

**FAIR WORK COMMISSION
AT MELBOURNE**

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

SUBMISSION

**CATHOLIC HEALTH AUSTRALIA
AUSTRALIAN BUSINESS INDUSTRIAL
AGEING AUSTRALIA**

29 MAY 2026

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1. INTRODUCTION

Parties

- 1.1 The submission is prepared on behalf of Catholic Health Australia (**CHA**), Australian Business Industrial (**ABI**) and Ageing Australia, (collectively, **the Parties**).
- 1.2 The interests of Ageing Australia in AM2024/11 are strictly limited to nursing employees in aged care.

Evidence

- 1.3 The Parties rely on the following statements filed in AM2024/11:
- (a) Witness Statement of Ilona Ryan dated 26 May 2026 (Education Manager, St Vincent's Private Hospitals Melbourne);
 - (b) Witness Statement of Kris Salisbury dated 27 May 2026 (Chief Nurse and Clinical Governance Officer, Calvary);
 - (c) Witness Statement of Benjamin Williams dated 28 May 2026 (General Manager Aged Care, Calvary);
 - (d) Witness Statement of Anne-Marie Robinson dated 29 May 2026 (Clinical Services Director – Medical Services, Cabrini Health);
 - (e) Witness Statement of Emma Prosser dated 26 May 2026 (Acting General Manager of Clinical Governance (Hospitals), Uniting Care (QLD));
 - (f) Witness Statement of Duncan Apelt dated 29 May 2026 (Senior Manager Operational Performance – Hospitals, Uniting Care (QLD));
 - (g) Witness Statement of Katharine Bassett dated 29 May 2026 (Director of Health Policy at CHA); and
 - (h) Witness Statement of Claire Bailey dated 28 May 2026 (Head of Workplace Relations at Ageing Australia).
- 1.4 In addition to the above, the Parties rely on a Tender Bundle dated 29 May 2026.

2. SUMMARY OF POSITION

The ANMF Proposal

2.1 The ANMF Proposal arises out of the consent position reached between the ANMF, Australian Private Hospitals Association and Healthscope during conferencing in late 2025.¹ It contains two categories of proposed variation:

- (a) variations arising from the application of findings and principles established in the Aged Care Proceedings² and Priority Awards Review,³ which may be readily accepted as satisfying the statutory test in s 157(2) (see **Section 6**); and
- (b) variations that are inconsistent with or ignore established work value principles and do not, at this stage, appear to be justified by work value reasons (see **Sections 7 and 8**).

2.2 CHA and ABI are not opposed to the minimum award wages of nursing employees (other than aged care) being increased. However, such variations must satisfy the requirements of s 157 of the *Fair Work Act 2009* (Cth), including taking into account ss 134 and 284. To do otherwise will further embed anomalies into the pay and classification structure of the *Nurses Award 2020* (**Nurses Award**) that do not properly reflect of the essential elements of qualification, displayed competence and acquired experience and responsibility.⁴

Significance of the Recent Work Value Proceedings

2.3 The substantive decisions in two recent proceedings include findings and principles relevant to the evaluative judgment to be exercised by the Expert Panel:

¹ It is noted that the ANMF Proposal with respect to NPs does not fall within that consent.

² See especially, *Aged Care Award 2010; Nurses Award 2020; Social, Community, Home Care and Disability Services Industry Award 2010* [2022] FWCFB 200, 319 IR 127 (**Stage 1 Decision**); *Aged Care Award 2010; Nurses Award 2020; Social, Community, Home Care and Disability Services Industry Award 2010* [2024] FWCFB 150, 331 IR 137 (**Stage 3 Decision**); *Applications by Australian Nursing and Midwifery Federation Nurses Decision* [2024] FWCFB 452 (**Nurses Decision**).

³ See especially, *Gender-based undervaluation – priority awards review* [2025] FWCFB 74, 340 IR 1 (**April Decision**); *Gender-based undervaluation – priority awards review – Children’s Services Award 2010* [2025] FWCFB 283 (**ECEC Decision**); *Gender-based undervaluation – priority awards review – Health Professional and Support Services Award 2020* [2025] FWCFB 297 (**HPSS Award Decision**).

⁴ See *Nurses Decision* [2024] FWCFB 452 at [12]; *Application by Independent Education Union of Australia* [2021] FWCFB 2051 at [647] (**Teachers Decision**).

- (a) The Work Value Case – Aged Care Industry (**Aged Care Proceedings**), including the *Stage 1 Decision*,⁵ *Stage 3 Decision*⁶ and *Nurses Decision*; and
 - (b) Gender-based Undervaluation – Priority Awards Review (**Priority Awards Review**), including the *April Decision*, *ECEC Decision* and the *HPSS Decision*.
- 2.4 Those decisions illustrate the principled approach that is to be taken by the Expert Panel under s 157.
- 2.5 The finalisation of the Aged Care Proceedings provides an important starting point for the Expert Panel ahead of its consideration of whether work value reasons exist to justify the variations sought by the ANMF to the minimum rates for nursing employees (other than aged care) in the *Nurses Award*.
- 2.6 The *Stage 3 Decision* confirms that the historical development of the *Nurses Award* contributed to both the minimum rates not being properly fixed and impacted by historic gender undervaluation. Other factors that contributed to the current anomalies in the *Nurses Award* include the recurrence of consent positions (with no basis in wage setting or work value principles) and adoption of features from the federal award system (in particular, annual increments that were time-based and not informed by work value considerations).
- 2.7 The *Nurses Decision* provides a principled blueprint by which the anomalies that remain in the current pay structure may be remedied and in a manner that is consistent with the modern awards objective and minimum wages objective. Specifically, the caring skills benchmark is appropriate for assistants in nursing (**AINs**) and the C1(a) benchmark is appropriate for registered nurses (**RNs**), midwives and occupational health nurses (see **Section 6**).

Enrolled Nurses

- 2.8 The ANMF Proposal in relation to minimum award rates for ENs features incremental pay increases; the adjustment from *annual* to *biannual* increments (i.e. every 2 years) is an artifice and maintains the anachronistic structure condemned by the Full Bench in *Teachers Decision* and *Nurses Decision*. The evidence in relation to the displayed

⁵ *Stage 1 Decision* [2022] FWCFB 200, 319 IR 127.

⁶ *Stage 3 Decision* [2024] FWCFB 150, 331 IR 137.

competence and acquired experience of ENs is mixed (see **Section 7**); it does not support the ANMF Proposal.

- 2.9 Turning to the proposed classification definitions, they are not supported by evidence⁷ and cannot objectively assist with the classification exercise or aid award compliance (see **Section 7**).⁸
- 2.10 The ANMF proposal also ignores the outcome of the *Nurses Decision* that established the “enrolled nurse supervising other direct care employees” as single rate and classification for ENs in the aged care sector.
- 2.11 The position of the Parties is that the work value of ENs working in aged care was considered to finality in the Aged Care Proceedings; it should not be revisited.

Nurse Practitioners

- 2.12 Absent identification of work value reasons that distinguish the work performed by NPs outside of aged care settings, the minimum award rates should be aligned to the NP pay structure in the aged care stream (see **Section 8**).

Operative Date and Phasing-In

Private Hospital Sector

- 2.13 The proposed variations to the *Nurses Award* will have a material impact on providers operating in the private hospital sector. The increase in labour costs will also extend to oncosts.
- 2.14 Employers that currently engage occupational health nurses will also be impacted.
- 2.15 In the absence of funding, with a view to mitigate the impact on employers to some degree, any increases arising from these proceedings should be implemented in five equal annual instalments. Further submissions are set out in **Section 9**.
- 2.16 To enable employers in the private sector time to prepare for the upcoming changes, as well as provide CHA time to engage in negotiations with the Government in relation

⁷ A problem recognised in *Nurses Decision* [2024] FWCFB 452 at [50] in the context of ENs working in aged care.

⁸ A problem recognised in *Nurses Decision* [2024] FWCFB 452 at [59] in the context of RNs working in aged care; *Aged Care Award 2010*; *Nurses Award 2020*; *Social, Community, Home Care and Disability Services Industry Award 2010* [2024] FWCFB 298 at [39].

to funding, the first instalment (together with any consequential changes to the *Nurses Award*) should commence 3-months from the publication of the final determination.⁹

- 2.17 To the extent a submission of the ANMF has not been addressed, it should not be taken to be agreed. Further submissions about the weight to be given to lay and expert evidence filed by the ANMF will be addressed in closing submissions.

Aged Care Sector

- 2.18 As at the date of these submissions, there is no commitment by the Commonwealth to increase funding in the aged care sector to cover the cost increases arising from this matter. Aged care providers would be forced to absorb these increased costs.¹⁰
- 2.19 The Parties maintain objection to the re-opening of matters determined in AM2021/63. This objection was first set out in submissions filed 14 November 2025.¹¹
- 2.20 In the event variations are made impacting aged care, against these objections, aged care providers will require no less than 3 months to implement the changes (see **Section 9**).

⁹ Ageing Australia maintains objection to the re-opening of matters determined in AM2021/63, in the event variations are made impacting aged care, the Witness Statement of Claire Bailey refers to members requiring no less than 3 months.

¹⁰ Witness Statement of Claire Bailey at [20].

¹¹ See Ageing Australia and ABI in a Joint Submission: *“Response to the ANMF’s Agitation of the Aged Care Decisions”* (14 November 2025); CHA Submission: *“Response to the Applicant’s Position Document”* (14 November 2025).

3. STATUTORY FRAMEWORK

- 3.1 Section 157 of the *Fair Work Act 2009* (Cth) (the **FW Act**) sets out the evaluative exercise to be undertaken by the Expert Panel.
- 3.2 Before varying the minimum award rates in the *Nurses Award*, the Expert Panel must be satisfied that:¹²
- (a) the variation is justified by work value reasons (**the first limb**); and
 - (b) making the determination outside the system of annual wage reviews is necessary to achieve the modern awards objective (**the second limb**).

Justified by Work Value Reasons

- 3.3 The scope of the first limb is informed by the definition of “*work value reasons*” in subsection (2A), which are reasons justifying the amount that employees should be paid for doing a particular kind of work and “*related to*” three exhaustive categories:¹³
- (a) the nature of the work;
 - (b) the level of skill or responsibility involved in doing the work;
 - (c) the conditions under which the work is done.
- 3.4 Whilst the words “*related to*” are of broad import, there must be a sufficient connection or association between the purported reasons and a prescribed category of work value reason.¹⁴

Consideration of Assumptions based on Gender

- 3.5 Subsection (2B) requires the Expert Panel’s consideration of work value reasons to be free of assumptions based on gender and include consideration of whether historically the work has been undervalued because of assumptions based on gender.¹⁵
- 3.6 This provision informs the approach the Commission must take with respect to its decision-making under the first limb of the statutory test.¹⁶

¹² *Fair Work Act 2009* (Cth) s 157(2).

¹³ *Fair Work Act 2009* (Cth) s 157(2A); *Stage 1 Decision* [2022] FWCFB 200 at [148].

¹⁴ *Stage 1 Decision* [2022] FWCFB 200 at [155].

¹⁵ *Fair Work Act 2009* (Cth) s 157(2B).

¹⁶ *Stage 3 Decision* [2024] FWCFB 150 at [14].

3.7 Importantly, subsection (2B) does not expand the categories of work value reasons or introduce a *‘third limb’* into the statutory test. The first limb continues to remain squarely focused upon an evaluation of identified “*work value reasons*” and whether they justify a variation of modern award minimum wages.

Necessary to achieve the Modern Awards Objective

3.8 If the Expert Panel determines that a change to the classification structure and/or minimum award rates is justified by work value reasons, it is also required to be satisfied that any determination outside the system of annual wage reviews is necessary to achieve the modern awards objective.¹⁷

3.9 Considerations relevant to the modern awards objective and minimum wages objective are returned to below in **Section 10** of this submission.

3.10 The consideration of the annual wage review is in effect a temporal consideration of when any such variation should commence; 1 July or some other time. The Expert Panel also has a discretion in regard to this issue arising from s 166; this can be better addressed in the context of operative date and phasing-in of any increase to minimum wages.

¹⁷ *Fair Work Act 2009* (Cth), s 157(2)(b), refers s 134.

4. THE AGED CARE PROCEEDINGS

Overview

4.1 The finalisation of the Aged Care Proceedings provides an important starting point for the Expert Panel ahead of its consideration of whether work value reasons exist to justify the variations sought by the ANMF to the minimum rates for nursing employees (other than aged care) in the *Nurses Award*.

