



# **BACKGROUND DOCUMENT 9 – PROCEDURAL HISTORY**

*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)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT ASBURY  
COMMISSIONER O'NEILL

MELBOURNE, 30 AUGUST 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.*

[1] Three applications to vary modern awards in the aged care sector are before the Full Bench:

1. [AM2020/99](#) – an application by the Health Services Union (HSU) and a number of individuals to vary the minimum wages and classifications in the *Aged Care Award 2010* (Aged Care Award).
2. [AM2021/63](#) – an application by the Australian Nursing and Midwifery Federation (ANMF) to vary the Aged Care Award and the *Nurses Award 2010*, now the *Nurses Award 2020* (Nurses Award).<sup>1</sup>
3. [AM2021/65](#) – an application by the HSU to vary the *Social, Community, Home Care and Disability Services Award 2010* (SCHADS Award) (the Applications).

[2] On 12 November 2020, a number of individuals made an [application](#) to vary the minimum wages and classifications in the Aged Care Award. An [amended application](#) was made on 17 November 2020 adding the HSU as an applicant (AM2020/99). The application seeks to vary the Aged Care Award by:

- (a) Increasing wages for *all* classification levels in the Aged Care Award by 25 per cent by replacing subclause 14.1 of the Award with the following:<sup>2</sup>

<b>14.1 Minimum wages – Aged Care Employee</b>		
<b>Classification</b>	<b>Per week</b>	
	<b>\$</b>	
<b>Aged care employee – level 1</b>	<del>861.40</del>	1076.80
<b>Aged care employee – level 2</b>	<del>895.50</del>	1119.40
<b>Aged care employee – level 3</b>	<del>929.90</del>	1162.40
<b>Aged care employee – level 4</b>	<del>940.90</del>	1176.10
<b>Aged care employee – level 5</b>	<del>972.80</del>	1216.00
<b>Aged care employee – level 6</b>	<del>1025.20</del>	\$1281.50
<b>Aged care employee – level 7</b>	<del>1043.60</del>	\$1304.50

- (b) Varying the classification structure in Schedule B to provide for an additional pay level for Personal Care Workers (PCW) who have undertaken specialised training in a specific area of care and who use those skills, clarifying progression from Aged Care Employee Level 1 to Level 3, clarifying the role descriptions within the personal care stream, referring to the administration of medication as a task for a Senior Personal Care Worker and providing for a new role description for qualified and senior Recreational/Lifestyle Officers. The proposed replacement Scheduled B is outlined at **Annexure A**.

<sup>1</sup> The *Nurses Award 2010* was varied and renamed the *Nurses Award 2020* on 9 September 2021 ([2021] FWCFB 4504).

<sup>2</sup> An updated version of the HSU’s proposed clause 14.1 was included in its closing submissions dated 22 July 2022 to reflect the *Annual Wage Review 2020-21* and the *Annual Wage Review 2021-22*.

[3] On 14 December 2020, the HSU filed an [outline of evidence](#).

[4] On 16 March 2021, the ANMF [wrote](#) to the Commission foreshadowing that it would be making an application to vary the minimum wages and classifications in the Nurses Award.

[5] At a [directions hearing](#) on 26 March 2021, the United Workers Union (UWU) foreshadowed an application to vary the SCHADS Award.

[6] On the 1 April 2021, submissions were received from the following parties:

- [HSU](#)
- [ANMF](#)
- [UWU \(collectively the Unions\)](#)

[7] On 17 May 2021, the ANMF made an [application](#) to vary the Aged Care Award and the Nurses Award (AM2021/63) by:

1. inserting a new Aged Care Employees Schedule into the Nurses Award, which would increase rates of pay by 25 per cent and expire after 4 years; and
2. creating a new classification structure for PCWs in the Aged Care Award (and consequentially removing them from the main '*aged care employee*' classification structure in Schedule B) and increasing PCW rates of pay by 25 per cent.

