

**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  
REPLY SUBMISSIONS ON “*CLASSIFICATION AND ALLOWANCE ISSUES*”**

1. These are the ANMF’s submissions filed pursuant to Order 11 made by Hatcher J on 27 October 2023, in reply to material filed by other parties in relation to “*classification and allowance issues*” (*i.e.*, issues 1–16 of the revised Stage 3 Issues summary published on 02 August 2023) (“**Issues Document**”).
2. Accordingly, these submissions are further to the ANMF’s primary submissions concerning classification and allowance issues dated 01 November 2023 (“**ANMF Classification [X]**”), and responsive to the submission on classification and allowance issues of:
  - (1) the HSU dated 01 November 2023 (“**HSU Classification [X]**”); and
  - (2) the Joint Employers dated 01 November 2023 (“**JE Classification [X]**”).
3. It seems to the ANMF that, rather than responding under the same headings that it used in the ANMF Classification submissions, it will be easiest for these submissions to (broadly) follow the structure of the submissions to which reply is made.
  - A. HSU Classification submissions**
  4. At a high level, the ANMF’s response to the HSU Classification addresses the following four points, addressed under separate sub-headings below.
  5. *First*, at a high level, the reason why the ANMF’s (somewhat less prescriptive) classification descriptions are preferable to the HSU’s (somewhat more prescriptive) classification descriptions. This will involve some analysis of the joint report of Professors Charlesworth and Meagher.
  6. *Second*, a comment on the part of the HSU Classification submission which identifies and considers differences between the opinion of Professors Charlesworth and Meagher, and the position of the HSU (HSU Classification [19]–[26])
  7. *Third*, a comment on the tables underneath HSU Classification [17]–[18] which, as far as the ANMF can discern, are not accurate.
  8. *Fourth*, a comment on the differences between the HSU’s proposal for a further 10 per cent increase in award wages for direct care workers and the ANMF’s proposal.

### **A.1 The advantage of less-prescriptive classification descriptors**

9. Of course, only the ANMF proposes a variation to the *Nurses Award*, and so all of the analysis that follows of the difference between the HSU and the ANMF is in relation to the *Aged Care Award*. Though, the submissions set out below also explain the approach taken by the ANMF in relation to (in particular) the AIN classifications in the *Nurses Award*.
10. One of the larger differences between the HSU's and the ANMF's proposed classifications is the level of detail. Taking as equivalents Level 4 (on the HSU draft determination) and Grade 3 (on the ANMF draft determination)—the Cert III level:
  - (1) the ANMF's classification is constituted by five bullet points and 89 words;
  - (2) the HSU's classification is 774 words over three pages.
11. This may reflect differences in the approach to preparation of the two documents. The HSU's document was developed in consultation with Professors Charlesworth and Meagher (HSU Classification [8]). The ANMF's approach involved consultation with academics, but also professional officers, industrial officers, and directors of nursing.<sup>1</sup> It is the product, then, of various inputs—some more theoretical, some more pragmatic.
12. The advantage of the ANMF's approach is the pragmatic one: it will be easier for employers and employees to understand and apply in workplaces. It will minimise disputes about classifications. This advances the modern award objective in s 134(1)(g)—that modern awards are (*inter alia*) simple and easy to understand.
13. It is, of course, necessary as part of a work value case that the nature of the work, the level of skill or responsibility involved in doing it, and the conditions in which it is done, be recognised and valued. That includes recognition and valuation of “*hidden skills*.” That has been a big part of the ANMF's case. It is not, however, necessary—nor, in the ANMF's submission, desirable—that, those matters having been identified and valued, they be included in great detail in a classification structure.

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<sup>1</sup> Statement of Annie Butler dated 01 November 2023, [89].

14. Subject to a few qualifications, the ANMF agreed with the proposition expressed in question 7 of Background Document 10, being this:

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

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

15. Both proposed structures (HSU / ANMF) provide a career-based classification structure. The differences between them relate to the final two bullet points.

