

**FAIR WORK COMMISSION
AT MELBOURNE**

**APPLICATION BY AUSTRALIAN NURSING AND MIDWIFERY FEDERATION
(AM2024/11)**

RESPONSE TO THE ANMF'S AGITATION OF THE AGED CARE DECISIONS

**AGED & COMMUNITY CARE PROVIDERS ASSOCIATION LTD
AUSTRALIAN BUSINESS INDUSTRIAL**

14 November 2025

INTRODUCTION

- 1.1 This submission is filed on behalf of Aged & Community Care Providers Association Ltd (**Ageing Australia**) and Australian Business Industrial (**ABI**) and responds to the proposals advanced by the Australian Nursing and Midwifery Federation (**ANMF**) in AM2024/11 that seek to challenge the outcome of the Aged Care Work Value Proceedings in relation to enrolled nurses (**ENs**) and nurse practitioners (**NPs**) working in the aged care sector.
- 1.2 There ANMF advance three proposals that fall outside the scope of the present proceedings:
 - (a) amending the classification definition of the “*enrolled nurse supervising other direct care employees*” both its title and description;
 - (b) inserting two new pay and classification levels for ENs in aged care (“*EN 3*” and “*EN 4*”); and
 - (c) increasing the rates of pay for NPs in aged care by 15.5%.
- 1.3 For the reasons set out in this submission, each proposal is opposed.

SUMMARY OF POSITION

- 1.4 The proposals advanced by the ANMF in relation to ENs and NPs working in aged care fall outside the scope of AM2024/11. All submissions and proposals advanced by the ANMF in that respect should be disregarded and struck out by the Fair Work Commission (**the Commission**).
- 1.5 The use of the words “*struck out*” are deliberate noting that the ANMF seek to informally amend their original application filed 9 February 2024 via its most recent position document: “*This position document updates and supplements the application and prevails to the extent of any inconsistency*”.¹
- 1.6 The conduct of the ANMF seeking to challenge or otherwise purport to informally re-open issues that have already been subject to final determination in AM2021/63 in the present proceedings is procedurally improper and should not be allowed by the Commission.
- 1.7 If the ANMF wish to proceed with an application to re-agitate issues relating to nursing employees working in aged care, that must be the subject of a separate and fresh application.
- 1.8 The conduct of the ANMF is procedurally improper for the following reasons:
- (a) all substantive issues in AM2021/63 (i.e. the aged care component of the Nurses Work Value Case) have been subject to final judgment by an Expert Panel of the Commission (see **Section 2**);
 - (b) each of the “*aged care*” proposals concern issues that were subject to consideration and determination by an Expert Panel of the Commission (see **Section 3 and 4**); and, as a result,
 - (c) issues relating to nursing employees working in aged care fall outside the scope of the current proceedings.
- 1.9 AM2021/63 was finalised and concluded.
- 1.10 If the ANMF wish to proceed with an application to re-agitate issues relating to nursing employees working in aged care, that must be the subject of a separate and fresh application.

¹ ANMF Position Document dated 24 October 2025, paragraph 4 (emphasis added).

2. THE FINALISATION OF AM2021/63

- 2.1 On 18 May 2021, the ANMF filed its application with respect to nursing employees working in aged care. That application was allocated matter number AM2021/63.
- 2.2 The “aged care” application was initially heard as part of the Work Value Case for the Aged Care Industry, alongside applications relating to the variation of the *Aged Care Award 2010* (AM2020/99) and the *Social, Community, Home Care and Disability Services Industry Award 2010* (AM2021/65).
- 2.3 As a result, both the *Stage 1 Aged Care Decision* and *Stage 3 Aged Care Decision* also concern work value findings in relation to nursing employees.
- 2.4 On 9 February 2024, the ANMF filed a second application that concerned nursing employees other than those working in aged care (i.e. any nurse not captured by the aged care proceedings). That application was allocated matter number AM2024/11.
- 2.5 In the *Stage 3 Aged Care Decision*, the Expert Panel initially determined that the appropriate course was to finalise AM2021/63 in conjunction with AM2024/11. However, “that is not what ultimately happened”.²
- 2.6 Having regard to concerns raised by Private Hospital interests shortly after the filing of AM2024/11,³ Hatcher J issued directions indicating that the two applications were to be separated and that parties other than the ANMF were to file their material in relation to the outstanding issues in the aged care work value proceedings relating to nurses by 26 August 2024.⁴
- 2.7 As a result of those directions, the Nurses Work Value Case was (again) divided into two streams, with the aged care stream scheduled to be determined first.
- 2.8 The “aged care” stream of the Nurses Work Value Case was listed for hearing 19 September 2024.
- 2.9 The substantive proceeding for AM2021/63 was finalised by the publication of the *Nurses Decision* on 6 December 2024.