4.2 This is because:

- (a) *first*, to the extent that all parties support the proposed increases and classifications for AINs, RNs, midwives and OHNs, based on the application of findings and principles from the Aged Care Proceedings, the Expert Panel may readily accept that the statutory test in s 157 has been satisfied;
- (b) *second*, the Aged Care Proceedings (together with the Priority Awards Review) illustrate the principled approach that is to be taken by the Expert Panel in its consideration of work value reasons and proposed variations to the classification and pay structure of the *Nurses Award* outside of the Annual Wage Review; and
- (c) *third*, the Aged Care Proceedings include a detailed consideration of the history of the Nurses Award, which is relevant to the Expert Panel's consideration under s 157(2B).

4.3 This section identifies the relevant findings and principles established in *Stage 1 Decision*, *Stage 3 Decision* and *Nurses Decision*.

Stage 1 Decision – Work Value Findings

4.4 In the *Stage 1 Decision*, the following work value reasons were identified as justifying an increase of 15%:

- (a) The workload of nurses and personal care employees in aged care has increased, as has the intensity and complexity of the work;¹⁸
- (b) The acuity of residents and clients in aged care has increased. People are living longer and entering aged care later as they are choosing to stay at home for

¹⁸ *Stage 1 Decision* [2022] FWCFB 200 at [551], [789], [965].

longer and receive in-home care. Residents and clients enter aged care with increased frailty, co-morbidities and acute care needs;¹⁹

- (c) The proportion of residents and clients in aged care with dementia and dementia associated conditions has increased;²⁰
- (d) Home care is increasing as a proportion of aged care services;²¹
- (e) Since 2003, there has been a decrease in the number of Registered Nurses (**RN**) and Enrolled Nurses (**EN**) as a proportion of the total aged care workforce. Conversely, there has been an increase in the proportion of PCWs and AINs;²²
- (f) RNs have increased duties and expectations, including more administrative responsibility and managerial duties;²³
- (g) PCWs and AINs operate with less direct supervision. PCWs and AINs perform increasingly complex work with greater expectations;²⁴
- (h) There has been an increase in regulatory and administrative oversight of the Aged Care Industry;²⁵
- (i) More residents and clients in aged care require palliative care;²⁶
- (j) Employers in the aged care industry increasingly require that PCWs and AINs hold Certificate III or IV qualifications;²⁷
- (k) The philosophy or model of aged care has shifted to one that is person-centred and based on choice and control, requiring a focus on the individual needs and preferences of each resident or client. This shift has generated a need for additional resources and greater flexibility in staff rostering and requires employees to be responsive and adaptive;²⁸

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid at [551], [789].

²² Ibid at [551], [789], [890]-[892].

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid at [551], [789], [890]-[892], [965].

²⁷ Ibid at [551], [789], [890]-[892].

²⁸ Ibid at [551], [789], [890]-[892], [965].

- (l) Aged care employees have greater engagement with family and next of kin of clients and residents;²⁹
- (m) There is an increased emphasis on diet and nutrition for aged care residents;³⁰
- (n) There is expanded use and implementation of technology in the delivery and administration of care;³¹ and
- (o) Aged care employees are required to meet the cultural, social and linguistic needs of diverse communities including Aboriginal and Torres Strait Islander people, culturally and linguistically diverse people and members of the LGBTQIA+ community.³²

4.5 As to those findings, the Full Bench made the following observation: *“they would not necessarily apply consistently across classifications or universally in every instance to all employees concerned.”*³³

4.6 The work value reasons found in the *Stage 1 Decision* also included evidence about *“invisible skills”* (informed by the evidence of Professor Junor).³⁴

Stage 3 Decision – Work Value Findings

4.7 In the *Stage 3 Decision*, the Expert Panel (as reconstituted) made further distinct findings of work value reasons with respect to *“direct care”* employees in the aged care industry:

- (a) PCWs, HCWs and AINs have never been the subject of a work value assessment by the Commission or its predecessors;³⁵
- (b) the pay rate alignment of PCWs, HCWs and AINs to the C10 classification *“has meant that the award rates of pay for PCWs, HCWs and AINs have never properly comprehended the exercise of the ‘invisible’ skills involved in aged care work identified in the expert report of Associate Professor Anne Junor”*;³⁶

²⁹ Ibid.

³⁰ Ibid at [551], [789], [890]-[892].

³¹ Ibid.

³² Ibid at [551], [789], [890]-[892], [965].

³³ Ibid at [891]; [789], [890]-[892].

³⁴ Ibid at [896].

³⁵ *Stage 3 Decision* [2024] FWCFB 150 at [156(1)].

³⁶ Ibid.

- (c) whilst nurses had been subject to previous work value assessments, those processes “*did not properly take into account either the professionalisation of the nursing occupation which occurred during the 1990s or the ‘invisible’ skills exercised in the aged care sector identified in the Junor Report*”;³⁷
- (d) the “*16 findings*” made in the *Stage 1 - Aged Care Decision* (see above);³⁸ and
- (e) “*enhanced IPC [infection prevention and control] measures have become a permanent and important part of work requirements within aged care facilities since the COVID-19 pandemic, and this has involved the exercise of additional skills and responsibilities by direct care employees, additional training, and changes to their working environment. This itself constitutes an increase in the work value of direct care employees*”.³⁹

4.8 Importantly, in making those findings about direct care employees, the Expert Panel also held “*it is not possible to determine the matter before us **simply by awarding a uniform percentage increase in pay rates***”.⁴⁰

4.9 In the context of the *Stage 3 Decision*, including with reference to the specific work value reasons found, the Expert Panel decided upon the following course to address the increase to award minimum rates:

- (a) For PCWs, HCWs and AINs in aged care, the Expert Panel decided the appropriate course was to “*identify a benchmark pay rate for a key classification and then construct a new and uniform classification structure on the basis of that benchmark rate*”.⁴¹
- (b) Having identified an “*appropriate benchmark classification and rate*”, the Expert Panel decided upon “*an appropriate classification structure which encompasses the various levels of skill and responsibility exercised by such employees, sets rates which bear an appropriate relativity to the benchmark rate and properly value the work in question free of assumptions based*

³⁷ Ibid at [156(2)].

³⁸ Ibid at [156(3)].

³⁹ Ibid at [156(4)].

⁴⁰ Ibid at [157] (emphasis added).

⁴¹ Ibid.

on gender, and provides for a career path accompanied by skills development.⁴²

(c) For nursing employees in aged care, the Expert Panel observed that *“the same course is generally appropriate... but... there are wider considerations which render it inappropriate to deal with the issue of aged care nurses’ rates to finality in this decision.”* Those *“wider considerations”* included:

- (i) the fact that the *Nurses Award* includes *“annual increments”*, which the parties had not properly dealt with in submissions or evidence before the Expert Panel; and
- (ii) an issue as to the appropriate pay relativity between a three-year and a four-year degree-qualified RN.⁴³

Accordingly, beyond some observations as to the *“benchmark rate for the fixation of minimum wages for RNs in aged care”* and the ENs in aged care, the determination for nurses was held over.⁴⁴

“Invisible” skills as a work value reason

4.10 The concept of *“invisible”* skills is no longer novel and has been practically characterised by the Commission for application in work value reason assessments.

4.11 In the *Stage 3 Decision*, the Expert Panel held that four categories of *“invisible”* skills had been disregarded from the C10 benchmark, which contributed to the award minimum wages for direct care employees not being properly set, namely:

- (a) interpersonal and contextual awareness;
- (b) verbal and non-verbal communication;
- (c) emotion management; and
- (d) dynamic workflow coordination (collectively, **the identified skills**).⁴⁵

⁴² Ibid at [174] (emphasis added).

⁴³ Ibid at [207(1)].

⁴⁴ Ibid at [204].

⁴⁵ Ibid at [156(1)].

- 4.12 The Expert Panel also observed that it was likely that the same disregard of the identified skills would have impacted the setting of award minimum wages in other female-dominated occupations or industries.⁴⁶
- 4.13 It was also observed that disregard of the identified skills from the “*masculinised C10 benchmark*”:
- (a) continued a pattern of treating the identified skills exercised in female-dominated industries and occupations “*as merely-feminine traits*”; and
 - (b) lies “*at the heart of the gendered undervaluation of work*”.⁴⁷
- 4.14 Each finding supported a conclusion that the rates for direct care employees in aged care were not properly set in the first place.⁴⁸
- 4.15 In circumstances where it is not controversial that the nursing occupation is female-dominated, consideration of the identified skills – *as opposed to the spotlight tool* – provide a logical and sensible starting place.
- 4.16 Further, the evidence that will assist the Commission to make the necessary evaluative judgment under s 157(2)(a) of the FW Act is lay evidence that contextualises the performance of the identified skills (not necessarily expert evidence).
- 4.17 By reference to those same findings, any proposed emphasis on the spotlight tool seems misplaced. We will return to submissions about the weight to be given to the expert evidence of Dr Lisa S. Heap in closing submissions.
- 4.18 The *Stage 3 Decision* did not simply accept the general findings about “*spotlight skills*” as set out in the *Stage 1 Decision*;⁴⁹ rather, the Expert Panel went further and named the identified skills.⁵⁰
- 4.19 That specific finding brought certainty to the Expert Panel’s observations and conclusions as to the types of “*invisible*” skills not previously compensated by award minimum rates.

⁴⁶ Ibid.

⁴⁷ Ibid at [156].

⁴⁸ Ibid.

⁴⁹ Ibid at [857].

⁵⁰ Ibid at [156(1)].

Calculation of a Year

- 4.20 The Expert Panel in the Aged Care Proceedings also considered the question of whether progression in the relevant awards should be differentiated by hours work vs the calendar year; a proposal raised by the Joint Employers.
- 4.21 In the context of how to calculate “4 years’ additional industry experience” the Expert Panel explicitly rejected the insertion of hours.⁵¹

*[38] This is rejected, for three reasons. First, it adds unnecessary complexity. We envisage particular difficulty as to how the Joint Employers’ proposal would work in practical terms if an employee changes employers in the period after being classified at the new Level 3. Second, we intended, as earlier explained, that the requirement for 4 years’ additional industry experience would support retention of employees. **By this, we generally contemplated employees staying a further 4 calendar years in their current role, irrespective of the number of hours worked per week.** The Joint Employers’ proposal would, in practical terms, extend the period by a number of calendar years and might thereby diminish or vitiate the intended retention benefit. Third, the Joint Employers’ proposal is inconsistent with a classification structure based on qualifications and skills required to be exercised by employees, and with providing employees with an incentive to obtain the Certificate III qualification to progress to Level 4.*

⁵¹ *Aged Care Award 2010; Nurses Award 2020; Social, Community, Home Care and Disability Services Industry Award 2010* [2024] FWCFB 2 at [38].

Nurses Decision – Work Value Findings

4.22 The *Nurses Decision*:

- (a) established a “*single pay level*” and “*single classification*” for the EN working in aged care;
- (b) affirmed the rates to be set for an EN with supervisory responsibilities and an RN (namely the C1(a) benchmark); and
- (c) affirmed the approach taken in *Teachers* in relation to time-based increments without any relationship to work value having no place in the *Nurses Award*.

Enrolled Nurses

4.23 Based on the evidence in the Aged Care Proceedings, including the work value findings identified in the *Stage 1 Decision* and *Stage 3 Decision*, the Expert Panel made the following decisions:

- (a) “*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***”;⁵²
- (b) insert a new classification definition for an EN working in aged care, with the following title “*enrolled nurse supervising other direct care employees*”;⁵³
- (c) the rate of an EN aged care is to be aligned to the rate of a Team Leader under the Aged Care Award 2010 “*based on the proposition that ENs and Team Leaders would both have responsibility for supervising PCWs*”;⁵⁴

4.24 The Expert Panel also observed that the oversight and assistance of PCWs by ENs “*is a central role of all ENs in residential aged care*” and “[t]here was no evidence of ENs in aged care not having this responsibility”.⁵⁵

4.25 Putting that decision into context, the Expert Panel said:⁵⁶

“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

⁵² *Nurses Decision* [2024] FWCFB 452 at [51].

⁵³ *Ibid* at [50].

⁵⁴ *Ibid* at [48]; *Stage 3 Decision* [2024] FWCFB 150 at [205].

⁵⁵ *Ibid*.

⁵⁶ *Nurses Decision* [2024] FWCFB 452 at [51] (emphasis added).