16. As to the second, what is appropriate (in the ANMF’s submission) is that the skills, qualifications, and experience—rather than a lengthy list of the tasks that a person may be required to carry out, and the environment in which it is performed—be addressed. This is done, even if at a high-ish level, in the ANMF’s classification structure. The HSU’s classification structure goes well beyond skills, qualifications, and experience. For example, in “*Work environment*,” it refers to such matters as emotional demands from residents and residents’ families. This is doubtless relevant to the value of the work performed; it is not clear, however, that it assists in enabling employees and employers to figure out whether a person is classified at one level or another.

17. That feeds into the third bullet point—clarity of transition between one level and another. The central differences between the HSU’s Level 4 and its Level 5 are in the “*Description of work*,” “*Qualifications and experience*,” and “*Accountability and extent of authority*” headings. Within these (and in relation to personal care work):

- (1) at level 5 within “*Description of work*,” a reference to administration of medication is added, as is a reference to provision of support, induction, and mentoring of new workers;
- (2) at level 5, within “*Qualifications and experience*,” there is a further reference to holding the relevant unit of competency for medication administration, and to having on-the-job training in mentoring and supporting other employees;

- (3) at level 5, within “*Accountability and extent of authority*,” there are a variety of changes in relation, primarily, to the degree of accountability for residents’ care, and again to training.
18. But within “*Specialist knowledge and skills*,” the only changes are:
  - (1) from “*Knowledge and skills to induct and support other aged care employees to acquire relevant skills*,” to “*Knowledge of inducting and assisting other aged care employees acquire relevant skills*”; and
  - (2) the addition of a reference to “*profound*” cognitive impairment in point 6 (where moderate impairment already was listed), and the addition of an example: “*such as the skills to understand ... or agitated*.”
  - (3) “*Sound communication and interpersonal skills*” becomes “*Well-developed communication and interpersonal skills*.”
19. In “*Work environment*,” the changes are also minor—reflecting, in the ANMF’s submission accurately, that Level 4 and Level 5 employees will basically be working in the same environment.
20. There are two points to make about this.
21. *First*, it will not assist the practical application of the classification structure that it is necessary carefully to read three pages for each level in order to figure out what are the changes between Level 4 and Level 5. The ANMF substantially achieves the same distinction by the addition in Grade 4 of bullet points 2, 4, and 9 (accountability, supervision, assisting in medication administration), and its difference from Grade 3 is immediately apparent to the reader.
22. *Second*, if large parts of a classification structure are substantially unchanged as between levels (e.g., “*Specialist knowledge and skills*” and “*Work environment*” as between Levels 4 and 5 in the HSU’s structure), that will not be of assistance in identifying the clear means of transition between levels, nor the skills that will inform the reader whether a given employee is at one level or a different one.
23. In short, the HSU’s classification structure is (respectfully) a useful description of the kinds of things that cause the work value of the workers to be what it is (*i.e.*, it identifies the nature of the work, the conditions in which it is done, *etc.*). But, in the ANMF’s

submission, that is not the most-important function of classifications. The work value considerations result in the fixing of a wage at a particular level. Thereafter, the most important thing is that the classification structure be capable of practical application in workplaces. This is why the ANMF's approach would be preferred over the HSU's.

**A.2 The difference between the Professors and the HSU**

24. As the HSU identifies, there are two differences between its draft determination and the opinions expressed by Professors Charlesworth and Meagher.
25. *First*, a difference as to the appropriate analogue in the Metals C10 framework for HSU Levels 5, 6, and 7.
26. *Second*, that the Professors proposed considerable decompression of the classification structure, resulting (at the top end) in increases of around 50 per cent on the current settings; whereas, although the HSU also proposes decompression, its decompression is not quite so pronounced.
27. As to the first of these issues, in the ANMF's submission, the Professors' opinion is closer to being correct. The difference between the HSU and the Professors is summarised in the following table:

Level	Qualification in HSU classification	C10 level proposed by HSU	C10 level proposed by Professors
5	Cert III plus med-comp	C7	C8
6	Cert IV	C5	C6
7	Advanced Diploma	C2(a)	C4

