Pay point 3	\$34.40	\$39.56	\$5.16
Pay point 4 and thereafter	\$34.96	\$40.21	\$5.25
<b>Registered Nurse – Level 3</b>			
Pay point 1	\$36.09	\$41.50	\$5.41
Pay point 2	\$36.75	\$42.26	\$5.51
Pay point 3	\$37.38	\$42.99	\$5.61
Pay point 4 and thereafter	\$38.06	\$43.76	\$5.70
<b>Registered Nurse – Level 4</b>			
Grade 1	\$41.19	\$47.37	\$6.18
Grade 2	\$44.14	\$50.76	\$6.62

Grade 3	\$46.71	\$53.72	\$7.01
<b>Registered Nurse – Level 5</b>			
Grade 1	\$41.56	\$47.80	\$6.24
Grade 2	\$43.77	\$50.33	\$6.56
Grade 3	\$46.71	\$53.72	\$7.01
Grade 4	\$49.63	\$57.07	\$7.44
Grade 5	\$54.73	\$62.94	\$8.21
Grade 6	\$59.89	\$68.87	\$8.98
<b>Minimum entry rate</b>			
4 year degree	\$28.17	\$32.40	\$4.23
Masters degree	\$29.14	\$33.51	\$4.37
<b>Nurse practitioner</b>			
1 <sup>st</sup> year	\$41.53	\$47.76	\$6.23
2 <sup>nd</sup> year	\$42.76	\$49.17	\$6.41

## Table 3: New minimum award wage rates – Home Care Packages

[Fair Work Commission Determination – PR751296 – Schedule E of Social, Community, Home Care and Disability Services Award](#)

<b>Classification under the <i>Social, Community, Home Care and Disability Industry Award 2010</i></b>	<b>Current hourly award rate (From the first full pay period on or after 1 July 2022)</b>	<b>New hourly award rate (From the first full pay period on or after 30 June 2023)</b>	<b>Additional amount payable from the first full pay period on or after 30 June 2023 (difference between current and new hourly award rates)</b>
<b>Home care employee level 1—aged care</b>	\$22.93	\$26.37	\$3.44
<b>Home care employee level 2—aged care</b>			
Pay point 1	\$24.26	\$27.90	\$3.64
Pay point 2	\$24.42	\$28.08	\$3.66
<b>Home care employee level 3—aged care</b>			
Pay point 1 (certificate III)	\$24.76	\$28.47	\$3.71
Pay point 2	\$25.52	\$29.35	\$3.83
<b>Home care employee level 4—aged care</b>			
Pay point 1	\$27.01	\$31.06	\$4.05

Pay point 2	\$27.55	\$31.68	\$4.13
<b>Home care employee level 5—aged care</b>			
Pay point 1 (degree or diploma)	\$28.96	\$33.30	\$4.34
Pay point 2	\$30.10	\$34.62	\$4.52

Note: Hourly rate calculations are based on the full-time weekly rates documented in the relevant awards divided by 38 hours and rounded to the nearest \$0.01.



# Aged care worker wage rise – Home Care Packages Program

## Provider fact sheet

This fact sheet is to assist Home Care Packages (HCP) Program providers to prepare for the increase to award wages from 30 June 2023.

## Background

The Fair Work Commission’s decision on the Aged Care Work Value case of a 15% increase to the award wage for many aged care workers, including home care workers, will take effect from 30 June 2023 (from the first full pay period on or after 30 June 2023).

The Australian Government is investing \$11.3 billion in funding to support wages including:

- A \$2.2 billion increase in funding for home care providers to cover the wage increase
- \$98.7 million for historical leave liabilities for aged care providers.

This is the largest ever wage increase for the sector and signifies real progress towards valuing our critical aged care workers.

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## What is the Fair Work Commission decision?

The Australian Government is funding the Fair Work Commission's decision on the Aged Care Work Value case. This means a 15% award wage increase for eligible aged care workers.

The Government expects that all funding for the wage increase is passed on for the full benefit of workers. Where you have been paying your workers according to the award wage, you will now need to pay your workers in accordance with the new award rate from the start of the worker's first full pay period on or after 30 June 2023.

The wage increase is expected to benefit 250,000 registered nurses, enrolled nurses, assistants in nursing, personal care workers, head chefs and cooks, recreational activities officers (lifestyle workers) and home care workers.

A more skilled and diverse workforce will deliver safe, consistent, high-quality aged care services for in-home care recipients. This starts with fair wages for workers, a supportive workplace and recognition of the complex, often undervalued work involved.

Fair Work Commission is also considering further increases for aged care workers in the sector and considering increases for other workers in the aged care sector, including administrative and support staff.

## Who will receive the increase?

The wage increase is for workers subject to the following modern awards:

- **Aged Care Award 2010:** personal care workers and recreation/lifestyle activities officers and head chefs/cooks (aged care employee level 4-7 provided the employee is the most senior chef or cook engaged in a facility)
- **Nurses Award 2020:** nursing assistants, enrolled nurses, registered nurses, nurse practitioners working in aged care
- **Social, Community, Home Care and Disability Services Industry Award (SCHADS) 2010:** home care workers working in aged care.

## How will the increase be implemented?

From 1 July 2023, funding will be provided through an increase to the Home Care Package subsidy amount. This will allow your business to fund the wage increase without reducing services for care recipients.

Home Care Package subsidy rates will increase by 11.9%. This includes standard cost indexation plus an increase for the impact of the Fair Work Commission on the in-scope wages.

- Annual indexation is 3.3% and the Fair Work Commission increase is 8.3%
- The method used to increase package amounts was to increase rates by 3.3% and then increase that amount by 8.3% (3.3% increased by 8.3% is 11.9 %).

The basic subsidy and supplements with a workforce component will be increased by 11.9%. This increase includes annual indexation.

The supplements that are increasing are:

- Viability supplement
- Dementia and cognition supplement
- Veterans supplement
- Top-up supplement

The wage increase will be available from the July 2023 claim.

The basic subsidy rates will increase as follows:

HCP Level	Current Daily Subsidy (1 July 2022)*	From 1 July 2023 Subsidy
Level 1	\$25.15	\$28.14
Level 2	\$44.24	\$49.49
Level 3	\$96.27	\$107.70
Level 4	\$145.94	\$163.27

Supplements such as oxygen and enteral feeding supplements will increase by annual indexation only, as these supplements do not have a workforce component.

\*The Government contribution changes on 1 July every year with indexation.

For more detail, refer to the [HCP subsidy and supplement rates update fact sheet](#).

### **Will the subsidy increase be sufficient?**

The subsidy increase has been calculated based on what providers spent in 2021-22 on aged care workers and will be sufficient to ensure almost every care recipient continues to receive the same hours of care from 1 July 2023. All care recipients' HCPs will increase by 11.9% to cover the cost of the wage rise for aged care workers, as well as other increases in prices. This increase is less than 15% is to account for the fact that many care recipients use their home care package to access goods, equipment, allied health and home modifications, which are not impacted by the wage increase, alongside their direct nursing and personal care services.

A grant opportunity will open to provide additional support to providers of the small proportion of care recipients whose packages are fully expensed on nursing and personal care each month and whose providers may therefore have a small shortfall.

### **Care and package management caps**

Care and package management caps that were implemented on 1 January 2023 will increase on 1 July 2023 with indexation.

## Maximum daily prices for care management and package management from 1 July 2023

HCP level	basic subsidy	care management x 20%	package management x 15%
Level 1	\$28.14	\$5.63	\$4.22
Level 2	\$49.49	\$9.90	\$7.42
Level 3	\$107.70	\$21.54	\$16.16
Level 4	\$163.27	\$32.65	\$24.49

## When will the wage rise be implemented?

The changes will take effect from the start of the worker's first full pay period that starts on or after 30 June 2023.

Information about the 15% increase for the aged care sector and the annual wage review is available on the Fair Work Ombudsman's [annual wage review](#).

## What will providers need to do?

Providers will need to:

- communicate and implement these changes for their workers affected by the relevant awards
- consult with and gain the consent of care recipients to any changes that may affect them.

Providers cannot make changes to home care agreements without informed consent and agreement from care recipients.

## Enterprise agreements

Some providers have a separate arrangement for paying their workers known as an Enterprise Agreement. This arrangement should mean that their workers are already being paid at least the base pay rate in the applicable award wage. If this rate is not at least the new base pay rate, these providers will have to increase those workers' base pay rate to at least meet the new base pay rate.

More information on [Enterprise Agreements](#) is available on the Fair Work Ombudsman website.

## Communicate with care recipients

You may need to adjust your pricing models. This may require reasonable increases in charges for care and services delivered by workers receiving the wage increase.

A reasonable and justifiable price increase for care and services must be:

- value for money and reflect the resources it takes to provide the care or service
- clear, understandable and transparent



- in the best interests of care recipients
- in line with program requirements and legislation
- directly related to coordinating allowable care or services or purchasing goods to meet the care recipient's assessed needs and goals.

Any changes to prices must be agreed by care recipients. Where a care recipients' prices increase to account for the increased wages, providers must renegotiate home care agreements with their care recipients and gain mutual consent. This ensures care recipients are adequately informed and understand all the changes and the terms of the proposed agreement.

It is the provider's responsibility to ensure care recipients understand any changes to prices and why these changes are being made.

This will involve:

- Providing a copy of the [department's letter to care recipients](#), in case they have not yet received it in their mail.
- Discussing with care recipients how prices for care and services delivered by some workers may need to change, including:
  - what prices are changing
  - why the prices need to change
  - what those prices include
  - when the new prices will start.
- Renegotiating prices with care recipients.
- Updating home care agreements.
- Updating pricing schedules.
- Publishing up-to-date prices on My Aged Care. For support with this process, refer to [My Age Care's tips for HCP providers](#).

We do not consider a notice of changes to be discussion and mutual agreement with the care recipient. Care recipients should be given a minimum of 14 days to respond, or other timeframe as agreed in the home care agreement, to proposed changes unless they are urgently required by the care recipient.

For further guidance on [setting](#), [publishing](#) or [charging](#) prices and updating [home care agreements](#), visit the department's website.

# Compliance

## Fair Work Ombudsman

The [Fair Work Ombudsman](#) is responsible for ensuring compliance with Australian workplace laws and providing education about rights and responsibilities at work.

The Fair Work Ombudsman can also help to resolve workplace issues including by using a range of compliance powers.

Visit their website for more information on the Fair Work Ombudsman's approach to [resolving workplace disputes](#) at the workplace level compared to [compliance and enforcement](#).

## Aged Care Quality and Safety Commission

The [Aged Care Quality and Safety Commission](#) uses a wide range of regulatory tools to monitor and assess the performance of aged care providers as well as ensuring providers comply with their provider responsibilities under the *Aged Care Act 1997*. This includes the legislative requirement to adequately consult and gain mutual consent of care recipients to make any changes to home care agreements and prices for the care and services they receive.

If the Commission finds a provider to be non-compliant with their responsibilities, they will progress further compliance or enforcement action.

In all circumstances, the Commission's response is informed by the risk posed to the safety, health, wellbeing and quality of life of care recipients.

For more information, read the Commission's guide on [home services pricing and agreements](#) and visit their [website](#).

## Australian Competition and Consumer Commission

The [Australian Competition and Consumer Commission](#) (ACCC) is an independent Commonwealth statutory authority. Its role is to:

- enforce the [Competition and Consumer Act 2010](#) and a range of additional legislation
- promote competition and fair trading
- regulate national infrastructure for the benefit of all Australians.

The ACCC can investigate and act:

- where businesses mislead care recipients about pricing
- on unfair business practices
- against businesses involved in price fixing and other anti-competitive behaviour.

More information on [your obligations to consumers, and how to meet them, as well as your business rights](#) is available on the ACCC website.

## Question and Answers

To assist providers, see below for answers to commonly asked questions.

### Home Care Packages Program Providers

#### 1. If I pay above the award, do I need to increase my staff's wages?

- The investment in wages must be passed on for the full benefit of workers.
- Higher wages for aged care workers mean providers can attract and retain staff to relieve workforce pressures.
- For providers who pay above award through Enterprise Agreements or individual contracts, they will continue to be required to pay their workers according to these arrangements.
- For further information on [safety net contractual arrangements](#), visit the Fair Work Ombudsman's website.

#### 2. Does the Government monitor what providers are paying their workers?

- It is a legal requirement for employers to fund the minimum pay rates as prescribed by the relevant [modern award](#) but we expect aged care providers to pass on all the additional wage related funding they will receive in this budget.
- The department will continue to monitor provider expenditure on wages through the Quarterly Financial Report and program assurance activities and will publish key financial trends from the sector as part of the Quarterly Financial Snapshot.
- From January 2024, the Government will be publishing service level data on what providers are paying their workers. It will be evident which providers are offering the best deal to their workers.

#### 3. Is this funding enough to fund the wage increase?

- Yes. Aged Care accounting firm StewartBrown recently estimated the Government needed to fund \$1.6b in 2023-24 to meet the Fair Work Commission's decision.

#### 4. Will the funding also cover leave liabilities?

- The Government's funding commitment includes \$98.7 million in 2023-24 for an additional one-off grant funding for historical leave liabilities.
- Historical leave liabilities will be funded according to aged care service type, including a grant opportunity for residential and home care aged care providers, and other aged care programs.
- Further information about this grant opportunity will be available later in 2023.

## 5. The outcome of the Annual Wage Review (AWR) will take effect from 1 July 2023, will workers receive another wage increase?

- The Government has committed to funding \$2.2 billion to increase the home care subsidy by 11.9% (including annual indexation) from 1 July 2023.
- The Government is aware the [annual wage review](#) will likely increase award wages again from 1 July 2023.
- Annual wage review increases are considered as part of regular annual program indexation arrangements.
- Employers will therefore need to financially prepare for another wage increase as determined by the Fair Work Commission.
- It is expected that providers consider the timing of the 2 award wage increases when renegotiating enterprise agreements with their workers.
- Employers can sign up for [email updates](#) from the Fair Work Ombudsman on changes for the aged care sector pay rates and the annual wage review.

## 6. What does a 'reasonable' price increase mean?

- Price increases must be reasonable and justifiable for care and services delivered by workers receiving the wage increase.
- A reasonable and justifiable price increase must be:
  - value for money and reflect the resources it takes to provide the care or service
  - clear, understandable and transparent, in the best interests of care recipients
  - in line with program requirements and legislation
  - directly related to coordinating allowable care or services
  - purchasing goods to meet the care recipient's assessed needs and goals.
- You should be able to explain your pricing methodology and provide evidence to inform the prices you charge.
- For more information, refer to the Aged Care Quality and Safety Commission's [Home Services Pricing and Agreements](#) brochure.

## 7. How long do I have to update prices on My Aged Care?

- Your business must update My Aged Care as soon as possible.
- Any updates to your pricing information should be applied consistently to your pricing schedule and full price list.
- When updating My Aged Care, you will need to use the [Find the Provider function](#) to ensure the changes you make are visible to the public for all your active outlets/services.

- This is also a good opportunity to review your outlets and deactivate any that are no longer in use or are duplicates.
- For more information on how to update My Aged Care, read the:
  - [service and support portal user guide](#)
  - [administrator functions guide](#)
  - [tips for HCP providers regarding costs](#)

#### **8. Are on-costs covered?**

- Yes, the subsidy increase was calculated by analysing what providers spent on aged care workers, including on-costs, in the 2021-22 financial year.

#### **9. My care recipient's package budget does not include care or services delivered by workers in aged care covered by the wage increase. Will their package subsidy still be increased?**

- Yes, base funding has been increased to ensure enough funds are available to cover wage increases.
- All care recipients must receive care management, which includes a workforce component.

#### **10. I have workers who work across multiple programs, including National Disability Insurance Scheme (NDIS), Department of Veteran Affairs (DVA) and HCP. What does this mean for these workers?**

- The Government is aware that Disability Support Workers (DSWs) can be employed as 'social and community services' workers under Schedule B or 'home care' workers under Schedule E of the SCHADS Award.
- However, the NDIS Disability Support Worker Cost Model (the Cost Model) sets price limits for some categories of support delivered by DSWs.
- The Cost Model is set equivalent to level 2.3 (\$1,229.88 per week), or higher, under Schedule B (social and community services) of the SCHADS Award.
- The social and community services stream of the SCHADS award was subject to an equal remuneration order in 2012 which raised award rates by 25%.
- A similarly qualified aged care worker (on Schedule E, pay point 4.2), with the 15% increase would be paid \$1,204.10 per week from 30 June 2023.
- It is our understanding that most DSWs delivering NDIS services are paid in accordance with Schedule B rates, but we note that providers may set their own wages independently of the NDIA price guide as long as this is done in a way that complies with Australian workplace laws.
- Where a provider delivers multiple programs, they should contact the Fair Work Ombudsman for specialised advice on which awards apply to their workforce.

- More information on [equal remuneration order in the SCHADS Award](#) is available on the Fair Work Ombudsman's website.

### **11. Is there a mandatory timeframe for providers to pass on the wage increase?**

- As per legislation providers must implement this pay increase and pay their workers according to the award from 30 June 2023.
- HCP providers should consult with their scheduling and billing software providers to ensure that their systems will be updated to take into account the wage increase.
- However, if providers do not have their systems in place in time for 30 June 2023 and there is a risk you won't be able to pay your workers on time contact the Fair Work Ombudsman for specialised advice.

## **Care recipients**

To explain the changes to care recipients, please refer to the [HCP resources on the department's website](#), including the [care recipient fact sheet](#) and [the letter to care recipients](#).

You can also refer to the Commission's [consumer guidance fact sheet](#).

## **Where can providers find out more information?**

For assistance navigating these changes, providers can go to the following links:

- [Home care agreements for Home Care Packages](#)
- [ACCC - Home care services – your business rights and obligation](#)
- [Fair Work Commission - Aged Care Award increase](#)
- [Fair Work Ombudsman - Get help](#)
- [Aged Care Act 1997](#)
- [User Rights Principles 2014](#)
- Review the [2022 SCHADS Award fact sheet](#)
- [Subscribe to aged care sector newsletters and alerts](#)

## **Contact**

If you have further questions, you can contact:

- [agedcareworkforcereform@health.gov.au](mailto:agedcareworkforcereform@health.gov.au) about aged care workforce reforms, or
- [hcpmanualsfeedback@health.gov.au](mailto:hcpmanualsfeedback@health.gov.au) about the subsidy increase in home care.