*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.***

- 4.26 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.⁵⁷

Registered Nurses

- 4.27 In relation to pay points for RN Levels 1-3, the Expert Panel held:

- (a) *“the current scheme of pay points in the RN Level 1, 2 and 3 classifications should not be retained since they are not consistent with properly-fixed minimum rates of pay based on work value”*;⁵⁸
- (b) a four-year increment in the classification of RN Level 1 and a three-year increment in RN Level 2 *“is sufficient to recognise increased work value through acquired knowledge and skill”*;⁵⁹
- (c) aligned the RN Level 1-3 rates to the rates set in the *Teachers Case*.⁶⁰

“• RN Level 1, after completion of four years’ service, aligns with Teacher Level 3 under the EST Award.

• RN Level 2, 1–3 years aligns with Teacher Level 4 under the EST Award.

• RN Level 2, after completion of three years’ service, maintains the existing relativity of Level 2 pay point 4 to Level 2, pay point 1.

• RN Level 3 aligns with Teacher Level 5 under the EST Award.”

⁵⁷ Ibid at [51].

⁵⁸ Ibid at [57].

⁵⁹ Ibid at [58].

⁶⁰ Ibid at [62].

4.28 In setting properly fixed rates informed by work value reasons, the Expert Panel also had regard to whether there was a “sufficient differential between the skill valuation of RN Levels 1 and 2”.⁶¹ This arose because the ANMF were agitating for maintaining “additional pay points” at RN1, RN2 and RN3.

4.29 The decision to remove the internal grades from RN4 and RN5 was supported by the following reasoning:

(a) the classification definitions for both RN4 and RN5 addressed progression through the grades in similar terms:

“Appointment at a particular grade at this level will depend upon the level of complexity associated with the duties described in clause [A.5.4 or A.5.5 as relevant]. In this connection the number of beds in a facility will be a relevant consideration”.

(the appointment provision)

(b) the appointment provision in both RN4 and RN5 provided “no objective legal prescription based on work value as to how employees are to be graded within RN Levels 4 and 5. It effectively leaves to the employer’s subjective judgment the grade to which an employee may be appointed”,⁶²

(c) having regard to the “significant” spread of the rates between the grades in each classification: “No work value differences of this extent can sensibly be derived from the considerations in clauses A.5.4(c) and A.5.5(c)” (i.e. the appointment provisions),⁶³ and

(d) “the classification definition for RN Levels 4 and 5 make it apparent that employees appointed at these levels are undertaking management or leadership roles for which contracts of employment providing for individualised salaries are likely to be the norm. It is not necessary in these circumstances for each classification to have more than a single minimum wage rate”.⁶⁴

⁶¹ Ibid at [58].

⁶² Ibid at [60].

⁶³ Ibid.

⁶⁴ Ibid.

4.30 The internal grades were removed and the existing relativities for RN Level 4 and 5 were maintained as follows:⁶⁵

“• RN Level 4 maintains the existing relativity of Level 4 grade 1 to Level 3 pay point 1.

• RN Level 5 maintains the existing relativity of Level 5 grade 3 to Level 4 grade 1”

Nurse Practitioners

4.31 By the *Stage 1 Decision*, NPs in aged care received a 15% increase, justified by the work value reasons set out earlier. In the *Nurses Decision*, the Expert Panel made a deliberate decision to not increase the minimum rates for NPs working in aged care any further. The reasoning for that decision included (at [61]):

- (a) “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”;
- (b) “[e]ven with no [further] 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”;
- (c) “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”;
- (d) insufficiency of evidence at the time of the proceedings.

⁶⁵ Ibid at [62].

5. SECTION 157(2B): CONSIDERATION OF GENDER ASSUMPTIONS AND IMPACT ON RATES SETTING IN THE NURSES AWARD

- 5.1 Unlike recent work value cases, the Expert Panel has the benefit of two Full Bench decisions that considered whether nursing classifications had been undervalued because of assumptions on gender (i.e. the consideration required by s 157(2B)).
- 5.2 In many respects, the key lifting in relation to identification of historical “*gender-based undervaluation of work*” is now authoritatively set out in the *Stage 3 Decision* at [10]-[94]. The Expert Panel in that decision recognised a “*wider context of gender assumptions which have pervaded the federal industrial relations system since its inception in the early 20th century*”. This was addressed by consideration of the following:
- (a) historical gender assumptions in award wage fixations between 1907 and 1967;⁶⁶
 - (b) the “*unfinished business*” of the *Equal Pay Cases*;⁶⁷
 - (c) the implementation (and non-implementation) of the C10 Metals Framework Alignment Approach;⁶⁸ and
 - (d) the award modernisation process.⁶⁹
- 5.3 As a summation of the relevant industrial history that precedes the current modern awards system, each consideration must necessarily have relevance to broader considerations of the impact of gender undervaluation on the modern awards system.
- 5.4 The consideration of s 157(2B)(b) is then directly forwarded by the detailed account of the historical development of the *Nurses Award 2010* included in the *Nurses Decision* (at [111] to [135]). By reference to that history, which was not limited to a consideration of nursing employees in aged care, the Expert Panel observed (at [135]):

“This history confirms what is apparent on the face of the Nurses Award, as set out in paragraphs [942]–[955] of the Stage 1 decision. 216 The rates of pay for degree-qualified nurses in the Nurses Award are not properly fixed minimum rates because the principles set out in the Paid Rates Review decision²¹⁷ and

⁶⁶ *Stage 3 Decision* [2024] FWCFB 150 at [25]-[53].

⁶⁷ *Ibid* at [54]-[75].

⁶⁸ *Ibid* at [76]-[94].

⁶⁹ *Ibid* at [95].

*the ACT Child Care decision²¹⁸ (see paragraphs [82]–[83] above) were never properly applied. It is apparent that nursing has undergone a revolutionary transformation from an occupation which in 1958 was equated to a trade to a recognised profession for which a university degree is required for entry. However, **the federal award system has failed to set minimum award rates of pay which properly recognise the addition to work value effected by this transformation and, in the context of this being a female-dominated occupation, this can only be characterised as historic gender undervaluation.***”

6. SECTION 157(2) AND “THE CONSENT POSITION”

Overview

- 6.1 On 19 November 2025, a consent position between the ANMF and relevant interested parties was communicated to Hatcher J. Specifically, that the ANMF proposed variations in relation to the following classifications was not in dispute:
- (a) assistants in nursing / nursing assistants (**AINs**);
 - (b) registered nurses (**RNs**) (including midwives); and
 - (c) occupational health nurses, occupation health clinical nurses and occupational health consultants (collectively, **OHNs**).
- 6.2 In submissions filed by the ANMF dated 20 March 2026, it was suggested that weight should be put on that consent having regard to the parties in the proceedings and that such consent can be relied upon in satisfaction of s 157(2).
- 6.3 That submission should be rejected.
- 6.4 The existence of a consent position does not equate to satisfaction of the statutory test (or that the proposed rates are properly fixed and free from the impact of assumptions based on gender). The *Nurses Decision* contains multiple references to consent positions throughout the historical development of the *Nurses Award*, which support the caution that must be applied.⁷⁰
- 6.5 Rather, the basis upon which the Expert Panel may find satisfaction of the statutory test in relation to the above classifications is because the ANMF proposal in relation to AINs, RNs (including midwives) and OHNs involves the direct application of principles and findings from the Aged Care Proceedings.
- 6.6 The basis for the alignment is set out below.

⁷⁰ See examples in *Nurses Decision* [2024] FWCFB 452 at [66], [99], [110].

Consistency with the Aged Care Proceedings

Nursing Assistants / Assistants in Nursing

- 6.7 Subject to adjustments to account for the Annual Wage Review increases,⁷¹ the ANMF proposal for the AIN pay structure is consistent with the pay and classification structure set for direct care employees under the *Aged Care Award 2010*.⁷²
- 6.8 That consistency results from:
- (a) application of the “*Caring Skills benchmark rate*” to the Certificate III-qualified AIN,⁷³ and
 - (b) alignment to the ‘*new*’ classification structure created for direct care employees under the *Aged Care Award* (see Levels 1-3) as a result of the *Stage 3 Decision*.⁷⁴
- 6.9 The appropriateness of that alignment is supported by the findings and observations of the Expert Panel in the *Gender Undervaluation – Priority Awards Review decision (Priority Award Review decision)*, which affirmed that the Caring Skills benchmark rate is relevant to “*caring*” work and not limited to aged care settings. The Expert Panel observed:
- “in respect of work of a ‘caring’ nature involving the exercise of ‘soft’ or ‘invisible’ skills, the Caring Skills benchmark rate (currently \$1269.80 per week) established in the Stage 3 Aged Care Decision for a Certificate III-qualified employee indicates the upper end of the range of potential outcomes.”*⁷⁵
- 6.10 In the *Priority Awards Review decision*, the Caring Skills benchmark rate was applied to Certificate III-qualified employees under the *SCHADS Award* and *Children’s Services Award 2010*.⁷⁶ That alignment reflects the Commission’s finding that the identified Certificate III-qualified workers “*exercise skills and discharge responsibilities which are of equal or comparable work value*” to PCWs/AINs working in aged care.⁷⁷

⁷¹ *Annual Wage Review 2025* [2025] FWCFB 3500 at [6].

⁷² *Stage 3 Decision* [2024] FWCFB 150; *April Decision* [2025] FWCFB 74.

⁷³ *April Decision* [2025] FWCFB 74, citing the *Stage 3 Decision* [2024] FWCFB 150.

⁷⁴ *Stage 3 Decision* [2024] FWCFB 150.

⁷⁵ *April Decision* [2025] FWCFB 74 at [71].

⁷⁶ *Ibid* at [389] and [551].

⁷⁷ *Ibid* at [547].

Registered Nurses

- 6.11 Subject to adjustments to account for the Annual Wage Review increases,⁷⁸ the ANMF proposal for the RN pay structure is consistent with the amendments made to the RN pay structure in the aged care stream following the *Nurses Decision*.⁷⁹
- 6.12 The proposed amendments include:
- (a) adopting equivalent minimum rates for each RN level, which include:⁸⁰
 - (i) alignment to the rates in Teachers Case for RN1, RN2 and RN3; and
 - (ii) maintaining existing relativities for RN4 and RN5 (as described in the *Nurses Decision*);⁸¹
 - (b) adopting the same pay structure for RN1 and RN2, which includes progression to an increased rate following completion of a set number of years (e.g. 'completion of 4 years');⁸²
 - (c) the removal of anachronistic pay points and/or progression by annual movement from the pay structure consistent with the *Teachers Case*,⁸³ and
 - (d) removal of internal grades from RN4 and RN5, which were observed to not be based on work value.⁸⁴

Occupational Health Nurses

- 6.13 Some observations are made about the existing classification and pay structure in the *Nurses Award*:
- (a) The classification structure for the OHN was modelled off the classification structure that appeared in the *Nurses (ANF - South Australian Private Sector) Award 2003*.
 - (b) The classification definitions for each level of OHN contain references to distinct skills, experience and/or qualifications. For example:

⁷⁸ *Annual Wage Review 2025* [2025] FWCFB 3500 at [6].

⁷⁹ *Nurses Decision* [2024] FWCFB 452.

⁸⁰ *Ibid.* See also *Statement* [2024] FWCFB 405.

⁸¹ *Nurses Decision* [2024] FWCFB 452 at [62].

⁸² *Ibid.* See also *Statement* [2024] FWCFB 405.

⁸³ *Nurses Decision* [2024] FWCFB 452. See also *Statement* [2024] FWCFB 405.

⁸⁴ *Nurses Decision* [2024] FWCFB 452 at [59]-[60].

- (i) **Occupational Health Nurse Level 1** – *“at least 4 years post registration experience”*;
 - (ii) **Occupational Health Clinical Nurse Level 2** – *“at least 4 years post registration experience”* and *“completion of a relevant post-registration qualification to this field of employment”*;
 - (iii) **Senior Occupational Health Clinical Nurse** – *“at least 5 years post registration experience”*, *“coordinates the occupation health nursing service”* and *“provides support and direction to 4 or less occupational health nurses and/or occupational health clinical nurses”*; and
 - (iv) **Occupational Health Nurse Consultant Level 3** – *“at least 5 years post registration experience”*, *“coordinates the occupation health nursing service”* and *“provides support and direction to 5 or more occupational health nurses and/or occupational health clinical nurses”*.
- (c) Each level includes 4-5 pay points. The progression between the pay points is *“by annual movement”* (see clause 15.2(a)). Despite the reference to *“the acquisition and use of skills”* and *“knowledge”* in paragraph (b), the progression is primarily time-based.
- (d) There is alignment between the OHN and RN pay structures. Specifically, Occupational Health Nurse Level 1, pay point 1 is aligned to RN1, pay point 4. Although progression through both structures is currently based on the anachronistic years of service model, this alignment is consistent with experience requirement for an Occupational Health Nurse Level 1: *“an RN with at least 4 years post registration experience”*.