28. The Metal Industry classification structure is reflected in the table at [562] of the *Teachers' Decision* (“**C10 Framework**”).<sup>2</sup> In the C10 Framework, the applicable C10 levels for the qualifications listed in the second column above are, respectively:
- (1) C9 or C8 (because C7 is Cert IV);
  - (2) C7, or at highest C6 (because C5 is Diploma);
  - (3) at highest, C3 (the Advanced Diploma level).
29. The ANMF’s proposal differs from the HSU’s in terms of what qualification should apply at these levels.<sup>3</sup> At HSU Classification [21], the HSU submits that its “*proposal reflects the current indicative qualifications for each level in the Aged Care Award.*” It does not. The ANMF’s proposal, on the other hand, does. But even if the HSU’s changes were to be adopted, the HSU’s proposal is out of alignment with the C10 Framework. The Professors’ alignment is closer, but even then they are arguably misaligned at Cert IV level.
30. As to the *second* of the issues, the HSU’s submission in HSU Classification [23]–[26] broadly invites the Commission to adopt the Professors’ approach to benchmarking and decompression. This approach could probably be described as a re-benchmarking of each classification to its (uncompressed) C10 Framework equivalent (plus a further increase), with consideration then being necessary to wage crossover between higher-level AINs / PCWs and Enrolled Nurses.<sup>4</sup>
31. Decompression is something to which the Commission may wish to give consideration. If decompression were to occur, it would probably best fit within step 3 of the C10 Metals Framework Alignment Approach identified in the *ACT Child Care Decision* (see ANMF Classification [12])—*i.e.*, upward adjustment as necessary after fixing a key classification (step 1), and adjusting other wages consistently with existing internal relativities (step 2).

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<sup>2</sup> *Independent Education Union of Australia* [2021] FWCFB 2051.

<sup>3</sup> That is, the ANMF proposes that Grade 4A / Level 6 is still below Cert IV level, whereas the HSU proposes that as the Cert IV level; the ANMF proposes that Grade 5 / Level 7 be the Cert IV level; the HSU proposes that as an Advanced Diploma level.

<sup>4</sup> Joint Report of Professors Sara Charlesworth and Gabrielle Meagher dated 30 October 2023, [50]–[53].

32. As was recognised in the *Aged Care Award 2010 (2022)* 319 IR 127; [2022] FWCFB 200 (“**Stage 1 Decision**”), subject to limitations, the C10 Metals Framework Alignment Approach and the AQF are both useful tools in aligning rates of pay in one modern award with classifications in other modern awards with similar qualification requirements, and they support a system of fairness, certainty and stability.<sup>5</sup> The ANMF has submitted, and continues to submit, that the C10 Metals Framework Alignment Approach would be preferred to use of the AQF.

### **A.3 The HSU’s tables showing internal relativities**

33. This point relates to the tables underneath HSU Classification [17]–[18]. The point to be made here has substantially been addressed above. It is in relation to the column marked, “*Correct C10 equivalent,*” and can be illustrated by reference to “*Residential Care Level 5.*”
34. The HSU says that the correct C10 equivalent for that level is C7. In the C10 Framework, the C7 level is associated with a Cert IV. But in the HSU’s draft determination, the Cert IV level is Level 6, not Level 5.
35. It is the same with Level 7. The HSU submits that aligns with C2(a). In the C10 Framework, C2(a) is the second “*Advanced Diploma*” level (*i.e.*, Advanced Diploma plus additional training). C3 is the first Advanced Diploma level.
36. The C10-equivalent classifications proposed by the Professors are, in the ANMF’s submission, closer to accurate.

### **A.4 Further wage increases**

37. The C10 Metals Framework Alignment Approach involves these three steps:
- (1) identify the key classification and fix it to its C10 equivalent in the Metal Industry Award;
  - (2) maintain internal relativities by reference to that fixed key classification;
  - (3) increase minima if they are too low.

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<sup>5</sup> *Stage 1 Decision* at [192] and [939]. For an example of an application of the AQF see, *4 yearly review of modern awards –Pharmacy Industry Award 2010* [2018] FWCFB 7621, 284 IR 121 at [194] – [196].



38. The HSU's approach is as follows:
- (1) fix each classification to its AQF equivalent in the C10 Framework;
  - (2) then, further increase minima by (in this case) 10 per cent.
39. The HSU's approach can probably be fit within the C10 Metals Framework Alignment Approach on the basis that it is doing most of its work at step 3 (increasing minima if they are too low—here, in order to achieve de-compression). As the ANMF submitted above, decompression is something to which the Commission may wish to give consideration. If it does so, however, it is probably preferable that it occur in the context of step 3 of the C10 Metals Framework Alignment Approach.

