



FairWork
Commission

BACKGROUND DOCUMENT 2

AWARD HISTORIES

Fair Work Act 2009

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

Aged Care Award 2010

(AM2020/99)

Nurses Award 2020

(AM2021/63)

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

(AM2021/65)

MELBOURNE, 9 JUNE 2022

This document has been prepared to facilitate proceedings and does not purport to be a comprehensive discussion of the submissions made; nor does it represent the concluded view of the Commission on any issue.

The award histories in this document have generally been drawn from the submissions of the parties, however, some additional matters have been added by the Commission's research area.

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Aged Care Award 2010

1. A history of wages and classifications in the *Aged Care Award 2010*

1.1 Pre-modern awards

Award coverage in the aged care industry

[1] Before award modernisation the aged care industry, was regulated by a number of state and federal awards.¹ In their joint submission Aged & Community Services Australia, Leading Age Services Australia and Australian Business Industrial (the Joint Employers) identify the following instruments as relevant:

- *Health and Allied Services—Private Sector—Victorian Consolidated Award 1998*² (HASA)
- *Private Hospitals, Convalescent and Benevolent Homes (Northern Territory) Award 2003*;
- *Private Hospitals and Nursing Homes Industry Award - State 2003*;
- *Residential and Support Services (Victoria) Award 1999*;
- *Health Services Employees Award*.³

[2] Leigh Svendson, witness for the HSU has provided evidence that the classification structure of the Aged Care Award was based on the following instruments (the predecessor instruments):

- (a) *HASA*;
- (b) *Health and Allied Services – Public Sector – Victoria Consolidated Award 1998*;
- (c) *Notional Agreement preserving the Aged Care General Services (State Award)*;
- (d) *Notional Agreement preserving the Charitable Sector, Aged and Disability Care Services (State) Award 2003*.⁴

Wage setting

[3] The Joint Employers note that there are some decisions in relation to pre-modern awards that allude to the C10 rate but that the modern award classification structure does not map to any pre-modern award.⁵ The HSU submits that no work value assessment has been conducted in relation to any of the instruments that they identify as the predecessor instruments.⁶

[4] The Joint Employers note that the HASA was made on 30 June 1998 as part of the award simplification process.⁷ They submit that that process was to ensure that the award conformed with prescribed allowable award matters but that the rates were not reviewed as part

¹ The Joint Employers, [submissions](#), 4 March 2022, at 15.3

² [AP783872CRV](#)

³ [AN150064](#)

⁴ Leigh Svendson, 23 April 2022, [Witness statement](#) at para 4.

⁵ The Joint Employers, [Submission](#), 4 March 2022, at para 3.10.

⁶ Leigh Svendson, 23 April 2022, [Witness statement](#) at para 10.

⁷ The Joint Employers, [Submission](#), 4 March 2022, at para 15.10.

of this process.⁸ Both parties provide a comprehensive history of the HASA and neither party identifies any evidence that the wages in the HASA were properly set.⁹ The Joint Employers conclude that the description of the award as a '*minimum rates award*' is not conclusive evidence that the rates were properly set.¹⁰

[5] The Joint Employers submit there is evidence that the rates in at least 3 pre-modern awards were properly set including the following awards:

- *Private Hospitals, Convalescent and Benevolent Homes (Northern Territory) Award 2003*;
- *Private Hospitals and Nursing Homes Industry Award - State 2003*; and the
- *Health Services Employees Award*.¹¹

[6] The Joint Employers further note that the *Award for Accommodation and Care Services Employees for Aged Persons - South-Eastern Division 2004* and *Award for Accommodation and Care Services Employees for Aged Persons - State (Excluding South-East Queensland) 2004* were fixed against internal relativities. They submit that some other awards allude to the C10 framework but absent any decision by the Commission assessing the wages in the awards they cannot conclude that the wages were properly set.¹² Ultimately the Joint Employers are of the view that while the Commission might find some alignment with instruments that contained rates described as 'properly set' with regards to the Aged Care Award, the exercise of assessing the wages must be 'undertaken deliberately and expressly'.¹³

1.2 Award modernisation

[7] On 28 March 2008 the Minister for Employment and Workplace Relations signed an award modernisation request pursuant to s.576C(1) of the *Workplace Relations Act 1996* (the WR Act).¹⁴

[8] Section 576A of the WR Act provided, among other things, that modern awards must be simple to understand and easy to apply, must be of a safety net character, must promote flexible modern work practices and efficient and productive workplaces and must be in a form that promotes collective bargaining.

[9] A Full Bench of the Australian Industrial Relations Commission (AIRC) noted in an award modernisation decision on 20 June 2008¹⁵, that the Minister's request and the relevant provisions of the WR Act required them to have regard to, among other things, the desirability of reducing the number of awards in the workplace relations system and minimising the number of awards applying to a particular employee or employer.

⁸ The Joint Employers, [Submission](#), 4 March 2022, at para 15.10.

⁹ Leigh Svendsen, 23 April 2022, [Witness statement](#) provides a comprehensive history of the HASA and all variations made to it at paras 121-171.

¹⁰ The Joint Employers, [Submission](#), 4 March 2022, at para 15.39.

¹¹ The Joint Employers, [Submission](#), 4 March 2022, at paras 15.27, 15.28 and 15.32.

¹² The Joint Employers, [Submission](#), 4 March 2022, at para 15.37.

¹³ The Joint Employers, [Submission](#), 4 March 2022, at para 15.41.

¹⁴ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 172.

¹⁵ [2008] AIRCFB 550.

[10] The AIRC commenced consulting about the programming of the matter which was conducted until May 2008.¹⁶

[11] The Women's Electoral Lobby & National Pay Equity Coalition made a submission as part of the award modernisation process in relation to pay and classifications in the health and welfare industry.¹⁷ That submission recommended using the HASA as the basis for classifications and wages.¹⁸ A statement published on 3 September 2008 indicated that the aged care industry would be dealt with under stage 2 of the award modernisation process.¹⁹ Parties were invited to make submissions and contribute draft awards. Parties' drafts were received from the HSU and the Aged Care Employers' Industry Association (Aged Care Employers).