² *Applications by Australian Nursing and Midwifery Federation* [2024] FWCFB 452 at [14] (**Nurses Decision**).

³ See *Nurses Decision* at [15].

⁴ *Nurses Decision* at [16].

- 2.10 A draft determination was also published on that date. In relation to that draft determination, parties were only permitted to advance comments of “a *technical nature*”.⁵
- 2.11 A determination was published on 20 December 2024.
- 2.12 Consistent with the *Nurses Decision*:⁶
- (a) a further determination was published on 27 August 2025, with an effective date of 1 October 2025; and
 - (b) a final determination will be published shortly before 1 August 2026, which will result in the aged care work value increases being fully phased-in.
- 2.13 That background is set out to demonstrate that there can be no suggestion that AM2021/63 remains open.
- 2.14 The finalisation of AM2021/63 is further supported by the absence of any listing, statement or decision since the publication of the *Nurses Decision*.
- 2.15 All subsequent listing notices and directions issued have only referred to AM2024/11.

⁵ *Nurses Decision* at [70].

⁶ *Nurses Decision* at [65].

3. ENROLLED NURSES IN AGED CARE

3.1 The decision of the Expert Panel to establish a “*single pay level*” for ENs was informed by work value findings and reasons. None of the reasoning in the *Nurses Decision* provides a foundation for the proposals advanced by the ANMF.

Single Pay Level

3.2 The Expert Panel’s decision to set a “*single pay level*” for ENs in aged care was informed by the work value findings and reasoning set out in the *Stage 1 Aged Care Decision*, *Stage 3 Aged Care Decision* and the *Nurses Decision*.

3.3 In the *Nurses Decision*, the Expert Panel held:⁷

*“We consider that the appropriate approach in respect of ENs in aged care is to remove the existing table of rates in clause 15.2(b)(ii) and **replace it with a single classification of ‘Enrolled nurse supervising other direct care employees’** with a rate of \$1422.20.”*

3.4 The definition for the “**enrolled nurse supervising other direct care employees**” was informed by the Commission’s consideration of “*the role of the EN in aged care disclosed by the evidence before us for which we have set the rate of \$1422.20*”.⁸

3.5 In the *Stage 3 Aged Care Decision*, the Expert Panel observed:

*“We also consider, having regard to the work value reasons identified in the Stage 1 decision and this decision, that the rate for an EN in aged care who has responsibility for supervising other PCWs should be set at the same rate which we propose for a Level 6 direct care employee (Team Leader) with supervisory responsibilities, namely \$1370.80 per week.”*⁹

3.6 In the *Nurses Decision*, the Expert Panel observed:

“...we do not accept that the rate established in the Stage 3 decision for an EN supervising PCWs should be equated with the current EN pay point 1 classification. As was made clear at paragraph [205] of the Stage 3 decision, which we have earlier quoted, the establishment of the alignment with the new Level 6 Team Leader rate in the Aged Care Award was based on the proposition

⁷ *Nurses Decision* at [51].

⁸ *Nurses Decision* at [50].

⁹ *Stage 3 Aged Care Decision* [2024] FWCFB 150 at [205].

that ENs and Team Leaders would both have responsibility for supervising PCWs. The further evidence of Ms Brooks to which we have earlier referred establishes that such supervisory responsibility, involving oversight of and assistance to PCWs, is a central role of all ENs in residential aged care. There was no evidence of ENs in aged care not having this responsibility.”¹⁰

- 3.7 Ahead of confirming the single rate for the EN in aged care (alongside the rates for RNs and NPs in aged care) the Expert Panel also observed:¹¹

“We also confirm the rates of pay proposed in the Statement, which (apart from the ANMF’s submission concerning NPs and service-based increments) were not the subject of any comment by the parties.”