6.14 Subject to adjustments to account for the Annual Wage Review increases,⁸⁵ the ANMF proposal for the OHN pay structure is consistent with the principles established in Aged Care Proceedings for the following reasons:

- (a) The removal of pay points is consistent with the principles and reasoning set out in the *Nurses Decision*, it removes the anachronism carried over from the federal award system.

⁸⁵ *Annual Wage Review 2025* [2025] FWCFB 3500 at [6].

- (b) The proposed pay structure from the OHNs is appropriately aligned to the modified RN structure. This is achieved by aligning:
- (i) Occupational Health Nurse Level 1 to RN1 upon the completion of 4 years, which continues to recognise the Occupational Health Nurse Level 1 requirement of having *“at least 4 years post registration experience”*;
 - (ii) Occupational Health Clinical Nurse Level 2 to the RN2 pay structure, which recognises an increase in pay upon the completion of 3 years;
 - (iii) Senior Occupational Health Clinical Nurse to RN2 upon completion of 3 years; and
 - (iv) Occupational Health Nurse Consultant Level 3 to RN3.

7. SECTION 157(2): ENROLLED NURSES

Overview

7.1 The ANMF proposal in relation to ENs is problematic because it:

- (a) features incremental pay increases based on arbitrary periods of service (increasing the increment to 2 years is an artifice that maintains the anachronistic structure condemned by *Teachers Decision* and *Nurses Decision*) (**Problem 1: Incremental Pay Increases**);
- (b) proposes classification definitions that cannot objectively assist with the classification exercise or aid award compliance⁸⁶ and are not supported by evidence⁸⁷ (**Problem 2: Classification Definition**);
- (c) disregards the outcome of the *Nurses Decision* that established the “*enrolled nurse supervising other direct care employees*” as single rate and classification for ENs in the aged care sector (**Problem 3: Ignores Aged Care Findings**).

7.2 For the reasons that follow the ANMF’s proposal regarding ENs should be rejected.

Problem 1: Incremental Pay Increases

7.3 The annual incremental pay scale for ENs in the *Nurses Award* is an anachronism. It is the result of an approach to wage setting that has its origin in federal awards.⁸⁸

7.4 The ANMF Proposal suggests that a possible solution to that anachronism is to change the annual increment from “1 year” to “2 years”. Putting aside aged care, this results in the following pay points:

- (a) EN 1 – Completion of 6 months;
- (b) EN 2 – Completion of 2 years;
- (c) EN 3 – Completion of 4 years;
- (d) EN 4 – Completion of 6 years.

7.5 Neither the employer or employee evidence recognise 2 years as an appropriate or consistent marker of increased work value for ENs. Rather, aside from recognising the

⁸⁶ A problem recognised in *Nurses Decision* [2024] FWCFB 452 at [59] in the context of RNs working in aged care; *Aged Care Award 2010*; *Nurses Award 2020*; *Social, Community, Home Care and Disability Services Industry Award 2010* [2024] FWCFB 298 at [39].

⁸⁷ A problem recognised in *Nurses Decision* [2024] FWCFB 452 at [50] in the context of ENs working in aged care.

⁸⁸ See *Nurses Decision* [2024] FWCFB 452 at [57]; *Stage 3 Decision* [2024] FWCFB 150 at [131]-[133].

first year as a period of greater supervision and skill development, the evidence from both employees and employers appears to be quite mixed (even before testing):

- (a) Samantha Beattie, NP, refers to ENs being “*independently competent*” between 2-3 years, and able to “*practice at an advanced level*” from approximately 4 years;⁸⁹
- (b) Jade Barclay, EN, provides examples of skills learnt across two different wards over a period of 8 years, she identifies a fresh learning curve within the first 6-12 months of joining a new ward;⁹⁰
- (c) Darren Wall, EN, provides examples of skill learnt after 18 months and 3-4 years;⁹¹
- (d) Kris Salisbury, Chief Nurse and Clinical Governance Officer, refers to most ENs being independent 2-3 years post-qualification experience (but again, qualifies that individual progress is personal and variable);⁹²
- (e) multiple employer witnesses refer to increased competency as varying between individual, with factors such as life experience, prior work experience, exposure to different situations and personal attributes being relevant;⁹³
- (f) Duncan Apelt, Senior Manager Operational Performance – Hospitals, refers to ENs generally reach a level of consistent proficiency within their practice after approximately 3 to 4 years. However, if they move one department or ward to another specialty area, a further 1 to 2 years before they are fully proficient again;⁹⁴
- (g) Emma Prosser, Interim General Manager Clinical Governance, refers to an ENs core tasks remaining “*broadly consistent over time*” and “*nursing clinical judgement*” changing overtime through exposure to “*repetitive clinical*”

⁸⁹ Witness Statement of Samantha Beattie at [28(c)] and [28(f)].

⁹⁰ Witness Statement of Jade Barclay at [15]-[16].

⁹¹ Witness Statement of Darren Well at [39].

⁹² See Witness Statement of Kris Salisbury at [48]-[51].

⁹³ See Witness Statement of Ilona Ryan at [107], [114]-[115]; Witness Statement of Kris Salisbury at [48]-[51]; Witness Statement of Anne-Marie Robinson at [55]-[60]; Witness Statement of Duncan Appelt at [28]-[31], [68].

⁹⁴ Witness Statement of Duncan Appelt at [77]-[79].

situations” (she also gives evidence of her observations of ENs in their second year and after 5 years).⁹⁵

7.6 Even at this early stage in the proceedings, in circumstances where the evidence is very mixed, the Expert Panel would approach the ANMF Proposal for ENs with caution.

7.7 Further, whilst the Commission has acknowledged that the acquisition of knowledge and skill through on-the-job experience can contribute to a work value finding,⁹⁶ as seen in the following examples:

(a) Teachers – the Full Bench provided for two pay increments for a fully accredited/registered teacher, at three years and six years;⁹⁷

(b) Direct Care Workers – 4 years’ experience;⁹⁸ and

(c) Children’s Services Employees (Educator) – 4 years’ experience,⁹⁹

in each instance, the now established markers of competency were supported by overwhelming evidence from both employee and employers that substantiated the existence of relevant markers or shifts in competency. It is not just the mere passage of time.

7.8 The ANMF want to maintain incremental pay points to provide “*career progression*”. This same argument was previously unsuccessfully ran with respect to ENs working in aged care. In the Aged Care Proceedings, the ANMF argued:

*“Pay points for ENs should not be eliminated. The effect of that elimination would be to eliminate career progression for ENs who do not choose to go and seek further degree qualifications and was inconsistent with the proposition that there should be a career-based classification structure with a clear means to transition from one level to another.”*¹⁰⁰

7.9 That argument was rejected by the Expert Panel on the basis that the evidence did not support the maintenance of pay points. As part of that rejection, the Expert Panel referred to the disconnect between the evidence in the proceedings and the proposed

⁹⁵ Witness Statement of Emma Prosser at [31].

⁹⁶ *Nurses Decision* [2024] FWCFB 452 at [58];

⁹⁷ *Teachers Decision* [2021] FWCFB 2051 at [657].

⁹⁸ *Stage 3 Decision* [2024] FWCFB 150 at [193]-[194].

⁹⁹ *ECEC Decision* [2025] FWCFB 283 at [3], [8].

¹⁰⁰ *Nurses Decision* [202] FWCFB 452 at [41(1)].

classification definitions (i.e. the definitions that existed in the *Nurses Award* at the relevant time):

*“This classification definition relates to an entry-level employee, and the references to the EN having practical nursing experience not in excess of 12 months, having limited or no practical experience of ‘current situations’, and exercising only limited discretionary judgement not developed by practical experience is plainly inconsistent with the evidence that ENs in aged care supervise PCWs and provide them with advice and support. Nor do the classification descriptions for EN pay points 2, 3, 4 or 5 (set out at clauses A.4.2, A.4.3, A.4.4 and A.4.5 respectively) make any reference to the EN having supervisory responsibility over other employees. Accordingly, we do not consider that any of the existing EN classification definitions match, in terms of work value, the role of the EN in aged care disclosed by the evidence before us for which we have set the rate of \$1422.20.”*¹⁰¹

- 7.10 Further submissions about potential markers of competency that are informed by work value reasons will be returned to in closing submissions, following the testing of the evidence.

Alignment to Advanced Educator in Children’s Services Award

- 7.11 The ANMF Proposal aligns the “*introductory rate*” for ENs outside of aged care to CSE Level 5 – Advanced Educator in the *Children’s Services Award 2010*; a classification that requires a diploma as a minimum requirement (**Diploma Rate**).
- 7.12 The following observations are made:
- (a) the Diploma Rate arises from the *Priority Awards Review* and may be accepted as a rate that is free from assumptions based on gender;¹⁰²
 - (b) the Expert Panel in the *Priority Awards Review* observed the work performed by educators to be comparable to the work performed by care workers in the aged care sector;¹⁰³

¹⁰¹ *Nurses Decision* [2024] FWCFB 452 at [50].

¹⁰² *ECEC Decision* [2025] FWCFB 283 at [3], [8].

¹⁰³ *April Decision* [2025] FWCFB 74 at [547]-[551].

- (c) the Diploma Rate would appear to be appropriate for the rate for the EN (other than aged care).

7.13 For completeness, the current rate for “enrolled nurse supervising other direct care employee” would not be appropriate for ENs (other than aged care). This is because, as the evidence will show, ENs outside of aged care do not have comparable supervisory responsibilities.

Proposed Alignment of the EN to a Degree-qualified RN

7.14 The ANMF Proposal also suggests that a properly fixed rate for an EN with 6 years’ experience should sit above the rate set by the Expert Panel for entry level RN (i.e. within their first year of practice):

ANMF PROPOSAL		NURSES AWARD 2020	
EN Pay Point 6	\$1521.74	RN Level 1 – first year ¹⁰⁴	\$1500.30

7.15 The effect of that proposal, if adopted, would mean that after 6 years’ experience, a diploma qualified EN aligns to an RN that has completed either a 3 or 4 year degree. The Expert Panel should approach the ANMF Proposal with caution.

Problem 2: Classification Definition

7.16 The ANMF Proposal includes a series of EN classification definitions that:

- (a) incorporate reference to professional development; and
- (b) maintain “skill indicators” with some amendments.

7.17 In the *Stage 3 Decision*, the Expert Panel made it clear that classification definitions are not “position descriptions”. In *Stage 3 Decision*, the Expert Panel observed: ¹⁰⁵

“We consider, with respect, that this evidence involves at least to some extent a misconception of the function of classification descriptors in modern awards. They are not ‘position descriptions’ of the type which might apply to individual employment arrangements. Their purpose is to identify to which categories of employees the minimum pay rates prescribed by the award are payable. They are the means of expressing the legal prescription of the minimum pay obligations of employers and entitlements of employees. Except

¹⁰⁴ In aged care, once fully phased in.

¹⁰⁵ *Stage 3 Decision* [2024] FWCFB 150 at [183].

*insofar as it is necessary to serve this purpose, there is no need for classification descriptors to give a total description of the skills, duties and incidents of the jobs to which they apply. **Indeed, it is undesirable for this to be attempted.** The changing nature of modern work means that a classification descriptor of this nature would rapidly become outdated. Further, the type of comprehensive description contemplated would be excessively lengthy and require complicated judgments to be formed as to how each employee is to be classified and paid, thus constituting an onerous regulatory burden on employers. This is illustrated by the descriptor proposed for the Certificate III-qualified classification in the Joint Report, which is some four pages long. This degree of complexity does not aid award compliance. The proper assessment of work value, including the proper recognition of the ‘invisible’ skills that characterise these female dominated jobs, is not to be found in the award classification descriptor for a position but rather in its minimum rate of pay. Whether that rate of pay represents a proper assessment of work value can be determined from the Commission decision which fixed that rate of pay.”*

- 7.18 The evidence will demonstrate the “skill indicators” attached to annual (or biannual) increments no longer serve an appropriate or accurate representations of the work performed by ENs (similar to aged care). This is because each of the skills arise in the course of an ENs employment, with individual strengths or proficiency of said skills being very much a product of the individual. Some achieve it within the first 6 months, some at 6 years may still struggle.
- 7.19 The recent approach to classification structures taken in both the Aged Care Proceedings and Priority Awards Review reinforces that it is not necessary or helpful to set out the tasks, skills, responsibilities performance by ENs at each level.
- 7.20 Rather, the Expert Panel has the opportunity to set a far more simpler structure that is fit for purpose and removes the anachronistic features of incremental pay increases based on arbitrary periods of service and skill indicators that have no connection to work value.
- 7.21 Similarly, the ANMF proposed classification definitions consistently refer to the following as ‘justifying’ progression to a further classification level based on training and experience, including:

- (a) “An employee will be appointed to this pay point based on training and experience”;
- (b) “practical experience in the provision of nursing care and/or services” (i.e. a further 2 years); and
- (c) “completion of continuing professional development as required by the NMBA or its successor”.