Aged Care Employers

[12] On 31 October 2008, the Aged Care Employers submitted a draft of aged care award. Their draft only included classifications for support stream employees who work in home care.²⁰

[13] The Aged Care Employers submitted a second draft on 16 December 2008 with a classification structure they said used the HASA as a starting point and then 'modified and flattened this structure based on relevant awards and NAPSAs around Australia.'²¹

[14] The classification structure for the support stream in their draft award was a 7-level structure. The Aged Care Employers draft also referred to predecessor awards for the classification structure and contained the following commentary:

i. Support Stream Level 1, which has no equivalent in the Health and Allied Services Private Sector Victorian Consolidated Award 1998 or the Health Service Union's draft award, is solely comprised of the Homecare Worker Grade 1 classification.

ii. Support Stream Level 2, which broadly correlates to Level 3 of the HSU's draft award, is expressed to be the equivalent of the Health and Allied Services Private Sector Victorian Consolidated Award 1998 wage skill groups 1 to 5 and NSW NAPSA Care Service Employee 1.

iii. Support Stream Level 3, which broadly correlates to Level 5 of the Health of Services Union's draft award, is expressed to be the equivalent of the Health and Allied Services Private Sector Victorian Consolidated Award 1998 wage skill groups 6 and NSW NAPSA Care Service Employee 2.

iv. Support Stream Level 4, which broadly correlates to Level 8 of the Health of Services Union's draft award, is expressed to represent the Health and Allied Services Private

¹⁶ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 173.

¹⁷ Women's Electoral Lobby & National Pay Equity Coalition submission, 26 May 2009, cited in Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 174.

¹⁸ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 175.

¹⁹ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 178.

²⁰ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 182.

²¹ Aged Care Employers submission, 16 December 2008, cited in Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 197 (a copy of the submission and draft are at Tab 139 of the statement).

Sector Victorian Consolidated Award 1998 wage skill group 8 and NSW NAPSA Care Service Employee 3.

v. Support Stream Level 5, which broadly correlates to Level 10 of the Health of Services Union’s draft award, is expressed to represent the Health and Allied Services Private Sector Victorian Consolidated Award 1998 wage skill group 10.

vi. Support Stream Level 6, which broadly correlates to Level 11 of the Health of Services Union’s draft award, is expressed to represent the Health and Allied Services Private Sector Victorian Consolidated Award 1998 wage skill group 11 and NSW NAPSA Care Service Employee 4.

vii. Support Stream Level 7, which has no equivalent in the Health and Allied Services Private Sector Victorian Consolidated Award 1998 or the Health Service Union’s draft award, is solely comprised of the Hostel Supervisor classification and is expressed to represent NSW NAPSA Care Service Employee 5 Hostel Supervisor.²²

HSU

[15] The HSU filed a submission and draft aged care award on 31 October 2008 containing 3 streams: the Support Stream; the Clinical Stream and the Management Stream.²³ The Support stream (which the HSU says formed the basis of the classification structure in the *Aged Care Award 2010*) had 11 classification levels.²⁴

[16] The HSU filed a submission on 5 November 2008 which again contained an 11-level classification structure for the Support Stream of the Aged Care Award.²⁵ The HSU submission contained the following commentary about the classification structure:

‘The levels within each stream ascend by reference to autonomy of role, complexity of tasks and qualifications and skills required of the employee. The indicative tasks associated with each level are described within the classification system below. Indicative tasks assist to place an employee’s role in a particular level within a stream.’²⁶

[17] The key amendment from their first draft was in relation to the classification for personal care workers (PCW) with the first level outside of extended care moving to level 8.²⁷

²² Aged Care Employers’ Submission 31 December 2008, cited in Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 198 (a copy of the submission and draft award are appended to the statement at Tab 131).

²³ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 179 (a copy of the submission is appended to the statement at Tab 130).

²⁴ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 181 (a copy of the draft award and classification descriptors are appended to the statement at Tabs 130A and 130B).

²⁵ Leigh Svendsen, 23 April 2022, [Witness statement](#) at paras 184-186.

²⁶ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 185 (a copy of the submission is appended to the statement at Tab 141).

²⁷ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 187 – note also that the HSU submit the placement of a PCW grade 2 above a PCW grade 3 was likely in error.

[18] On 14 January 2009, the HSU made a supplementary submission again with an 11-level classification structure but with only 7 levels in the Support stream.²⁸ In this classification structure each level (aside from Health 1) had more than one pay point with progression to the next pay point requiring additional responsibilities or skills.²⁹ The trade certificate or equivalent was set at Health 5 and additional qualifications were required at each level after that.³⁰ The HSU submission also linked each classification to those found in existing awards.³¹

The exposure draft

[19] On 23 January 2009, the Commission published a statement dealing with stage 2 of the award modernisation process and exposure drafts for the awards in that stage including aged care.³²

[20] The exposure draft contained a 9-level classification structure with levels 8 and 9 reserved for management level employees.³³ The HSU submits that the exposure draft's classification structure was 'largely derived from the draft awards proposed by the HSU and the Aged Care Employers'.³⁴ The Witness statement of Leigh Svendsen sets out in detail which level in the exposure draft corresponds the levels in the parties' drafts.³⁵

Submissions from parties about the exposure draft

[21] The Aged Care Employers made the following submissions regarding the classification structure:

- the levels at which 'Aged Care Employees' have been graded is one level too high for each classification (see classifications contained within the Aged Care Employers Draft Modern Aged Care Industry Award, filed 16 December 2008);
- there is an absence of 'home care' classifications;
- Diversional Therapy and Recreational Activity Officer classifications have been omitted from the grades altogether;
- classification definitions at Levels 8 and Level 9 are essentially non-nursing manager roles and not very common in aged care. They are unlikely to be utilised and should be removed. Further, supervisory classifications should commence at Level 4, not Level 7;
- Leading hand and tool allowances should be incorporated into classification levels."³⁶

[22] The Aged Care Employers also handed up a further amended classification schedule during the hearing and in this schedule, they proposed to lower the classifications for PCW by

²⁸ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 200.

²⁹ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 201.

³⁰ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 202.

³¹ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 203.

³² Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 205 (a copy of the exposure draft is appended to the statement at Tab 143).

³³ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 205.

³⁴ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 206.