[8] The ANMF's proposed Aged Care Employees Schedule in the Nurses Award would create a new set of minimum rates for employees who are engaged in the provision of:

- (a) Services for aged persons in a hostel, nursing home, aged care independent living units, aged care services apartments, garden settlement, retirement village or any other residential accommodation facility; and or
- (b) Services for an aged person in a private residence.<sup>3</sup>

[9] The proposed schedule applies an increased minimum wage for employees working in the aged care industry in the following classifications:

- Nursing assistant
- Enrolled nurses (including student enrolled nurse) (EN)
- Registered nurses (RN) (levels 1-5); and
- Nurse practitioner.<sup>4</sup>

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<sup>3</sup> ANMF Application (AM2021/63) Annexure 1 [1].

<sup>4</sup> The proposed schedule does not include the classification Occupational health nurse as set out at cl.A.6 of the Nurses Award.

[10] The ANMF’s application seeks a 25 per cent wage increase for all employees covered by the Nurses Award who provide services for aged persons. The ANMF’s initial application was dated 17 May 2021 and there have been 2 developments since that application was made:

1. The ANMF’s initial application included a proposal to insert a new Aged Care Employees Schedule into the Nurses Award which reflected the structure of clause 14 of the *Nurses Award 2010*. The *Nurses Award 2020* came into operation on 9 September 2021. Clause 15 of the *Nurses Award 2020* differs from clause 14 in the 2010 award in two significant respects: it contains a minimum hourly rate for each classification and minimum entry rates for employees with a 4-year degree or a Masters degree.
2. The minimum wages in the Nurses Award and the Aged Care Award have increased as a result of the *Annual Wage Review 2020-21* and the *Annual Wage Review 2021-22*.

[11] In its closing submissions,<sup>5</sup> the ANMF amended its proposed schedule to the Nurses Award to reflect the developments since its initial application as follows:

<b>Nurses Award 2020</b>		
<b>Proposed Schedule G</b>		
<b>(note Schedule F under the Nurses Award 2020 is now Part-day Public holidays)</b>		
<b>Classification</b>	<b>Minimum weekly rate (Full-time employee)</b>	<b>Minimum hourly rate</b>
	\$	\$
<b>G.1 General</b>		
G.1.1 The provisions of this schedule apply until [insert date 4 years after commencement].		
G.1.2 The provisions of this schedule are to be applied to employees in the classifications listed in Schedule B, engaged in the provision of:		
<ul style="list-style-type: none"> <li>(a) Services for aged persons in a hostel, nursing home, aged care independent living units, aged care serviced apartments garden settlement, retirement village or any other residential accommodation facility; and/or</li> <li>(b) Services for an aged person in a private residence.</li> </ul>		
<b>G.2 Nursing assistant</b>		
1 <sup>st</sup> year	1104.30	29.06

<sup>5</sup> ANMF closing submissions dated 22 July 2022 Annexure 2.

2 <sup>nd</sup> year	1121.50	29.51
3 <sup>rd</sup> year and thereafter	1139.50	29.99
Experienced (the holder of a relevant certificate III qualification)	1176.10	30.95

### **G.3 Enrolled Nurses**

#### **(a) Student enrolled nurse**

Less than 21 years of age	1025.90	27.00
21 years of age and over	1076.80	28.34

#### **(b) Enrolled nurses**

Pay point 1	1197.90	31.52
Pay point 2	1213.80	31.94
Pay point 3	1229.90	32.36
Pay point 4	1247.60	32.83
Pay point 5	1260.10	33.16

### **G.4 Registered Nurses**

Minimum entry rate for a:

4-year degree <sup>1</sup>	1338.10	35.21
Masters degree <sup>1</sup>	1384.30	36.43

<sup>1</sup>Progression from these entry rates will be to level 1 – Registered nurse pay point 4 and 5 respectively

#### **Registered nurse – level 1**

Pay point 1	1281.50	33.72
Pay point 2	1307.80	34.41
Pay point 3	1339.90	35.26
Pay point 4	1375.50	36.20
Pay point 5	1417.80	37.31
Pay point 6	1458.80	38.39
Pay point 7	1501.00	39.50
Pay point 8 and thereafter	1540.00	40.53

#### **Registered nurse – level 2**

Pay point 1	1580.90	41.60
Pay point 2	1606.00	42.26
Pay point 3	1633.90	43.00
Pay point 4 and thereafter	1660.60	43.70

