

**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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**26 August 2024**

**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>

WKH VNL O O la Q O lly D W R a h s R l p r a c t i s e a n d c o m p l e t e nursing functions in stable situations with limited direct su SHUYLVLRQ ' 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 <sup>3</sup> D S S R L Q W P H Q W ' By contrast to the EN structure, this is truly discretionary. For example, RN level 3 <sup>3</sup> L V 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). 6 H H D O V R 5 H S R U W W R W K H ) X O O % H Q F K & R P P L V L R Q ' 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 is, the structure is based on time served.

37. Broadly, the structure of 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 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 an EN or RN, as the ANMF put it, is of little assistance to the question presently before the Expert Panel.

(b) The evidence relating to progression 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 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

<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  
<sup>3</sup> FR PPHQW DXWKRULWDWLYHO\ RQ FXUUHQW ZDJH  
VHFWRU RU RQ ZDJH PRYHOQSWVattempb.<sup>40</sup> WLPH´

(d) The evidence of Helia Brooks does not address the incremental pay point scales for RN level 1 (etc). The reference to <sup>3</sup> L Q F U H P H Q W D O a S U R J U H V 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, <sup>3</sup> Z L W K L Q W K H D F F H S W D E O H U D Q J H R I U H O D W L Y L W L H V ´
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 <sup>3</sup> V N l i n e C l o u s e 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) 7KHSD\ SRLQWV ZLWKLQ HDFK OHYHO R4 and 5) LQFOXGL 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.



\$ J H & D U : H R U N H U  
: D J M

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

As the Government increases funding 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

The \*RYHUQPHQW ¶V LQYHVWPHQW LQ ZDJHV PXVW EH SDVV 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 d H S D U W P H Q W ¶ V 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 d H S D U W P H Q W ¶ V funding and 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 d H S D U W P H Q W ¶ V Wage Subsidy D W W K H µ increase in the Home Care Packages Program ¶ S D J H

## 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 U D W H D Q G W K H Q H Z D Z D U G U D W H I R U W K H Z R U N H U ¶ V D Z D µ \$ G V G L L R Q D O D P R X Q W S D \ D E O H ¶ 7 K L V D G G L W L R Q D O D P R X 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 L Q F U H D V H V G U D Z Q I U R P W K H S U R Y L G H U ¶ V I X Q G L Q J D V L G

## 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> 7 K H L Q G H [ D W L R Q S O X V D Q L Q F U H D V H I R U W F R I S E D P I S T K F H W V R M D V Q I G H U : & R Q W K H L Q G H [ D W L R Q Z D V D Q G W K H ) : & L Q F U H D V H R V F W R I S H V Z B W H D O F R V 7 K L V P H W K R G X V H G W R L Q F U H D V H S D F N D J H D P R X Q W V Z D V W R L Q F U H D P R X Q W E \ L Q F U H D V H G E \ L

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 monitor 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.

# 7 D E O H H Z P L Q L P X Z D U G U D W M V G H Q W L D O D J H G F D

[Fair Work Commission Determination ±PR751293 ±Aged Care Award](#)

[Fair Work Commission Determination ±PR751294 ±Nurses Award](#)

Classification under the Aged Care Award 2010	Current hourly award rate (From the first full pay period on or after 1 July 2022 )	New hourly award rate (From the first full pay period on or after 30 June 2023)	Additional amount payable from the first full pay period on or after 30 June 2023  (Difference between the current and new hourly award rate s)
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
Head chefs/ Head cooks *			

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

## 7 D E O H 1 X O N V Q U I E F ± D W H R Q V D U H H P S O R \ H H V

Classification under the Nurses Award 2020	Current hourly award rate (From the first full pay period on or after 1 July 2022 )	New hourly award rate (From the first full pay period on or after 30 June 2023)	Additional amount payable from the first full pay period on or after 30 June 2023  (Difference between the current and new hourly award rate s)
Nursing Assistant /Assistant in Nursing			
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
Student Enrolled Nurse			
Less than 21 years of age	\$21.60	\$24.84	\$3.24
21 years of age and over	\$22.67	\$26.07	\$3.40
Enrolled Nurses			
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
Registered Nurse ±Level 1			
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
Registered Nurse ±Level 2			
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
Registered Nurse ±Level 3			
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
Registered Nurse ±Level 4			
Grade 1	\$41.19	\$47.37	\$6.18
Grade 2	\$44.14	\$50.76	\$6.62

Grade 3	\$46.71	\$53.72	\$7.01
Registered Nurse ±Level 5			
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
Minimum entry rate			
4 year degree	\$28.17	\$32.40	\$4.23
Masters degree	\$29.14	\$33.51	\$4.37
Nurse practitioner			
1 <sup>st</sup> year	\$41.53	\$47.76	\$6.23
2 <sup>nd</sup> year	\$42.76	\$49.17	\$6.41

7 D E O H P L Q Z P X Z D U G Z D J H E U R P V H D W U J D F N D J H V

[Fair Work Commission Determination ±PR751296 ±Schedule E of Social, Community, Home Care and Disability Services Award](#)