³⁵ Leigh Svendsen, 23 April 2022, [Witness statement](#) at paras 206-207.

³⁶ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 208 (a copy of the Aged Care Employers submission is appended to the statement at Tab 146).

one level.³⁷ For example, PCW grade 1 went from Level 3 to Level 2. The schedule deleted classification Levels 5, 8 and 9 and made amendments to the lists of indicative tasks.³⁸

[23] At the hearing held on 23 February 2009, the Aged Care Employers gave the following explanation for the changes they made to the classification structure in their most recent draft:

“Just turning to STAGE 2 FB2, which is the Aged Care Employers recommendations for classifications. We've taken all of the personal care workers down one grade, so on page 3 of STAGE 2 FB2 aged care employee Level 2 is the entry level for the personal care worker. We've set out some details as to indicative tasks of those personal care workers. Aged care employee Level 3, that's where we introduce a cook who can supervise other service assistants, and we also have a personal care worker Level 2, and again we've set out the different qualifications and skills and experience levels there in the schedule. The rest is fairly self explanatory. We've reduced the classifications from nine levels to six levels and that's as a result of deleting Level 5.”³⁹

1.3 The modern award

[24] The modern award was first published on 3 April 2009.⁴⁰ The decision making the award does not refer to any changes to the classification structure.

[25] The HSU notes that the following amendments had been made to the classification structure in line with the proposal by Aged Care Employers:

- i. All PCW classifications were moved down one level;
- ii. The names of the Chef classifications were changed;
- iii. Levels 8 and 9 of the classification structure were deleted; and
- iv. The Recreational/Lifestyle Activities Officer (unqualified) role was created.⁴¹

[26] The HSU concludes that the Commission had largely accepted the changes as proposed by the Aged Care Employers.⁴²

Were the Aged Care Award wages properly set?

[27] The HSU submits that the award rates were not the subject of any detailed work value assessment during the award modernisation process.⁴³ The Joint Employers submit that for the rates in the Aged Care Award to have been properly set it would require a Full Bench decision of the Commission that has expressly assessed the minimum rates in the award.⁴⁴ The Joint Employers further submit that is ‘uncontroversial that to-date no such assessment has

³⁷ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 217 (a copy of the amended classification schedule from Aged Care Employers is appended to the statement at Tab 150).

³⁸ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 217 (a marked up copy of the ACEIA schedule showing deletions and additions of text are appended to the statement at Tab 151)..

³⁹ Transcript of Proceedings, 23 February 2009, PN 510

⁴⁰ [\[2009\] AIRCFB 345](#) see para [145].

⁴¹ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 222.

⁴² Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 222.

⁴³ HSU, [submission](#), 1 April 2021, at para 28.

⁴⁴ ABI and others, [Submission](#), 4 March 2022, at para 15.40.

occurred'.⁴⁵ The HSU concurs that the evidence shows that the rates the Aged Care Award were not properly set with regards to work value or intra award relativities.⁴⁶

Variations affecting classifications since award modernisation

[28] There have been no variations to the classification structure since the Aged Care Award was made.⁴⁷ There has been one application to vary affecting the classifications since the Aged Care Award commenced operating on 1 July 2010 outside of the statutory reviews. This variation which was granted in part altered the qualification requirements for gardeners.⁴⁸

The transitional review

[29] Schedule 5, Item 6 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* required the Commission to review all modern awards after the first 2 years of all modern awards coming into effect.

United Voice application

[30] In the transitional review United Voice applied to vary, among other things, classification descriptors within Schedule B.⁴⁹ These variations included adding clarifying details about the level of experience of PCW at Levels 4 and 5. The extract below is the text they sought to include in clause B.4 for a Level 4 employee:

- In the case of a personal care worker, this is the entry level for employees who hold a relevant Certificate III qualification but have no relevant in-service experience. This is also the level for personal care workers who do not hold relevant Certificate III qualifications, but who have had a minimum of 12 months in-service experience.⁵⁰

[31] The following is the text they sought to include in clause B.5 for a Level 5 employee:

- In the case of personal care workers, employees at this Level will hold a relevant Certificate III qualification and will have at least 560 hours in-service experience. They will also have sufficient knowledge and experience to give relevant advice and/or information to the employer and/or clients in relation to the specific areas of their responsibilities.⁵¹

[32] In addition, United Voice sought to include the following dot point in clause B.7:

- This is the Level for employees who hold a relevant AQF Certificate IV qualification.
- In the case of recreational/lifestyle employees, this is the Level for employees who coordinate the provision of lifestyle/diversion therapy in an enterprise or workplace.

⁴⁵ ABI and others, [Submission](#), 4 March 2022, at para 15.40.

⁴⁶ HSU, [submission in reply](#), 21 April 2022, at para 7.

⁴⁷ Leigh Svendsen, 23 April 2022, [Witness statement](#) at para 225.

⁴⁸ Application was granted by Decision on Transcript of proceedings, 19 May 2010.

⁴⁹ AM2012/34, Application for review of modern Award, 6 March 2012.

⁵⁰ [2013] FWC 5696, [58]

⁵¹ *Ibid*

[Note: Qualified Diversional Therapists may be covered by the Health Professionals and Support Persons Award 2010 - see clause B.2.1 of Schedule B to that Award.⁵²

[33] The application was dismissed by the Commission on the grounds that there was insufficient evidence to support the variation.⁵³

4 yearly review

[34] Section 156 of the FW Act (since repealed) required the Commission to review all modern awards every 4 years. The Commission commenced the review in early 2014 and the *Aged Care Award 2010* was dealt with in Group 4 of the 4 yearly review process.

United Voice application

[35] United Voice made an application to vary to clause B.4 as follows (proposed new text underlined, strikethrough to be deleted):

B.4 Aged care employee—level 4

An employee at this level:

- is capable of prioritising work within established policies, guidelines and procedures;
- is responsible for work performed with a medium level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses good communication, interpersonal and/or arithmetic skills; and
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience.
- In the case of a personal care worker, ~~is required to hold~~ holds a relevant certificate III qualification or possesses equivalent knowledge and skills gained through on-the-job training.