## FAIR WORK COMMISSION

MATTER NUMBERS AM2020/99; AM2021/63; AM2021/65

### WORK VALUE CASE – AGED CARE INDUSTRY

#### COMMONWEALTH'S SUBMISSIONS IN RESPONSE TO 8 JULY 2024 DIRECTIONS

1. The Commonwealth makes the following submission in relation to rates of pay, operative date and phasing-in in respect of any wage increases that the Commission may determine for registered and enrolled nurses in the aged care sector (**aged care nurses**) as a consequence of the *Stage 3 Aged Care decision* ([2024] FWCFB 150) (**Stage 3 decision**).<sup>1</sup>
2. The Commonwealth reiterates its support for any further wage increases for aged care nurses that the Commission considers are justified by work value reasons having regard to the *Stage 3 decision (aged care nurse wage increases)*, and is committed to funding those wage increases, including on-costs incurred by aged care providers as a result of the wage increases, in all Commonwealth-funded aged care.
3. The Commonwealth notes that the quantum of any aged care nurse wage increases has not yet been determined by the Commission. For the reasons set out in paragraphs [3] to [5] of the Commonwealth's submissions dated 24 November 2023, the Commonwealth submits that the Commission should not award any additional wage increases exceeding those sought in the original applications before the Commission at this time.
4. The Commonwealth has previously submitted that until the quantum of any increase is determined by the Commission, the Commonwealth is unable to properly consider the fiscal impact and provide information on the appropriate approach to timing and phasing-in of additional funding to support any further increases to award wages (24 November 2023 at [7]).
5. In line with the Directions published on 8 July 2024, the Commonwealth has considered the issues of funding, operative date and phasing-in the context of the submissions, evidence and draft determinations filed by the ANMF on 26 April 2024, and correspondence submitted by the ANMF dated 18 July 2024.
6. The Commonwealth notes that further wage increases for registered and enrolled nurses in the aged care sector is not without cost to the Commonwealth and will require significant additional funding to be provided to the aged care sector.
7. While some aged care providers pay 'market rates' that are in line with the ANMF proposed pay rates, this is not true for all providers. Commonwealth funding for the

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<sup>1</sup> In accordance with [2] of the Commission's directions dated 8 July 2024.

aged care sector is predominantly provided through the payment of subsidies to providers. As a result, any further increases to award wage rates for aged care nurses will increase the funding required of the Commonwealth in respect of all providers, and therefore the overall cost to the Commonwealth.

8. In this regard, the Commonwealth notes that in relation to the \$11.3 billion committed over four years (from 2023-24 to 2026-27) to meet the cost of the 15% increase in award wages for direct care workers, including registered and enrolled nurses, approximately \$2.6 billion is estimated as relating to wage increases for aged care employed nurses.
9. Without detracting from this submission, the Commonwealth's position on funding for any aged care nurse wage increases is as follows (**Commonwealth funding commitment**):<sup>2</sup>
  - 9.1. for any wage increases up to 3 per cent – on 1 July 2025;
  - 9.2. for any wage increases up to a further 3 per cent (i.e. up to 6 per cent total) – on 1 October 2025;
  - 9.3. for any wage increases up to a further 7 per cent (i.e. up to 13 per cent total) – on 1 October 2026;
  - 9.4. for any wage increases up to a further 7 per cent (i.e. up to 20 per cent total) – on 1 October 2027.
10. In the event that the aged care nurse wage increases differ for different classifications of aged care nurses (for example, because of a change in internal relativities), the Commonwealth funding commitment as set out above applies on a classification-by-classification basis.
11. As the Commonwealth has previously submitted,<sup>3</sup> having regard to the Commonwealth's role as the principal funder in the aged care sector,<sup>4</sup> the Commission can be satisfied that making any aged care nurse wage increases in alignment with the timing of the Commonwealth funding commitment would result in those increases having a non-material impact on business and employer costs.
12. The result is that, having regard to the modern awards objective in s 134(1)(f) of the *Fair Work Act 2009* (Cth) (**FW Act**):

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<sup>2</sup> References to wage increases below are to increases above the interim wage increases made as a result of the *Stage 2 decision* [2023] FWCFB 40, and include on-costs associated with the corresponding percentage wage increase in accordance with the approach set out in paragraphs [14] to [18] of the Commonwealth's Stage 2 submissions dated 16 December 2022 (**Stage 2 submissions**).

<sup>3</sup> Commonwealth's submissions concerning operative date and phasing in dated 12 April 2024 (**12 April 2024 submissions**) at [5].

<sup>4</sup> As recognised in the *Stage 1 decision* [2022] FWCFB 200 at [904], [911].



- 12.1. 1 July 2025 would be an ‘appropriate’ operative date for any aged care nurse wage increases for the purposes of s 166(2) of the FW Act; and
  - 12.2. phasing-in any aged care nurse wage increases above 3 per cent in alignment with the Commonwealth funding commitment would be appropriate and consistent with the principles summarised in paragraphs [28] to [30] of the Commonwealth’s Stage 2 submissions dated 16 December 2022 (**Stage 2 submissions**) and paragraphs [985] to [990] of the *Stage 1 decision*.<sup>5</sup>
13. However, the Commonwealth again acknowledges the presumption in s 166(1) of the FW Act and the fact that the timing of the Commonwealth funding commitment, including its implications for the modern awards objective in s 134(1)(f) of the FW Act, is not determinative of the Commission’s decision with respect to the timing or phasing in of any aged care nurse wage increases.<sup>6</sup>
14. For the reasons previously submitted,<sup>7</sup> the Commission need not consider whether it would be theoretically possible for the Commonwealth to fund any aged care nurse wage increases sooner than it has decided. However, by way of explanation, the Commonwealth identifies the following matters that have informed its funding commitment:
- 14.1. The Commonwealth anticipates that any wage increases for aged care nurses will be implemented in a similar way to the interim wage increases and the Stage 3 wage increases for direct and indirect care workers, summarised in paragraph [11] of the Stage 2 submissions.
  - 14.2. Implementing funding for wage increases in the aged care sector takes time for the reasons set out in paragraph [8.2] of the 12 April 2024 submissions.
  - 14.3. The significant majority of aged care nurses, over 80 per cent, are estimated to work in residential aged care. As for residential aged care workers (addressed in paragraph [8.3.1] of the 12 April 2024 submissions), the increased funding needed to fund any wage increases for aged care nurses in residential aged care settings needs to be correctly calculated and applied based on independent pricing advice from the Independent Health and Aged Care Pricing Authority (IHACPA). This advice is subject to the following timeframes:
    - 14.3.1. From 2024, IHACPA’s annual pricing advice is provided mid-year to support changes in the Australian National Aged Care Classification (AN-ACC) price which take effect on 1 October of the same year.

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<sup>5</sup> [2022] FWCFB 200.

<sup>6</sup> As recognised in the *Stage 1 decision* [2022] FWCFB 200 at [911]-[916] and the *Stage 2 decision* [2023] FWCFB 93 at [415].

<sup>7</sup> Commonwealth’s 12 April 2024 submissions at [7].

- 14.3.2. In circumstances where IHACPA's annual pricing advice for 2024 has already been provided, it will be necessary to seek out-of-session advice to support any funding for wage increases to take effect through the AN-ACC price before 1 October 2025.
- 14.3.3. As the Commonwealth has previously submitted,<sup>8</sup> IHACPA must undertake significant work to provide the necessary advice to the Commonwealth, which may take several months after a final decision of the Commission in respect of any aged care nurse wage increases (including quantum).
- 14.3.4. It follows that, even if a decision by the Commission were to be made by October 2024, it would not be possible for IHACPA to provide the necessary advice to the Commonwealth until the first quarter of 2025.
- 14.3.5. Once IHACPA's advice is provided, advice will need to be provided to Government in line with the Budget process, with further steps also required to develop subordinate legislation and make necessary information and communications technology changes as set out in paragraphs [8.3.2] and [8.3.3] of the 12 April 2024 submissions.
- 14.3.6. To be confident that the necessary time is available to progress through these steps following the receipt of a decision (timing of which is not known), a 1 July 2025 operative date is proposed.
- 14.3.7. The subsequent proposed increases from 1 October 2025 will be factored into the regular IHACPA pricing advice.
- 14.4. Significant aged care reforms are due to be introduced in 2025, following the introduction and expected passage of the new Aged Care Act. Preparation for commencement of the new Act is a complex undertaking for the Commonwealth, providers and care recipients.
- 14.5. These reforms include the introduction of Support at Home (to replace the Home Care Packages program), which will incorporate new pricing arrangements for in-home care that will be similar to residential aged care. The Commonwealth's position is to include any wage increase for aged care nurses within the pricing arrangements commencing on 1 July 2025.
- 14.6. Preparations are also underway for the Commonwealth Home Support Programme (CHSP) to be recontracted for another two years, commencing 1 July 2025. This includes new contract arrangements being put in place and significant changes to the architecture of the program as part of systemic reforms to the in-home aged care system. It is not possible to vary existing CHSP grant agreements in addition to the changes already being progressed to implement the wage increase for aged care workers on 1 January 2025. Instead, any funding for wage increases for aged care nurses would be rolled

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<sup>8</sup> Reply submissions of the Commonwealth dated 10 February 2022 at Annexure, [3]-[7].

into the new grant arrangements once the CHSP extension is finalised in July 2025.

- 14.7. The Commonwealth otherwise repeats paragraphs [8.3.4] and [8.3.5] of its 12 April 2024 submissions.
- 14.8. As for the Commonwealth's decision to implement funding for aged care nurses over a period of up to 29 months, the Commonwealth repeats the observations in paragraph [8.4] of the 12 April 2024 submissions and makes the following further observations:
  - 14.8.1. While the labour market has softened, with a gradual increase in the unemployment rate over the past year, it has remained quite resilient,<sup>9</sup> and wages growth remains elevated relative to its pre-pandemic rate.<sup>10</sup>
  - 14.8.2. The largest contributor to wages growth in the September quarter 2023 was the health care and social assistance industry, which experienced a wages increase of 3.1 per cent in the quarter, the strongest increase on record.<sup>11</sup> The 15 per cent interim wage increase for aged care workers was a significant contributor to that increase.<sup>12</sup>
  - 14.8.3. In this context, the Government has already committed \$11.3 billion over four years to fund the Stage 2 increase and is currently working through the funding impact of its commitment to fund the Stage 3 decision, which is expected to be in the order of an additional several billion dollars of the four year forward estimates.
  - 14.8.4. Similarly, the Government is conscious that there could be further successive decision for wage increases in relation to the Nurses and Midwives Work Value Case and Gender undervaluation – priority awards review given the requirement for the Commission to consider gender undervaluation and relativities, potentially adding to the Government's funding commitments over the near future and spillover effects to other sectors.
  - 14.8.5. The Commonwealth funding commitment has also been determined by reference to the Government's fiscal strategy, which continues to

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<sup>9</sup> See, eg, Australian Bureau of Statistics (**ABS**), Labour Force, Australia – June 2024 <<https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>>.

<sup>10</sup> See, eg, ABS, Wage Price Index – March 2024 <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/wage-price-index-australia/latest-release>>.

<sup>11</sup> See, eg, ABS, Wage Price Index for September 2023 <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/wage-price-index-australia/latest-release>>.

<sup>12</sup> Ibid.

be calibrated to current economic conditions with a focus on providing relief from cost-of-living pressures without adding to inflation, the need for budget repair and reducing gross debt.<sup>13</sup>

15. The Commonwealth does not otherwise wish to make any submissions concerning the matters referred to in [1] or [2] of the Commission's 8 July 2024 directions.

Date: 26 August 2024



.....  
Paul Vermeesch  
AGS lawyer  
for and on behalf of the  
Australian Government Solicitor,  
Solicitor for the Commonwealth

These submissions were settled by Kate Eastman SC and Dan Fuller, counsel for the Commonwealth of Australia.

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<sup>13</sup> Commonwealth of Australia, *Budget Paper No. 1: Budget Strategy and Outlook*, 'Statement 3: Fiscal Strategy and Outlook', pp 79-81.

**FAIR WORK COMMISSION**

AM2021/63

**THE AUSTRALIAN NURSING AND MIDWIFERY FEDERATION**

Applicant

**APPLICATION UNDER SECTION 157 OF THE *FAIR WORK ACT 2009* (CTH) TO  
AMEND THE *AGED CARE AWARD 2010* AND *NURSES AWARD 2020***

First Matter

AM2024/11

**THE AUSTRALIAN NURSING AND MIDWIFERY FEDERATION**

Applicant

**APPLICATION UNDER SECTION 157 OF THE *FAIR WORK ACT 2009* (CTH) TO  
AMEND THE *NURSES AWARD 2020***

Second Matter

**AUSTRALIAN NURSING AND MIDWIFERY FEDERATION  
REPLY SUBMISSIONS ON OUTSTANDING ISSUES FROM THE STAGE 3  
DECISION [2024] FWCFB 150 CONCERNING REGISTERED AND ENROLLED  
NURSES WORKING IN AGED CARE**

**A. Introduction**

1. By orders of 08 July 2024, Hatcher J directed that the issues of classifications, rates of pay, operative date and phasing-in in respect of registered nurses (“**RNs**”) and enrolled nurses (“**ENs**”) in the aged care sector, and any other matters necessary to give effect to the *Stage 3 Aged Care Decision* [2024] FWCFB 150 (“**Stage 3 decision**”), be dealt with in a separate hearing commencing 17 September 2024.
2. By order [2], parties other than the Australian Nursing and Midwifery Federation (“**ANMF**”) were directed to file, by 26 August 2024, any submissions, evidence and draft determinations concerning these issues, including any material in response to these submissions, evidence and draft determination filed by the ANMF on 26 April 2024 in matter no. AM2021/63 (“**ANMF S 26 April 2024**”).
3. On 26 August 2024, submissions pursuant to Order 2 were filed by:
  - (1) the Joint Employers (“**JE S [x]**”);<sup>1</sup> and
  - (2) the Commonwealth (“**Cth S [x]**”).<sup>2</sup>
4. Order [3] of the orders of 08 July 2024, provided for the ANMF to file evidence and submissions in reply by today, 09 September 2024. Accordingly, these submissions are filed in reply to the JE S and Cth S.
5. These submissions are broken into three primary parts.
6. **Part B** replies to JE S.
7. **Part C** replies to JE S 16 May 2024.
8. **Part D** replies to Cth S.
9. Additionally, on 18 July 2024, representatives of the ANMF wrote to the chambers of Hatcher J, copied to other parties (“**18 July 2024 letter**”), referring to:
  - (1) the decision of the Commission ([2024] FWCFB 298) determining the approach to the operative date and phasing-in of minimum wage increases for relevant

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<sup>1</sup> Joint Employer Response to Identified Issues, 26 August 2024. By JE S[1.2] and [1.3], the Joint Employers also rely on their submissions of 16 May 2024 (“**JE S 16 May 2024 [x]**”) as these relate to classifications, rates of pay and any other matters necessary to give effect to the *Stage 3 decision*.

<sup>2</sup> Commonwealth’s Response to 8 July 2024 Directions, 26 August 2024.

aged care classifications, other than RNs and ENs (“*First Stage 3 phasing decision*”); and

- (2) the ANMF submissions of 10 May 2024 (“**ANMF S 10 May 2024**”), addressing the operative date and phasing in of increases for the classification of aged care employees under the *Aged Care Award 2020* and the *Nurses Award 2020*.
10. The 18 July 2024 letter identified a revised position of the ANMF with respect to the operative date and phasing-in of minimum wage increases for RNs and ENs in the aged care sector. That revised position was adopted having regard to the *First Stage 3 phasing decision*, and was as follows:
- (1) increases to minimum rates for RNs and ENs in the aged care sector would occur in two tranches in accordance with the methodology identified at [18] of the *First Stage 3 phasing decision*;
  - (2) the operative date for the first tranche would be 1 January 2025;
  - (3) the operative date for the second tranche would be 1 October 2025.
11. The purpose of the 18 July 2024 letter was to indicate the ANMF’s position so that other parties might have the opportunity of addressing it in their submissions to be filed on 26 August 2024. The position identified in the 18 July 2024 letter remains the ANMF’s position on operative date and phasing-in in respect of RNs and ENs in the aged care sector. As further identified in the 18 July 2024 letter, the ANMF otherwise continues to rely on ANMF S 10 May 2024.
12. As such, for the purpose of the hearing commencing on 17 September 2024, the ANMF relies upon:
- (1) ANMF S 26 April 2024;
  - (2) The draft determination for the *Nurses Award*, and marked-up *Nurses Award*, filed 26 April 2024, subject to the revisions identified in the ANMF Submissions of 12 July 2024 arising from the *First Stage 3 phasing decision*;
  - (3) An Excel spreadsheet (filed in .xlsx format) showing the calculations feeding into the various relativities and rates of pay that were used to populate the rates in the *Nurses Award*;

- (4) a further statement of Julianne Bryce (ANMF Senior Federal Professional Officer), dated 26 April 2024;
- (5) a statement of Tanya Vogt (ANMAC Chief Executive Officer), dated 23 April 2024;
- (6) a further statement of Heila Brooks (Care Manager, St Catherine’s Hostel), dated 22 April 2024;
- (7) ANMF S 10 May 2024, subject to the matters identified in the 18 July 2024 letter; and
- (8) these reply submissions.

**B. Reply to JE S**

**B.1 The financial viability of the sector**

**B.1.1 The StewartBrown evidence (JE S [3.6]–[3.10])**

13. The ANMF has made submissions about the relevance of the financial viability of the aged care sector, and evidence (in one form or another) from StewartBrown, on a number of previous occasions.<sup>3</sup> Most-relevantly, its submissions of 17 November 2023 addressed the report of Mr Stuart Hutcheon of StewartBrown prepared for the Stage 3 hearing, upon which the Joint Employers continue to rely. The basic points the ANMF made in relation to Mr Hutcheon’s report, and which it repeats, are as follows:

- (1) Mr Hutcheon does not (without disrespect to him) have the right expertise to give statistical or economic opinions, and the Commission cannot know if Mr Hutcheon’s data is statistically representative (see at [57]–[58] of the 17 November 2023 submissions). Indeed, Mr Hutcheon agreed that he was not representing to the Commission that his survey report was statistically representative of the industry.<sup>4</sup>
- (2) how collected data was modified (*e.g.*, by excluding outliers) and “*cleansed*” is opaque and has not been explained to the Commission (see at [59], [62]–[63]);

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<sup>3</sup> Submissions dated 22 July 2022 at [844]–[856], submissions dated 20 January 2023 at [100], submissions dated 16 February 2023 at [2]–[25], submissions dated 17 November 2023 at [54]–[83].