7.22 The evidence will reveal:

- (a) the in-house training provided to ENs year-to-year is standard and targets maintenance of knowledge and skills, and matters specific to the employer;¹⁰⁶
- (b) bespoke training may be offered but, again, is offered to all;¹⁰⁷
- (c) all nursing employees are required to complete professional development (CPD) in order to maintain their registration as an EN, RN or NP – it does not advance nursing employees, it is essential to maintain registration.¹⁰⁸

7.23 Such that Expert Panel cannot be satisfied that ENs at the 6 month, 2 year, 4 year or 6 year mark are advanced in their role as a result of training or CPD. That criteria has no relationship with increased competency; it would insert an entirely artificial marker.

Problem 3: Ignores Aged Care Findings

7.24 As set out earlier, the Expert Panel in the *Nurses Decision* had already made findings about a “single classification” and “single rate” for ENs in aged care. The ANMF Proposal suggests that the Expert Panel in AM2024/11 should simply ignore that decision and re-consider the work value of ENs in aged care.

¹⁰⁶ See Witness Statement of Emma Prosser at [50]-[51]; Witness Statement of Ilona Ryan at [58]; Witness Statement of Kris Salisbury at [86]-[87]; Witness Statement of Benjamin Williams at [59]-[64]; Witness Statement of Anne-Marie Robinson at [51]-[54]; Witness Statement of Duncan Appelt at [93]-[94].

¹⁰⁷ See generally, Witness Statement of Benjamin Williams at [65].

¹⁰⁸ See Witness Statement of Emma Prosser at [52]-[54]; Witness Statement of Kris Salisbury at [84]-[85]; Witness Statement of Benjamin Williams at [67]; Witness Statement of Anne-Marie Robinson at [61]; Witness Statement of Duncan Appelt at [95]. See also, Nursing and Midwifery Board of Australia, Registration Standard: Continuing Professional Development (1 June 2016); Nursing and Midwifery Board of Australia, *Guidelines – Continuing Professional Development* (November 2016).

- 7.25 Turning to the ‘aged care’ progression proposal for ENs, again, the Expert Panel is presented with an artifice. The ANMF Proposal suggests that a proper consideration of the ENs’ work value in aged care results in the following pay points:
- (a) EN Aged Care;
 - (b) EN 3 – Completion of 4 years; and
 - (c) EN 4 – Completion of 6 years.
- 7.26 The basis for this architecture is not informed by work value reasons. This proposed “*integration*” was preceded by the ANMF reaching consent with other employer parties in the healthcare sector (who have acknowledged they do not have interest in aged care).
- 7.27 The purported integration is achieved by simply extending pay point 3 and 4 to ENs in aged care. It is a proposal that seeks to return pay points that were expressly removed by the Expert Panel in AM2021/63; it ignores the earlier determination.¹⁰⁹
- 7.28 The evidence from the employers will show:
- (a) after the first 6-12 months as an EN, the nature of work, skills required and conditions in which work is performed are not subject to change;¹¹⁰
 - (b) as with any role, over time, as a result of repetition, an EN may get more confident in the performance of their role;¹¹¹
 - (c) the EN role, by its nature and the scope of practice, is capped (that is portrayed as a negative by the ANMF that should be addressed by the return of pay points);¹¹²
 - (d) the completion of CPD is a requirement of all ENs (RNs and NPs) – it does not assist with classification or be classified as a work value reason;¹¹³

¹⁰⁹ *Nurses Decision* [2024] FWCFB 452 at [51].

¹¹⁰ See Witness Statement of Benjamin Williams at [39]-[41]; Witness Statement of Kris Salisbury at [27].

¹¹¹ See Witness Statement of Benjamin Williams at [42].

¹¹² See Witness Statement of Benjamin Williams at [39]-[41]; Witness Statement of Kris Salisbury at [27]. See also, Nursing and Midwifery Board of Australia, *Enrolled Nurses Standards for Practice* (1 January 2016); Nursing and Midwifery Board of Australia, *Fact Sheet – Scope of Practice and Capabilities of Nurses*.

¹¹³ See Witness Statement of Benjamin Williams at [66]; Nursing and Midwifery Board of Australia, *Registration Standard: Continuing Professional Development* (1 June 2016); Nursing and Midwifery

- (e) the mandatory training completed by ENs each year does not change, it is consistent;¹¹⁴ and
- (f) there is no proper basis to limit or link the skill indicators in proposed “*pay point 3*” and “*pay point 4*” to an EN in aged care with 4 years and 6 years respectively.¹¹⁵

7.29 Mr Williams stated that his expectations for ENs remain consistent across the duration of their employment. He gave the example of multiple scenarios where his expectations remain whether the EN was 12 months, 4 years or 6 years in the position.¹¹⁶

7.30 There is no proper basis to make any further work value findings with respect to ENs in aged care. The findings of the Expert Panel in AM2021/63 in relation to ENs should not be disturbed.

Comparison: Residential Aged Care vs Hospital Setting

7.31 Putting aside the objection to the re-agitation of the closed issues, to assist the Expert Panel with its evaluative judgment of the proposed variations to the EN pay and classifications structure, the employer evidence provides insights into the nature of the work, skill and responsibility and conditions in which work is performed by ENs in both aged care and hospital settings.

7.32 The following similarities arise:

- (a) qualification is the same: a diploma;¹¹⁷
- (b) completes an orientation and annual in-house training, including training about how to respond to emergency situations;¹¹⁸
- (c) work within a 24/7 care arrangement with defined shifts;¹¹⁹

Board of Australia, Guidelines – Continuing Professional Development (November 2016); Nursing and Midwifery Board of Australia, Fact Sheet – Continuing Professional Development.

¹¹⁴ See Witness Statement of Benjamin Williams at [59]-[60].

¹¹⁵ See Witness Statement of Benjamin Williams at [47]-[49].

¹¹⁶ See Witness Statement of Benjamin Williams at [44]-[46].

¹¹⁷ See Witness Statement of Benjamin Williams at [18]; Diploma of Nursing (HLT53121).

¹¹⁸ See Witness Statement of Emma Prosser at [47]-[51]; Witness Statement of Ilona Ryan at [58], [62]-[63]; Witness Statement of Benjamin Williams at [43], [50], [59]-[62]; Witness Statement of Duncan Appelt at [85]-[89], [93]-[94].

¹¹⁹ See Witness Statement of Ilona Ryan at [36]; Witness Statement of Kris Salisbury at [55]; Witness Statement of Benjamin Williams at [36]-[37]; Witness Statement of Anne-Marie Robinson at [16]-[17]; Witness Statement of Duncan Appelt at [19]-[20].

- (d) worker under the indirect or direct supervision of an RN;¹²⁰
- (e) performs duties within a defined scope of practice that includes performance of clinical duties (e.g. wound care and administration of medication (excluding Sch 8) and nursing care that includes the performance of personal and hygiene care (e.g. feeding, dressing, showering));¹²¹
- (f) assists with the administration of medication (subject to level of competency, noting some ENs do not have competency to perform IV etc);¹²²
- (g) performs work in accordance with a care plan that is prepared and signed off by an RN;¹²³
- (h) completes observations and/or progress notes;¹²⁴ and
- (i) engages in communication with patient/consumer;¹²⁵
- (j) engages in communication with family members;¹²⁶ and
- (k) works in a team environment.¹²⁷

¹²⁰ See Witness Statement of Emma Prosser at [25]; Witness Statement of Ilona Ryan at [56]-[57]; Witness Statement of Kris Salisbury at [62]-[64]; Witness Statement of Benjamin Williams at [21]; Witness Statement of Anne-Marie Robinson at [34]; Witness Statement of Duncan Appelt at [34]-[36].

¹²¹ See Witness Statement of Emma Prosser at [29]-[31]; Witness Statement of Kris Salisbury at [29]-[30]; Witness Statement of Benjamin Williams at [23]-[27], [29]; Witness Statement of Anne-Marie Robinson at [24], [29], [38]; Witness Statement of Duncan Appelt at [25]-[26], [44]-[54]. See also Nursing and Midwifery Board of Australia, *Enrolled Nurses Standards for Practice* (1 January 2016).

¹²² See Witness Statement of Emma Prosser at [29(c)]; Witness Statement of Kris Salisbury at [35]-[36]; Witness Statement of Benjamin Williams at [26]-[27]; Witness Statement of Anne-Marie Robinson at [29], [32]-[33].

¹²³ See Witness Statement of Emma Prosser at [28], [32(d)]; Witness Statement of Kris Salisbury at [37]; Witness Statement of Benjamin Williams at [24]; *Stage 1 Decision* [2022] FWCFB 200 at [487].

¹²⁴ See Witness Statement of Emma Prosser at [29(f)], [34]; Witness Statement of Kris Salisbury at [31]-[34], [38]; Witness Statement of Benjamin Williams at [23]; Witness Statement of Anne-Marie Robinson at [30]-[31]; Witness Statement of Duncan Appelt at [49]-[54]. See generally, *Report to Full Bench—Lay Witness Evidence Report* (Commissioner O’Neill, 20 June 2022) at [337], which provides a summary of the lay evidence in the Aged Care Proceedings: *Stage 1 Decision* [2022] FWCFB 200 at [360], [437].

¹²⁵ See Witness Statement of Emma Prosser at [32]; Witness Statement of Kris Salisbury at [40]; Witness Statement of Benjamin Williams at [34]-[35]; Witness Statement of Duncan Appelt at [40].

¹²⁶ See Witness Statement of Kris Salisbury at [40]; Witness Statement of Anne-Marie Robinson at [29(g)].

¹²⁷ See Witness Statement of Emma Prosser at [25]; Witness Statement of Benjamin Williams at [15].

7.33 The following differences arise:

Hospital Setting

- (a) involves the delivery of acute, specialised, and emergency care;¹²⁸
- (b) the work environment can include a variety of wards or units including general medical and surgical wards, intensive care unit, operating theatres, palliative, oncology, paediatric, ENT, rehabilitation, maternity, etc;¹²⁹
- (c) features a multidisciplinary team of professionals including doctors, NPs, RNs, ENs, AINs and Allied health staff on site;¹³⁰
- (d) the EN is rarely (if ever) the most senior nursing employee on site;¹³¹
- (e) only occasionally do ENs have a supervisory role over assistants in nursing (however, this is typically limited and not universal);¹³²
- (f) there is a higher percentage of RNs and doctors in a hospital compared to ENs;¹³³
- (g) features patients that have a variety of care needs that may be admitted and discharged within a day to longer stays;¹³⁴ and
- (h) a different patient journey: admission, treatment and care (which may include surgery) and discharge.¹³⁵

¹²⁸ See Witness Statement of Emma Prosser at [11]; Witness Statement of Anne-Marie Robinson at [12]-[13].

¹²⁹ See Witness Statement of Emma Prosser at [11]-[12]; Witness Statement of Ilona Ryan at [13]-[22], [45]; Witness Statement of Anne-Marie Robinson at [2]; Witness Statement of Duncan Appelt at [38]-[39].

¹³⁰ See Witness Statement of Ilona Ryan at [26]-[29]; Witness Statement of Kris Salisbury at [17], [73]; Witness Statement of Benjamin Williams at [75]; Witness Statement of Anne-Marie Robinson at [7], [15], [29(h)], [46].

¹³¹ Witness Statement of Anne-Marie Robinson at [27]-[28].

¹³² See Witness Statement of Anne-Marie Robinson at [39]-[41].

¹³³ See Witness Statement of Emma Prosser at [20], [23]; Witness Statement of Kris Salisbury at [23]; Witness Statement of Benjamin Williams at [68], [74]; Witness Statement of Anne-Marie Robinson at [9], [40]; Witness Statement of Duncan Appelt at [22]-[24].