[36] In a Full Bench decision⁵⁴ the Commission was of the view that there was merit in deleting the final dot point but was of the *provisional view* that it should be replaced with the following:

- In the case of a personal care worker, holds a relevant Certificate 3 qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work.

[37] The provisional view was confirmed in a subsequent Full Bench decision and a determination was published making the change to the award.⁵⁵

⁵² *Ibid*

⁵³ [2013] FWC 5696 [70-71].

⁵⁴ [2019] FWCFB 5078 at [90].

⁵⁵ [2019] FWCFB 7094 at [22] and Determination PR720159.

Nurses Award 2010

2. A history of wages and classifications in the *Nurses Award 2010*

2.1 Pre-modern awards

[38] Prior to the award modernisation process, nurses were regulated by a combination of state and federal awards.⁵⁶ The following pre-reform awards (the ‘SA Awards’) were used as the basis for the classification structure in the *Nurses Award 2010*:

- *Nurses (South Australian Public Sector) Award 2002*; and
- *Nurses (ANF – South Australian Private Sector) Award 2003*.⁵⁷

[39] The ANMF submits that the rates of pay based on an assessment of work value were last fixed as follows:⁵⁸

- In 1998 for ENs and RNs (see *Nurses (ANF-South Australian Private Sector) Award 1989; Paid Rates Review decision*, 20 October 1998, Print Q7661).
- In 2005 for AINs/ PCWs (see *Nurses Private Employment (ACT) Award 2002*, 21 November 2005 PR965496)

[40] Both the ANMF and the Joint Employers refer to the 1998 *Paid Rates Review* decision⁵⁹. In this case, the rates of the South Australian Awards were the subject of consideration by the AIRC, with 2 applications made by the Australian Nursing Federation (ANF) pursuant to item 49, Part 2 of Schedule 5 of the *Workplace Relations and Other Legislation Amendment Act 1996* (Cth).⁶⁰ The Full Bench determined in relation to South Australian Nurses:⁶¹

‘We accept the submissions that although the rates contained in the awards (excluding Appendix A) have been treated as paid rates awards in the past, they are nevertheless properly fixed minimum rates with rates for the relevant classifications being within the acceptable range of relativities in relevant minimum rates awards. We are also satisfied that the incremental salary levels for nurses and enrolled nurses within the classification structures of the two nursing awards form part of the work value assessment of nurses rates of pay conducted by Full Benches of the Commission in the development of professional rates for the nursing profession in federal awards. Accordingly, they are not affected by our decision. ...’

[41] However, the Joint Employers note that the Full Bench determined, in relation to Appendix A which concerned ‘Wage Rates – Aged Care Sector’, that those rates were in excess of properly fixed minimum rates for nursing classifications.⁶² The Full Bench stated:

⁵⁶ The Joint Employers [submissions](#), 4 March 2022, at para 16.3.

⁵⁷ The Joint Employers, [submissions](#), 4 March 2022, at para 16.4.

⁵⁸ ANMF, [index of evidence and submissions](#), 29 October 2021, B.2.3

⁵⁹ *Minister for Workplace Relations and Small Business, Re - 1276/98 M Print Q7661 [1998] AIRC 1413*; The Joint Employers submission, 4 March 2022, [16.5]

⁶⁰ Kristen Wischer, [Witness Statement](#), 14 September 2021 page 36; The Joint Employers, [submission](#), 4 March 2022, at para 16.5

⁶¹ Kristen Wischer, [Witness Statement](#), 14 September 2021 at para 171

⁶² The Joint Employers, [submission](#), 4 March 2022, at para 16.7

“The rates were inserted by a Full Bench of the Commission on 16 February 1996 as a special case and increased wages by 10% for nurses employed in the aged care sector in SA. The 10% increase reflected a bargaining outcome achieved by the ANF in the SA public and private health sectors. In the light of our decision there are no grounds to retain those components of the rates in Appendix A which reflect the 1996 special case increase. The amount by which the rates in Appendix A exceed the rates in the Award proper should be identified separately and dealt with in accordance with the principles in this decision. Whether any consequential changes are required in Appendix A, is a matter to be dealt with at the settlement of the order giving effect to our decision. An appropriate order in accordance with the principles containing a residual component above the minimum rate is to be drawn up by the ANF...”

[42] The question of whether consequential changes were required to Appendix A was referred to and settled by Commissioner Smith.⁶³

[43] The Joint Employers submit that in 2003, Commissioner Hingley observed: ‘All rates of pay in this award have been updated to include the arbitrated safety net adjustment payable under the Safety Net Review — Wages May 2002 Decision [PR002002] and satisfy me they are properly set minimum rates as required by the above relevant principles’. The Joint Employers further submit that in respect of rates of pay, it was also noted that this award was part of applications before the Full Bench in the Paid Rates Review decision. The award was varied and titled the *Nurses (ANF South Australian Private Sector) Award 2003*.⁶⁴

[44] The Joint Employers submit that ‘the minimum rates and classifications in the pre-reform awards were the subject of several decisions relating to wage fixing and adjustments, special cases and work value determinations and a combination of state and national decisions’ and that ‘whilst the rates in some pre-reform awards were described as properly set, it is unclear whether the rates in the Nurses Award were ever assessed as properly set.’⁶⁵

[45] The Joint Employers conclude that the rates in the *Nurses Award 2010* ‘may have been properly set at one stage but having regard to qualifications and AQF required for each classification – the minimum rates do not correspond to the minimum qualifications of the positions when compared against the AQF’. The employers submit that as such, there appears to be a ‘significant anomaly when the existing minimum rates in the Nurses Award are compared against the C10 framework for some classifications.’⁶⁶

[46] In the 2005 Assistant in Nursing (AIN) decision, the ANF applied to vary the *Nurses Employment (ACT) Award 2002* pursuant to s.113 of the WR Act. The application sought to insert a new classification structure in relation to an AIN (Aged Care) and to update the wage rates contained in the award.⁶⁷

⁶³ The Joint Employers, [submission](#), 4 March 2022, at para 16.8, citing Decision (Print S3326) and Order (Print S3327) of 18 February 2000.

⁶⁴ The Joint Employers, [submission](#), 4 March 2022, at para 16.9, citing *Nurses (ANF-South Australian Private Sector) Award 1989* (PR933237) [2003] AIRC 797 (7 July 2003) at [16].