#### **A.5 Conclusion—HSU**

40. For the reasons set out above, and in the ANMF's principal classification submission, the Commission would prefer the approach taken in the ANMF's *Aged Care Award* draft determination to the approach taken in the HSU's draft determination.

#### **B. JE Classification submissions**

41. At a high level, the ANMF's response to the JE Classification submissions involves eight points, addressed under separate sub-headings below.
42. *First*, the Joint Employers correctly identify the "*C10 Metals Framework Alignment Approach*" (JE Classification [12] – [13] and apply Step 1 (JE Classification [31] – [34]) but fail to properly apply Steps 2 and 3 (JE Classification [35] – [40]).
43. *Second*, in failing to provide for any additional wage increase for direct care workers below Level 6 (JE Classification [20]), the JE Classification submissions are inconsistent with the *Stage 1 Decision* and with the evidence.
44. *Third*, the ANMF agrees that direct care workers should be separated out from other aged care workers (JE Classification [22(a)]), for reasons previously given. However, classification levels for lifestyle activities officers can and should be addressed together with personal care workers. The ANMF does not have a view about whether breaking down indirect care workers into the categories proposed by the Joint Employers is desirable.

45. *Fourth, contra* JE Classification [42] and [79], a Level 7 classification should be retained.
46. *Fifth*, the inclusion of an “*Introductory level*” for aged care employees – direct care, below the existing level 2, personal care worker grade 1 (JE Classification [64] – [69]) would amount to a downward alignment of entry level employees which fails to properly reflect work value.
47. *Sixth*, and relatedly, so far as the Joint Employers make submissions about Level 6 aged care employees – direct care, those submissions are misdirected on the basis that they assume, wrongly, that there are presently workers at that level under the existing *Aged Care Award*.
48. *Seventh*, a response to the Joint Employers’ proposal concerning a medication allowance and an allowance for work in a specialised dementia unit (JE Classification [137]–[147]).
49. *Eighth*, the ANMF responds to particular submissions in relation to classification descriptors (largely found within JE Classification at [59]–[63] and [71]–[83]) which are not individually significant enough to merit their own sub-heading.
50. The ANMF has no submissions to make concerning the SCHCADS Award.

#### **B.1 Failure to properly apply the C10 Metals Framework Alignment Approach**

51. The “*C10 Metals Framework Alignment Approach*” is defined at [177] – [178] of the *Stage 1 decision* to be the three-step approach described in the *ACT Child Care Decision*.<sup>6</sup> So much is appropriately identified by the Joint Employers at JE Classification [13].
52. The JE Classification submissions then purport to apply the C10 Metals Framework Alignment Approach at “*Step 1: Key classification*” (JE Classification [31] – [34]) and “*Steps 2 & 3: Analysis of Internal Relativities*” (JE Classification [35] – [39]).
53. The application by the Joint Employers of step 1 to the C10 Metals Framework Alignment Approach is unremarkable. The Joint Employers correctly identify the

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<sup>6</sup> Australian Liquor, Hospitality and Miscellaneous Workers Union re Child Care Industry (Australian Capital Territory) Award 1998 and Children’s Services (Victoria) Award 1998 – re Wages rates PR954938 (13 January 2005), [2005] AIRC 28 (“**ACT Child Care Decision**”)

“aged care employee – direct care – level 4” as a “key classification” in accordance with step 1. The C10 Framework is also correctly identified at JE Classification [37], Table A1.

54. However, the “*analysis of internal relativities*” conducted by the Joint Employers (JE Classification [35] – [39]) departs from Steps 2 and 3 of the C10 Metals Framework Alignment Approach. In this part, the Joint Employers conduct an analysis of wage rates by attempting to align each classification level under the *Aged Care Award* with a classification level under the C10 Framework (see for eg., JE Classification [38] and Table B2). Having identified the key classification, the Joint Employers make no attempt to set other rates in the *Aged Care Award* by:

- (1) applying the internal award relativities which have been established, agreed or maintained; or
- (2) having regard to whether existing rates are too low such that they should then be increased so that they are properly fixed minima.

