

FAIR WORK COMMISSION

AM2021/63

AUSTRALIAN NURSING AND MIDWIFERY FEDERATION

Applicant

**APPLICATION UNDER SECTION 157 OF THE *FAIR WORK ACT 2009* (CTH) TO
AMEND THE *AGED CARE AWARD 2010* AND *NURSES AWARD 2020***

First Matter

AM2020/99

HEALTH SERVICES UNION

Applicant

**APPLICATION UNDER SECTION 157 OF THE *FAIR WORK ACT 2009* (CTH) TO
AMEND THE *AGED CARE AWARD 2010***

Second Matter

AM2021/65

HEALTH SERVICES UNION

Applicant

**APPLICATION UNDER SECTION 157 OF THE *FAIR WORK ACT 2009* (CTH) TO
AMEND THE *SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES
INDUSTRY AWARD 2010***

Third Matter

**AUSTRALIAN NURSING AND MIDWIFERY FEDERATION
COMMENTS IN RELATION TO DRAFT DETERMINATIONS**

A. Introduction

1. On 21 February 2023 the Full Bench published a decision ([2023] FWCFB 40) in relation to the issues to be considered in Stage 2 of these proceedings (“**Stage 2 decision**”). By the Stage 2 decision, the Full Bench:
 - (1) Confirmed the view that the evidence establishes that the relevant existing minimum wage rates in the *Aged Care Award 2010* (“**Aged Care Award**”), the *Nurses Award 2020* (“**Nurses Award**”), and the *Social, Community, Home Care and Disability Services Award 2010* (“**SCHADS Award**”) do not properly compensate direct care workers in either residential or in-home aged care settings, for the value of the work performed. The Full Bench identified that it was satisfied that the requirements of s 157(2) of the *Fair Work Act 2009* (Cth) (“**FW Act**”) had been met in relation to direct care workers;
 - (2) Stated that it was satisfied that the requirements of s 157(2) of the FW Act were also met in relation to employees engaged and classified as Head Chefs/Chefs/Cooks at levels 4–7, or as Food services supervisors engaged and classified at level 7 provided the individual employee is the single most senior food services employee engaged in a facility and to Recreational Activities Officers/Lifestyle Officers (“**RAOs**”) at all levels;
 - (3) Stated that it was satisfied that an interim increase of 15 per cent to modern award minimum wages in these proceedings is necessary to achieve the modern awards objective and the minimum wages objective in relation to the following employees:
 - (a) direct care workers under the Awards; and
 - (b) 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
 - (c) RAOs under the Aged Care Award; and
 - (4) Determined that the interim increase will take effect from 30 June 2023, the Full Bench being satisfied that it is appropriate to specify that date.

2. Together with the Stage 2 decision the Full Bench also published draft determinations to give effect to the interim increase and directed interested parties to file any comments in relation to the draft determinations by 1 March 2023.
3. These are the comments of the Australian Nursing and Midwifery Federation (“ANMF”) in relation to the draft determinations.

B. The Aged Care Award Draft Determination

4. The ANMF understands that the effect of the Aged Care Draft Determination would be to create two classification streams, namely:
 - (1) Clause B.1 “*Aged care employee—general*”, pertaining to General and administrative services employees and Food services employees (“**Aged care employee—general stream**”); and
 - (2) Clause B.2 “*Aged care employee—direct care*”, pertaining to Personal care workers and RAOs (“**Aged care employee—direct care stream**”).
5. In addition, an employee in the Aged care employee—general stream at levels 4–7 will receive the separate rate of pay identified at cl 14.2 where that employee is the single most senior food services employee engaged by any employer at the facility or site.
6. The ANMF notes that the Aged care employee—general stream at cl B.1 would continue to include provision for “*Personal care*” employees, but with “*no indicative task*” listed. To avoid confusion, it is submitted that the reference to “*Personal care*” employees should be omitted from the Aged care employee—general stream.
7. The Aged care employee—direct care stream also includes provision for the classification of employees at level 1 (cl B.2.1) and at level 6 (cl B.2.6) although “*no indicative task*” is listed for Personal care employees at those levels.
8. At present, the Aged Care Award does not provide for the employment of personal care workers (“PCWs”) or RAOs at levels 1 or 6. The ANMF would oppose any realignment downward of the entry level for PCWs from level 2 to level 1 under the Aged Care Award. Likewise, the ANMF does not seek the inclusion of a classification for PCWs or RAOs at level 6. It is anticipated that these are issues to be ventilated in Stage 3.

9. The Aged Care Draft Determination would also amend the definition of the “*standard rate*” in cl 3.1, such that this would be defined by reference to the minimum wage for a level 6 employee in the Aged care employee—general stream. The standard rate is then utilised in the Aged Care Award for the calculation of the Leading hand allowance (cl 15.3), the Nauseous work allowance (cl 15.5) and the Sleepover allowance (cl 22.9(d)).
10. It is submitted that employees within the Aged care employee—direct care stream should be entitled to the benefit of the interim increase when calculating their entitlement to these allowances. This would be achieved by either:
 - (1) Defining the standard rate by reference to the minimum wage for a level 6 employee in the Aged care employee—direct care stream; or
 - (2) Providing for different standard rates for employees in the Aged care employee—direct care stream (referable to the minimum rate for a level 6 employee in that stream) and for employees in the Aged care employee—general stream (referable to the minimum rate for a level 6 employee in that stream).

C. The Nurses Award Draft Determination

11. The Nurses Award Draft Determination would also amend the definition of the “*standard rate*” in cl 2, such that this would be 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 then utilised in the Nurses Award for the calculation of the On-call allowance (cl 17.2 and C.1.1).
12. Again, it is submitted that 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. This would be achieved by either:
 - (1) Defining the standard rate by reference to the minimum wage for Registered nurse—aged care employees—level 1 Pay point 1; or
 - (2) Providing for different standard rates for aged care employees (referable to the minimum wage for Registered nurse-aged care employees—level 1 Pay point 1) and for employees other than aged care employees (referable to the minimum

wage for Registered nurse-other than aged care employees—level 1 Pay point 1).

D. The SCHADS Award Draft Determination

13. The ANMF has no comments with respect to the SCHADS Award Draft Determination.

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1 March 2023

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