⁶⁵ The Joint Employers, [submission](#), 4 March 2022, at paras 16.1-16.2.

⁶⁶ The Joint Employers [submission](#), 4 March 2022, at para 24.10.

⁶⁷ Kristen Wischer, [Witness Statement](#), 14 September 2021 at para 236.

[47] The ANF submitted that there had been such significant change in the nature of the work performed by AINs and that this warranted the creation of a new classification structure. Further, they submitted that there had not been a comprehensive review of salaries of nurses employed in the residential aged care sector in the ACT since a series of Nurses National Rates cases between 1986 and 1989. These cases established common rates of pay for employment of all nurses, other than persons employed to assist in the provision of nursing care or nursing services i.e. AINs.⁶⁸

Commissioner Deegan accepted that the aged care sector had changed and determined that it was appropriate to vary the award. The decision meant variations, *inter alia*, in relation to the title of Nurses Aide, introducing a new structure with Level 1 being an unqualified worker with a pay rate at 89% of the C10 rate,⁶⁹ aligning Assistant in Nursing Level 2 with the C10 classification in the Metals Award and that further experience gained after one year on the job would take the rate to 102% of the C10 rate.⁷⁰

[48] The resultant varied award was included in the list of awards proposed by the ANF as the basis for developing the Modern Award.⁷¹

2.2 Award modernisation

[49] As discussed above, on 28 March 2008 the Minister for Employment and Workplace Relations signed an award modernisation request pursuant to s.576C(1) of the WR Act. The WR Act required the Commission to complete an award modernisation process in accordance with the request.

[50] In its June 2008 decision⁷² the Full Bench also indicated that it should make awards primarily on broad industry lines and, as far as practical, make those awards applicable to all award-covered employees in the relevant industry.⁷³ The Full Bench observed in its 3 September 2008 decision⁷⁴ that the ACTU had proposed that a number of occupation-based modern awards should be made, including in relation to nursing. The Full Bench noted that this proposal for occupation-based awards would be considered at the appropriate time.

[51] Nurses fell under the ‘health and welfare services (excluding social and community services)’ industry which was dealt with in Stage 2 of the award modernisation proceedings. During the stage 2 proceedings, the issue of whether nurses would fall under industry awards or an occupational award remained a matter for determination.

Parties’ draft awards

⁶⁸ Kristen Wischer, [Witness Statement](#), 14 September 2021 at para 239.

⁶⁹ Kristen Wischer, [Witness Statement](#), 14 September 2021 at para 243.

⁷⁰ Kristen Wischer, [Witness Statement](#), 14 September 2021 at para 244.

⁷¹ Kristen Wischer, [Witness Statement](#), 14 September 2021 at para 246.

⁷² [2008] AIRCFB 550.

⁷³ [2008] AIRCFB 550, [12].

⁷⁴ [2008] AIRCFB 708.

[52] The ANF put forward a draft award along occupational lines, the *Exemplar Nursing Occupational Industry Award* (Exemplar award).⁷⁵

[53] The Australian Federation of Employers & Industries (AFEI) provided a draft *Nurses (Not Elsewhere Included) – Private Sector Award 2010*,⁷⁶ and stated that it did not object to the establishment of an award for nurses not otherwise covered by an industry award.

[54] The Health Services Union (HSU) in its submission of 31 October 2008 was opposed to a separate occupational award for Nurses. The HSU submitted draft awards for the Aged Care Industry, Health and Medical Services Industry and the Ambulance Services Industry.

[55] The Australian Council of Trade Unions (ACTU) in its submission of 31 October 2008 submitted that there should be a separate occupational award for nurses and that nurses should hence be excluded from the aged care and health services awards.

[56] United Voice (then the LHMU) in its submission of 30 October 2008 continued its opposition to the creation of a Nursing Occupational Award and did not support the exclusion of nursing occupations from the proposed Aged Care Industry Award.

ANF draft

[57] The ANF, in its submission to the Commission, attached an Exemplar award and a document titled ‘Award rates of pay-key classification entry level’.

[58] The ANF based the Exemplar award on the following 10 awards:

- (a) *Nurses’ Aged Care Award – State 2005 (Queensland)* (NACAS)
- (b) *Private Hospital Nurses’ Award – State 2003 (Queensland)* (PHNAS)
- (c) *Nurses Private Employment (A.C.T.) Award 2002*
- (d) *Nurses (Northern Territory) Private Sector Award 2002*
- (e) *Nurses’ (ANF – WA Private Hospitals and Nursing Homes) Award 1999*
- (f) *Nurses (Victorian Health Services) Award 2000*
- (g) *Nurses (ANF – South Australian Private Sector) Award 2003*
- (h) *Nurses (Tasmanian Private Sector) Award 2005*
- (i) *Nursing Homes, &C., Nurses’ (State) Award (NSW)*
- (j) *Private Hospital Industry Nurses’ (State) Award (NSW)*.⁷⁷

[59] It is noted on the Exemplar Award filed that the ‘Assistant in Nursing’ classification structure is derived from the following awards:

- *Nurses Private Employment (ACT) Award 2002 AP818792CRA*; and
- *Nurses’ Aged Care Award – State 2005 AN140193*;

and that the remaining structure and classification definitions are from the:

- *Nurses (ANF – South Australian Private Sector) Award 2003 [Transitional] AT825646* (Nurses SA Private Award)

⁷⁵ Kristen Wischer, [Witness Statement](#), 14 September 2021 at para 250.

⁷⁶ Attached to its submission of 12 November 2008.

⁷⁷ Kristen Wischer, [Witness Statement](#), 14 September 2021 at para 251.

[60] The ANMF submitted that, with respect to the Exemplar award, that the rates of pay and classification structure were based on the South Australian Awards and were confirmed as properly fixed minimum rates by the Full Bench in the Paid Rates Review decision.⁷⁸

The exposure draft

[61] The Full Bench published the exposure draft for the *Nurses Award 2010* (at that time called the *Nurses Occupational Industry Award 2010*) with a Statement on 23 January 2009.⁷⁹

[62] It appears, at least in relation to the classification structure and definitions, to have been largely based on the Exemplar award submitted by the ANF in October 2008.