55. For the reasons identified above at [A.2] above, the application of the C10 Metals Framework Alignment Approach would be preferred to an application of the AQF.

56. Here, the difficulties in applying the AQF are also highlighted by the somewhat arbitrary “*C10 Level*” attributed to various *Aged Care Award* classification Levels, particularly Levels 1 – 3, 5 and 7 at JE Classification [37], Table A2.

## **B.2 Absence of further wage increases for direct care workers**

57. Broadly, the proposal of the Joint Employers is to maintain current minimum wages for direct care employees under the *Aged Care Award* (JE Classification [20(b)], [20(c)] and [38] Table B2). This position cannot be reconciled with the fact that:

- (1) current minimum rates for direct care employees under the *Aged Care Award* were set where the Commission was satisfied that these rates (incorporating the interim increase) sat comfortably below the level of the increase it may determine on a final basis (*Stage 1 decision* at [938]) and which did not necessarily exhaust the extent of the increase justified by work value reasons in respect of direct care workers (*Stage 1 decision* at [56], [968] and [1095]); and

(2) as yet, the Commission has not had regard to impact of the COVID-19 pandemic on infection prevention and control and understaffing in setting award minimum wages for these employees (*Stage 1 decision* at [973] and [1096]).

58. For the reasons identified in ANMF Submissions on “*Wage Adjustment Issues*” filed 15 September 2023, those are matters which support an increase in current minimum wages in accordance with the ANMF’s draft determination for the *Aged Care Award*.

### **B.3 Separate provision for direct care and other kinds of workers**

59. The ANMF seek a separate classification structure in the *Aged Care Award* for direct care employees. This would include both PCWs and Recreational/Lifestyle activities officers. Such a separate classification structure provides an “*obvious drafting technique*” to accommodate different wage rates between direct care workers and other workers.

60. To the extent that the Joint Employer proposal provides for an “*Aged care employee-direct care and recreational activities*” stream (JE Classification [54], Table F2)<sup>7</sup>, this is generally consistent with the ANMF’s proposal. However, to further divide the classification streams as between the “*Direct care stream*” and the “*Recreational activities stream*”, would be to unnecessarily complicate the classification structure (JE Classification [48]).

### **B.4 Level 7 classification is desirable**

61. Whilst the Joint employers “*will not object*” to the retention of the current Level 7 classification under the *Aged Care Classification*, they contend there to be no compelling basis to retain this classification (JE Classification [42]). At JE Classification [42] and [79] it is further asserted that the evidence in Stage 1 did not support recognition of a Level 7 direct care employee.

62. Contrary to this submission, a Level 7 (or Grade 5) classification for a “*Personal Care Supervisor*” is desirable and necessary where:

(1) The Report to the Full Bench by Commissioner O’Neill dated 20 June 2022 (“**Lay Evidence Report**”) identified “*Commonality*” in evidence of lay witnesses, including that care staff (PCWs, AINs and other direct care

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<sup>7</sup> See also JE *Aged Care Award* Draft Determination at cl 14.3.

classifications) engaged in providing personal care to residents and clients, including supervisors/team leaders (at [88]).

- (2) The “*leading hand allowance*” at cl 15.3 of the *Aged Care Award* (JE Classification [79(b)]) does not compensate for work value associated with supervising the work of others, including work allocation, rostering and guidance. Rather, that allowance applies to:

“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.”

- (3) The Joint Employers appear to accept that such roles do exist but claim that they are held by “*non-award employees*” (JE Classification [42]). Where those roles exist, and the classification in the *Aged Care Award* is retained, employees in those roles will enjoy minimum terms and conditions in accordance with the *Aged Care Award* and other protections under the FW Act.<sup>8</sup> That is so whether or not an employer identifies an employee as an “*award employee*”;
- (4) The retention of a Level 7 (grade 5) classification provides an important step in the career progression of a direct care employee. Removal of this classification would be a backwards step in the professionalisation of the aged care workforce. It would be contrary to the findings of Commissioner Lynelle Briggs AO in the *Aged Care Quality and Safety Royal Commission Final Report* at p 41, that:

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

## **B.5 No “*Introductory level*” for direct care employees**

63. Historically, the lowest classification of direct care worker under the *Aged Care Award* has been at Level 2 (Personal care worker grade 1).<sup>9</sup> Prior to amendments to the *Aged Care Award* arising from these proceedings, the classification structure of that award

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<sup>8</sup> Including protection from unfair dismissal in accordance with Part 3-2 of the *FW Act*.