Classification under the Social, Community, Home Care and Disability Industry Award 2010	Current hourly award rate (From the first full pay period on or after 1 July 2022)	New hourly award rate (From the first full pay period on or after 30 June 2023)	Additional amount payable from the first full pay period on or after 30 June 2023 (difference between current and new hourly award rates)
Home care employee level 1 <sup>2</sup> aged care	\$22.93	\$26.37	\$3.44
Home care employee level 2 <sup>2</sup> aged care			
Pay point 1	\$24.26	\$27.90	\$3.64
Pay point 2	\$24.42	\$28.08	\$3.66
Home care employee level 3 <sup>2</sup> aged care			
Pay point 1 (certificate III)	\$24.76	\$28.47	\$3.71
Pay point 2	\$25.52	\$29.35	\$3.83
Home care employee level 4 <sup>2</sup> aged care			
Pay point 1	\$27.01	\$31.06	\$4.05

Pay point 2	\$27.55	\$31.68	\$4.13
Home care employee level 5 <sup>2</sup> aged care			
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:

- x A \$2.2 billion increase in funding for home care providers to cover the wage increase
- x \$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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<a href="#">Who will receive the increase?</a>	2
<a href="#">How will the increase be implemented?</a>	2
<a href="#">When will the wage rise be implemented?</a>	4
<a href="#">What will providers need to do?</a>	4
<a href="#">Compliance</a>	6
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<a href="#">Care recipients</a>	10
<a href="#">Where can providers find out more information?</a>	10

## 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:

- x 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)
- x Nurses Award 2020: nursing assistants, enrolled nurses, registered nurses, nurse practitioners working in aged care
- x 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.

- x Annual indexation is 3.3% and the Fair Work Commission increase is 8.3%
- x 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:

- x Viability supplement
- x Dementia and cognition supplement
- x Veterans supplement
- x 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:

- x communicate and implement these changes for their workers affected by the relevant awards
- x 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:

- x value for money and reflect the resources it takes to provide the care or service
- x clear, understandable and transparent

- x in the best interests of care recipients
- x in line with program requirements and legislation
- x 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:

- x Providing a copy of the [department's letter to care recipients](#), in case they have not yet received it in their mail.
- x Discussing with care recipients how prices for care and services delivered by some workers may need to change, including:
  - o what prices are changing
  - o why the prices need to change
  - o what those prices include
  - o when the new prices will start.
- x Renegotiating prices with care recipients.
- x Updating home care agreements.
- x Updating pricing schedules.
- x 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:

- x enforce the [Competition and Consumer Act 2010](#) and a range of additional legislation
- x promote competition and fair trading
- x regulate national infrastructure for the benefit of all Australians.

The ACCC can investigate and act:

- x where businesses mislead care recipients about pricing
- x on unfair business practices
- x 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?
  - x The investment in wages must be passed on for the full benefit of workers.
  - x Higher wages for aged care workers mean providers can attract and retain staff to relieve workforce pressures.
  - x 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.
  - x 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?
  - x 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.
  - x 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.
  - x 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?
  - x 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?
  - x The Government's funding commitment includes \$98.7 million in 2023-24 for an additional one-off grant funding for historical leave liabilities.
  - x 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.
  - x 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?
- x 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.
  - x The Government is aware the [annual wage review](#) will likely increase award wages again from 1 July 2023.
  - x Annual wage review increases are considered as part of regular annual program indexation arrangements.
  - x Employers will therefore need to financially prepare for another wage increase as determined by the Fair Work Commission.
  - x It is expected that providers consider the timing of the 2 award wage increases when renegotiating enterprise agreements with their workers.
  - x 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?
- x Price increases must be reasonable and justifiable for care and services delivered by workers receiving the wage increase.
  - x A reasonable and justifiable price increase must be:
    - o value for money and reflect the resources it takes to provide the care or service
    - o clear, understandable and transparent, in the best interests of care recipients
    - o in line with program requirements and legislation
    - o directly related to coordinating allowable care or services
    - o purchasing goods to meet the care recipient's assessed needs and goals.
  - x You should be able to explain your pricing methodology and provide evidence to inform the prices you charge.
  - x 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?
- x Your business must update My Aged Care as soon as possible.
  - x Any updates to your pricing information should be applied consistently to your pricing schedule and full price list.
  - x 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.

- x This is also a good opportunity to review your outlets and deactivate any that are no longer in use or are duplicates.
  - x For more information on how to update My Aged Care, read the:
    - o [service and support portal user guide](#)
    - o [administrator functions guide](#)
    - o [tips for HCP providers regarding costs](#)
8. Are on -costs covered?
- x 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?
- x Yes, base funding has been increased to ensure enough funds are available to cover wage increases.
  - x 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?
- x 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.
  - x However, the NDIS Disability Support Worker Cost Model (the Cost Model) sets price limits for some categories of support delivered by DSWs.
  - x 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.
  - x 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%.
  - x 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.
  - x 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.
  - x Where a provider delivers multiple programs, they should contact the Fair Work Ombudsman for specialised advice on which awards apply to their workforce.

- x 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?

- x As per legislation providers must implement this pay increase and pay their workers according to the award from 30 June 2023.
- x 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.
- x 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:

- x [Home care agreements for Home Care Packages](#)
- x [ACCC - Home care services – your business rights and obligation](#)
- x [Fair Work Commission - Aged Care Award increase](#)
- x [Fair Work Ombudsman - Get help](#)
- x [Aged Care Act 1997](#)
- x [User Rights Principles 2014](#)
- x Review the [2022 SCHADS Award fact sheet](#)
- x [Subscribe to aged care sector newsletters and alerts](#)

## Contact

If you have further questions, you can contact:

- x [agedcareworkforcereform@health.gov.au](mailto:agedcareworkforcereform@health.gov.au) about aged care workforce reforms, or
- x [hcpmanualsfeedback@health.gov.au](mailto:hcpmanualsfeedback@health.gov.au) about the subsidy increase in home care.