[63] The Full Bench stated in relation to the Nurses Award as follows:

“[77] The exposure draft of the Nurses Occupational Industry Award 2010 is, as its name suggests, cast as an occupational award. Nurses are the single biggest occupational group in health and welfare services and the material advanced suggests at this stage that an occupational award is warranted. The award generally applies to nurses wherever employed although nurses employed in secondary schools have been excluded.”
[footnotes omitted]⁸⁰

[64] The Full Bench also noted that they had struck the minimum wage for both the nurses and health professionals award, which have a common entry rate for a 3-year degree, with a minimum wage for both classifications at \$697.00 per week.⁸¹

2.3 The modern award

[65] The modern Nurses Award 2010 was made on 3 April 2009.⁸² The Full Bench made the following comments in relation to the nursing assistant classification and the inclusion of an additional pay point under that classification:

“[152] In the Nurses Award 2010 there is also a classification for nursing assistant. We were asked both to delete this classification and to make it more relevant. There were concerns about an overlap between this classification and the personal care worker. We have decided to retain the classification in the Nurses Award 2010 and make it directly relevant to the work of nurses. In addition, we have adopted the suggestion of the ANF to provide an additional salary point at the Certificate III level.”⁸³

[66] The rate for the additional pay point for nursing assistants holding a Certificate III was set at the C10 rate of \$637.50.⁸⁴

⁷⁸ Kristen Wischer, [Witness Statement](#), 14 September 2021 at para 256.

⁷⁹ Kristen Wischer, [Witness Statement](#), 14 September 2021 at para 257 citing Statement [2009] AIRCFB 50.

⁸⁰ Kristen Wischer, [Witness Statement](#), 14 September 2021 at para 258 citing Statement [2009] AIRCFB 50 at [77].

⁸¹ Kristen Wischer, [Witness Statement](#), 14 September 2021 at para 259 citing Statement [2009] AIRCFB 50 at [79].

⁸² [2009] AIRCFB 345.

⁸³ [2009] AIRCFB 345, [152]

⁸⁴ Kristen Wischer, [Witness Statement](#), 14 September 2021 at para 266.

Relevant variation applications

AM2011/8

[67] An application to vary the Nurses Award 2010 pursuant to s.160 of the Act was submitted by the ANF on 3 February 2011. The application relevantly sought to include a reference to midwives and midwifery in the coverage clause and also in the classification structure in Schedule B to ensure that all employees providing midwifery responsibilities either as part of a nursing role or independent of such a role will be covered by the Nurses Award 2010. It also sought the deletion of clause 4.7 of the award to remove any uncertainty that nurses employed in pharmacies are appropriately covered by the Nurses Award.

[68] Vice President Watson made the following comments on transcript:⁸⁵

“As far as the second part of the application is concerned, it appears that midwifery has been considered in conjunction with nursing under Nursing Awards for many years and that most midwives hold general nursing qualifications and are covered by the Nursing Award. However, there is a category, and perhaps a growing category, of employees that are engaged in midwifery duties who do not hold nursing qualifications as such and again there is an uncertainty as to the award coverage of such people. There is no direct provision excluding midwives and there is some mention of midwives in the classification structure of the award.

I consider that there is a basis here under section 160 of the act to remove an ambiguity or uncertainty, or to correct an error and extend the scope of the award to cover midwives who may not have a nursing qualification. I will, therefore, approve that variation and issue an order varying the award in that respect. As I have indicated, I will communicate my concluded view of the first part of the application as soon as I am able to. The proceedings are now adjourned.”

[69] The award was varied by determination issued 9 March 2011.⁸⁶ The coverage clause was amended by deleting the exclusion of nurses employed in pharmacies in clause 4.7, and by including midwives in 4.2(b). The classifications schedule was also amended by adding the following dot point to the end of clause B.2 which defines ‘nursing care’:

- For the purposes of this award nursing care also includes care provided by midwives.

The transitional review

[70] Classification definitions were subject to an application to vary lodged by the ANMF and on 14 November 2012, Vice President Watson issued a decision⁸⁷ which outlined the matter as follows:

“[43] The ANF application seeks two variations to the classifications within Schedule B of the Award. The first is to replace references to state and territory registration boards

⁸⁵ Transcript 1 March 2011, PN138-139.

⁸⁶ PR507190.

⁸⁷ [\[2012\]FWA 9420](#).

with references to the “Nursing and Midwifery Board of Australia”. The ANF submits that a national registration scheme has been established and nurses and midwives are required by law to be registered with the Nursing and Midwifery Board of Australia (NMBA). It submits that the proposed variations are consistent with the modern awards objective. The PHIEA supports the variation and it is not opposed by the Aged Care Employers or the Australian Day Hospital Association (ADHA).

[44] ABI submits that the variation proposed by the ANF is necessary to keep the Award relevant and up to date. It suggests additional wording be inserted to avoid applications to update the award in the future.

[45] I will make the variation sought.

[46] Secondly the ANF seeks to amend the definition of enrolled nurse at pay point 2, by inserting reference to diploma and advanced diploma qualifications. It submits that the proposed variation will update the existing clause in line with current qualifications required to be registered as an enrolled nurse. It submits that the variation is necessary to achieve the modern awards objective particularly that of ensuring that modern awards provide a fair and relevant safety net of terms and conditions.

[47] The PHEIA supports this variation. ABI supports this variation, however contends that the operative date of this variation should be the date the regulatory changes take effect, being 1 July 2014. The variation is not opposed by the Aged Care Employers or the ADHA.

[48] I will make the variation sought. The date of effect of the variation will be 1 July 2014.”

[71] A determination varying the *Nurses Award 2010* was issued 14 November 2012⁸⁸ operative 14 November 2012 and 1 July 2014 (with respect to the variation to the definition of enrolled nurse at pay point 2).

The 4 yearly review

[72] The *Nurses Award 2010* was dealt with in Group 2 of the 4 yearly review process.