<sup>4</sup> Transcript of 07 December 2024, PN3088–3090.



- (3) reports prepared for benchmarking, in which one excludes outliers, are no doubt useful to StewartBrown’s customers, but are not useful to the Commission which is concerned with an entire sector (even, *e.g.*, facilities that are outliers because they are much more profitable than the norm) (see at [60]–[61]);
  - (4) Mr Hutcheon does not provide calculations so as to enable scrutiny of his opinions (see at [65]–[69]);
  - (5) Mr Hutcheon’s calculations assume, which is not the fact, that the Commission’s Orders will have the necessary effect that all nurses, even those on above-award wages, will receive a 25 per cent wage increase ([72]–[75]). (See cross-examination on 07 December 2024 at PN3102–3103).
14. In addition, Mr Hutcheon accepted that his survey was opt-in (07 December 2023, PN3069), with participation that varied from place to place (PN3070–3075), and that government-owned providers mostly did not participate (PN3080).
  15. As the ANMF submitted on 13 December 2023 (PN5717–5720), it accepts that an unfunded wage increase in a labour-intensive industry “*is likely to cause financial difficulties for at least a proportion of employers,*” as Hatcher J put it at PN5716. The Commission could not, however, proceed on the basis that Mr Hutcheon’s opinions provide a basis for being more precise than that. For that reason, JE S [3.4]–[3.9] could not be adopted. Findings expressed in terms of actual dollar figures simply cannot safely be made on Mr Hutcheon’s evidence.
  16. As the ANMF has said before (PN5709), nothing in that involves any criticism of Mr Hutcheon, who was a truthful witness doing his best to assist the Commission. It remains, however, than an opt-in paid survey, the participation in which varies from place to place and sector to sector, prepared by a person who is not an economist or statistician, to provide a benchmark for the clients of the report (rather than a statistically-representative survey), which addresses a different issue than that which confronts the Commission (because it assumes no absorption into above-award payments), cannot support specific, dollar-figure, findings. A finding at that level of generality would be consistent with the finding the Full Bench made in the *Stage 2 decision* at [431].

**B.1.2 Nursing employees in aged care and above-award payments (JE S [3.11]–[3.13])**

17. JE S [3.11] contains two propositions. *First*, that most aged-care nurses are covered by enterprise agreements rather than the *Nurses Award*. *Second*, as a “*general proposition*,” that even those who are not so covered are paid above award rates.
18. The *first* may be accepted, though that does not tell one how much above the award minima the enterprise agreements are (if at all). The evidential basis for the *second* is not apparent.
19. As to the *first*, the most-recent evidence before the Commission is the August 2023 edition of the ANMF’s “*Paycheck*” publication, tendered (with leave) by email dated 15 December 2023 at 17:32. On page 40 of *Paycheck*, the following relevantly appears:

“This section of *Paycheck* provides information on agreement coverage in the non-public residential aged care sector and an analysis of the wage rates for key nursing classifications based on 661 enterprise agreements operating as at 15 July 2023. The information is updated on a six monthly basis as new agreements are approved by the Fair Work Commission. It includes data at a national level as well as by each State and Territory.

Australia wide, the proportion of facilities covered by awards is 8.9% and the proportion of facilities where the entire nursing workforce is covered by agreements is 86.2%.

...

Across Australia, 86.2% of all aged care facilities have their entire nursing workforce covered by enterprise agreements (2104 out of 2442 facilities). This coverage rate is calculated by mapping enterprise agreements to the Australian Government Department of Health list of Non-Public Sector Residential Aged Care Services (excluding services associated with public hospitals or publicly funded regional area health services). 84% of these fully covered facilities are covered by a single agreement setting out wages and conditions for all classifications of nursing staff (RN, EN and AIN/ PCW). In 4.8% of facilities, nursing classifications are partially covered by agreements and partially covered by the *Nurses Award*.

Only 9.0% of facilities are totally award reliant. On a State/Territory basis, the percentage share of facilities that are totally reliant on awards is 5.1% in NSW; 3.5% in VIC; 3.3% in SA; 1.5% in TAS; 7.4% in ACT; 22.1% in QLD and 19.9% in WA. In the Northern Territory, all facilities are fully covered by agreements.”

20. There follows a detailed analysis in tables of agreement coverage by state. On pages 41–43 there is a comparison of the hourly rate with relevant public sector rates of pay. With very few exceptions, public sector rates of pay are higher.

21. What does not appear there, but what can be reproduced by combining a few tables in the *Paycheck* publication, is a comparison between the actual average rates of pay and award minima. The table on pages 15–16 sets out award minima as at 30 June 2023. Table 3 on page 41 contains the average wage rate as at July 2023. Setting out the two side by side reveals, for the EN and RN classifications appearing in Table 3, the following:

	Award rate	Average rate
EN min	\$ 29.00	\$ 28.70
EN max	\$ 30.51	\$ 32.04
RN level 1 entry	\$ 31.03	\$ 33.30
RN level 1 thereafter	\$ 37.28	\$ 41.69

22. One can add to this the minimum hourly rates from the ANMF’s draft determination for the *Nurses Award* (filed 26 April 2024), and then — with that information — calculate, on average, how much of a wage rise is capable of being absorbed by the current average over-award pay rate:

	Award rate	Average rate	Rate sought	% absorbed
EN min	\$ 29.00	\$ 28.70	\$ 36.07	0%
EN max	\$ 30.51	\$ 32.04	\$ 37.95	20.6%
RN level 1 entry	\$ 31.03	\$ 33.30	\$ 38.71	29.6%
RN level 1 thereafter	\$ 37.28	\$ 41.69	\$ 46.51	47.8%

23. The Commission is able to proceed on the basis, therefore, that there is limited or no scope for absorption toward the lower end of the EN classifications, but considerable

scope for absorption toward the upper end of those classifications, and in the RN classifications (at least amongst those in relation to which the ANMF has data).

**B.1.3 Absorption (JE S [3.14]–[3.17])**

24. As to JE S [3.14] concerning whether absorption will or will not be permitted, the Commonwealth could be asked to confirm its position in the September 2024 round of hearings. So far as “*absorption*” refers to a circumstance whereby funding is provided to employers on account of increases to minimum rates, but by one means or another employers fail to pass the whole of that amount through to workers, the ANMF’s position is that that clearly should not be permitted. Increased funding in relation to wages, arising out of a work value case, should go to wages.
25. JE S [3.17] is (with respect) a little difficult to understand. It seems to submit that if absorption is permitted, the economic disadvantage to employers will be “*modest*”; whereas if absorption is not permitted, the disadvantage will be “*material*.” That cannot be right. There are two scenarios, as follows:
  - (1) Scenario 1: the Commonwealth increases funding by X per cent calculated on award minima:
    - (a) (1)(A): No absorption: whatever the employers receive, they must pass on. This is neutral for them: they receive (say) \$10 from the Commonwealth being the X per cent increase to (say) the RN’s wage, and they give that \$10 to the RN.
    - (b) (1)(B): Absorption: the employers have a windfall gain. They receive the \$10 from the Commonwealth reflecting the X per cent increase to the RN’s wage, but pass on only the \$5 necessary to bring the RN’s wage up to the new minimum. They retain \$5.
  - (2) Scenario 2: the Commonwealth funds only whatever is the increase necessary to bring all employees up to the new award minima. Here, absorption is not possible. For an employee \$3 below the new minimum, the Commonwealth provides to the employer, and the employer must provide to the employee, that \$3. For an employee \$4 below the minimum, it is the same but substituting \$4 for \$3. This scenario is necessarily neutral for the employer.

26. In short, all scenarios are either neutral for employers or provide them a windfall. The windfall scenario — Scenario (1)(B) absorption — is perverse: why would the Commonwealth fund a wage increase on the basis that the employees need not actually receive that wage increase? In any case, *contra* JE S [3.17], there is no world in which, assuming Commonwealth funding tracks the Commission’s staging and phasing-in, employers are out of pocket.

**B.2 Time is required to prepare for implementation of any variations**

27. JE S Part 4 does not directly reply to the ANMF’s proposal for the operative date and phasing-in of further minimum wage increases for RNs and ENs in aged care. Rather, it is asserted at JE S[4.1] that aged care providers “*require time to ensure all essential preparatory steps and necessary communications are made and received prior to the operative date*” of any further minimum wage increases. The Joint Employers do not identify how much time would be required. No evidence has been provided in support of a contention that the operative date proposed by the ANMF would not be feasible, or that specific transitional arrangements are necessary.
28. It is accepted that the determination of appropriate transitional arrangements is a matter that calls for the exercise of broad judgement, rather than a formulaic or mechanistic approach involving the qualification of the weight accorded to each particular consideration.<sup>5</sup> However, it is incumbent upon a party seeking transitional arrangements to identify a proper basis for any delay in increasing minimum rates otherwise justified by work value reasons.

**B.2.1 Residential aged care**

29. The submission at JE S [4.4] is to the effect that the implementation of Commonwealth funding for residential aged care takes time.
30. In this proceeding, the Commonwealth previously agreed that it may be theoretically possible to provide additional funding to the sector relatively quickly following a decision by the Commission regarding an increase to minimum award rates.<sup>6</sup> That

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<sup>5</sup> *Penalty Rates – Transitional Arrangements decision* [2017] FWCFCB 3001 at [142] and *4 Yearly Review of the General Retail Industry Award 2010* at [264]

<sup>6</sup> Reply Submissions of the Commonwealth, 10 February 2022 at Annexure [2].

agreement was subject to the caveat that the Commonwealth has a responsibility to ensure funding is distributed accurately and appropriately including:

- (1) to ensure value and efficient use of taxpayer funding; and
  - (2) to ensure there is sufficient funding that is well targeted for aged care providers to support the increased costs in respect of increases to award rates.<sup>7</sup>
31. The interim increases to award minima wage arising from the *Stage 1 decision* commenced on 30 June 2023. Those increases were fully funded by the Commonwealth in accordance with appropriate accountability mechanisms. One would expect that if this process had involved particular complexities or delays, evidence of this would have been placed before the Commission.
32. The Commonwealth funding commitment contained in Cth S is otherwise addressed below at Part D.
33. With respect to the specific sub-paragraphs to JE S [4.4]:
- (1) *Contra* JE S [4.4(a)], the Commission can have confidence that the accurate distribution of funding will occur expeditiously given the similar process undertaken for the implementation of the interim increase and the absence of evidence to the contrary. The development of appropriate accountability measures is not a regulatory burden for the purpose of s 134(1)(f);
  - (2) The Commonwealth has previously recognised that would be possible to incorporate increases to award minimum wages into the Australian National Aged Care Classification (“AN-ACC”) price.<sup>8</sup> This is what ultimately occurred with respect to the Stage 1 interim increases.<sup>9</sup> As identified below at [66], the Independent Health and Aged Care Pricing Authority (“IHACPA”) can be asked now to provide pricing advice. *Contra* JE S [4.4(b)], this does not provide a proper basis to delay implementation of minimum wage increases.

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<sup>7</sup> Reply Submissions of the Commonwealth, 10 February 2022 at Annexure [2].

<sup>8</sup> Reply Submissions of the Commonwealth, 10 February 2022 at Annexure [3].

<sup>9</sup> Department of Health and Aged Care “Aged Care Worker Wages - Guidance for aged care providers on the provision of funding relating to Stage 2 of the Fair Work Commission Aged Care Work Value Case” <https://www.health.gov.au/sites/default/files/2023-06/aged-care-worker-wages-guidance-document.pdf>

- (3) It may be accepted that the calculation of the rate of funding increases is a complicated task. However, the proposition that this would here be expected to take months (JE S [4.4(c)]) is not properly supported by evidence. In any event, the Commonwealth has recognised it could make an AN-ACC price decision without IHACPA advice.<sup>10</sup>
- (4) The Commonwealth has previously agreed that a change to the AN-ACC as a funding mechanism would only involve changes to subordinate legislation (then in the *Aged Care (Subsidy, Fees and Payments) Determination 2014*; and the *Aged Care (Transitional Provisions) (Subsidy and Other Measures) Determination 2014*).<sup>11</sup> The ANMF understands that this is the process that occurred with respect to the Stage 1 interim increase, and will occur with respect to Stage 3 increases for classifications other than nurses. The ANMF proposal would require this process to be expanded to incorporate final award rate increases for ENs and RNs in aged care at the same time. This would not appear to introduce any particular complexity requiring additional time (*contra* JE S [4.4(d)]).
- (5) The bare reference at JE S [4.4(e)] to the need to develop and implement “*relevant information and communications technology changes required to implement the increased funding*” is unexplained and unsupported by evidence. It should be given no weight.
34. For the reasons addressed in the ANMF S 26 April 2024 at Part D, and below at Part C.3, the need for employers to grapple with material changes to the classification structure and to consider any transitional arrangements would not arise. Should the Expert Panel determine that changes to the classification structure are necessary to achieve the modern awards objective, certainty could be achieved by a table or provisions setting out transitional arrangements.<sup>12</sup>

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<sup>10</sup> Reply Submissions of the Commonwealth, 10 February 2022 at Annexure [8].

<sup>11</sup> Reply Submissions of the Commonwealth, 10 February 2022 at Annexure [4].

<sup>12</sup> See JE S[5.1].

### **B.2.2 Home care**

35. The Joint Employers make similar submissions about home care providers requiring “*sufficient time*” at JE S [4.6]. The general comments above at [30] to [31] apply in respect to that submission.
36. With respect to the specific sub-paragraphs to JE S [4.6]:
- (1) It is unremarkable that stage 3 wage increases would be implemented in a similar way to the interim wage increases. This has been foreshadowed by the Commonwealth<sup>13</sup> and the first tranche of stage 3 increases for classifications other than nurses, including in home care, are to commence on 1 January 2025. The Joint Employers fail to identify what “*meaningful preparatory steps*” home care providers are being prevented from taking.
  - (2) As to the need to consider whether any adjustments to home care package agreements are required (JE S[4.6(b)]), the Joint Employers have again elected not to put evidence of the terms of home care package agreements before the Expert Panel, or identify what adjustments may be required. The relevance of and impact of “*absorption practices*” is addressed above at Part B.1.3.
  - (3) The Joint Employers also fail to fully explain the asserted need for the Commonwealth to communicate with home care package recipients (at JE S[4.6(c)]). Even if such communications are required, they could occur in concert with any similar communication regarding the effect of the stage 3 increases for classifications other than nurses.
  - (4) JE S[4.6(d)] involves speculation about what clients with home care agreements might or might not do. There is no evidence to enable the Expert Panel to make a relevant finding. In any event, the ANMF’s proposed implementation dates are the same as those applying to aged care classifications, other than RNs and ENs. As such, the ANMF proposal would not add to the frequency of changes.

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<sup>13</sup> Commonwealth Submissions Concerning Operative Date and Phasing In, 12 April 2024 at [8.1].



**C. Reply to JE S 16 May 2024**

**C.1 The RN issue**

37. The Joint Employers have now confirmed the joint position with the ANMF that the three-year degree RN classification (level 1 pay point 1) would align with the C1(a) classification in the C10 Metals Framework (JE S 16 May 2024 [8]). Following the *Annual Wage Review 2023–24 decision* [2024] FWCFB 3500 (“*AWR*”), this rate would be set at \$1,526.00.<sup>14</sup>

**C.2 The EN issue**

38. The Joint Employers have now confirmed the joint position with the ANMF that the EN classification would align with the new Level 6 – Team Leader direct care classification in the Aged Care Award 2010 (JE S 16 May 2024 [9]). Following the *AWR*, this rate would be set at \$1,422.20. No additional language in the EN classification definitions appears to be proposed by the Joint Employers.

**C.3 The minimum rate and relativities issue**

39. At JE S 16 May 2024 [17] and [39]–[40] it is suggested that the ANMF bears an evidentiary onus to retain annual increments within the classification structure in the *Nurses Award* for aged care nurses. Reliance at JE S 16 May 2024 [17] is placed on *Independent Education Union of Australia* [2021] FWCFB 2051 (“*Teachers Case*”) at [647] for this proposition.

40. That submission misconstrues the Commission’s statutory task. Section 157(1) of the *Fair Work Act 2009* (Cth) means that the Expert Panel may only vary the *Nurses Award* if, and to the extent that, it is satisfied that doing so is necessary to achieve the modern award objective. Any party seeking a particular change therefore bears a legal, or at least a persuasive, onus of showing that the change is necessary in that way: the party who asserts must prove.<sup>15</sup> But the ANMF does not seek a change to the classification structure in the *Nurses Award* for aged care nurses. It seeks only a minor adjustment to the relativities as between EN and RN classifications, which is justified by work

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<sup>14</sup> Reflecting the rate for the Proficient Teacher classification employed in long day care centres in accordance with [654] of the *Application by Independent Education Union of Australia* [2021] FWCFB 2051.

<sup>15</sup> *Food Channel Network Pty Ltd v Television Food Network GP* (2010) 185 FCR 9 at 18 [26]–[27] (Keane CJ, Stone and Jagot JJ).

value reasons. The ANMF bears no onus — legal, evidentiary, or otherwise. Its position involves maintenance of the *status quo*.

41. JE S 16 May 2024 does not assert that the removal of time-based increments in the *Nurses Award* classification structure is necessary to achieve the modern award objective. If it did, the Joint Employers would bear an onus of making that proposition good. No alternative proposal is put forward by the Joint Employers, or any other interested party.<sup>16</sup> As noted in ANMF S 26 April 2024 [77], the current classification structure represents a hybrid of professional career standards and time-based increments. It provides a fair and relevant minimum safety net of terms and conditions, taking into account, *inter alia*, “*the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia ...*” consistent with s 134(1)(g). It is “*fair*” given that it may be the only career progression available to the employee<sup>17</sup> and in that it allows for the recognition of “*invisible*” skills. It is “*relevant*” having regard to increases in work value which accompany increased experience of ENs and RNs.<sup>18</sup> It also assists in ensuring a simple, easy to understand and stable modern award system by meeting the objectives identified in the *Stage 3 decision* at [184].
42. At JE S 16 May 2024 [19] and [20], the Joint Employers question the historical basis for incremental increases for ENs and RNs based on work value. This historical basis is addressed at Part D.2 of ANMF S 26 April 2024 and is not repeated here.
43. Further reliance is placed on the *Teachers Case* at JE S [23] where it is said certain features of the *Nurses Award* structure would need to be removed or changed if the reasoning in the *Teachers Case* were accepted. There are four points in reply.
44. *First*, for the reasons identified at ANMF S 26 April 2024 [60]–[64] and [74], the *Teachers Case* is readily distinguishable.
45. *Second*, it is wrong to suggest that “*grades*” for RN level 4 and RN level 5 involve progression through annual increments.<sup>19</sup> As discussed at ANMF S 26 April 2024 [53],

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<sup>16</sup> As is consistent with the evidence of Heila Brooks (care manager – akin to a DON position – at St Catherine’s Hostel in Wangaratta) that she is unaware of any objective mechanism which functions, or could function as an alternative to experience, by which the attainment of increased skill and expertise can be recognised. Further Statement of Heils Brooks of 22 April 2024 at [13] – [14].