¹³⁴ See Witness Statement of Emma Prosser at [13]-[18]; Witness Statement of Ilona Ryan at [34]-[35]; Witness Statement of Kris Salisbury at [68]-[69], [72]; Witness Statement of Anne-Marie Robinson at [13]-[14], [19]-[23].

¹³⁵ See Witness Statement of Emma Prosser at [13]-[18]; Witness Statement of Ilona Ryan at [31]; Witness Statement of Anne-Marie Robinson at [19]-[23],[16].

Residential aged care

- (i) involves delivery of person centred care that prioritised provided support and assistance to consumer in 'home like' settings (i.e. the EN is working in the resident's home, even if care is provided in a residential aged care setting) - the work environment of residential aged care facilities has moved away from hospital ward set up;¹³⁶
- (j) residents are typically entering aged care much later in life, they are older and with acute needs;¹³⁷
- (k) features a smaller team of professionals on site;¹³⁸
- (l) the EN is commonly one of the most senior nursing employees on site, albeit always acting within their scope of practice and subject to the direct or indirect supervision of an RN;¹³⁹
- (m) the EN is tasked with supervising direct care employees – all ENs do this to a degree in aged care settings;¹⁴⁰
- (n) there is a lower percentage of RNs (and nursing staff generally), the highest proportion by role is the direct care worker.¹⁴¹

¹³⁶ See Witness Statement of Kris Salisbury at [70]-[71]; *Stage 1 Decision* [2022] FWCFB 200 at [695]-[707].

¹³⁷ See Witness Statement of Ben Williams at [73]; Witness Statement of Anne-Marie Robinson at [14]; *Stage 1 Decision* [2022] FWCFB 200 at [570].

¹³⁸ See Witness Statement of Kris Salisbury at [74]; Witness Statement of Benjamin Williams at [12]-[13], [15], [76].

¹³⁹ See Witness Statement of Benjamin Williams at [15]; Witness Statement of Kris Salisbury at [74]-[75].

¹⁴⁰ See Witness Statement of Kris Salisbury at [74]-[75]; Witness Statement of Benjamin Williams at [28]; See *Nurses Decision* [2024] FWCFB 452 at [48].

¹⁴¹ See Witness Statement of Kris Salisbury at [24]; Witness Statement of Benjamin Williams at [12], [69].

8. SECTION 157(2): NURSE PRACTITIONERS

- 8.1 The ANMF Proposal suggests that work value reasons exist that justify:
- (a) a 35.6% increase for NPs working in settings other than aged care; and
 - (b) a further 15.6% for NPs working in aged care.
- 8.2 Whilst a 15% increase for NPs working in setting other than aged care may be readily accepted following an application of the reasoning in the *Nurses Decision*. It is unclear what work value reasons the ANMF rely upon to justify that *additional* increase.
- 8.3 In the *Nurses Decision*, the Expert Panel made a deliberate decision to not increase the minimum rates for NPs working in aged care. The reasoning for that decision included:¹⁴²
- (a) the “*very high relativity*” to the benchmark rate;
 - (b) insufficient evidence before the Commission; and
 - (c) the Expert Panel were not satisfied that NP rates should be placed “*significantly above the Level 5 teacher who similarly practises their profession at an advanced level of accreditation*”.
- 8.4 Currently, a Teacher Level 5 under the *Education Services (Teachers) Award 2020* has a corresponding wage rate of \$1,922.40 per week. By contrast, the Nurse Practitioner – Aged Care Employees stream wage rate is \$2,060 per week (adjusted for the *AWR 2025* 3.5% increase, once phased-in). That is a relativity of approximately 130.5% to the C1(a) benchmark.
- 8.5 In circumstances where the NP rates were also set with consideration as to alignment to both relativities in the Nurses Award and with regard to consistency across the broader modern award system, the Expert Panel should approach the ANMF Proposal with caution.
- 8.6 Absent identification of work value reasons that distinguish the work performed by NPs outside of aged care settings, the minimum award rates should be aligned to the NP pay structure in the aged care stream.¹⁴³

¹⁴² *Nurses Decision* [2024] FWCFB 452 at [61].

¹⁴³ The evidence referring to NP filed by the Parties includes: Witness Statement of Illona Ryan at [118]-[126], [134]-[135]; Witness statement of Kris Salisbury at [78]-[84]; Witness Statement of Emma Prosser at [58]-[64]; Witness Statement of Duncan Appelt at [108]; Nursing and Midwifery Board of Australia,

9. OPERATIVE DATE AND PHASING-IN

Position

- 9.1 The increased rates should be implemented in five equal annual instalments, with the first instalment (together with any consequential changes to the *Nurses Award*) commencing 3-months from the publication of the final determination.¹⁴⁴
- 9.2 A five year phasing-in period should not be seen as unusual, lengthy phasing periods for material changes to remuneration are commonplace.¹⁴⁵ The reasonableness of this proposition is evident when compared to recent approaches by the Expert Panel in the *Priority Awards Review for the Children’s Services Award 2010*.
- 9.3 In *Priority Awards Review*, the Expert Panel implemented a 5-year phasing-in period in annual increments and a 5% instalment cap in the context of the availability (while limited) of some government funding to pay for increased wages in the early childhood education and care sector.

Submissions

Private Hospital Sector

- 9.4 This approach to implementation allows time to for:¹⁴⁶
- (a) CHA to address the material increase to their cost base, including through negotiations for increased funding from governments and private health insurers;

Nurse Practitioner Standards for Practice (1 March 2021); Nursing and Midwifery Board of Australia, *Registration Standard: Endorsement as a Nurse Practitioner* (1 June 2016); Nursing and Midwifery Board of Australia, *Guidelines – For Nurses Applying for Endorsement as a Nurse Practitioner* (December 2022).

¹⁴⁴ See Witness Statement of Katharine Bassett at [48], [50]-[52]. Whilst Ageing Australia maintains objection to the re-opening of matters determined in AM2021/63, the Witness Statement of Claire Bialek refers to members requiring no less than 3 months.

¹⁴⁵ See example: *Equal Remuneration Case* [2012] FWA FB 1000 at [67]: “The percentage loadings will be introduced over eight years, in nine equal instalments”; *4 yearly review of modern awards – Supported Employment Services Award 2020* (AM2014/286) [2022] FWCFB 245 at [25]: transitional period of three years. See also *Applications to vary the Transport Industry – General Carriers Contract Determination 2017 and Transport Industry – Courier and Taxi Truck Contract Determination* [2022] NSWIRComm 1003 at [16], [23]. See also *Stage 3 Aged Care Decision* [2024] FWCFB 150.

¹⁴⁶ See Witness Statement of Katharine Bassett dated 29 May 2026 at [46]-[49].

- (b) employers to take steps to prepare for the increases, including communications with all affected employees; and
- (c) the evaluative exercise of implementing any new classifications to be undertaken, including those covered by enterprise agreements (including s 206 considerations).

9.5 In relation to CHA, it is also noted:

- (a) CHA's members operating in the private hospital sector are not funded by government and will need to absorb the increased costs to the extent that improved funding arrangements cannot be negotiated;¹⁴⁷ and
- (b) there is a reasonable level of over award payments paid but the extent and magnitude is not uniform; it should not be taken as a gloss to suggest a level of affordability that does not exist.

Aged Care Sector

9.6 As at the date of these submissions, there is no commitment by the Commonwealth to increase funding in the aged care sector to cover the cost increases arising from this matter. Aged care providers would be forced to absorb these increased costs.¹⁴⁸

9.7 The aged care sector is reliant on funding; a fact that was repeatedly recognised by the Commission in the Aged Care Proceedings.¹⁴⁹

9.8 Absent funding, providers of all sizes that employ ENs and/or NPs in the aged care sector would encounter increased financial pressure. In relation to the impact, Claire Bailey says:

- (a) *“Many aged care providers are financially stretched as it is with other cost increases that they have experienced in the last 12 months”*;¹⁵⁰ and
- (b) *“The financial strain on residential aged care providers is also reflected in the results of the most recent survey report published by StewartBrown, which*

¹⁴⁷ See Witness Statement of Katharine Bassett dated 29 May 2026. See generally, Australian Government, Department of Health and Aged Care, *Private Hospital Sector Financial Health Check – Summary* (October 2024).

¹⁴⁸ Witness Statement of Claire Bailey at [20].

¹⁴⁹ See example, Aged Care Award 2010; *Nurses Award 2020*; *Social, Community, Home Care and Disability Services Industry Award 2010* [2024] FWCFB 298 at [13]. See also Witness Statement of Katharine Bassett at [51]-[52].

¹⁵⁰ Witness Statement of Claire Bailey at [22].

*refers to increased operating deficits (by comparing the December 2025 survey results to the December 2024 survey results)*¹⁵¹

9.9 Ms Bailey's statement also includes a detailed account of the preparatory steps that providers in aged care will need time to undertake ahead of any increase.¹⁵² This includes:

- (a) if covered by the *Nurses Award*, re-classifying all ENs and NPs against the new Award classification structure and compare the wage rates being paid already against the new wage rates;¹⁵³
- (b) if covered by an enterprise agreement, mapping their enterprise agreement EN and NP classifications against the new Award classification structure and work out how this would impact the wage rates of individual ENs and NPs;¹⁵⁴
- (c) preparing and sending out communications to employees about any changes to their classification and/or wage rate;¹⁵⁵
- (d) planning and budgeting for the cost implications from the increase in wage rates for employees;¹⁵⁶ and
- (e) undertaking the administrative exercise of updating, making changes to and running check on the payroll system, with a view to ensure all affected employees will be paid the correctly from the operative date.¹⁵⁷

Timing of Annual Instalments

9.10 In the event the annual instalments are scheduled around the Annual Wage Review, it is submitted that the operative date for any work value increases should be 2 July.

¹⁵¹ Witness Statement of Claire Bailey at [23].

¹⁵² Witness Statement of Claire Bailey at [27]-[28].

¹⁵³ Witness Statement of Claire Bailey at [28(a)].

¹⁵⁴ Witness Statement of Claire Bailey at [28(b)].

¹⁵⁵ Witness Statement of Claire Bailey at [28(a)] and [28(b)].

¹⁵⁶ Witness Statement of Claire Bailey at [28(c)].

¹⁵⁷ Witness Statement of Claire Bailey at [28(d)] and [28(e)].

10. SECTIONS 134 & 284: FAIR AND RELEVANT MINIMUM SAFETY NET

- 10.1 The modern awards objective requires an exercise of evaluative judgment and balance. The essential basis of s 134 is the formation of a fair and relevant minimum safety net composed of modern awards and the NES.
- 10.2 The key consideration that s 134 is directed to is the provision of “*a fair and relevant minimum safety net of terms and conditions*”. The remaining paragraphs are factors that may have relevance to that consideration and are required to be considered.
- 10.3 The construction of s 134 has been subject to extensive consideration by the Commission.

Fair and Relevant Minimum Safety Net of Terms and Conditions

- 10.4 Starting with the preamble in subsection (1):
- (a) fairness “*is to be assessed from the perspective of the employees and employers covered by the modern award in question*”¹⁵⁸ and that assessment “*must be done in the context of any broader economic or other considerations which might affect the public interest*”;¹⁵⁹
 - (b) the reference to “*relevant*” is “intended to convey that a modern award should be suited to contemporary circumstances”;¹⁶⁰ and
 - (c) as to the expression “*minimum safety net of terms and conditions*”, the Commission has referred to the obligation to ensure that “*the award system provides for 'secure, relevant and consistent wages and conditions of employment' so that it is an effective safety net 'underpinning direct bargaining'*”.¹⁶¹
- 10.5 The notion of a “*fair and relevant*” minimum is clearly more than an absolute minimum or subsistence floor, but the notions of fairness and relevance concern both employers and employees.

¹⁵⁸ *Re 4 Yearly Review of Modern Awards - Penalty Rates* (2017) 265 IR 1; [2017] FWCFB 1001 at [117] (emphasis added).

¹⁵⁹ *Shop Distributive and Allied Employees Association v \$2 and Under* (2003) 135 IR 1 at [11] (although Giudice J was in dissent, his Honour’s observations on this point were consistent with the majority).

¹⁶⁰ *Re 4 Yearly Review of Modern Awards - Penalty Rates* (2017) 265 IR 1; [2017] FWCFB 1001 at [120].