[73] On 10 October 2016 a full bench decision⁸⁹ in relation to Stage 2 of the 4 yearly review decided to remove the words ‘or enrolled’ from the definition of nursing assistant. This meant that nursing assistants could only be supervised by Registered Nurses. In the reason for the decision the Full Bench considered the submission from the ANMF that the law did not permit enrolled nurses to supervise nursing assistants. This submission was supported by the HSU and the Private Hospital Associations. In the absence of submissions arguing against the merits the Full Bench was satisfied to make the change. The Full Bench stated as follows:

[133] The ANMF’s proposal to vary the classification definitions in Schedule A is supported by the HSU and the Private Hospital Industry Employer Associations. The ACE submitted (on 21 August 2015) no more than that the changes to the “Nursing

⁸⁸ [PR531015](#) and [PR531852](#)

⁸⁹ [2016] FWCFB 7254

Assistant” definition are substantive and they should be referred to a separately constituted Full Bench. No submissions in opposition to the merits of the changes have been received. We are satisfied that the variations should be made to the exposure draft. We consider that they simply update the definitions to reflect the current nomenclature and regulations applicable to the nursing profession.

[74] The 4 yearly review resulted in a number of changes to the award including a restructure of the award. However, none of these changes relate directly to wage rates or classification structure. The replacement award, the *Nurses Award 2020* came into operation on 9 September 2021.⁹⁰

Have the minimum rates in the Nurses Award been properly set?

[75] The ANMF submits that the fixture of rates above were not ‘proper’ fixtures of rates – ie. ones free of gender bias.⁹¹

[76] The Joint Employers submit that the industrial history underpinning the Nurses Award reveals that the classifications and wage rates of RNs, ENs and AINs have been subject to extensive review. Notwithstanding that this history suggests that there may be a proper basis for finding the minimum rates in the Nurses Award are properly set, and in order to conclude that they are, ABI and others submit that reference must be made to a decision of a Full Bench that expressly assesses the minimum rates by reference to the C10 framework and the AQF. ABI and others submit that since the publication of the Nurses Award this has not occurred. ABI and others also submit that the exercise of properly setting minimum rates is a deliberate exercise and should be undertaken with respect to the existing classification structure in the Nurses Award.⁹²

[77] The Joint Employers’ submission provides their analysis of the changes that have occurred in the work of nursing employees working in aged care under the Nurses Award.

[78] The CCIWA submits that there is a lack of clarity between the HSU and ANMF as to whether the relevant rates of pay have been subject to an assessment based on work value. They submit that the HSU identifies that in the case of the Aged Care and SCHADS awards, that ‘it is unclear whether there has ever been a proper evaluation of the minimum rates for these workers’, whereas, the ANMF identifies that in the case of nurses, this was done in 1998 and for personal care workers in 2005, but claim the decisions were tainted by gender bias and that roles have since changed. The CCIWA submit that the ANMF doesn’t identify in what manner gender bias occurred or identify concisely how roles have changed.⁹³

⁹⁰ Kristen Wischer, [Witness Statement](#), 14 September 2021 at para 281.

⁹¹ ANMF, [submission](#), 29 October 2021 at paragraph 16.

⁹² ACSA, LASA and ABI, [submission](#), 4 March 2022, at paras 16.50-16.51.

⁹³ Chamber of Commerce and Industry of Western Australia, [submission](#), 4 March 2022, at para 31.

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

3. A history of wages and classifications in the SCHADS Award 2010

3.1 Pre-reform awards

[79] Prior to the award modernisation process, employees in the home care aged care sector were regulated by a combination of state and federal awards. The Joint Employers refer to a Statement published by the Full Bench of the Commission on 25 September 2009 identifying the following pre-reform awards as forming the basis for the classification structure in the SCHADS Award:⁹⁴

- *Social and Community Services (Queensland) Award 2001;*
- *Crisis Assistance Supported Housing (Queensland) Award 1999;*
- *Family Day Care Services Award 1999;*
- *Residential and Support Services (Victoria) Award 1999 (the Residential Award);* and
- *Home and Community Care Award 2001.*

[80] The Full Bench said the following in relation to pre-reform awards relating to social and community service:⁹⁵

“[101] ... There are federal awards in this sector in all states except New South Wales, Tasmania and South Australia, where there are NAPSAs. The wage rates in the federal Australian Capital Territory, Western Australian and Queensland awards were reviewed as part of the award simplification process in 2002. They are all currently very similar. The New South Wales NAPSA provides for generally higher wage rates than the federal awards. The South Australian and Tasmanian NAPSA wage rates are generally lower than the federal awards. In adopting the federal Queensland award wage rates, we note that s.576(L) of the WR Act requires that modern awards provide a fair minimum safety net.”

[81] In relation to the pre-reform awards relating to disability services, the Full Bench said:⁹⁶

“[104] Award coverage of disability services employees is currently spread over federal awards (Australian Capital Territory, Victoria and Northern Territory) and NAPSAs (New South Wales, Tasmania, South Australia and Queensland). Wage rates are largely comparable between the federal awards (the Australian Capital Territory award is slightly higher). The New South Wales NAPSA wage rates are again the highest rates. All of the other State NAPSAs contain generally lower rates.”

Wage setting

[82] The HSU submits that no initial work value assessment was undertaken in the New South Wales Home Care Award, or in the federal awards that followed, nor has any been subsequently undertaken.⁹⁷

⁹⁴ The Joint Employers [Submission](#), 4 March 2022, at para 17.5.

⁹⁵ The Joint Employers [Submission](#), 4 March 2022, at para 17.6.

⁹⁶ The Joint Employers [Submission](#), 4 March 2022, at para 17.8.

⁹⁷ HSU [submission](#), 29 October 2021, at para 45.