<sup>17</sup> See ANMF S 26 April 2024 at [73] – [74] and [78].

<sup>18</sup> See below at [47] and [48].

<sup>19</sup> JE S [23(c)]. See also JE S [40(b)].

progression through grades is not covered by cl 15.3(a) of the *Nurses Award*. Rather, appointment to a “*grade*” will depend upon the level of complexity associated with the duties described in the relevant position descriptor where the number of beds in a facility will be a relevant consideration.

46. *Third*, it may be accepted that the evidence before the Expert Panel does not establish that the work value of an EN pay point 1 (for example) will increase by precisely 1.3 per cent after 1,786 hours of experience, but that kind of precision in the evidence is not required (even if were possible). There is a large body of evidence that the value of the work of ENs and RNs in aged care does increase with experience.

47. That includes the following evidence from ENs:

- (1) Suzanne Hewson describes developing skills required to manage residents with dementia who become a significant risk to staff members and residents. She says that these skills are learned from experience and, if you are lucky, good mentoring from colleagues.<sup>20</sup> She also highlighted the skill, experience and concentration required to administer medications properly and safely.<sup>21</sup>
- (2) Wendy Knights gave evidence that most learning about the implementation of high care plans occurred on the job.<sup>22</sup> She also described the reduced use of pain relief and restraint medication following the Royal Commission as meaning that nurses and carers were informally learning new skills to de-escalate situations and calm or console residents.<sup>23</sup>
- (3) Patricia McLean identified that she would exercise the skills she had developed working in aged care over around 45 years when changing catheters, providing wound care (including drains), treating ulcers, assessing clients as to whether they needed to go to their GP / hospital, applying cream (medicated and non-medicated) to clients’ skin, administering medicine, assisting clients with medication, and monitoring clients’ health to ensure they are doing okay at home.<sup>24</sup>

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<sup>20</sup> Amended Statement of Suzanne Claire Hewson (EN) 6 May 2022 at [23].

<sup>21</sup> Amended Statement of Suzanne Claire Hewson (EN) 6 May 2022 at [24(a)].

<sup>22</sup> Amended Statement of Wendy Knights (EN) 29 October 2021 at [67].

<sup>23</sup> Amended Statement of Wendy Knights (EN) 29 October 2021 at [72].

<sup>24</sup> Amended Statement of Patricia Mclean (EN) 9 May 2022 at [73].

48. Evidence from RNs also identified the development of work value through experience, for example:

- (1) Addressing violence and unpredictable residents, Irene McInerney identified that staff needed to have good communication skills and be able to judge when to press and when to back off. She said that judging well came from years of caring and nursing experience.<sup>25</sup>
- (2) Lisa Bayram identified that she relied on years of experience to identify changes and new needs of residents.<sup>26</sup> She also used her extensive nursing experience to guide residents and their families in really important decisions.<sup>27</sup> Under cross-examination she also said as follows regarding the development of skills relevant to palliative care:

“So listening, making decisions under duress with people who are distressed, leading families who are in situations where they're not familiar and they're anxious and they don't know what's going to happen and trying to get the best outcomes for them and for their loved ones, and the information that you provide and the leadership and the guiding people through the process. That's the really important stuff that everybody needs to be better at, and that you really, really need experience, and mentoring to learn that stuff. Everybody can learn how to fix the bed, do the mouth care, put on the nice music, talk nicely to the families, but that other stuff takes a long time to learn, but it's essential. If you haven't got people who can do that then you can't provide good palliative care.”<sup>28</sup>

- (3) Likewise, Hazel Bucher identified that palliative care takes time, experience and skill.<sup>29</sup> She also recognised that new graduate RNs from Australia and other countries need time to develop and build their clinical experience, and confidence.<sup>30</sup>

49. This evidence recognises the increased skill and expertise that ENs and RNs develop through increased experience working in aged care. That increased experience allows ENs and RNs to improve their clinical skills, to better manage residents with dementia, to implement high care plans more effectively, to better identify and de-escalate

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<sup>25</sup> Amended Statement of Irene McInerney (RN) 10 May 2022 at [52].

<sup>26</sup> Statement of Lisa Maree Bayram (RN) 29 October 2021 at [38(c)].

<sup>27</sup> Statement of Lisa Maree Bayram (RN) 29 October 2021 at [38].

<sup>28</sup> Transcript, Cross-examination of Lisa Bayram [PN8252].

<sup>29</sup> Amended Statement of Hazel Bucher (NP) 10 May 2022 at [48].

<sup>30</sup> Amended Statement of Hazel Bucher (NP) 10 May 2022 at [46].

situations involving violent residents, to more accurately identify the needs of residents, and to better guide residents and their families in end-of-life situations.

50. This reflects increases in work value, much of which will not be recognised by progression to a higher level or grade. As identified in the Further Statement of Heila Brooks, some RNs do not seek higher classifications (*i.e.*, above RN level 1), and for other RNs there may be no opportunity in their work setting for appointment to a higher level.
51. *Fourth*, as identified above, changing the classification structure in the *Nurses Award* for aged care nurses may only occur if the Expert Panel is satisfied that such a change is necessary to achieve the modern award objective. No party has sought to satisfy the Expert Panel of that fact: it forms part of no party's case.

#### **D. Reply to Cth S**

##### **D.1 General reply**

52. Although some water has flowed under the bridge since the ANMF's principal submissions on phasing-in and staging dated 10 May 2024, the ANMF continues to rely on those submissions. It otherwise responds to the Commonwealth's submissions dated 26 August 2024 on the same topics, as follows.
53. On 15 March 2024, in the *Stage 3 decision*, the Full Bench made findings that:
- (1) the rates for undergraduate degree-qualified RNs have never been properly fixed in accordance with the C10 Metals Framework Alignment Approach, which constitutes gender undervaluation of the work of such nurses ([203]);
  - (2) its analysis indicated that the work of all RNs and ENs covered by the *Nurses Award*, not just in aged care, had been subject to a failure to properly apply the C10 Metals Alignment Framework, and to gender undervaluation ([207(2)]);
  - (3) the rate for an EN in aged care, who has responsibility for supervising other PCWs, should be set at the same rate as PCW Level 6 ([206]);
  - (4) changes in the value of work performed by RNs justify wage increases beyond the interim increase of 15 per cent ([203]).

54. However, for reasons given in the *Stage 3 Decision*, the Full Bench decided not to finalise the classification structure and pay rates for RNs and ENs at that time.

55. On 12 April 2024, the Commonwealth filed submissions about phasing in of the wage increases contemplated by the *Stage 3 decision*. At [9], it said this:

“The Commonwealth funding commitment and these submissions deal only with the direct and indirect care workers who are the subject of the Stage 3 wage increases, which does not include Registered Nurses (RNs) and Enrolled Nurses (ENs). The Commonwealth notes that the Full Bench considered the appropriate course to be to finalise the classification structure and pay rates for aged care RNs and ENs in conjunction with the Australian Nursing and Midwifery Federation’s application in matter AM2024/11. 9 Matters relating to the timing and implementation of any wage increases for aged care nurses made as part of that process will be the subject of a future decision of the Commonwealth Government.”

56. On 19 April 2024, the ANMF wrote to the Commonwealth, which letter is attached to the ANMF’s submissions of 10 May 2024. In short, the ANMF said that:

- (1) [208] of the *Stage 3 decision* did not justify the Commonwealth declining to state a position in relation to the timing and phasing-in of any wage increase for RNs and ENs in aged care;
- (2) in any event, in light of developments in the AM2024/11 (*i.e.*, the prospect of it being necessary to finalise the aged care case prior to AM2024/11), it was desirable for the Commonwealth to state its position concerning the timing of increased funding connected with RNs and ENs in aged care;
- (3) if wage increases for RNs and ENs in aged care were excluded from expenditure proposals considered by cabinet, the ANMF requested that that be rectified and that the “*Commonwealth finding commitment*” be reformulated.

57. As is apparent from its letter dated 02 May 2024 (also attached to the ANMF’s 10 May 2024 submissions), the Commonwealth declined to re-consider its approach. Now, the Commonwealth has indicated that its position on funding for any aged care nurse wage increases is as follows (Cth S[9]):

- “9.1 for any wage increases up to 3 per cent – on 1 July 2025;
- 9.2. for any wage increases up to a further 3 per cent (*i.e.* up to 6 per cent total) on 1 October 2025;
- 9.3. for any wage increases up to a further 7 per cent (*i.e.* up to 13 per cent total) – on 1 October 2026;

9.4. for any wage increases up to a further 7 per cent (i.e. up to 20 per cent total) – on 1 October 2027.”

58. The ANMF’s application has been on foot for about 3.5 years. The *Stage 1 decision*, which was clear in stating that the interim increase of 15 per cent was “*comfortably below*” what the Commission might determine on a final basis (at [938]), was nearly two years ago. As the ANMF has pointed out on several occasions,<sup>31</sup> the logic of the Commission’s findings concerning historical undervaluation, including gender-based undervaluation, is that:

- (1) for some time, aged-care employees have been underpaid for the value of their work, including because of the stereotypically-female nature of that work;
- (2) were increases to follow Commonwealth funding, as it says would be “*appropriate*” (Cth S [12.2]), aged-care employees would continue to be underpaid for the value of their work, again on that partially-gendered basis, until all funding was in;
- (3) this is despite the minimum wages objective and modern awards objective now expressly requiring the FWC to take into account the need to achieve gender equality including by eliminating gender-based undervaluation of work (ss 134(1)(ab), 284(1)(aa)).

59. Any decision as to staging involves deciding which of (at least) three interests should be subordinated and which superordinated: those of the Commonwealth, those of the employers, and those of the workers. The Commonwealth’s (hence taxpayer’s) interests cannot be directly affected by the Commission’s Orders: the Commonwealth is plainly right to submit (Cth S [14]) that it cannot be ordered to fund differently, or sooner, than its commitment. But its interests can be indirectly affected: if the Commission were to order increases pre-dating the Commonwealth’s funding commitments, then the Commonwealth would be faced with a choice between seeking to fund earlier than it had committed to fund (so as to prevent loss to employers), or allowing employers to bear some loss before funding commences.

60. Accordingly, at least three of the relevant interests are:

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<sup>31</sup> ANMF submissions of 09 February 2023 at [32]; ANMF submissions of 10 May 2024 at [19].

- (1) the interest the Commonwealth has in the staging of increases tracking its funding commitments, so that it is not forced into the difficult choice outlined in the previous paragraph;
  - (2) the interest employers have in not becoming liable to pay increased wages without Commonwealth funding equalling those increases (hence avoiding decreased profits, or increased losses);
  - (3) the interest aged-care workers have in being paid the value of their work — which is to say, in not being paid less than they are worth for reasons including gendered reasons.
61. The unstated assumption in the Commonwealth submission that it is “*appropriate*” for staging to track its funding commitment (Cth S [12.2] is that the interests of the workers should be subordinated to those of the Commonwealth and those of the employers. That is, in order to ensure that the Commonwealth does not face a difficult funding decision or a need to work more-quickly than anticipated, and in order to ensure that employers are not out of pocket (or in the Commonwealth’s words, that there would be a “*non-material impact on business and employer costs*” (Cth S [11])), aged-care nurses should bear being underpaid, on a gendered basis, for more than three years longer.
62. When that assumption is stated, its unattractiveness is apparent. Why should employees be the ones entirely out of pocket, and employers not at all? No answer to that question has been proffered.
63. As for the interests of the employers, the ANMF repeats the submissions made above in relation to the financial viability of the sector. In relation to the Commonwealth being on the receiving end of pressure to move more quickly than it might otherwise have desired, the ANMF submits as follows.
64. *First*, it was obvious from the *Stage 3 decision* that, at some point, wage increases would be ordered. Given the content of the paragraphs of the *Stage 3 decision* identified above, educated guesses could have been made as to their quantum, and funding commitments worked out on the basis of such estimates. Then, if amendment was required in light of the final quantum, there would have been adequate time to do so. This would have assisted in ensuring that aged-care nurses did not fall behind the cohort of other aged-care direct care workers. This was the point of the ANMF’s April



2024 correspondence, which requested the Commonwealth reconsider its approach. The Commonwealth did not reconsider its approach.

65. *Second*, as outlined in Part D.2, the effect of the Commonwealth's different approaches to funding non-nurse aged care workers as compared with nurse aged-care workers is that, for significant periods of time, there will be anomalies in the minimum rates. These might have been avoidable had the Commonwealth acted more pro-actively.
66. *Third*, Cth S [14.1]–[14.3] provides information about budgeting processes, but none of it deserves particular weight, for two reasons. One is that it does not explain any delay in staging beyond 01 October 2025 (at which point IHACPA will have been able to provide advice, if asked, in session). The other is that the Commonwealth's submissions seem to proceed on a basis that work cannot commence on a given task until all previous tasks have been completed. Contrary to that basis:
- (1) the IHACPA can be asked, now (and could have been asked some time ago) to provide pricing advice based on certain hypotheticals, only one of which may ultimately prove to be correct;
  - (2) advice to Government, development of subordinate legislation, and of ICT changes, can likewise begin now on the basis that there are a number of possible outcomes.
67. *Fourth*, the relevance of Cth S [14.4]–[14.7] to staging is not immediately apparent.
68. *Fifth*, as to Cth S [14.8], the matters there stated are, of course, matters that the Commonwealth may legitimately take into account in making its funding decisions, which are not justiciable in this proceeding. However, they do not provide a good reason for keeping workers out of the value of their work.

## **D.2 Potential for overlapping minimum rates as a result of Commonwealth funding commitment**

69. The *Stage 3 decision* at [188] recognises that an RN will usually be the person with ultimate supervisory responsibility of PCWs. This is consistent with the RN Standards

for Practice which provide that an RN working in aged care will remain accountable for ensuring the appropriate delegation of nursing care to PCWs.<sup>32</sup>

70. As identified in ANMF S 26 April 2024 at [35]–[50]:
- (1) the evidence in this proceeding is that ENs have supervisory responsibility in respect of PCWs; and
  - (2) the ANMF understands the effect of the *Stage 3 decision* is that the work value of a EN pay point 1 is equivalent to the work value of a PCW to be classified at Level 6 – Team Leader. This is a joint position as between the ANMF and the Joint Employers.
71. A PCW in the new *Aged Care Award* classification structure will be defined to be an employee whose primary responsibility is to directly provide “*personal care services to residents under the supervision of a registered or enrolled nurse*” (emphasis added).<sup>33</sup>
72. For the reasons identified below, adopting the Commonwealth funding commitment (Cth S [9]), as a basis for the operative date and phasing in of minimum wage increases for ENs and RNs in aged care has the potential to create significant industrial disharmony, and other anomalous or undesirable outcomes, as between PCWs under the *Aged Care Award* (on the one hand) and aged care RNs and ENs (on the other).
73. Should the Expert Panel order the operative date and phasing-in of minimum wage increases for aged care ENs and RNs in accordance with the Commonwealth funding commitment, ENs and RNs would receive their increases on the following timetable:
- (1) On 1 July 2025, 3 per cent;
  - (2) On 1 October 2025, a further 3 per cent (*i.e.*, 6 per cent total);
  - (3) On 1 October 2026, a further 7 per cent (*i.e.*, 13 per cent total); and
  - (4) On 1 October 2027, a further 7 per cent (*i.e.*, 20 per cent total).

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<sup>32</sup> NMBA Registered Nurse Standards for Practice, at [78(c)].

<sup>33</sup> *Stage 3 decision* at [193], definition of an “aged care employee-direct care”.

74. ENs and RNs would not receive their full minimum rate increase, applying the rates set out in the *ANMF's draft determination* and together with the *AWR*, until 1 October 2027. Other direct care workers, as provided in the *First Stage 3 phasing decision* at [18]–[20], will receive their full increase on 1 October 2025.
75. **Schedule 1** to these Submissions is a table plotting the considerable delay and disparity that would result, as between PCWs and ENs and RNs, were the Expert Panel to adopt the Commonwealth's proposal. These points are salient:
- (1) PCWs would receive their final pay increase two years ahead of RNs and ENs;
  - (2) Over the period 1 January 2025 to 1 October 2027, many ENs and RNs in aged care are on considerably-lower minima than their PCW colleagues.
    - (a) See RN level 1 pay point 1: at all of 1 January 2025, 1 July 2025, 1 October 2025, and 1 October 2026 — that is, until 1 October 2027 — the PCW (Level 6 – Team Leader) has a higher minimum than RN level 1 pay point 1;
    - (b) See EN pay point 1:
      - (i) between 1 January 2025 and 1 July 2025, the Cert III PCW (Level 3 — qualified) has a higher minimum than an EN Level 1 pay point 1;
      - (ii) from 1 July 2025–1 October 2026, the minima for the Cert III PCW and the EN Level 1 pay point 1 are roughly the same (*i.e.*, within 20 dollars of each other);
    - (c) See EN pay point 5 (the highest EN level): between 1 January 2025 and 1 October 2026, the highest PCW level (Level 6 — team leader) has a higher minimum than EN pay point 5;
    - (d) ENs and RNs wait until 1 October 2027 for their full wage increase, whereas all PCWs receive their full increases on 1 October 2025.
76. These outcomes, albeit that they are temporary, are at odds with the findings of the Commission in relation to work value, with the AQF and the C10 Metals Framework approach, and with the reporting or supervision relationships in an aged-care

workplace. They are, obviously, anomalous outcomes. They create undesirable incentives — including, for example, for ENs and RNs to cease to work as ENs or RNs and instead to seek roles as PCWs.