¹⁶¹ *Re 4 Yearly Review of Modern Awards - Penalty Rates* (2017) 265 IR 1; [2017] FWCFB 1001 at [121], citing the *August 1994 Review of Wage Fixing Principles decision* (1994) 55 IR 144 at [147]-[149] (statutory references omitted).

Considerations

- 10.6 Section 134 provides a series of considerations that need to be weighed in the balance in arriving at the fair and relevant minimum safety net for employers and employees.¹⁶² No limb has primacy over another.¹⁶³

Paragraph (a)

- 10.7 Expert Panels of the Commission have consistently defined “*low paid*” as being two-thirds of the median adult ordinary-time earnings for full-time employees.¹⁶⁴ This is determined by reference to either the Australian Bureau of Statistics (**ABS**) Characteristics of Employment (**COE**) data or the ABS Employee Earnings and Hours (**EEH**).
- 10.8 Using those measures, the “*low paid threshold*” may be calculated as either:
- (a) \$1,149.06 per week (using the ABS COE data for December 2025);¹⁶⁵ or
 - (b) \$1,245.42 per week (using the ABS EEH data for January 2026).¹⁶⁶
- 10.9 The following observations are made in relation to the current minimum rates for nursing employees other than aged care employees:
- (a) AINs (Nursing Assistant): below the COE and EEH measures;
 - (b) ENs Pay Point 1 – 4: below the COE and EEH measures;
 - (c) EN Pay Point 5: above the COE threshold, but below the COE measure;
 - (d) RN Level 1 to RN Level 5 (including all pay points and grades): above the COE measure;
 - (e) RN Level 1 Pay Point 1 to 3: below the EEH measure;

¹⁶² See *Re 4 Yearly Review of Modern Awards - Penalty Rates* (2017) 265 IR 1; [2017] FWCFB 1001.

¹⁶³ *Re 4 Yearly Review of Modern Awards - Penalty Rates* (2017) 265 IR 1; [2017] FWCFB 1001 at [115].

¹⁶⁴ See *Nurses Decision* [2024] FWCFB 452 at [68]; *ECEC Decision* [2025] FWCFB 283 at [25].

¹⁶⁵ Australian Bureau of Statistics, “*Characteristics of Employment*” (released 12 December 2025 for reference period August 2025): <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/employee-earnings/latest-release>>.

¹⁶⁶ Australian Bureau of Statistics, “*Employee Earnings and Hours*” (released 23 January 2026 for reference period May 2025) <<https://www.abs.gov.au/statistics/labour/earnings-and-working-conditions/employee-earnings-and-hours-australia/latest-release>>.

- (f) RN Level 1 Pay Point 4 and 5 to RN Level 5 (including all pay points and grades, inclusive): above the COE measure;
- (g) NPs: above the COE and EEH measures;
- (h) OHNs: above the COE and EEH measures.

10.10 The following observations are made in relations to the current minimum rates for ENs and NPs working in aged care:

- (a) EN supervising other direct care employees: above the COE and EEH measures; and
- (b) NPs: above the COE and EEH measures.

10.11 By reference to those calculations:

- (a) all AINs are below the low paid threshold on either measure;
- (b) all RNs are above the COE measure;
- (c) all NPs are above the low paid threshold on either measure.
- (d) all ENs and NPs working in aged care are above the low paid threshold on either measure.

Paragraph (aa)

10.12 Paragraph (aa) introduced *three* new concepts into the *FW Act*, “*the need to improve*”, “*access to secure work*”, and “*across the economy*”.

10.13 Since the introduction, the Commission’s consideration of paragraph (aa) has focused on the subject matter of “*access to secure work*”. In the Aged Care Proceedings, the Expert Panel focused on whether or not proposed variations may “*endanger the security of employment*” across a group of employees. For example:

- (a) In the *Stage 3 Decision*, the Expert Panel observed that having regard to the Commonwealth’s commitment to “*funding the pay increases that may arise from this decision*” it was satisfied that the pay variations will not endanger the security of employment for direct care employees in the aged care sector. This paragraph was therefore a “*neutral consideration*”.¹⁶⁷

¹⁶⁷ *Stage 3 Decision* [2024] FWCFB 150 at [211].

- (b) In the *Nurses Decision*, the Expert Panel confirmed it was satisfied that the pay variations will not endanger the security of employment for ENs and RNs in the aged care sector. Matters that informed that consideration included the shortage of staff (particularly RNs) and the minimum staff requirements for 24/7 presence and care minutes by nurses in aged care facilities. This paragraph was therefore a “neutral consideration”.¹⁶⁸

10.14 This focus appears to arise from observations by the Full Bench in the *Stage 1 Decision*, which suggested the issues of “secure work” and “job security” (s 3(a) and s 134(1)(aa)) are directed to similar purposes and that this was a neutral consideration in that case, the construction of paragraph (aa) did not attract scrutiny.¹⁶⁹

10.15 In the *Priority Awards Review*, across all proceedings that have finalised, the Expert Panel found paragraph (aa) to be a neutral consideration. It observed: “*There is no evidence before us that the variations will have any effect, detrimental or otherwise, as to the need to improve access to secure work*”.¹⁷⁰

10.16 In the absence of statutory definitions, a useful starting point is to set out the ordinary meaning by reference to the dictionary definitions. As mentioned earlier, this may assist with identifying the range of meanings associated with the terms during their ordinary usage.¹⁷¹

10.17 The definitions of “improve”, “access” and “secure” appear below:

(a) “improve” means:

- (i) “to bring into a more desirable or excellent condition: to improve one’s health”;
- (ii) “to make (land) more profitable or valuable by enclosure, cultivation, etc; increase the value of (property) by betterments, as buildings”;
- (iii) “to turn into account; make good of: to improve an opportunity”; and

¹⁶⁸ *Nurses Decision* [2024] FWCFB 452 at [68].

¹⁶⁹ See *Aged Care Award 2010*, *Nurses Award 2020*, *Social, Community, Home Care and Disability Services Industry Award 2010* [2023] FWCFB 93 at [171] (**Stage 2 Reasons for Decision**).

¹⁷⁰ *April Decision* [2025] FWCFB 74 at [109]; *HPSS Award Decision* [2025] FWCFB 297 at [46]; *ECEC Decision* [2025] FWCFB 283 at [25].

¹⁷¹ See *Theiss v Collector of Customs* (2014) 250 CLR 664; [2014] HCA 12 at [23]; *Tal Life Ltd v Shuetrim* (2016) 91 NSWLR 439; [2016] NSWCA 68 at [80].

- (iv) *“to increase in value, excellence, etc; become better: the situation is improving”*.¹⁷²
- (b) *“access”* means:
 - (i) *“way, means, or opportunity of approach or entry”*; and
 - (ii) *“(sometimes fol. by to) the act or privilege of coming; admittance; approach: to gain access to a person”*.¹⁷³
- (c) *“secure”* means:
 - (i) *“free from or not exposed to danger; safe”*;
 - (ii) *“not liable to fall, yield, become displaced, etc, as a support or a fastening”*;
 - (iii) *“affording safety, as a place”*;
 - (iv) *“in safe custody or keeping”*;
 - (v) *“free from care; without anxiety”*;
 - (vi) *“sure; certain: to be secure of victory”*;
 - (vii) *“able to be counted on: victory is secure”*; and
 - (viii) *“self-confident; poised”*.¹⁷⁴

10.18 The Macquarie Dictionary includes 75 definitions for the term *“work”* (and its derivatives). Unlike *“job”*, the ordinary meaning of *“work”* has broader associations and applications, it also generally associated with an action. Some definitions include:

- (a) *“exertion directed to produce or accomplish something; labour; toil”*;
- (b) *“that on which exertion or labour is expended; something to be made or done; a task or undertaking”*;
- (c) *“productive or operative activity”*;
- (d) *“manner or quality of working”*;
- (e) *“employment; a job, especially that by which one earns a living”*;

¹⁷² *Macquarie Dictionary*.

¹⁷³ *Ibid*.

¹⁷⁴ *Ibid*.

- (f) *“materials, things, etc, on which one is working, or is to work”;*
- (g) *“the result of exertion, labour or activity; a deed or performance”;* and
- (h) *“a product of exertion, labour or activity: a work of art”.*¹⁷⁵

10.19 The definitions of “across” and “economy” appear below:

- (a) *“across” means:*
 - (i) *“from side to side”;*
 - (ii) *“on the other side”;*
 - (iii) *“from one side to another”;* and
 - (iv) *“on the other side”.*¹⁷⁶
- (b) *“economy” means:*
 - (i) *“thrifty management; frugality in the expenditure of consumption of money, materials, etc”;*
 - (ii) *“an act of means of thrifty saving; a saving”;*
 - (iii) *“the interrelationship between the factors of production (land, labour and capital and possible also management or enterprise) and the means of production, distribution, and exchange”;*
 - (iv) *“the management, or science of management, of the resources of a community, etc, with a view to productivity and avoidance of waste: national economy”;*
 - (v) *“the disposition or regulation of the parts or functions of any organic whole; an organised system or method”;* and
 - (vi) *“the efficient, sparing, and concise use of something”.*¹⁷⁷

10.20 As to the phrases “need to improve” and “across the economy”, we set out some observations:

- (a) This is the first occasion that the term “improve” appears in the *FW Act*.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

- (b) Paragraph (aa) is the first occasion in the FW Act in which the term “access” is being used outside the context of access to a record or document.¹⁷⁸
- (c) Section 134(1)(aa) introduces the first reference to “economy” (as opposed to “the national economy” or “economic” in the FW Act).
- (d) The approach of the legislature should not be assumed to be thoughtless: the choice of text is a precise and deliberate exercise. The general approach to statutory construction is that words are assumed to be used consistently. That is, if a word is used consistently in legislation, it should be given the same meaning consistently. It follows, where a legislature could have used the same word but chose to use a different words, the intention was to change the meaning.¹⁷⁹
- (e) As Gageler J observed in *Baini v The Queen*:

*“That modern contextual approach ordinarily requires that statutory language re-enacted in an identical form after it has acquired a settled judicial meaning be taken to have the same meaning. It equally requires that, changes of drafting style aside, statutory language re-enacted in an altered form after it has acquired a settled judicial meaning be taken to have a different meaning. Were it otherwise, legislative policy choices would be blurred and orderly legislative reform would be impeded.”*¹⁸⁰
- (f) Each existing reference to “the national economy” (or “the Australian economy”) is accompanied by a clear direction as to the scope of considerations. For example:
 - (i) Section 134(1)(h) directs consideration of the impact to three parts of the national economy: “sustainability, performance and competitiveness”.
 - (ii) Section 284(1)(a) directs consideration of the impact to two parts of the national economy: “performance and competitiveness”.

¹⁷⁸ See example, *Fair Work Act 2009* (Cth) ss 180, 483-483D, 489, 495, 709, 713a.

¹⁷⁹ D C Pearce, *Statutory Interpretation in Australia* (LexisNexis, 10th edition, 2024) at [4.7].

¹⁸⁰ *Baini v The Queen* [2012] HCA 59 at [43].

- (iii) Sections 424 and 431 refer to “*caus[ing] significant damage to the Australian economy or an important part of it*”.
- (g) The FW Act also includes three references to “*economic prosperity*” and “*economic growth*”:
 - (i) *First*, in relation to the overarching objective to provide a balanced framework for cooperative and productive workplace relations “*that promotes national economic prosperity and social inclusion for all Australians*”.
 - (ii) *Second*, in relation s 3(a), which sets out an action that contributes to the achievement of that objective, namely, by “*providing workplace relations laws*” that, *inter alia*, “*promote productivity and economic growth for Australia's future economic prosperity*”.
- (h) For completeness, s 530 of the FW Act also refers to reasons of an “*economic... or similar nature*” as a basis upon which an employer may decide to dismiss 15 or more employees.

10.21 Secure work should be seen to be a reference to the fixing of and predictability of conditions and processes associated with the work itself.

10.22 The *Nurses Award 2020* already does this in many ways. For example, by fixing starting and finishing times, setting minimum notice periods for changing rosters, classifying work and establishing clear and predictable process for managing issues such as change.

10.23 Importantly, secure work should not be construed to simply arise with higher paid work as rates of minimum wages may have no bearing on the security of work itself or may in fact negatively impact the security of work in sectors where there is an inability to fund higher minimum wages through price taking to recover minimum wage increases or through insufficient, insecure or conditional funding for those sector that are funding reliant.

Paragraph (ab)

10.24 Both s 134(1)(ab) and s 284(1)(aa) replace the former reference to the principle of “*equal remuneration for work of equal or comparable value*”. The Revised Explanatory Memorandum notes that principle of “*equal remuneration*” has not been deleted from

the consideration, instead it is now captured within the new formulation of paragraphs (ab) and (aa), respectively.

