



DECISION

Fair Work Act 2009

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

Aged Care Award 2010

(AM2020/99 and AM2021/63)

Nurses Award 2020

(AM2021/63)

Social, Community, Home Care and Disability Services Industry Award 2010

(AM2021/65)

DEPUTY PRESIDENT ASBURY

DEPUTY PRESIDENT O'NEILL

COMMISSIONER BISSETT

BRISBANE, 3 MARCH 2023

Applications to vary modern awards – work value – Aged Care Award 2010 – Nurses Award 2020 – Social, Community, Home Care and Disability Services Industry Award 2010 – Stage 2 – interim increase – determinations issued.

Introduction

[1] On 21 February 2023 we issued a decision¹ (*the Stage 2 decision*) in which we decided to vary the *Aged Care Award 2010* (Aged Care Award), *Nurses Award 2020* (Nurses Award) and *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADS Award) (collectively, the Awards) to provide an interim increase of 15 per cent to modern award minimum wages for the following employees:

- direct care workers under the Awards;
- Head Chefs/Cooks under the Aged Care Award (aged care employee level 4-7 provided the employee is the most senior chef or cook engaged in a facility); and
- Recreational Activities Officers/Lifestyle Officers under the Aged Care Award.

[2] We decided that this increase is necessary to achieve the modern awards and minimum wages objectives at ss.134(1) and 284(1) of the *Fair Work Act 2009* and specified that it will take effect from 30 June 2023.²

[3] The background to the case is summarised at paragraphs [1] to [8] of the *Stage 2 decision*.

[4] Draft determinations giving effect to the interim increase were published concurrently with the *Stage 2 decision*. Interested parties were directed to file any comments in relation to the draft determinations no later than Wednesday, 1 March 2023.

[5] Only the Australian Nursing and Midwifery Federation (ANMF) filed comments in response.³ We will deal with each of the issues raised by the ANMF in turn.

Draft determination – Aged Care Award

Inclusion of personal care employees in clause B.1—Aged care employee—general

[6] The ANMF notes that the classifications in clause B.1—Aged care employee—general (general stream) continue to include “Personal care” employees at each classification level, but with “no indicative task” listed. To avoid confusion, the ANMF submits the reference to “Personal care” employees should be omitted from the general stream.

[7] We agree and the references have been removed from the final determination.

Classification of direct care stream employees at level 1 and 6

[8] The ANMF also notes that the direct care stream includes provision for the classification of employees at level 1 (clause B.2.1) and at level 6 (clause B.2.6) although “no indicative task” is listed for personal care employees at these levels. The ANMF states that, at present, the Aged Care Award does not provide for the employment of PCWs or RAOs at levels 1 or 6.

[9] The ANMF submits that it opposes any realignment downward of the entry level for PCWs from level 2 to level 1 under the Aged Care Award. The ANMF states that it likewise does not seek the inclusion of a classification for PCWs or RAOs at level 6.

[10] As noted by the ANMF, further consideration will be given to these issues during Stage 3 of these proceedings.

Definition of standard rate

[11] The ANMF also notes that the draft determination amends the definition of “standard rate” in clause 3.1 so that it is defined by reference to the minimum wage for a level 6 employee in the general stream. The standard rate is used for the calculation of the leading hand allowance, nauseous work allowance and sleepover allowance. The ANMF submits that employees within the direct care stream should be entitled to the benefit of the interim increase when calculating their entitlement to these allowances.

[12] The ANMF submits this would be achieved by either:

- Defining the standard rate by reference to the minimum wage for a level 6 employee in the direct care stream; or

- Providing for different standard rates for employees in the direct care stream (the minimum rate for a level 6 employee in that stream) and for employees in the general stream (the minimum rate for a level 6 employee in that stream).

[13] We note that the amendment to the definition of the standard rate in the draft determination maintains the current standard rate for all employees covered by the Aged Care Award, irrespective of the application of the interim increase. The ANMF’s proposals would result in an increase to wage-related allowances, either for all employees or for employees in the direct care stream. We believe any consideration of an adjustment to these allowances should occur during Stage 3 of the proceedings.

Draft determination – Nurses Award

Definition of standard rate

[14] The ANMF notes that the draft determination for the Nurses Award also amends the definition of “standard rate” in clause 2 so that it is defined by reference to the minimum wage for a Registered nurse—other than aged care employee—level 1 Pay point 1. The standard rate is used to calculate the on-call allowance applicable to aged care employees and other than aged care employees alike. The ANMF submits that employees within the aged care stream should be entitled to the benefit of the interim increase when calculating their entitlement to an on-call allowance. The ANMF states this would be achieved by either:

- Defining the standard rate by reference to the minimum wage for a Registered nurse—aged care employees—level 1 Pay point 1; or
- Providing for different standard rates for aged care employees (the minimum wage for Registered nurse-aged care employees—level 1 Pay point 1) and for employees other than aged care employees (the minimum wage for Registered nurse—other than aged care employees—level 1 Pay point 1).

[15] As with the Aged Care Award, the amendment to the definition of the standard rate in the draft determination for the Nurses Award maintains the amount of the current standard rate. We are of the view that any consideration of these issues should occur during Stage 3 of these proceedings.

Publication of determinations

[16] Final determinations for each of the Awards will be issued alongside this decision in the same form as the draft determinations, save for the omission of the “Personal care” from the tables in clause B.1 of the Aged Care Award mentioned in paragraph [7].⁴

[17] In accordance with the *Stage 2 decision* the final determinations will take effect on 30 June 2023.



DEPUTY PRESIDENT

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¹ [2023] FWCFB 40

² [2023] FWCFB 40 at [17]-[19]

³ ANMF submission – draft determinations dated 1 March 2023

⁴ The final determination for the Aged Care Award will also correct a typographical error at item 1 of the draft determination by changing “clause 0” to “clause 14.1”.