77. Such outcomes are patently unfair and undesirable. As Deputy President Binet concluded in *Legal Land Perth Pty Ltd* [2018] FWC 2707 at [15], there exists:

“...the risk of industrial disharmony resulting from employees working side by side under different terms and conditions of employment and the additional cost burdens of administering two sets of pay and conditions for one workforce”

The Expert Panel determined, in the *Stage 3 decision* at [156], that there were work value reasons for the minimum award rates of pay in respect of “all direct care employees covered by the Aged Care Award, the SCHADS Award and the Nurses Award” to be “increased substantially beyond the 15 per cent interim increase.” Likewise, the Full Bench in the *Stage 2 decision*, at [17], afforded the interim increase to all direct care workers, effective 30 June 2023. The Commonwealth funding commitment, by contrast, divides direct care workers. If reflected in the Commission’s orders as to phasing-in, it would require aged care RNs and ENs to wait substantially longer to be paid in accordance with their recognised work value.

### **D.3 Critical nurse shortages forecast in aged care**

78. Recent figures from the Australian Government Department of Health and Aged Care’s *Nursing Supply and Demand Study* predict a critical shortfall in the nursing workforce in aged care.<sup>34</sup> The study aims to quantify supply and demand for nurses between 2023 and 2035, using data collected between 2014 and 2022. This recent study, published 03 July 2024, builds upon previous studies by the Department of Health and Aged Care and other entities, such as Health Workforce Australia.
79. According to these figures,<sup>35</sup> there are 50,232 full-time equivalent (“FTE”) nurses presently (as at 2024) in the aged care sector.<sup>36</sup> Government forecasts demonstrate demand for 55,572 FTE nurses in aged care this year. This means there is currently,

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<sup>34</sup> Australian Government Department of Health and Aged Care, *Nursing Supply and Demand projections*, as at 3 July 2024, available at <https://hwd.health.gov.au/supply-and-demand/nursing-supply-demand-study.html>.

<sup>35</sup> Australian Government Department of Health and Aged Care, *Nursing Supply and Demand projections*, as at 3 July 2024. See [Nursing Supply and Demand Results](#) spreadsheet titled ‘National by sector’ at columns I, J and T, rows 91-99.

across the sector, a shortfall of 5,341 FTE nurses. That shortfall is projected to rise to 9,288 FTE nurses by 2025, and 13,342 FTE nurses by 2030.

80. These numbers further demonstrate the urgent need to attract and retain nurses in aged care. Increasing the number of RNs and ENs in aged care is critical to the sector's ability to meet 24/7 RN staffing requirements and mandatory minimum care minutes.

81. Furthermore, as the Full Bench and the Expert Panel have concluded, attraction and retention of employees in the aged care, by way of an increase in minimum wages, will assist in achieving the modern awards objective per s 134(1)(c) of the FW Act.

82. At [1039] of the *Stage 1 decision*:

“In our view, increasing minimum wages will assist in attracting and retaining employees in the age care sector, thereby promoting social inclusion through increased workforce participation.”

83. At [171] of the *Stage 2 decision*:

“Increases to the minimum rate of pay may increase the attractiveness of the work and in doing so positively impact recruitment and retention in the aged care industry.”

84. At [211] of the *Stage 3 decision*,

“..there is material which indicates that the interim pay increase resulted in increased participation in the aged care workforce, and there is some reason to believe that this will continue if further increases are granted. Accordingly, this weighs in favour of the variations. It may also be the case that improving the capacity for the aged care sector to attract and retain staff, and thereby provide more places and services as required by the community, will support the fuller economic participation and social inclusion of some unpaid carers for whom caring responsibilities currently inhibit their own paid labour force participation.”

85. The timely finalisation of wage increases for RNs and ENs will afford certainty to the aged care sector and assist the sector to meet current and projected nurse shortages, thereby also enabling “*social inclusion through increased workforce participation*” per s 134(1)(c).

86. Conversely, the Commonwealth's funding commitment is inconsistent with recognition of the urgent need to attract and retain ENs and RNs in aged care. It risks jeopardising the sector's ability to successfully implement recent reforms in residential aged care. And, as outlined above, adoption of the Commonwealth's funding commitment would create a perverse incentive for ENs or RNs in aged care to work as PCWs.

**E. Conclusion**

87. The Expert Panel would therefore make orders:

- (1) to give effect to the *Stage 3 decision* by varying the *Nurses Award* in accordance with the ANMF's draft determination, subject to the revisions identified in the ANMF Submissions of 12 July 2024 arising from the *First Stage 3 phasing decision*;
- (2) for stage 3 minimum wage increases for ENs and RNs in aged care to come into operation in two tranches, on 1 January 2025 and 1 October 2025, in accordance with the methodology identified at [18] of the *First Stage 3 phasing decision*.

**J C McKenna**

**J E Hartley**

**V M G Jones**

*Counsel for the ANMF*

9 September 2024

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Gordon Legal

Solicitors for the ANMF

### Schedule 1: Comparison of PCW and EN/RN final pay increase operative dates

Classification	Current rate As at 9 September 2024 and incorporating the AWR (3.75%).	New rate In respect of PCWs, the <i>Stage 3 decision</i> at [194] and the AWR (3.75%). In respect of RNs and ENs, the ANMF Draft Determinations and the AWR (3.75%).	Percentage increase in new rate	Operative date and phasing in of the new rates				
				As at 1 January 2025 Applying, in respect of PCWs, the first tranche (50%) of the <i>Stage 3 decision</i> at [194] and the AWR (3.75%).	As at 1 July 2025 Applying, in respect of ENs and RNs, the Cth funding commitment (3%).	As at 1 October 2025 Applying, in respect of PCWs, the second tranche (50%) of the <i>Stage 3 decision</i> at [194] and the AWR (3.75%). Applying, in respect of ENs and RNs, the Cth funding commitment (a further 3%).	As at 1 October 2026 Applying, in respect of ENs and RNs, the Cth funding commitment (a further 7%)	As at 1 October 2027 Applying, in respect of ENs and RNs, the Cth funding commitment (up to a further 7%)
<b>PCW (Level 3 – Qualified);</b> <i>[PCW Certificate III]</i> Aged care employee – direct care – level 4	\$1,187.10	\$1,269.80 <i>(\$1,223.90 prior to AWR)</i>	6.97%	\$1,228.45 <i>(50% of the final increase)</i>	N/A	\$1,269.80 <i>(Remaining 50% of the final increase)</i>	N/A	N/A
<b>PCW (Level 6 – Team leader)</b> Aged care employee – direct care – level 7	\$1,316.70	\$1,422.21 <i>(\$1,370.80 prior to AWR)</i>	8.01%	\$1,369.45 <i>(50% of the final increase)</i>	N/A	\$1,422.21 <i>(Remaining 50% of the final increase)</i>	N/A	N/A
<b>EN pay point 1</b>	\$1,209.10	\$1,422.21 <i>(\$1,370.80 prior to AWR)</i>	17.62%	\$1,209.10 <i>Nil increase</i>	\$1,245.38 <i>(3% increase)</i>	\$1,281.65 <i>(6% increase)</i>	\$1,366.29 <i>(13% increase)</i>	\$1,422.21 <i>(17.62% increase)</i>
<b>EN pay point 5</b>	\$1,271.98	\$1,496.18 <i>(\$1,442.10 prior to AWR)</i>	17.63%	\$1,271.98 <i>Nil increase</i>	\$1,310.13 <i>(3% increase)</i>	\$1,348.29 <i>(6% increase)</i>	\$1,437.33 <i>(13% increase)</i>	\$1,496.18 <i>(17.63% increase)</i>
<b>RN level 1, pay point 1</b>	\$1,293.56	\$1,525.96 <i>(\$1,470.80 prior to AWR)</i>	17.97%	\$1,293.56 <i>Nil increase</i>	\$1,332.36 <i>(3% increase)</i>	\$1,371.17 <i>(6% increase)</i>	\$1,416.72 <i>(13% increase)</i>	\$1,525.96 <i>(17.97% increase)</i>



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE HATCHER, PRESIDENT**

**AM2024/11**

**s.158 - Application to vary or revoke a modern award**

**Application by Australian Nursing and Midwifery Federation (145V)  
(AM2024/11)**

*Nurses Award 2020*

**Sydney**

**10.11 AM, THURSDAY, 29 FEBRUARY 2024**



PN1

JUSTICE HATCHER: I will take the appearances. Mr McKenna, you appear for the applicant, the ANMF?

PN2

MR J McKENNA: I do, your Honour, if it please the Commission, together with Ms Jones, initial V.

PN3

JUSTICE HATCHER: Thank you. Mr Bailey, you appear for the Australian Salaried Medical Officers Federation?

PN4

MR I BAILEY: I do, your Honour, thank you.

PN5

JUSTICE HATCHER: Ms Sultan, you appear for the United Workers Union?

PN6

MS A SULTAN: Yes, thank you, your Honour.

PN7

JUSTICE HATCHER: Mr Ward, you appear for Australian Business Industrial?

PN8

MR N WARD: I do, your Honour.

PN9

JUSTICE HATCHER: Can you turn your camera back on, Mr Ward, if you can.

PN10

MR WARD: My camera is on, your Honour, from my perspective. I'll turn it off and turn it on again.

PN11

JUSTICE HATCHER: All right. Mr Nelson, you appear for Healthscope Operations Ltd?

PN12

MR M NELSON: Yes, sir.

PN13

JUSTICE HATCHER: And Mr Broanda and Mr Cutler, you appear for Mater Misericordiae Limited?

PN14

MR D BROANDA: Correct.

PN15

MR D CUTLER: Correct, your Honour.

PN16

JUSTICE HATCHER: All right. Mr McKenna, how do you wish to deal with this application?

PN17

MR McKENNA: Thank you, your Honour. It is anticipated that the Commission would make some directions for the filing and service of material from the applicant and other interested parties. To that end, your Honour, if I can address the issue of timetabling, unless there are other matters that your Honour wished to hear about first?

PN18

JUSTICE HATCHER: What I was going to raise with you, Mr McKenna, was, firstly, whether there should, as a first step, be a conference of the parties just to try and ascertain attitudes towards this application and whether it can be advanced on, at least in part if not in whole, a consent basis, and, secondly, whether that first step should await the issuing of a decision in the Aged Care matter, which, as you know, will likely say something about nurses' wages in aged care. I can indicate that that decision is likely to be issued on or about 15 March.

PN19

MR McKENNA: Thank you, your Honour, for the indication, and, yes, in answer to your questions, I can confirm that the instructions are that both of those ideas would be embraced, that is, a conference of the parties and for a conference of the parties to occur after the publication of those reasons, your Honour.

PN20

JUSTICE HATCHER: Yes, all right. Thank you. Mr Bailey, what's your organisation's attitude to the application?

PN21

MR BAILEY: Look, I don't have specific instructions, but I think that would be a suitable approach, your Honour.

PN22

JUSTICE HATCHER: Just for my knowledge, what's your organisation's interest in the application?

PN23

MR BAILEY: Our interest is that, although the Medical Practitioners Award is not co-extensive as far as coverage is concerned, I think it's a subset and, obviously, there is a general interest amongst the branches in this particular matter. I don't know, at this stage, whether or not there's any intention, or desire, to be actively making submissions or seeking to be involved to that extent, but there is a general interest, obviously, with the coverage of the Nurses Award and the matters that I see are being agitated in the application.

PN24

JUSTICE HATCHER: All right. Thank you. Ms Sultan.

PN25

MS SULTAN: The United Workers Union has an interest in this award as it has members that are nurses, primarily enrolled nurses and assistants in nursing, in a number of states and territories.

PN26

We support, in principle, the application filed on the basis that the wages in the Nurses Award were never properly fixed and, you know, it involves historical undervaluation of the profession, being female-dominated, and the wage rates haven't been properly adjusted following the changes to work, but, as your Honour rightly pointed out, we are mindful of the interplay between this matter and the Aged Care Work Value case, including the overlap of the AIN classification and the personal care workers' classification, so we would support the conference occurring after that decision issues, but, at this stage, we are not intending to file submissions in this matter and we would seek to be excused from attendances, but would ask to be copied into parties' correspondence.

PN27

We also would like the ability to file submissions, should our position change on the material filed or the decision in the Aged Care Award.

PN28

JUSTICE HATCHER: Ms Sultan, there's a web page in this matter, so you simply need to look at the web page to find out what's going on. Mr Ward.

PN29

MR WARD: Your Honour, having had the benefit of being in the Aged Care case for the last three years and understanding the issues in debate around nurses, I think your proposal is clearly the most practical and the most efficient. We should wait for the Aged Care decision to be handed down, have a chance to digest it, and then I think a conference is entirely the best way to go forward.

PN30

JUSTICE HATCHER: Thank you. Mr Nelson.

PN31

MR NELSON: Thank you, your Honour. Our interest is as the second-largest employer of nurses in the private sector, so we have a keen interest in the application and its potential impact in terms of award classifications.

PN32

JUSTICE HATCHER: All right. And what's your attitude towards the application?

PN33

MR NELSON: Our attitude is that we are enquiring at this stage as to the approach and would support the suggestions from your Honour.

PN34

JUSTICE HATCHER: All right. Thank you. Mr Broanda and Mr Cutler.

PN35

MR BROANDA: Thank you, your Honour. Your Honour, the proposed way forward seems entirely practical. I pick up on a comment that Mr Ward made that we would also support, your Honour, in as much as waiting for the release of the decision before we reconvene. It's giving us time, if your Honour could, to digest and understand the decision and then also take instructions.

PN36

We are, your Honour, also talking with industry associations that cover particularly Catholic Health Australia and the Australian Private Hospitals Association, and we are looking to form some views on the back of that.

PN37

Your Honour, our position, I envisage, will be heavily influenced by the outcome of the Aged Care decision, so we support that way forward, but, your Honour, we just ask if you could afford us a reasonable time between the publishing of the decision and the further reconvening of this matter to give us time to understand it and seek instructions.

PN38

JUSTICE HATCHER: How long might that period be?

PN39

MR BROANDA: Your Honour, I respectfully suggest at least two to three weeks.

PN40

JUSTICE HATCHER: Yes, all right. Does any other party disagree with the notion that the conference should be two to three weeks after the Aged Care decision. No? All right. Well, that's the course I intend to take, so there will be a notice of listing issued later today which will identify the date and location of the conference.

PN41

Mr McKenna, unless there's nothing further on your behalf, we will now adjourn. In terms of further directions, we can assess the position after the conference has occurred.

PN42

MR McKENNA: If your Honour pleases.

PN43

JUSTICE HATCHER: Thank you for your attendance. We will now adjourn.

**ADJOURNED INDEFINITELY**

**[10.19 AM]**



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE HATCHER, PRESIDENT**

**AM2024/11**

**s.158 - Application to vary or revoke a modern award**

**Application by Australian Nursing and Midwifery Federation  
(AM2024/11)**

**Application by Australian Nursing and Midwifery Federation  
(AM2021/63)**

**Nurses Award 2020**

**Melbourne**

**2.00 PM, THURSDAY, 4 APRIL 2024**

**Continued from 29/02/2024**

PN1

JUSTICE HATCHER: I'll take appearances. Mr Hartley, you appear with Ms Wischer and Mr White for the applicant?

PN2

MR J. HARTLEY: Yes, sir.

PN3

JUSTICE HATCHER: Mr Taylor, you appear for the Australian Workers Union.

PN4

MR G. TAYLOR: I do, sir.

PN5

JUSTICE HATCHER: Mr Broanda, for Catholic Health Australia, and also the Australian Private Hospitals Association?

PN6

MR D. BROANDA: Sorry, what was that again?

PN7

JUSTICE HATCHER: The Australian Private Hospitals Association, and Day Hospitals Australia. There are three industry associations within that group.

PN8

MR PROIETTO: Yes, your Honour.

PN9

And Mr Proietto, you appear for Healthscope Operations and Adelaide Community Health Care Alliance.

PN10

MR D. PROIETTO: That's correct, your Honour.

PN11

JUSTICE HATCHER: Mr McCullough, you appear for the Victorian Hospitals Industrial Association?

PN12

MR S. MCCULLOUGH: That's correct, your Honour.

PN13

JUSTICE HATCHER: And Mr Ward, you appear via Teams for Australian Business Industrial?

PN14

MR N. WARD: And Aged & Community Care Providers Association, your Honour.

PN15

JUSTICE HATCHER: Yes, all right. Right, have I got all the appearances? All right. I might start off with you, Mr Hartley. First of all, has your client engaged in any further consideration of the application in light of the Aged Care decision?

PN16

MR HARTLEY: I'm sorry, your Honour. I missed the middle of your Honour's question.

PN17

JUSTICE HATCHER: I said has your client engaged in any further consideration of the application, both in substance and process in light of the Aged Care decision?

PN18

MR HARTLEY: Your Honour, yes is the short answer. My client has considered and continues to consider what the effect of the Aged Care decision should be on the (indistinct) the second application. At the moment I'm not instructed to amend that application in any way, though that is still the subject of consideration.

PN19

And in part, I think something that would be highly relevant to that consideration is what is going to be the position of the other parties in proceeding 2. So, we have things to say about proceeding 1. I think your Honour listed today, also in relation to paragraphs 204 to 208 of the stage 3 decision, and we have things to say about that which I could say now or later.

PN20

But in respect of proceeding 2 which most people are here for - - -

PN21

JUSTICE HATCHER: Yes.

PN22

MR HARTLEY: Substantively, as I understand it and I wasn't here as your Honour knows, on the last occasion but I understood that your Honour stood the matter over in order to allow the stage 3 decision to come out, for people to consider their positions and in particular, the call on respondents or interested parties to consider what their stance would be in respect of that second proceeding. And what their answer is to that question would affect the way that we approach proceeding 2, your Honour.

PN23

JUSTICE HATCHER: I understand. All right. Well, in order you prefer, what attitude to the employer respondents have to the application of the current timing?

PN24

MR BROANDA: Thank you, your Honour. Your Honour, the application that's on foot today is challenging the application for the employer sector. And if I deal directly with the position of the applicant first, your Honour. We would propose to have a timetabling put forward that would initially enable the respondents to

engage with the applicant to see where we can have a meeting of the minds and reduce the number of matters that are in contention.

PN25

I anticipate that the focus of our exploration, your Honour, would be around the degree of adjustment that needs to occur in the private hospital sector which is a very different entity to the aged care sector. Additionally, there are multiple layers of matters that haven't yet been considered by the Tribunal or aren't dealt with in the application, at least as it's currently prepared. Your Honour, for example, it doesn't deal with midwives. But midwives - - -

PN26

JUSTICE HATCHER: I'm sorry, deal with what?

PN27

MR BROANDA: Midwives.

PN28

JUSTICE HATCHER: Midwives, yes.

PN29

MR BROANDA: Which is a profession that's also covered by the award. So, we need to explore what is the effect on the proposal, the outcome of the aged care decision on a number of occupations that exist within that Nurses Award. But additionally, your Honour, there are issues of commonwealth funding at play.