- 10.25 The new formulation emphasises the connection between “*gender equality*” and “*equal remuneration for work of equal or comparable value*”. Accordingly, paragraph (ab) solidifies the requirement of the Commission to take into account “*the need to achieve gender equality*” when setting minimum wages.
- 10.26 Notwithstanding the new formulation (and re-ordering) of the ‘new’ matters, the need to take into account “*eliminating gender-based undervaluation of work*” is only one of the several factors the Commission is required to consider under ss 134 and 284.
- 10.27 This limb largely reinforces the obligation placed on the Commission in s 157(2B).¹⁸¹ In *Nurses Decision*, the Expert Panel observed:¹⁸²

“For the reasons earlier set out in the Stage 3 decision, the pay variations will ensure equal remuneration for work of equal value and eliminate gender-based undervaluation of work and will thereby provide workplace conditions that facilitate women’s full economic participation and contribute towards achieving gender equality. This weighs significantly in favour of making the variations.”

Paragraph (b)

- 10.28 It should follow as a matter of logic that increasing minimum award rates of pay in a regulated sector simply diminishes the capacity of employers to bargain for further wage increases above those higher minimum rates. This is especially the case in funded sectors where the raising of minimum rates to the extent of funding will largely negate the capacity of employers to bargaining in any practical sense at all.
- 10.29 It should be uncontroversial that “*pay*” (and related matters) is a cornerstone focus for bargaining; in fact, it would be unlikely that an enterprise agreement can be located without wages being a part of it.
- 10.30 It is noted that previously in the Aged Care Proceedings, the Expert Panel observed “*it is difficult to predict the effect increasing minimum wages will have on collective*

¹⁸¹ See *Stage 3 Decision* [2024] FWCFB 150 at [211]; *Nurses Decision* [2024] FWCFB 452 at [68].

¹⁸² *Nurses Decision* [2024] FWCFB 452 at [68].

bargaining in the aged care sector". Paragraph (b) was treated as a neutral consideration.¹⁸³

Paragraph (c)

- 10.31 It is axiomatic that in our modern liberal society economic participation brings with it broad benefits; self-esteem, social relationships as well as economic rewards.
- 10.32 This is amplified in our economy where one and half and two income families are becoming the norm.
- 10.33 Increased workforce participation requires a consideration that entry level jobs serve an important function within society to allow certain classes of persons "*such as the young and low skilled employees*" to enter into the workforce.¹⁸⁴
- 10.34 This consideration was found to favour variations in the Aged Care Proceedings; however, to different degrees for direct care employees vs RNs. In *Nurses Decision*, the Expert Panel observed:¹⁸⁵

*"As found in the Stage 3 decision at paragraph [150], the evidence suggests that the interim pay increase resulted in increased participation in the aged care workforce, and there is some reason to believe that this will continue if further increases are granted. However, as also found at paragraph [154] of the Stage 3 decision, **this effect is likely to be diminished for RNs because of the extent to which market wage rates are already significantly above the award minima.** Accordingly, this weighs in favour of the variations but only to a limited degree."*

Paragraph (d) and (da)

- 10.35 These factors do not appear relevant in the current proceedings as they concern the value of minimum wages as opposed to changes in conditions that may bear upon this consideration.

Paragraph (f)

- 10.36 This limb will be of relevance to both the private hospital sector and the aged care sector.

¹⁸³ *Stage 3 Decision* [2024] FWCFB 150 at [211]; *Nurses Decision* [2024] FWCFB 452 at [68].

¹⁸⁴ *Annual Wage Review 2009-10* (2010) 193 IR 380; [2010] FWAFB 4000 [275]-[276].

¹⁸⁵ *Nurses Decision* [2024] FWCFB 452 at [68].

Private Hospital Sector

- 10.37 Increasing minimum wages will have an obvious impact on business and in an unfunded sector this will require a consideration of price elasticity and an ability to recover such costs through price increases.
- 10.38 In 2024, the Department of Health and Aged Care conducted a Health Check on the private hospital on the private hospital sector; prior to the decision stakeholder had already raised concerns about the ongoing financial viability of the sector.¹⁸⁶
- 10.39 The Health Check assessed private hospital financial data for the period 2017–18 to 2023–24. Financial data was voluntarily provided by 243 out of 647 hospitals, representing 58% of private hospital separations and 63% of hospital revenue in 2022–23.¹⁸⁷
- 10.40 The Health Check include the following data:
- (a) The sector is diverse, with variations in size, location, types of treatments delivered, business models and agreements with private health insurers and other funders. In July 2024, there were:¹⁸⁸
 - (i) 647 private hospitals providing more than 36,000 beds;
 - (ii) Around 83% of private hospitals are in metropolitan locations, 9% in regional centres and 8% in rural towns.
 - (b) Australia’s private hospitals cover more than 40% of all hospital admissions and deliver approximately 70% of elective surgeries.¹⁸⁹
 - (c) *“For private hospitals that submitted financial data to the Health Check, there was a decline in the weighted average Earnings Before Interest, Tax and Depreciation (EBITDA) margins⁷ from 8.7% in 2018-19 to 4.4% in 2022-23.”*¹⁹⁰

¹⁸⁶ Australian Government, Department of Health and Aged Care, *Private Hospital Sector Financial Health Check – Summary* (October 2024) 2.

¹⁸⁷ Ibid 3.

¹⁸⁸ Ibid 2.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid 5.

(d) ABS data revealed that “private hospitals have experienced a decline in both profit margins and capital replacement rates, indicating reduced investment and suggesting potential longer-term risks of asset deterioration.”¹⁹¹

10.41 Increases to minimum wages also impacts an array of on-cost considerations which concern on-going on costs and also the cost of provisioned on-costs such as annual leave and long service leave.

10.42 The evidence of Katharine Bassett addresses both the general economic state of the industry and the costs impact of the increases sought by the ANMF for CHA members.¹⁹²

10.43 In the *Priority Awards Review* proceedings for employers in the community pharmacy sector and healthcare sector (which includes a private sector that is not funded), the Expert Panel acknowledged an increase in employment costs will have a “significant” impact on some employers; a factor that weighs against the grant of proposed variations. However, in both cases, the employment costs impact was held to be either “ameliorated” or “significantly mitigated” by the implementation of phasing-in arrangements.¹⁹³

10.44 In relation to the community pharmacy, the impact was considered “ameliorated” because the Pharmacy Guild of Australia had agreed to the phasing-in timetable that was ultimately imposed.

10.45 In a funded sector like aged care, there is a direct correlation between employment costs and funding, which needs to be at the forefront of consideration when making changes to any minimum rates. This is because:

- (a) the funding provided is finite and determined by the government funding agency outside of the control of the employer;
- (b) funding may not be sufficient to support any minimum wage increase leaving an unrecoverable deficit which could drive business into making losses or otherwise reducing the quality of service; and

¹⁹¹ Ibid 6.

¹⁹² See Witness Statement of Katharine Bassett at [16]-[44].

¹⁹³ *April Decision* [2025] FWCFB 74 at [109]; *HPSS Award Decision* [2025] FWCFB 297 at [162].

- (c) in some sectors the latter may be prohibited by other regulatory impositions for service quality such as mandated service standards or ratios.

Aged Care Sector

10.46 In the *Nurses Decision*, the proposed variations were held to have an impact on employment costs for aged care employers. However, the impact was observed to be *“limited because of the extent of over-award wage rates paid to ENs and RNs in the aged care sector, and will further be ameliorated by the Commonwealth’s funding commitment”*.¹⁹⁴

10.47 The current circumstances before the Expert Panel are materially different. Unlike the Aged Care Proceedings, providers operating in aged care do not have the benefit of a commitment or guarantee from the Commonwealth to fund any increases associated with AM2024/11. The absence of funding will increase the cost impact for providers in the sector that engage ENs or NPs.¹⁹⁵ This consideration weighs against making the proposed variations to ENs or NPs working in aged care.¹⁹⁶

Paragraph (g)

10.48 This consideration appears to be largely irrelevant in the present proceedings.

10.49 More generally, in terms of an easy to understand and stable modern award system, regard should also be had to the approach of the Full Bench and Expert Panels in previous work value decisions. Whilst not bound by that precedent, the practice has been to follow the approach of the Full Bench of the Commission. In this respect, we submit the approach in the Aged Care Proceeding and Priority Awards Review should be followed in considering the proper formulation of classification structures.

Paragraph (h)

10.50 This paragraph requires consideration of *“the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy”*.

10.51 The following factors are relevant:

¹⁹⁴ *Nurses Decision* [2024] FWCFB 452 at [68].

¹⁹⁵ See Witness Statement of Claire Bailey at [20].

¹⁹⁶ See generally, *HPSS Award Decision* [2025] FWCFB 297 at [162].

- (a) for private hospitals, the potential inflationary impact of increasing minimum award wages and the limited ability recover this through pricing;
- (b) for the aged care sector, there is currently no commitment from the Commonwealth to fund any further increases arising from AM2024/11. This may necessitate a need to pass on increases to the consumers;¹⁹⁷
- (c) the Full Bench has previously acknowledged the relevance of a funded sector in the context of s 134(1)(h);¹⁹⁸
- (d) absent a guarantee by the government to increase funding in the aged care sector, wage increases may have the effect of undermining these sector, such that providers can no longer afford to employ enough staff or provide the requisite number of services required, which may result in providers that already operate at a deficit being forced to discontinue services;¹⁹⁹
- (e) Australia has recently experienced a material spike in inflation with broader impacts on the community; cost of living and the Commission will need to be especially mindful of this limb in the context of current government fiscal and monetary policy to restrain inflation in the broader interests of employers and employees.

10.52 Such sensitivity is not new and by way of example in the *4 yearly review of modern awards--Supported Employment Services Award 2010* [2019] FWCFB 8179 (3 December 2019) [358], [364] the Commission concluded that to simply implement a general increase “*would not achieve the modern awards objective of a fair and relevant minimum safety net of terms and conditions*”.²⁰⁰ The full conclusion appears below:

“[364] Our conclusion, based on the above analysis, is that the adoption of the SWS as the single mandatory wage assessment tool within the current wage structure of the SES Award as proposed by the AEDLC would not achieve the modern awards objective of a fair and relevant minimum safety net of terms and conditions. In this respect we have paid particular regard to paragraphs (a), (c) and (f) of s134(1) as being of relevance and weight. In relation to paragraph (a), the adoption of the AEDLC proposal would likely have the effect of increasing

¹⁹⁷ Witness Statement of Claire Bailey at [19]-[20].

¹⁹⁸ See *4 yearly review of modern awards--Supported Employment Services Award 2010* [2019] FWCFB 8179 at [358], [364] (3 December 2019).

¹⁹⁹ See generally, Witness Statement of Claire Bailey at [22]-[25].

²⁰⁰ *4 yearly review of modern awards--Supported Employment Services Award 2010* [2019] FWCFB 8179 at [364].

the wages paid to many supported employees, although the financial benefit of this would be diminished by a reduction in their DSP payments. In respect of paragraphs (c) and (f), the mandatory adoption of the SWS as proposed would lead to a very large increase in the employment costs, which would result in a significant loss of jobs for disabled person in ADEs and thus would diminish rather than promote the social inclusion of disabled person by reducing their level of workforce participation. With respect to the minimum wages objective, we have taken into account the considerations in paragraphs (a)-(d) of s 284(2) in the same way as the equivalent considerations in s 134(1). In respect of the paragraph (e), we do not consider that that the adoption of the SWS in its current form as the sole determinant of wages for disabled persons in ADEs would be “fair” to either ADEs and employees or disabled employee for the reasons we have earlier given.”²⁰¹

Consideration of the Minimum Wages Objective

10.53 Turning to the minimum wages objective in s 284(1), at the outset it is noted that the primary consideration, in this respect, relates to the safety net of fair minimum wages rather than the “*promotion of economic prosperity*”.²⁰²

10.54 The above observations with respect to s 134(1)(h), (ab), (c) and (a), overlaps with the Expert Panel’s consideration of s 284(1)(a), (aa), (b) and (c), respectively.

10.55 Section 284(1)(e) is not relevant to this matter.

On behalf of CHA, ABI and Ageing Australia:



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²⁰¹ Ibid.

²⁰² *Annual Wage Review 2009-10* (2010) 193 IR 380; [2010] FWA FB 4000 at [14].