[83] The Joint Employers submit that the wages in the Residential Award were properly set⁹⁸, having been properly fixed in accordance with the Paid Rates Review Decision and the WR Act.⁹⁹ They note that the C10 rate that was identified was set at a lower rate than the C10 and that the internal relativities were based on that lower rate.¹⁰⁰ Ultimately the Joint Employers conclude that while some pre-reform rates may have been properly set and the industrial history may indicate some alignment of those rates with the structure of the current SCHADS awards the exercise of properly fixing minimum rates must be done expressly.¹⁰¹

3.2 Award modernisation

[84] The SCHADS Award arose out of stage 4 of the award modernisation process. Home aged care employees were originally included in the exposure draft for the Aged Care Award that was dealt with in Stage 2. By a decision of the Full Bench in relation to stage 2 awards¹⁰² the home aged care employees were not included in the Aged Care Award 2010 when it was published.¹⁰³

The exposure draft

[85] The exposure draft was published with a Statement of the Full Bench of the Commission on 25 September 2009.¹⁰⁴ The Statement relevantly provides, in relation to home care employees, that the wages rates and classifications are based on the *Home and Community Care Award 2001* (pre-modern federal award).¹⁰⁵ The Statement also notes that the wage rate for a Certificate III qualified home care employee is the same rate as the similarly qualified employee in the *Aged Care Award 2010*.¹⁰⁶

[86] At an award modernisation hearing on 5 November 2009 social and community services level 2 was identified as the equivalent of the C10 rate.¹⁰⁷

3.3 The modern award

[87] The modern award was published on 4 December 2009.¹⁰⁸ The Full Bench declined to include a schedule of rates preserving the classifications and wages of transitional instruments but instead included the rates and classifications they had determined based ‘on the material available at this time, to be appropriate for a modern award in this industry’.¹⁰⁹ They also

⁹⁸ The Joint Employers [Submission](#), 4 March 2022, at para 17.17.

⁹⁹ ABI and others [Submission](#), 4 March 2022, at para 17.17.

¹⁰⁰ ABI and others [Submission](#), 4 March 2022, at para 17.18.

¹⁰¹ ABI and others [Submission](#), 4 March 2022, at para 17.22.

¹⁰² [\[2009\] AIRCFB 50](#) at [76].

¹⁰³ ABI and others [Submission](#), 4 March 2022, at para 15.22.

¹⁰⁴ ABI and others [Submission](#), 4 March 2022, at para 17.5.

¹⁰⁵ ABI and others [Submission](#), 4 March 2022, at para 17.5.

¹⁰⁶ ABI and others [Submission](#), 4 March 2022, at para 17.5.

¹⁰⁷ ABI and others [Submission](#), 4 March 2022, at para 17.9. citing AM2008/24, Transcript of Proceedings [2009] FWA Trans 864 (24 November 2009) at [PN3067]- [PN3074].

¹⁰⁸ ABI and others [Submission](#), 4 March 2022, at para 17.11.

¹⁰⁹ The Joint Employers [Submission](#), 4 March 2022, at para 17.12 citing [\[2009\]AIRCFB 945](#) 4 December 2009 at [80].

delayed the operative date for the wages and classifications for a period of 1 year until 1 July 2011.¹¹⁰ The standard transitional provisions schedule was included in the award with the modified commencement date. The decision makes no mention of any other changes that effect the wages and classifications within the award.

Were the rates in the SCHADS award properly set?

[88] The Joint Employers make reference to the Full Bench’s observations in the award modernisation decision for stage 4 as to the classifications and minimum rates at the publication of the SCHADS Award:¹¹¹

“[80] We have decided to make a modern award based on the terms of the exposure draft but with a number of alterations some of which we deal with below. The award will include the classifications and minimum wages which appear to us, on the material available at this time, to be appropriate for a modern award in this industry. We accept the force of the submissions made that in the circumstances it would be inconvenient to say the least to introduce new classifications and minimum wages for the industry covered by the award when a significant case is contemplated before Fair Work Australia next year. We have decided that the operative date for the implementation of the new classifications and wages should be delayed until 1 July 2011.”

[89] The Joint Employers further submit that the classifications and minimum rates in the SCHADS Award were the subject of extensive consideration, including reference to a combination of pre-reform awards that were considered properly fixed.¹¹² Notwithstanding this, the Joint Employers conclude that the exercise of fixing properly set minimum rates must be expressly undertaken.¹¹³

Subsequent variations and Equal Remuneration order

[90] There have been no substantive changes to the classifications for home care employees since the award was made. The HSU submits that since 2010, wage increases in the SCHADS Award for classifications in Schedule E have only come about through National Minimum Wage decisions.¹¹⁴

[91] The wages for some employees under the SCHADS Award were subject to a claim for equal remuneration as foreshadowed by the ASU in the award modernisation proceedings. The HSU submits that home care workers did not benefit from the Equal Remuneration Order.¹¹⁵ The Joint Employers submit that the Equal Remuneration decision is not relevant to this process.¹¹⁶

The Transitional Review

¹¹⁰ The Joint Employers [Submission](#), 4 March 2022, at para 17.12 citing [\[2009\]AIRCFCB 945](#) 4 December 2009 at [80].

¹¹¹ The Joint Employers [Submission](#), 4 March 2022, at para 17.12.

¹¹² The Joint Employers [Submission](#), 4 March 2022, at para 17.20.

¹¹³ The Joint Employers [Submission](#), 4 March 2022, at para 17.22.

¹¹⁴ HSU [submission](#), 29 October 2021, at para 45.

¹¹⁵ Dr Sara Charlesworth, [Supplementary Witness Statement](#), 22 October 2021.

¹¹⁶ See ACSA, LASA and ABI [Submission](#), 4 March 2022, at para 17.16.

[92] During the 2012 review of modern awards, United Voice lodged an application to vary the SCHADS Award to clarify the distinction between home care work under Schedule B and home care work under Schedule E.¹¹⁷ A number of other applications were received during the transitional review but they did not relate to classifications or wage rates.

The 4 Yearly Review

[93] The SCHADS Award was dealt with in Group 4 of the 4 yearly review process.

[94] The HSU applied to vary the classification criteria in the SACS and Home Care Streams, but this application was ultimately not pressed and no changes to classification structure were made.¹¹⁸

[95] Aside from a correction to a typographical error there have been no changes made to the home care classification schedule since the award was made in 2010.

Question 1 for all parties: Are there any corrections or additions to Background Document 2? Is it common ground that the material set out in Background Document 2 is uncontentious?

—END—

¹¹⁷ This matter was dealt with at the same time as a number of other matters and it does not appear from the consent variation that United Voice continued to press this matter. See PR531544

¹¹⁸ See HSU, submission 2 May 2015, HSU, submission 8 May 2017 [25] and HSU, submission 15 October 2018 [8].