PN30

The hospital sector is not immune from the difficult times, financially. There are restrictions in place at a commonwealth legislative level on private health funds that limit the amount of funding that can flow through for health care into the private hospital sector. The application, if it were granted as apparently stands, presents significant challenges financially on that front.

PN31

We would need time to talk to the commonwealth, your Honour. Additionally, amongst the respondent groups there are many entities that have contracts with the state and territories to deliver public health services. Those contractual arrangements with the states and territories have limitations within them that would also need to be explored to free up, I would suggest, the respondent's position in relation to a number of issues that are likely to be agitated in this process.

PN32

Your Honour, what we would be seeking, those groups that I represent, your Honour, is a timetabling that would incorporate at least a couple of months for us to talk with the applicant in the proceedings; suitable time either concurrently or post that to talk with the commonwealth and the states and the territories; and then a timetabling of material, post at that point.

PN33



But perhaps, your Honour, if we could bring it on for a further conference in a matter of a month's time to see whether the parties are at in terms of narrowing the issues that are between us, and certainly engaging with the commonwealth and the states and territories.

PN34

JUSTICE HATCHER: If you've read the Aged Care decision the expert panel in that matter said that it was deferring finalising classifications and rates for nurses in aged care because of the risk that that would, in effect, create a *fait accompli* for nurses elsewhere covered by this award. One of the problems which I think the Commission has to grapple with is, one, there's been a decision in principle to increase wages for nurses in aged care based upon a number of work value findings, and there's a timing issue.

PN35

That is that there is some scope not to finalise the aged care matter if the award for all nurses can be, as it were, I'll just say modified or reformed. But if that process takes too long the Commission can't wait forever to flow increases to nurses in aged care which its found that are already, in effect, owing. So, I think – and this is to the employer interest generally, I think you need to balance those considerations.

PN36

That is, if we're going to have a full-blown work value proceeding for nurses under this award then it may be that we will have to move on aged care nurses and you will, in effect, be confronted with something of a *fait accompli* in that sense that it will finalise the classification structure and rates for nurses in aged care. And then you'll be put to the task of demonstrating why they shouldn't simply follow on with everyone else. So, obviously that's not to put you under any pressure but we need to balance those matters in mind.

PN37

MR BROANDA: Yes your Honour. I appreciate that.

PN38

JUSTICE HATCHER: So, I mean, have you had the opportunity to sit down with your, I'll just call it clientele, and discuss this matter in detail? Or how far down the track are you to that?

PN39

MR BROANDA: Your Honour, I've been appointed to represent those entities, only a matter of three or four days ago.

PN40

JUSTICE HATCHER: Right.

PN41

MR BROANDA: We have had discussions and so far we've not been able to narrow our position in relation to each of the elements that will need to be satisfied here beyond, your Honour, and this is perhaps poorly phrased, beyond a superficial approach around what are the things that we're going to focus on and

where are the areas that we can probably talk to the ANMF about not spending too much time on.

PN42

We would welcome the opportunity to explore those with the applicant. We do have preliminary positions that we are looking to narrow within our organisations, your Honour.

PN43

JUSTICE HATCHER: All right. And the last matter I wanted to trouble you with at this stage, I'm trying to get an understanding of the extent to which the increases, either as proposed in the ANMF's application, or as contemplated in the Aged Care decision here. So, I'm trying to get an understanding of the extent to which the increases, either as proposed in the ANMF's application or as contemplated in the Aged Care decision, if flowed on will have an actual effect on nurses' wages.

PN44

That is, the impression, I think at least I received in the Aged Care case, was that the actual market rates of nurses are well above the current award, well above 15 per cent increase, and may still even be above the further increases that are contemplated. Obviously you're representing employers outside of the aged care sector. Can you give me, without going to chapter and verse, any impression as to how nurses' market rates or actual rates compare to what is contemplated in the application?

PN45

MR BROANDA: Look, I can. I can give you an idea, your Honour. My day job, if you like, is with the Mater Hospital Network in Queensland.

PN46

JUSTICE HATCHER: Yes.

PN47

MR BROANDA: Within the Mater Hospital Network in Queensland, if the aged care decision were applied to the nursing workforce, we're talking about a seven figure increase in wages immediately, not taking into account all the issues that arise from bargaining where the flexibilities that have been incorporated into bargaining have been accommodated by employers in recognition of we can't afford greater salaries than that that's already been provided in the enterprise agreements.

PN48

So, on a very simple figure, one employer amongst the many that I represent, and we're talking about a seven figure increase that is in a situation, your Honour, where that employer, and I'm not speaking out of school, the Mater's financial returns published in the Australian Charity and Not for Profit Commission website lost \$130,000,000 last year, lost \$80,000,000 the year before. So, when we're talking a seven figure increase, not taking into account the flexibilities that can no longer be all set, and that's just with one employer, your Honour. The cost across the sector is significant.

PN49

JUSTICE HATCHER: I'm just trying to understand. Why would it have the effect of removing flexibilities in the current enterprise agreement?

PN50

MR BROANDA: Your Honour, I'll give you, for example in the enterprise agreement to which the Mater is a party to. The overtime for nurses, for example, moves from time and a half to double time after three hours. I believe in the award currently it moves to double time after two hours. Now, we can accommodate that third hour and pass the BOOT requirements because our base rate is so much higher.

PN51

So, the base rate times time and a half for that third hour is a better off over all provision than the award rate plus double time. Now, if we lost that gap that presents a problem for us, just on that one example about how the overtime would be applied to a person who is subject to that enterprise agreement. And your Honour, there are various examples along those lines.

PN52

JUSTICE HATCHER: So, on the example you've just given, how long ago was that enterprise agreement struck?

PN53

MR BROANDA: That went through the Fair Work Commission's interest based bargaining process and concluded, your Honour, in July last year. I believe it was registered either in July or August of last year.

PN54

JUSTICE HATCHER: So, it's still got some time to run if we have to think about  
- - -

PN55

MR BROANDA: Another 12 to 18 months, your Honour, yes.

PN56

JUSTICE HATCHER: Right. Okay. Anything else you want to raise at this stage?

PN57

MR BROANDA: No, not at this stage. Thank you.

PN58

JUSTICE HATCHER: All right. So, Mr Proietto and Mr McCullough, what do you want to say?

PN59

MR PROIETTO: Yes, thank you, your Honour. Look, I would endorse the submissions made by my learned friend, Mr Broanda, in relation to how we see the process playing out. We do think that there would be some benefit in having

some preliminary conversations with the ANMF. That hasn't happened to this point, potentially the opportunity to narrow the areas that may be in dispute.

PN60

Your Honour's point regarding the aged care classification structure and the likely changes is one that I haven't taken instructions on. I accept what your Honour says about that. And given the timing involved though, I do suspect that the timetable that we would want, which is similar to what my learned friend has set out, would mean that we probably are in that world where we would need to say to the Commission, well, you've said this but we disagree for the following reasons, rather than being in a position to influence that now, I think, realistically.

PN61

I think the other reason why more time would be beneficial from our side of the table, and I have spoken to my friend about this, is that there is a possibility from the employer side of having one voice. I'm not sure if there are any more employer entities. There are approximately 20 employer entities of size, and obviously it would help with the efficient rating of this process if there were one, rather than two or three or 20 voices.

PN62

But there needs to be alignment amongst those groups and that's a process that we're still working through. And so, some more time would assist with that. In terms of the economic effect I haven't taken detailed instructions on that point but I do know as a preliminary point that the vast majority of the, approximately 12,000 nurses that are employed by my two clients are covered by enterprise agreements.

PN63

Those enterprise agreements do have rates that exceed the award minimum. But notwithstanding that, if the percentage increase that's being proposed in aged care workload (indistinct) would have a significant impact on the wage rates that my clients have to pay. There would be varying increases. It depends on the classification level, your Honour. At some classification levels the increase would be profound. In others it would be less.

PN64

And there may be isolated examples where there is no increase needed, at all, such as the current gap in the EBA. But my instructions are that it will definitely have a financial impact. And my friend has said, and we would agree with the submissions, that the industry is an industry – the privatised industry at the moment is facing some significant head winds and the vast majority of the workforce are nurses and would be affected by this decision.

PN65

So, if I make those observations. Otherwise I would endorse what my learned friend says about the proposal and the proposed timetable.

PN66

JUSTICE HATCHER: All right. Mr McCullough, do you want to add anything?

PN67

MR MCCULLOGH: Thank you, your Honour. I might – this is my first appearance in this matter, so just by way of context, the Victorian Hospitals Industrial Association is a registered organisation that represents Victorian public hospitals and standalone community health centres. There are approximately 60,000 nurses and midwives within that sector.

PN68

With respect to the submissions that have been made and some process by which to narrow the differences between the parties, we think that that would be a sensible way to proceed. I'll just make some observations about the two key components of the application as I understand it, and I'll apologise in advance if I misapprehend any component.

PN69

But starting with the issue of whether the rates are properly fixed and the application for the C10 Metals Framework Alignment, I'm mindful that the application precedes the third stage of the Aged Care decision. And for us there are some questions about how to reconcile elements of the application with elements of that ultimate decision.

PN70

Those include the starting point for the application about framework; the difference between the application and the rate that it chooses as the starting point but with the same end point, and that might be, I think it's the entry rate that's been utilised in the application as opposed to the rate flag 4 year degree; the issue of the structure and increments which has been the subject of comment in the previous proceeding including that it is yet to be addressed.

PN71

It is difficult for us to assess the impact of any outcome without those issues being ventilated, at least to some extent; the issue of the appropriate relativity between the three and the four year degree is a matter that's not yet been engaged with and it might be of use to do so. And in terms of the observation in the stage three case that the proper application of the C10 Metals Alignment Framework approach does not necessarily involve increasing of the rates for aged care nurses in the existing classification by the same percentage of the benchmark rate, again that goes to the issue of making it difficult to judge the effect of the application (indistinct), having regard to those issues not being engaged with or addressed.

PN72

I suspect that a process of further discussion would help narrow those issues but from our perspective they are currently unreconciled between the application and the stage 3 decision. On the second elements of the change to work value I note that in terms of the application there are matters that may overlap in terms of a Venn diagram since with the aged care application. But there are likely additional matters and the application seems to foreshadow the need to call evidence with respect to that element of the application.

PN73

In terms of the potential impact it is true that rates under enterprise agreements including for the Victorian Public Sector are higher than the current rates prescribed by the award. An increase of the magnitude that's proposed has certainly the potential to overtake some of the rates and result in an additional cost. I'll just supplement one thing in terms of the impact point.

PN74

Whilst if the rates under the award overtake those under the agreement that has an obvious and apparent cost in the first instance, classification structures are delicate things. And that will raise then the issue of relativity. It would be in that structure which would likely necessitate additional cost beyond that arising directly from any change to the modern award. Your Honour, unless you have any questions for me?

PN75

JUSTICE HATCHER: Thank you. Mr Ward?

PN76

MR WARD: Thank you, your Honour. Can I thank your Honour for letting me appear by Teams today, as well. I think I'd want to start by saying that for our part we understand with great clarity that some of the principle issues have now been disposed of in the Aged Care case as they relate to the (indistinct), particularly in relation to paragraph 204, 205 and 206 of the decision. Also, we don't cavil with those, but those matters have been resolved.

PN77

It seems to us that all we have left to do for our part is to dispose of the matters arising from paragraph 2071 which was effectively the question of annual steps or some alternative annual question of (indistinct) qualified (indistinct). We came to have those matters resolved in the aged care sector, as fast as possible. I have had some discussion with Mr Hartley yesterday. I think he's (indistinct). My clients are reflecting on those two issues. And if we were dealing with this purely on aged care I would probably be inclined to ask for a conference to see if we could reach some accord, at least solve a part of that, and if not then a timetable that would dispose for it as (indistinct) that is possible.

PN78

We are very mindful that after three years of the aged care case we're at the back end where (indistinct) is obviously heavily involved in (indistinct) funding arrangements to give effect to the decision. We don't feel disturbed by the possibility that the aged care matter might be adjourned for many, many months to allow others to (indistinct) out their views.

PN79

And now respectfully we understand their position and we accept that. But our idea would be that we should allow the aged care case to be wrapped up as quickly as possible. And if that involves the resolution of those two residual matters to be dealt with independently for the aged care case then that's what we would seek to have happen.

PN80

It would be industrially disadvantageous for wide parts of our workforce to have the benefit of the decision and for registered and enrolled nurses, in particular, to (indistinct) and that would materially impact and confuse the conversation with the commonwealth around funding. So, don't need to be waiting for another four or five or six months to allow the ANMF and private hospital providers to have conversations, or private hospital providers to have conversations.

PN81

We would prefer to have all those matters wrapped up quickly so we get the aged care finished in its entirety. I do appreciate that that might involve some degree of prejudice to other parties but I think that's the cross that one bears.

PN82

JUSTICE HATCHER: All right. Well, the current timetable in the aged care case indicates that we'll have all the submissions by 10 May. And then there may be another hearing beyond that depending upon what the submissions say. But I think the parties can reasonably anticipate in approximately June we'll be determining the outstanding issue of operative date and any question of phasing in.

PN83

And of course, once the operative date is determined that will set the clock ticking to finalise aged care nurses by about the same timetable. So, I think the parties would need to bear that sort of timeframe in mind. Now, Mr Hartley, having heard all that, what do you say should happen?

PN84

MR HARTLEY: Your Honour, one might have been over optimistic in hoping that everyone would turn up today and say aged care decisions (indistinct), let's roll it out across the entire nursing industry. Had that happened we may not be faced with this issue about what to do with aged care nurses.

PN85

But we are faced with that issue. We agree with what Mr Ward says about it being industrially undesirable, and undesirable for other reasons for aged care nurses to be kept out of the increases that the panel has determined are appropriate. That was made, I think, reasonably clear to other parties in the stage three decision that that might be a consequence, that there'd be this, call it a fait accompli.

PN86

In those circumstances an appropriate thing to do in our submission would be to grant the increases to aged care nurses within the sort of timetable that your Honour just outlined and then leave the second proceeding to run its course after that. In addition to the matters that my friend, Mr Ward, raised there are some issues that we would need to advance, at least submissions, possibly also evidence about in the context of aged care.

PN87

At 204 of the decision, your Honour, the panel expressed the view that it should be the four year degree and that was fixed at 14.70.80. The position of the ANMF

is that the four year degree is not an appropriate benchmark, including because there are very few comparatively four year degree nurses.

PN88

And so, we'd seek an opportunity of putting on at least a submission to persuade the panel of that and possibly evidence to show the fact that, which has been the subject of some evidence before but perhaps not targeted, that the three year degree qualified nurse is the benchmark, is the standard registered nurse and the four year degree is not, for reasons that we would develop, meet the appropriate benchmark. So, we'd seek an opportunity to persuade the Commission about that.

PN89

JUSTICE HATCHER: All right. I don't think the paragraph forecloses - - -

PN90

MR HARTLEY: Yes. No.

PN91

JUSTICE HATCHER: The possibility that the same rate might apply to a three year degree.

PN92

MR HARTLEY: Yes. Well, your Honour is right. It doesn't.

PN93

JUSTICE HATCHER: But that may point to the need to have, on that issue alone, a further hearing in the aged care matter.

PN94

MR HARTLEY: I think it very well might, your Honour, yes. Paragraph 205 – on reading of paragraph 205 is that the enrolled nurse, who has supervisory responsibilities, should be paid around the rate of a level 6PCW. That would accord with the ANMF's application.

PN95

Another reading of it is that only those enrolled nurses who do have supervisory responsibilities as opposed to those that do not, would be at the level 6, and the EN's who don't have any supervisory responsibilities, my instructions are that there'd be very few of those, if any, but one reading is that the panel is contemplating two classifications for EN's, or two streams perhaps, one with supervision, one without. That's not a course, that the ANMF would support.

PN96

And so, if that were what was to be understood in that paragraph that's another matter that we'd seek to be making submissions about.

PN97

JUSTICE HATCHER: But again, the paragraph doesn't say anything more than it says.

PN98

MR HARTLEY: Yes. That's right. Yes.



PN99

JUSTICE HATCHER: But I understand what you put.

PN100

MR HARTLEY: Yes. And then Mr Ward is correct with respect that 2071 raises these issues about what should be the classification structure (indistinct) based and (indistinct) appropriate, what should be the relativity between 3 and 4. So, those are the issues that we think can and should be ironed out relatively quickly and consistently with the sort of timetable that your Honour has just identified.

PN101

In the meantime we have no difficulty, of course, with speaking with the private hospitals in conference to see if issues can't be narrowed in respect of proceeding 2. But it's important industrially and for other reasons that the aged care nurses should be wrapped up, as Mr Ward says. That's the position of the ANMF.

PN102

JUSTICE HATCHER: On the aged care timetable, practically speaking, we have at least until mid-May before anyone has to decide whether we can finalise these matters together or have to (indistinct).

PN103

MR HARTLEY: Yes.

PN104

JUSTICE HATCHER: So, is there any reason why in response to what the employers have said this afternoon, we shouldn't use, at least, that time to unpack the sort of discussion process which they contemplate? And then bring the matter back on then and see what's left, or what is in dispute?

PN105

MR HARTLEY: I can think of no reason why that shouldn't be done. But it might be worthwhile in the interim that the Commission expressing its expectations in the aged care case about what will be the subject matters that will be dealt with on the, call it, existing aged care timetable.

PN106

Otherwise one might have a circumstance where we have discussions, things advance but not far enough, and then we come back before your Honour and say, well, we didn't know what it was that we were meant to be dealing with on the existing timetable.

PN107

JUSTICE HATCHER: Yes. I mean, the difficulty with the aged care timetable is that, at least the Commission doesn't know yet what the federal government is going to say about operative date. They may say the operative date should be 1 July, then they say the operative date should be 1 July 2026, in which case we've got plenty of time.

PN108

MR HARTLEY: Yes, that's so.

PN109

JUSTICE HATCHER: So, until we find out that it's a bit hard to work out what timeframe we're working with.

PN110

MR HARTLEY: I'll see if my instructor signals wildly to me that I'm making a mistake. But the ANMF will proceed on the basis that those issues that I've articulated will be dealt with on the existing aged care timetable, and we'll prepare whatever submissions and evidence we need to prepare.

PN111

In the event that the commonwealth has said what it's said and it appears to the Commission that that course is inefficient then the matter could be convened for a mention and discussion could be had about what should happen. But I think with a view to ensuring that the aged care case can be finalised as quickly as possible, we will, unless the Commission indicates that it would prefer a different course, be proceeding on the basis that we will be making submissions about those points that I articulated in the context of the finalisation of the aged care case.