“Incorporate the single classification”

- 3.8 The ANMF proposal for ENs is at odds with the *“integrated classification structure”* referred to at [51] of the *Nurses Decision*. This is evident from the surrounding context:¹²

*“We anticipate that a wider review of the work, roles and rates of pay of ENs across the entire health sector will be necessary when the ANMF’s application in AM2024/11 is heard and determined. This review is necessary not least because, for ENs outside the aged care sector, their rates of pay at all pay points are significantly below the current C5 classification rate in the Manufacturing and Associated Industries and Occupations Award 2020 despite new entrants being required to be diploma-qualified. **We anticipate that this review will result in an integrated classification structure for all ENs covered by the Nurses Award which will incorporate the single classification which we intend to apply in the aged care sector.”***

- 3.9 Within the same sentence, the Expert Panel explicitly refers to incorporating *“the single classification which we intend to apply in the aged care sector”* into any integrated structure.¹³ The language is not ambiguous: the new single classification for ENs in the aged care sector was not to be disturbed or abandoned by any subsequent change to the classification structure for ENs.

¹⁰ *Nurses Decision* at [48].

¹¹ *Nurses Decision* at [62].

¹² *Nurses Decision* at [51] (emphasis added).

¹³ *Nurses Decision* at [51].

3.10 Furthermore, there is absolutely no basis for the ANMF to argue for “*new rates*” or “*progression*” for ENs in aged care. To suggest otherwise is contrary to the *Nurses Decision*.

Amendment to Definition

3.11 Ahead of publishing the determination on 20 December 2024, the Expert Panel provided parties the opportunity to make comments of a “*technical nature*” in relation to a draft determination.¹⁴

3.12 Comments were raised by the parties in relation to both the proposed EN classification title and the impact of the words “*has responsibility for supervising other direct care employees*” in clause A.4.6(b) of the proposed EN definition.¹⁵

3.13 After consideration of those comments, the determination published by the Expert Panel:

- (a) retained the classification title set out in the *Nurses Decision* (namely, “*enrolled nurse supervising other direct care employees*”); and
- (b) amended paragraph (b) of the EN definition to read: “*may be required to supervise other direct care employees*”.

¹⁴ *Nurses Decision* at [70].

¹⁵ See example, Joint Employer Submissions dated 13 December 2024 at paragraph 15.

4. NURSE PRACTITIONERS IN AGED CARE

- 4.1 The ANMF proposal in relation to NPs working in aged care is also entirely inconsistent with the earlier aged care decisions, including the *Nurses Decision*.
- 4.2 Arising from the *Stage 1 Aged Care Decision* and *Stage 2 Aged Care Decision*, NPs working in aged care received a 15% increase to their rate of pay.
- 4.3 In the *Nurses Decision*, the Expert Panel made a deliberate decision to not increase the minimum rates for NPs working in aged care beyond the 15% increase.¹⁶ The Expert Panel provided two reasons for that decision, which are extracted in full below:¹⁷

“First, under the current structure, a NP has a very high relativity (54 per cent in the first year and 58.5 per cent in the second year) compared to a RN Level 1 pay point 1, and a first year NP has a rate of pay about the same as a RN Level 5 grade 1, who exercises management and leadership responsibilities. Even with no increase in the rate of pay, the first year NP will have a higher relativity to the benchmark rate of \$1525.90, and a higher rate of pay, than a Level 5 teacher with a highly accomplished/lead teacher accreditation. Noting that NPs in aged care have already received the benefit of the 15 per cent interim increase arising from the Stage 1 decision and the Stage 2 decision, we do not consider that the evidence before us concerning NPs (who only comprise a very small fraction of the nursing workforce in aged care) is sufficient to justify further pay increases at this time. In particular, notwithstanding the ANMF’s submissions to the contrary, the evidence does not justify NPs in aged care receiving further pay increases such as to place them significantly above the Level 5 teacher who similarly practises their profession at an advanced level of accreditation.”

¹⁶ See *Nurses Decision* at [61].

¹⁷ *Ibid*; *Statement* [2024] FWCFB 405, Attachment A, footnote 11: “No further increase is warranted since relativity to new benchmark rate for undergraduate degree-qualified nurse is already 130.5% at first year”.

5. CONCLUSION

- 5.1 The proposals advanced by the ANMF in relation to ENs and NPs working in aged care fall outside the scope of AM2024/11. All submissions and proposals advanced in this respect should be disregarded.
- 5.2 The conduct of the ANMF seeking to challenge or otherwise purport to informally re-open issues that have already been subject to final determination in AM2021/63 in the present proceedings is procedurally improper and should not be allowed by the Expert Panel.
- 5.3 If the ANMF wish to proceed with an application to re-agitate issues relating to nursing employees working in aged care, that must be the subject of a separate and fresh application.

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