<sup>9</sup> See *Aged Care Award 2010* incorporating all amendments up to and including 15 March 2023.

provided for “*Aged care employees*” at Level 1 to Level 7. The *Aged Care Award* also provided for five grades of personal care worker. No grades of personal care worker were identified at Level 1 or Level 6. Rather, the classification of “*Personal care worker grade 1*” was identified as an “*indicative task*” performed at Level 2. Personal care workers at Grades 2 to 5 were identified at Levels 3, 4, 5 and 7 respectively.

64. As such, entry level personal care workers have commenced at Level 2 under the *Aged Care Award* despite general and administrative services employees and food services employees entering at Level 1. So much is appropriate having regard to the nature of the work of personal care employees, the responsibility involved in doing the work and the conditions under which the work is done.

65. In these proceedings:

(1) by the *Stage 1 Decision* at [55], the Commission was satisfied that a 15 per cent interim increase in minimum wages of the direct care classifications in the *Aged Care Award* and was “*plainly justified by work value reasons*” as required by s.157(2);

(2) by the *Stage 2 Decision*<sup>10</sup> at [17], the Commission was satisfied that an interim increase of 15 per cent to modern award minimum wages in these proceedings was necessary to achieve the modern awards objective and the minimum wages objective in relation to (*inter alia*) the direct care workers under the *Aged Care Award*;

(3) on 18 May 2023, the Commission issued a decision<sup>11</sup> confirming an interim increase of 15 per cent to modern award minimum wages in accordance with the *Stage 2 Decision*.

66. There is no basis to find that, in giving effect to the 15 per cent interim increase in minimum wages for the direct care classifications in the *Aged Care Award*, the Commission intended to downgrade the classification of an employee with less than three months’ work experience in the industry. An employee with less than three

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<sup>10</sup> [2023] FWCFB 40 (“*Stage 2 Decision*”).

<sup>11</sup> [2023] FWCFB 93.

months' work experience in the industry would be entitled to no less than a 15 per cent increase to their minimum wages.

67. As a result of the *Stage 1 Decision* and *Stage 2 Decision*, the *Aged Care Award* was amended to provide separate classification structures for “*Aged care employee—general*” (Schedule B.1) and “*Aged care employee—direct care*” (Schedule B.2).<sup>12</sup> Employees within the “*Aged care employee—direct care*” classification enjoyed a 15 per cent increase in minimum wages.
68. Schedule B.2 “*Aged care employee—direct care*” now replicates the previous classification structure for “*Aged care employees*” at Level 1 to Level 7, save that the only “*indicative tasks*” identified are those pertaining to the five grades of Personal care workers. Accordingly, the “*Aged care employee—direct care*” classification structure at Schedule B.1 now includes Level 1 and Level 6, albeit that no grades of personal care worker are identified at these levels.
69. At JE Classification [64] – [69], the Joint Employers argue for “*retaining*” an entry level position, including for direct care employees under the *Aged Care Award*.
70. To include an “*introductory level*” for personal care workers at Level 1 would also alter the established position that the work value of an entry level personal care worker is greater than other entry level classifications under the *Aged Care Award*.
71. Accordingly, the Commission would not give effect to an “*introductory level*” for direct care employees below the Level 2 (Grade 1) classification.

#### **B.6 Level 6 direct care employees—an empty category**

72. For the reasons identified at Part B.5 above, the Commission would find that there are presently no PCWs classified at Level 6 of the *Aged Care Award*. To the extent that the submissions of the Joint Employers suggest otherwise (for eg, JE Classification [38], Table B2)), those submissions are misdirected.
73. However, on the ANMF’s application, the *Aged Care Award* would be amended to introduce the grade 4A (Level 6) “*Specialist Personal Care Worker*” classification.