PN112

JUSTICE HATCHER: All right. So, on the assumption that you deal with those issues in the aged care case alone, how long would you need to put on material relating to that?

PN113

MR HARTLEY: I would need to take some instructions about that, your Honour, I'm sorry. I can do that and we can communicate with your Honour's chambers. But I'm not in a position to answer that on my feet, I'm afraid.

PN114

JUSTICE HATCHER: All right. The other issue I want to raise with you about the broader application in the hope that it might be able to be dealt with on an expedited basis following your discussion with the employers, is whether the ANMF can start working on a statement of, I'll call it contentions, about the work value issues that relies upon which part ultimately then be referred to the employers to see if an agreed statement of facts can be constructed as it was in the aged care case.

PN115

MR HARTLEY: Yes. Yes. In the aged care case, your Honour, that joint statement was the product of a conference, I think a rather lengthy conference over perhaps several days. And we, I think, speaking for myself and perhaps Mr Ward but he can tell me if he disagrees, see some value in a similar sort of document being produced.

PN116

JUSTICE HATCHER: I had the idea that your client would produce its factual contentions and then we could find out to what extent they're in contest or otherwise.

PN117

MR HARTLEY: Yes, your Honour. I can see that into that.

PN118

JUSTICE HATCHER: All right. Well, while you're all here, and I'll adjourn shortly for a short period, what I'm going to ask the parties to do is to construct a timetable for discussions which would allow the parties to come before me for a further conference, a report back and further conference if necessary, some time in the week beginning 13 May. And then we might be in a better position by then to decide whether the matters can go forward as one or they need to be bifurcated.

PN119

MR HARTLEY: Yes. I'll take some instructions, your Honour.

PN120

JUSTICE HATCHER: All right. So, while the parties talk about that and while the parties get instructions, Mr Hartley, can you get instructions about what sort of timetable you would need to put on for the statement of contentions I've discussed in respect of the broader application, and any material you would seek to rely upon in respect of the outstanding issues in the aged care case.

PN121

MR HARTLEY: Yes, your Honour.

PN122

JUSTICE HATCHER: All right. So, I'll leave it to the parties to have those discussions. I'll adjourn until not earlier than 3 o'clock but if the parties need longer they can have it. But what I'm looking for is some clear timetable for these discussions to start, and some substantive progress being made as to what are the issues in dispute, and hopefully whether they can be resolved.

PN123

MR HARTLEY: May it please the Commission.

PN124

JUSTICE HATCHER: All right. I'll now adjourn.

**SHORT ADJOURNMENT**

**[2.36 PM]**

**RESUMED**

**[3.16 PM]**

PN125

JUSTICE HATCHER: Mr Hartley, what's the position?

PN126

MR HARTLEY: Thank you, your Honour. If I can start with the whole of proceeding 2, my learned friends have indicated to me that the type of document that they would find useful with a view to informing discussion is a document which sets out more concretely, what is the ANMF's position in the proceeding 2 about what should be the rights for particular classifications and what should the classification structure look like.

PN127

So, for the most part, that's things that I've already said orally today but we will put that in a document. It will be a relatively short document. And we can give that to our friends for the purpose of informing discussions by 26 April. That's slightly different from the sort of document that I think your Honour had in contemplation which was a statement of contentions.

PN128

That sort of document, a long one, would take a long time to put together, several months, I'm instructed. And so, in light of my friends' position and they'll correct me if I'm wrong, but the document that would assist them for discussions is that shorter document of the kind that I've described. So, we'd proposed that an order of that kind be made but by the 26th, the ANMF produce a document to the respondents outlining the ANMF's position on rates and classification structure in proceeding 2.

PN129

That's the proposal for proceeding 2. For proceeding 2, as your Honour knows, there's an - - -

PN130

JUSTICE HATCHER: Sorry, I - - -

PN131

MR HARTLEY: Yes.

PN132

JUSTICE HATCHER: I've forgotten which is 1 and 2, so let's - - -

PN133

MR HARTLEY: Yes, 1 is aged care.

PN134

JUSTICE HATCHER: All right.

PN135

MR HARTLEY: 1 is aged care. I'm sorry, your Honour. For aged care, your Honour knows that there's an existing date in the timetable which is 26 April, by which the parties are to put on submissions about the draft determinations. By that same date, if it's convenient to the Commission, we'd put on any further evidence and submissions in relation to the three subjects that I raised, being what should be the C1A benchmark, three or four years - we will say three; what should be the position in respect of EN's, that's paragraph 205; and what should be the position in respect of increments and relativities between the classification structure. So, we'd just - - -

PN136

JUSTICE HATCHER: Sorry, can you just outline those three matter again, please.

PN137

MR HARTLEY: Yes. Perhaps it's – sorry, I'll just pull up the stage 3 decision. So, the issue in paragraph 204, which was what should be the classification that is benchmarked to C1A - - -

PN138

JUSTICE HATCHER: All right, benchmark. Yes.

PN139

MR HARTLEY: Yes. The issue in paragraph - - -

PN140

JUSTICE HATCHER: That's the three or four year degree.

PN141

MR HARTLEY: That's right, your Honour. The issue in paragraph 205, which is what should be the EN classification that's roughly approximate to PCW level 6.

PN142

JUSTICE HATCHER: Yes.

PN143

MR HARTLEY: And then 207(1) is what should be the increments within the classification structure, and in particular, what should be the relativity between the three year and four year RN degree. So, we'll address those three matters together with any other issues about the draft determinations, by the existing date which is 26 April. And that would require, we think, some further evidence, not just submissions.

PN144

JUSTICE HATCHER: So, you'll be filing any evidence, as well?

PN145

MR HARTLEY: Yes, your Honour.

PN146

JUSTICE HATCHER: If we just go to the first document, I assume that is, at this stage, a without prejudice document?

PN147

MR HARTLEY: Yes, your Honour.

PN148

JUSTICE HATCHER: Yes. All right. Then when you provide the first document, how long, having regard to the various competing time pressures, might the parties need then to discuss your document before a report back occurs to the Commission?

PN149

MR HARTLEY: I think your Honour mentioned a date around 13 May. I very much doubt that we'd have much substantive to report by then. But it might be that it's worthwhile checking in with the Commission at that time or shortly afterwards just to provide the Commission with an update. But my friends can

probably speak to that question better than me about how long they'll need to consider the document at that time.

PN150

JUSTICE HATCHER: All right. And to prepare the statement of contentions?

PN151

MR HARTLEY: If we then - - -

PN152

JUSTICE HATCHER: You'll need to do that in some shape or form anyway, so -  
- -

PN153

MR HARTLEY: We will. But we'd encourage the Commission not to make an order about that today because the level of detail on the subject matters that would go into that statement of contentions might depend on the nature of the discussions that we have based on the slimmer document. So, if the Commission is content we'd submit that it's efficient to park that issue until, perhaps the next time we're before the Commission.

PN154

JUSTICE HATCHER: All right. Anything further?

PN155

MR HARTLEY: No, not from me, your Honour.

PN156

JUSTICE HATCHER: All right. So, what do the employer parties say about that? In particular, if I simply listed the matter for report back on 17 May, we can simply do that via Teams. So, that's three weeks after you'll receive Mr Hartley's document. Will that be sufficient time for the parties at least to make a start on having discussions?

PN157

MR BROANDA: Your Honour, that seems a reasonable time period, at least for us to get an indicative position and indicate the degree of opposition that might arise from the slimmer document.

PN158

JUSTICE HATCHER: As I've indicated, it might be necessary by that time depending upon the commonwealth's funding submission to the aged care matter, to make a decision as to whether matters can stay together or whether they need to be separated. That's the difficulty that gives rise to.

PN159

MR BROANDA: Yes. Thank you, your Honour.

PN160

JUSTICE HATCHER: Does any other employer party want to say anything in relation to that?

PN161

SPEAKER: Nothing further except that I concur with the submissions that have been made.

PN162

SPEAKER: And nothing further from me, your Honour.

PN163

MR WARD: Your Honour, the only thing I would add is that Mr Hartley and I had discussed providing us with the 16 May (indistinct) or with any submissions forwarded, evidence in reply to the material (indistinct) matters he's raised which will follow on 26 April. If that could be in the timetable, as well. And then (indistinct) the Commission if we then continue to engage with the ANMF to see if we can reduce the matters that are in contest that need to be sorted out in relation to those three matters (indistinct).

PN164

JUSTICE HATCHER: All right. Just going back to your aged care document, Mr Hartley, I'm just wondering whether that should include a draft determination.

PN165

MR HARTLEY: So, the broader application document?

PN166

JUSTICE HATCHER: The second document which will be what course you're urging for aged care nurses.

PN167

MR HARTLEY: Yes. Perhaps we are at cross purposes. We'd be filing submissions in evidence on the 26th in respect of aged care. Is that your Honour's  
- - -

PN168

JUSTICE HATCHER: Yes. That's what I'm talking about.

PN169

MR HARTLEY: Yes.

PN170

JUSTICE HATCHER: So, I'm just wondering whether that should include a draft determination.

PN171

MR HARTLEY: We could do that, unless my instructor tells me that – yes. Yes, we can do that, your Honour.

PN172

JUSTICE HATCHER: All right. Yes.

PN173

MR BROANDA: Your Honour, to the extent that the applicant will be filing additional evidentiary material by 26 April - - -

PN174

JUSTICE HATCHER: In the aged care case.

PN175

MR BROANDA: In the aged care case, but to the extent that it sounds like that's going to cross over into the classification structure, I wonder whether the employers in the second proceeding in the Nursing Award might be given the opportunity to be heard and/or present evidentiary material if needed in response to the material that's foreshadowed to be filed by 26 April, to the degree it's going to, your Honour, potentially impact on the classification structure and as we've discussed earlier, how that may flow across into the second application, down the track.

PN176

JUSTICE HATCHER: Well, you can do that if you want. That may just simply speak from any fait accompli that emerges if you'd been heard about that. But anyway, Mr Hartley, what do you say to that?

PN177

MR HARTLEY: I don't have instructions about it, your Honour. My immediate reaction is the prospect of an outcome in the aged care industry affecting nurses in other industries would have been obvious to people in other industries for perhaps several years. And to the degree that it introduced inefficiency to allow parties very much at the heel of the hunt to now seek to be heard in respect of matters that they haven't previously sought to be heard about, we wouldn't want that to slow down the process.

PN178

JUSTICE HATCHER: I think you're prepared to comply with Mr Ward's, dated 16 May? That would be the condition of it. I mean, I'm happy to direct that any party who thinks they've got a sufficient interest can respond to the ANMF's submissions, et cetera, on classification in the aged care matter by 16 May, if that's what you want to do.

PN179

MR BROANDA: I understand the point your Honour makes. It's difficult to know, not having seen the evidence or not knowing what that evidence might look like around the timetabling that's involved. Probably at this stage, your Honour, we just wanted to recognise that there may be material that's file but we don't yet know what that could be, that may have consequences that we'd like to address.

PN180

JUSTICE HATCHER: Yes. Well, I'm simply raise it if you want to do that in the aged care matter, the date will have to be 16 May.

PN181

MR BROANDA: I understand, your Honour.

PN182

JUSTICE HATCHER: All right. So, I'll simply make a direction that any interested party, or any party with a sufficient interest can respond to the ANMF's



material by that date. We'll then have the report back on the following day and if there's any new matter you want to raise or any new approach you want to take, we can assess it then. It's a bit hard at this stage to work out where we're going until you've had those discussions.

PN183

MR BROANDA: Yes. Thank you, your Honour.

PN184

JUSTICE HATCHER: All right. Anything else?

PN185

MR HARTLEY: No, your Honour.

PN186

JUSTICE HATCHER: Thank you, everyone, for your attendance today. I'll issue written directions giving effect to what's been proposed, and subject to that we'll now adjourn.

**ADJOURNED INDEFINITELY**

**[3.27 PM]**



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE HATCHER, PRESIDENT**

**AM2024/11**

**AM2021/63**

**s.158 - Application to vary or revoke a modern award**

**Application by Australian Nursing and Midwifery Federation  
(AM2024/11)  
(AM 2021/63)**

**Nurses Award 2020**

**Sydney**

**9.30 AM, FRIDAY, 17 MAY 2024**

**Continued from 04/04/2024**

PN1

JUSTICE HATCHER: Good morning. I will take the appearances. Mr McKenna, you appear with Mr Hartley and Ms Jones for the ANMF?

PN2

MR J McKENNA: If your Honour pleases. Thank you.

PN3

JUSTICE HATCHER: Thank you.

PN4

Mr O'Grady and Ms Leoncio, you appear for the Australian Private Hospitals Association, Catholic Health Australia, Day Hospitals Australia, Healthscope Operations and Adelaide Community Healthcare Alliance; is that right?

PN5

MR C O'GRADY: Yes, your Honour.

PN6

JUSTICE HATCHER: Yes, and Mr Ward, you appear for Australian Business Industrial and ACCP; is that right?

PN7

MR N WARD: Yes, your Honour. Thank you.

PN8

JUSTICE HATCHER: All right. Look, I might turn to you, Mr O'Grady. Firstly, you would have, or your clients would have received the without prejudice document from the ANMF which was the subject of a first direction on 4 April.

PN9

MR O'GRADY: Yes. That's right.

PN10

JUSTICE HATCHER: Have your clients had a chance to consider that?

PN11

MR O'GRADY: We have had a chance to see it. We haven't come to any conclusions about it, your Honour. It's, without going into the detail, it's at a very high level.

PN12

JUSTICE HATCHER: I see. Well, I have read the submissions which you filed yesterday and do I understand from your proposed directions that your clients have a preference that the Nurses Award issues, as they inter-relate with the Aged Care proceedings, should be dealt with first before the rest of the award is dealt with?

PN13

MR O'GRADY: Yes, your Honour.

PN14

JUSTICE HATCHER: Is that what I think it is?

PN15

MR O'GRADY: Yes, your Honour. As we understand the stage 3 decision, at 207 and 208, the Full Bench was conscious of the fact that there may be an impact on the Nurses Award generally from fixing the classifications in respect of aged care. In our submission, there are some fundamental differences between the two sectors and what we're proposing is a hearing to identify those differences for the Full Bench so that that could then be taken into account, either in fixing the classifications in the aged care sector, or alternatively, as we have foreshadowed, by ring fencing, if you like, those classifications so that they don't flow on to nurses more generally in the hospital sector.

PN16

JUSTICE HATCHER: But we have an application to deal with the Nurses Award more generally which obviously your clients are going to have to confront. One of the purposes in having the ANMF send to you the without prejudice document was to explore whether the entire award could be sorted out by way of a single and perhaps consensual process. Are you ruling that out?

PN17

MR O'GRADY: Well, I don't have instructions on that issue, your Honour, but my clients have seen the document. I don't have instructions really beyond the fact that what is proposed is not acceptable to my clients at this stage.

PN18

JUSTICE HATCHER: Okay.

PN19

Mr Ward, what do you say about the proposed directions of Mr O'Grady's clients?

PN20

MR WARD: I would simply start here, your Honour. In relation to aged care we had three discrete issues to resolve with the ANMF. My clients have resolved one by consent. They have resolved one, in principle by consent, and there's a wording issue to be resolved.

PN21

You made directions on the last occasion for the filing of evidence and submissions to resolve those matters. Everybody was invited to file, including Mr O'Grady's clients. The ANMF filed in accordance with the directions on the 26th. We filed in accordance with the directions on 16 May.

PN22

Our view is quite simple. We think there's only, effectively, one issue left between my clients and the ANMF in the aged care matter. We would ask that that be set down for hearing and dealt with.

PN23

I think it's time to cut us away from the Nurses Award proper. If that means we end up with a distinct classification structure sitting in the Nurses Award for aged care sobeit, but my clients are keen to have the aged care case finished, and it would seem that - - -

PN24

JUSTICE HATCHER: Yes.

PN25

MR WARD: It would seem there's very little. We probably only need half a day of hearing for Mr McKenna and I to dispose of the residual matter.

PN26

JUSTICE HATCHER: Yes. All right. Of course there's a few inter-related issues which here we're bouncing about which are hard to put together. So we have to determine the operative date issue for the aged care increases as a whole and perhaps we need to determine that issue first before we can finalise the classification because there may be issues of time scale involved.

PN27

MR WARD: I would accept that, your Honour.

PN28

JUSTICE HATCHER: And it may be, notwithstanding what the stage 3 decision said, it might be easier to, having heard what the attitude of the respondents to the Nurses Award generally are, maybe we should consider reuniting the matters, but I will speak to the panel about that.

PN29

MR WARD: Your Honour, I should, just for clarity, I should just indicate that ABI does have an interest outside aged care in the Nurses Award, in particular, in relation to members who employ many thousands of agency nurses, and also perhaps unsurprisingly, we have an interest in occupational health nurses.

PN30

JUSTICE HATCHER: All right.

PN31

Well, Mr McKenna, what do you think should happen now?

PN32

MR McKENNA: For clarity, your Honour, in terms of the proposed orders by Mr O'Grady's clients, that those are opposed by the ANMF. Order 1(a) mirrors the material that was due to be filed yesterday and I don't really see why an extra two months should be provided for that, particularly in circumstances where the order was made for the filing of reply material at the request of one of Mr O'Grady's clients on 4 April.

PN33

In respect to the second issue, dealing with the extent to which issues outside the aged care have potential flow-on effects, the panel in the stage 3 decision made

reference to a risk of a fait accompli arising. In our submission, that rises no higher than a risk.

PN34

The applications for aged care and the application for the broader nurses and midwives proceeding relate to what are discrete sets of classifications. The effect of the earlier decision in the aged care proceeding has been to separate out the classifications, so we would urge the finalisation of the aged care proceeding, including as to resolve the outstanding nurses, enrolled nurse and registered nurse issues, and of course, those issues, once determined, in a further proceeding it would be open to Mr O'Grady and his client to come along and say to the Commission that different findings should be made in a subsequent proceeding, and of course, the Commission would have to be satisfied. The panel would have to be satisfied of the matters in section 157.

PN35

So the private hospitals have had an opportunity to respond to the outstanding ER and RN issues. They haven't taken that up. Insofar as we understand it, there is, as things stand, only - there is limited prospect of being able to resolve the broader nurses and midwives application on a consent basis quickly and so that does leave the increases sought for aged care nurses hanging, and one other matter, of course, that your Honour would be aware of that has arisen since we were last before you, is the position of the Commonwealth, and what the Commonwealth has said is that it is, in effect, awaiting clarification from the panel as to the position for aged care nurses and midwives before it commits, makes a final commitment for those.

PN36

So our submission is that the aged care proceedings - nurses and midwives and aged care proceeding should be reunited with the applications in respect of the Aged Care Award and the SCHADS Award. The outstanding ER and RN issues should be resolved.

PN37

As Mr Ward has indicated, there isn't any substantial movement there. There is now only a very limited area of dispute as between the ANMF and the joint employers and they are, in our submission - - -

PN38

JUSTICE HATCHER: So just to sum this up. So there appears to be a consensus that we should finish the nurses' issues in the aged care case first and then turn to the rest of your work value application. So your difference with Mr O'Grady's clients is one of the timing. Is that - - -

PN39

MR McKENNA: It is. We would urge the Commission to finalise the aged care proceeding as quickly as possible. There are obviously a number of matters outstanding, one of which was alluded to, or arises from a matter that your Honour was informed of this morning. VHIA are engaged in bargaining with the ANMF and the Victorian Public Sector. That includes aged care. My instructions are that that is having a negative impact on bargaining and a resolution of these issues would have a positive impact on those negotiations.

PN40

So there are a number of reasons, and of course, none the least of which is that it's undesirable for gender-based undervaluation to continue, particularly in light of the changed objectives to the Act with respect to the need to address or the need to achieve gender equality. The Commission has made findings about that and we would urge the Commission to resolve those matters as quickly as possible.

PN41

JUSTICE HATCHER: Well, if we turn to your broader work value application. What do you say should happen to that; that is, in the event that we program the aged care matters for finalisation I would be inclined to also start programming that matter?

PN42

MR McKENNA: Yes.

PN43

JUSTICE HATCHER: Go ahead.

PN44

MR McKENNA: I'm sorry, your Honour. I don't mean to cut you off.

PN45

JUSTICE HATCHER: No. Go ahead. So I just want to hear from you as to what the program should be for the work value application.

PN46

MR McKENNA: Your Honour, we do remain supportive of any attempts to limit or narrow the issues there. I take it, from what Mr O'Grady has said, that that is a process that hasn't yet really been carried through by his clients and, presumably, further consideration will be given to that. We remain open to a process that involves discussions with his clients to try and narrow the issues and it might be appropriate to pursue that path further before full programming of that matter occurs.

PN47

JUSTICE HATCHER: Well, we can do that simultaneously with at least taking the first step of your client filing its case. If we did that, how long might your client need?

PN48

MR McKENNA: As your Honour would be aware, it's a large case. The short answer is six months, particularly as your Honour would be aware, we would be wishing to file evidence on the application of the tool, (indistinct) tool, to identify any skills. That's all in process. So in short, evidence and submissions in six months or thereabouts, your Honour.

PN49

JUSTICE HATCHER: All right. One alternative course, which I flagged on the last occasion, was whether, as a first step, your client could file an outline of contentions of fact and law, and then ask for a response from the various employer

respondents to see whether that leads to some substantial agreement about the facts which might obviate the need for a substantial evidentiary hearing. If we chose that path, how long might you need to put that together?

PN50

MR McKENNA: Well, your Honour, I probably need some instructions on that, but it might be more efficient - I guess it's a bit of a chicken and the egg - but it might be more efficient to have some discussions first, and that might then enable identification of narrowing of the issues and then file some sort of contentions of fact and law, but otherwise, I can seek some instructions as to the time that we think it would take to prepare that.

PN51

JUSTICE HATCHER: All right. Well, if you can just seek those instructions and send me a note.

PN52

Now, going back to you, Mr O'Grady. So the directions I made on 4 April contemplated the capacity to file submissions and evidence on the substantive issues by yesterday so why would I allow some further months for you to do that which will delay the finalisation of the aged care case?

PN53

MR O'GRADY: Well, really only for this reason - - -

PN54

JUSTICE HATCHER: I'm sorry, let me just say this. I mean because the simple fact is that, as I recall it, the unions are seeking an operative date which is way before that, so that would frustrate the finalisation of the aged care case.

PN55

MR O'GRADY: Well, we accept that, your Honour. We took from one of the comments you made on 4 April that the issue of timing would turn, to a large extent, on what the Commonwealth said about funding, and the position is that the Commonwealth has fixed a start date for funding in respect of non-nurses of 1 January 2015(sic) for 50 per cent and then - I'm sorry, 2025, and then 1 January 2026 for the remainder.

PN56

It was with that in mind that we thought that there would be an opportunity to ventilate the differences between the two sectors prior to 1 January 2025 and that would not impact upon the flow-on of the wage increases to nurses. So that's why we fixed the timing that we did, and given the variety of matters that would need to be addressed, we weren't in a position to put on substantive material given the deadline that your Honour set for yesterday.

PN57

JUSTICE HATCHER: But, Mr O'Grady, I'm just trying to understand what is the case you want to present in respect to aged nurses; that is, if you're saying that other nurses are different, that's the case you would run down the track, isn't it? Why would you run that case in respect of the aged care finalisation?



PN58

MR O'GRADY: Well, our concern, your Honour, was to address the issue that we thought emerged from paragraphs 207 and 208 of the stage 3 decision; namely, the capacity for the classifications structure put in place in respect of aged care to flow on to the hospital sector. Now, if it be the case – and I understand Mr McKenna to be suggesting that it is the case – that there's not going to be any argument that there should be a flow-on of that classification in respect of the hospital sector, then that addresses my client's concerns.

PN59

JUSTICE HATCHER: Well, I don't think that's the point, with respect. I fully anticipate there will be such an argument, but what are you going to say in respect of aged care nurses about that? We're not determining that issue in the aged care case.

PN60

MR O'GRADY: I accept that, your Honour. Well, the point - - -

PN61

JUSTICE HATCHER: I mean let me make it clear. It seems to me that if you run that contemplated case in the aged care proceedings and it's not accepted, then there will be a fait accompli. That seems to logically follow, doesn't it?

PN62

MR O'GRADY: Yes, and we would run a merits case to suggest that there should not be such a fait accompli. It was really to avoid the Commission - - -

PN63

JUSTICE HATCHER: Sure, but that obviates the purpose of separating out the aged care case because you then turn the aged care case into the decision key for the whole case.

PN64

MR O'GRADY: Well, it is a significant component in respect to the whole case. There is going to be some matters that would not have to be dealt with in the hearing that we were talking about. It was really designed to deal with this question of, or avoiding a situation where the classification structure put in place in respect of aged care would be ill adapted to the hospital sector and yet would seem to flow on to the hospital sector, and with a view to putting before the Commission material to enable that to be taken into account before finalising the classification structure in aged care.

PN65

JUSTICE HATCHER: And when you say 'ill adapted', what do you mean by this? I mean I'm trying to work out whether this is an issue of rates of pay or an issue about design or both.

PN66

MR O'GRADY: Both, and the focus would be on the latter in the context of the hearing that we were putting forward.

PN67

JUSTICE HATCHER: Okay.

PN68

Well, Mr McKenna, can you obtain your instructions. As I think most of the parties will know, there's a further directions hearing in the aged care matter next week so I think what I will do is we will conduct that directions hearing which will lead to a program for the finalisation of an operative date and then we will try to put the bigger picture back together to see where this all lands. So we will conduct that aged care directions hearing next week and then I will have the panel consider what course should be taken with the matters we have discussed today.

PN69

MR McKENNA: As your Honour pleases.

PN70

JUSTICE HATCHER: All right. Is there anything else that anyone wishes to raise? So I thank you for your attendance and we will now adjourn.

**ADJOURNED TO A DATE TO BE FIXED**

**[9.52 AM]**



# Notice of Listing

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<b>Title of Matter:</b>	Application by the Australian Nursing and Midwifery Federation
<b>Section:</b>	s.158 - Application to vary or revoke a modern award
<b>Subject:</b>	<i>Nurses Award 2020</i>
<b>Matter Number:</b>	AM2024/11

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## Listing Details:

The above matter is listed for **directions**, by video using Microsoft Teams, before Justice Hatcher, President at:

**10:00 AM (AEDT)**  
**Thursday, 29 February 2024**

The dial-in details for the proceeding are:

### **Microsoft Teams** [Need help?](#)

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Please join the Microsoft Teams meeting **10 minutes before the listed time**, so that we can take your appearances before the proceeding commences. We will admit you from the lobby when we are ready to take appearances.

Please confirm who will appear in the proceeding on behalf of your organisation by email to [chambers.hatcher.j@fwc.gov.au](mailto:chambers.hatcher.j@fwc.gov.au) by **5:00 pm (AEDT) on Tuesday, 27 February 2024**.

Participants in a Microsoft Teams proceeding must have a functioning videoconferencing device. If you would like to check your device and camera before the proceeding, please contact chambers by **5:00 pm (AEDT) on Tuesday, 27 February 2024** to arrange a test dial.

**Inquiries:**

All inquiries relating to this notice are to be directed to Edrea Venal / Mahmoud Al Rifai.  
Phone: (02) 9308 1812 | Email: [chambers.hatcher.j@fwc.gov.au](mailto:chambers.hatcher.j@fwc.gov.au).

**Fair Work Commission, 19 February 2024 9:35AM**



# Notice of Listing

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**Title of Matter:** Application by Australian Nursing and Midwifery Federation  
**Section:** s.158 - Application to vary or revoke a modern award  
**Subject:** *Nurses Award 2020*  
**Matter Number:** AM2024/11

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## Listing Details:

The above matter is listed for **conference**, in person, before Justice Hatcher, President, at:

**2:00 PM (AEDT)**  
**Thursday, 4 April 2024**  
**Fair Work Commission**  
**11 Exhibition Street**  
**Melbourne**

Please confirm who will appear in the proceeding on behalf of your organisation by email to [chambers.hatcher.j@fwc.gov.au](mailto:chambers.hatcher.j@fwc.gov.au) by **4:00 pm (AEDT) on Friday, 29 March 2024**.

**NOTE:** If you cannot attend the conference in person, you may request to attend by video using Microsoft Teams by emailing the chambers of Justice Hatcher by **4:00 pm (AEDT) on Friday, 29 March 2024**.

## Inquiries:

All inquiries relating to this notice are to be directed to Edrea Venal / Mahmoud Al Rifai.  
Phone: (02) 9308 1812 | Email: [chambers.hatcher.j@fwc.gov.au](mailto:chambers.hatcher.j@fwc.gov.au).

**Fair Work Commission, 29 February 2024 11:24AM**



# DIRECTIONS

*Fair Work Act 2009*

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

## **Applications by Australian Nursing and Midwifery Federation**

(AM2021/63, AM2024/11)

### **NURSES AWARD 2020**

[MA000034]

JUSTICE HATCHER, PRESIDENT

MELBOURNE, 4 APRIL 2024

*Applications to vary the Nurses Award 2020 – work value case.*

1. In relation to matter AM2024/11, the applicant is to serve on the interested parties who appeared at the conference today a without-prejudice document setting out its proposed classification structure in the *Nurses Award 2020* and the appropriate minimum rates of pay for each classification therein, by **5:00 pm (AEST) on Friday, 26 April 2024**.
2. Any other interested party may request the without-prejudice document referred to in item 1 of these directions from the applicant.
3. In relation to matter AM2021/63, the applicant is to file, by email to [awards@fwc.gov.au](mailto:awards@fwc.gov.au), a draft determination, submissions and evidence in relation to the following outstanding issues:
  - a. whether the registered nurse level 1, year 1 benchmark minimum rate of pay (aligned with classification C1(a) in the C10 Metals Framework) should apply to a registered nurse holding a three-year or a four-year university degree (refer paragraph [204] of the *Stage 3 decision* [\[2024\] FWC FB 150](#));
  - b. which enrolled nurse classification should correspond to the new Level 6 – Team Leader direct care employee classification in the *Aged Care Award 2010* (refer paragraph [205] of the *Stage 3 decision*); and
  - c. what the minimum rate increments within each classification of registered and enrolled nurses, and the relativities between those classifications, should be, including the relativity between a registered nurse holding a three-year university degree and one holding a four-year university degree (refer paragraph [207(1)] of the *Stage 3 decision*);

by **5:00 pm (AEST) on Friday, 26 April 2024**.

4. Any interested party may file, by email to [awards@fwc.gov.au](mailto:awards@fwc.gov.au), submissions and evidence in response to the material filed pursuant to item 3 of these directions by **5:00 pm (AEST) on Thursday, 16 May 2024**.
5. The applications will be listed for report-back at **9:30 am (AEST) on Friday, 17 May 2024** by video using Microsoft Teams.



PRESIDENT

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# Notice of Listing

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**Title of Matter:** Applications by Australian Nursing and Midwifery Federation (145V)  
**Section:** s.158—Application to vary or revoke a modern award  
**Matter Numbers:** AM2021/63 and AM2024/11  
*Nurses Award 2020*

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## Listing Details:

The above matters are listed for **report-back**, by video using Microsoft Teams, before Justice Hatcher, President at:

**9:30 AM (AEST)**  
**Friday, 17 May 2024**

The dial-in details for the proceeding are:

## Microsoft Teams [Need help?](#)

### [Join the meeting now](#)

Meeting ID: 499 106 568 680

Passcode: meqAZn

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## Dial-in by phone

[+61 2 9053 4920,926659438#](tel:+61290534920926659438) Australia, Sydney

[Find a local number](#)

Phone conference ID: 926 659 438#

## Join on a video conferencing device

Tenant key: [88412664@t.plcm.vc](mailto:88412664@t.plcm.vc)

Video ID: 133 968 068 4

[More info](#)

Please join the Microsoft Teams meeting **10 minutes before the listed time**, so that we can take your appearances before the proceeding commences. We will admit you from the lobby when we are ready to take appearances.

Please confirm who will appear in the proceeding on behalf of your organisation by email to [chambers.hatcher.j@fwc.gov.au](mailto:chambers.hatcher.j@fwc.gov.au) by **5:00 pm (AEST) on Tuesday, 14 May 2024**.

## Inquiries:

All inquiries relating to this notice are to be directed to Edrea Venal / Mahmoud Al Rifai.  
Phone: (02) 9308 1812 | Email: [chambers.hatcher.j@fwc.gov.au](mailto:chambers.hatcher.j@fwc.gov.au)

**Fair Work Commission, 4 April 2024**





# DIRECTIONS

*Fair Work Act 2009*

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

## **Applications by the Australian Nursing and Midwifery Federation**

(AM2021/63 and AM2024/11)

### **NURSES AWARD 2020**

[MA000034]

JUSTICE HATCHER, PRESIDENT

SYDNEY, 8 JULY 2024

*Application to vary the Nurses Award 2020 – work value case – outstanding issues from the Stage 3 decision [2024] FWCFB 150 concerning registered and enrolled nurses working in aged care – operative date and phasing-in of wage rate increases.*

Further to the directions hearing on Friday, 17 May 2024:

1. The issues of classifications, rates of pay, operative date and phasing-in in respect of registered and enrolled nurses in the aged care sector, and any other matters necessary to give effect to the *Stage 3 Aged Care decision* ([2024] FWCFB 150), will be dealt with in a separate hearing.
2. Any submissions, evidence and draft determinations concerning these issues from parties other than the Australian Nursing and Midwifery Federation (ANMF), including any material in response to the submissions, evidence and draft determination filed by the ANMF on 26 April 2024 in matter no. AM2021/63, shall be filed by **5:00 pm (AEST) on Monday, 26 August 2024.**
3. The ANMF shall file any evidence and submissions in reply by **5:00 pm (AEST) on Monday, 9 September 2024.**
4. The matters are listed for a three-day in-person hearing in Melbourne concerning the identified issues **from Tuesday, 17 to Thursday, 19 September 2024.**
5. Parties are granted liberty to apply to vary the above directions.



PRESIDENT

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# Notice of Listing

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<b>Title of Matter:</b>	Application by Australian Nursing and Midwifery Federation (145V)
<b>Section:</b>	s.158 - Application to vary or revoke a modern award
<b>Subject:</b>	Application to vary the <i>Nurses Award 2020</i> – work value case – outstanding issues from the Stage 3 decision [2024] FWCFB 150 concerning registered and enrolled nurses working in aged care – operative date and phasing-in of wage rate increases
<b>Matter Number:</b>	AM2021/63 and AM2024/11

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## Listing Details:

The above matters are listed for **hearing, in person, before an Expert Panel for pay equity in the Care and Community Sector** at:

**10:00 AM (AEST)**  
**Tuesday, 17 September 2024**  
**Fair Work Commission**  
**11 Exhibition Street**  
**Melbourne**

**10:00 AM (AEST)**  
**Wednesday, 18 September 2024**  
**Fair Work Commission**  
**11 Exhibition Street**  
**Melbourne**

**10:00 AM (AEST)**  
**Thursday, 19 September 2024**  
**Fair Work Commission**  
**11 Exhibition Street**  
**Melbourne**

## DETAILS

Please confirm who will appear in the proceedings on behalf of your organisation by email to [chambers.hatcher.j@fwc.gov.au](mailto:chambers.hatcher.j@fwc.gov.au) by **4:00 PM (AEST) on Tuesday, 10 September 2024**.

## Inquiries:

All inquiries relating to this notice are to be directed to Edrea Venal / Mahmoud Al Rifai.  
Phone: (02) 9308 1812 | Email: [chambers.hatcher.j@fwc.gov.au](mailto:chambers.hatcher.j@fwc.gov.au)

**Fair Work Commission, 8 July 2024**

**URGENT**



## Notice of Listing

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<b>Title of Matter:</b>	Application by Australian Nursing and Midwifery Federation-Victorian Branch (145V-VIC)
<b>Section:</b>	s.158 - Application to vary or revoke a modern award
<b>Subject:</b>	Applications to vary the <i>Nurses Award 2020</i>
<b>Matter Numbers:</b>	AM2021/63, AM2024/11

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### Listing Details:

The above matter is listed for **directions**, by video using Microsoft Teams, before Justice Hatcher, President at:

**9:00 AM (AEST)**  
**Thursday, 12 September 2024**

The dial-in details for the proceeding are:

**Microsoft Teams** [Need help?](#)

[Join the meeting now](#)

Meeting ID: 487 894 850 596

Passcode: agC5gx

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### Dial in by phone

[+61 2 9053 4920, 828408354#](#) Australia, Sydney

[Find a local number](#)

Phone conference ID: 828 408 354#

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Tenant key: [88412664@t.plcm.vc](#)

Video ID: 137 213 406 4

[More info](#)

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**Fair Work Commission, 11 September 2024**