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<sup>12</sup> As a result of Determination R751293.

Amongst other things, an employee at this classification “*may require relevant skills, training or experience in Dementia Care or Palliative Care*”.

**B.7 Allowances for medication and dementia care are undesirable**

74. As identified at ANMF Classification [135], the involvement of PCWs in assisting with the administration of medication is widespread, commonplace, and a typical, frequent, and regular part of the duties of persons who are involved in residential aged care. It introduces unnecessary complication to the application of the *Aged Care Award* to make the payment of an additional weekly amount depend on assessment of whether, in a given week, the employee has been “*approved by their employer*” to administer medication under supervision.
75. A PCW being required to assist aged persons with self-administration of medication and hold a relevant unit of competency goes to the level of skill and responsibility involved in doing the work. That the competency is not tied to a specific qualification does not alter that this is a fundamental aspect of work value which should be dealt with at the level of classification (*contra* JE Classification [137]).
76. Similarly, as identified at ANMF Classification [143] – [144], dementia is commonplace in residential aged care. Many staff receive received specialised training on how to deal with residents living with dementia.
77. The Joint Employers are correct to identify that the increased prevalence of residents with dementia has increased the intensity of the work for direct care employees (JE Classification [141]). To that end, the conditions under which the work of PCWs is done, and the nature of the work, have changed with a resulting increase in work value. To some extent, those are changes that have occurred and increased work value across the industry. But the impact of the increased prevalence of dementia is not limited to impact on the conditions under which the work is done and the nature of the work. Having relevant skills, training or experience in dementia care goes directly to the level of skill and responsibility involved in doing the work.
78. Working in “*hot places*” is an inapt analogy (JE Classification [144]). Without more, a hot environment does not involve increased skill or responsibility. Having relevant skills, training or experience in dementia care is more than an “*environmental factor*”



(*contra* JE Classification at [145]). Again, it is a fundamental aspect of work value which should be dealt with at the level of classification.

79. Contrary to the assertion that the evidence does not support a “*Specialist Personal Care Worker*” classification (JE Classification [79]), there is an abundance of evidence of direct care workers possessing relevant skills, training or experience in dementia care (see Lay Evidence Report at D.6 “*Specialised knowledge and skills*”). Likewise, the evidence in stage 1 established that direct care workers possessed relevant skills, training or experience in palliative care (again see Lay Evidence Report at D.6 “*Specialised knowledge and skills*”). That evidence supports the ANMF proposal to include the classification of “*Grade 4A– Specialist Personal Care Worker*” who may require relevant skills, training or experience in Dementia Care or Palliative Care.

#### **B.8 Miscellaneous submissions in relation to classification point**

80. At JE Classification [70] – [78] and [80] – [83], the Joint Employers address the classification descriptors for direct care employees. The submissions made above at Part A.1 regarding “*The advantage of less-prescriptive classification descriptors*” ([9] – [23]) apply generally here.
81. The amendments proposed by the Joint Employers include descriptions of “*direct care duties*”. By prescribing “*direct care duties*” and “*additional care duties*” the proposal by the Joint Employer goes beyond what is necessary to state the skills, qualification and experience required at each level and provide a clear means to transition from one level to another.
82. Further, the Joint Employers propose an employee at various grades “*must possess*” prescribed “*skills and abilities*”. The consequence of those detailed prescriptions would also be to reduce the clarity of what skills, qualification and experience required at each level and the requirements for transitioning from one level to another.
83. In short, the requirement to review the detailed description of duties, skills and abilities, qualifications, training and other requirements would not assist in the practical application of the proposed classification structure.

**B.9 Conclusion—Joint Employers**

84. For the reasons set out above, and in the ANMF’s principal classification submission, the Commission would prefer the approach taken in the ANMF’s *Aged Care Award* draft determination to the approach taken in the Joint Employers’ draft determination.

**C. Overall conclusion**

85. For the reasons identified in the ANMF Classification submissions and set out above, the Commission would make determinations in the form proposed by the ANMF in its draft determinations for the *Aged Care Award* filed 15 September 2023.

**J C McKenna**

**J E Hartley**

**V M G Jones**

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23 November 2023.

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