#### **Registered nurse – level 3**

Pay point 1	1714.10	45.11
Pay point 2	1745.60	45.94
Pay point 3	1775.80	46.73

Pay point 4 and thereafter	1807.60	47.57
<b>Registered nurse – level 4</b>		
Grade 1	1956.40	51.48
Grade 2	2096.60	55.17
Grade 3	2218.90	58.39
<b>Registered nurse – level 5</b>		
Grade 1	1974.30	51.95
Grade 2	2079.00	54.71
Grade 3	2218.90	58.39
Grade 4	2357.30	62.03
Grade 5	2599.90	68.42
Grade 6	2844.60	74.86
<b>G.5 Nurse practitioner</b>		
1 <sup>st</sup> year	1972.50	51.91
2 <sup>nd</sup> year	2031.10	53.45

[12] The ANMF proposes to vary the Aged Care Award by deleting ‘personal care worker’ from the definitions of aged care employee levels 2, 3, 4, 5 and 7 in Schedule B and inserting a new separate classification structure for PCWs.<sup>6</sup> The application also seeks to insert clause 14.1A, which increases the minimum wages of PCWs by 25 per cent as follows:<sup>7</sup>

<b>14.1A Minimum wages – Personal Care Workers</b>	
<b>Classification</b>	<b>Rate of pay</b>
	<b>\$</b>
Grade 1 – Personal Care Worker (entry up to 6 months)	1119.40
Grade 2 – Personal Care Worker (from 6 months) & Recreational/Lifestyle activities officer (unqualified)	1162.40
Grade 3 – Personal Care Worker (qualified)	1176.10
Grade 4 – Senior Personal Care Worker	1216.00
Grade 5 – Specialist Personal Care Worker	1304.50

[13] On 31 May 2021, the HSU made an [application](#) to vary the SCHADS Award (AM2021/65) by:

(1) Inserting the following new definition into clause 3.1:

*Home aged care employee means a home care employee providing personal care, domestic assistance or home maintenance to an aged person in a private residence; and*

<sup>6</sup> The ANMF’s proposed Schedule B is set out at Annexure B.

<sup>7</sup> An updated version of the ANMF’s proposed clause 14A was included in its closing submissions dated 22 July 2022 to reflect the *Annual Wage Review 2020-21* and the *Annual Wage Review 2021-22*.

- (2) Inserting a new clause 17A – Minimum weekly ages for home aged care employees to provide a 25 per cent increase in wages for home aged care employees at all classification levels as follows:<sup>8</sup>

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**17A.1 Home aged care employee Level 1**

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	<b>Per week</b>
	\$
Pay point 1	1089.50

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**17A.2 Home aged care employee Level 2**

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	<b>Per week</b>
	\$
Pay point 1	1152.40
Pay point 2	1160.30

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**17A.3 Home aged care employee Level 3**

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	<b>Per week</b>
	\$
Pay point 1 (certificate III)	1176.10
Pay point 2	1212.40

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**17A.4 Home aged care employee Level 4**

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	<b>Per week</b>
	\$
Pay point 1 (certificate IV)	1283.10

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<sup>8</sup> An updated version of the HSU's proposed clause 17A was included in its closing submissions dated 22 July 2022 to reflect the *Annual Wage Review 2020-21* and the *Annual Wage Review 2021-22*.

Pay point 2	1308.80
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**17A.5 Home aged care employee Level 5**

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	<b>Per week</b>
	\$
Pay point 1 (degree or diploma)	1375.80
Pay point 2	1430.00

(3) To make such further or other amendments to the SCHADS Award as appear appropriate to the Commission in light of the evidence in the proceeding.

[14] In essence, together, the Applications seek a 25 per cent rise to the minimum wage for all aged care employees covered by the Aged Care, Nurses and SCHADS awards. The ANMF supports the wage increases sought in the HSU applications for PCWs consistent with its own application.<sup>9</sup> While the ANMF application does not seek a wage increase for employees other than nurses and PCWs, it supports the wage increases sought by the HSU for other employees affected by those applications.<sup>10</sup>

[15] The HSU and ANMF differ on their approach to Schedule B in the Aged Care Award.

[16] The ANMF submits that the work performed by Assistants in Nursing (AIN) and PCWs differs qualitatively from the work done by general and administrative services and food services workers and as a result their rates of pay should be treated separately.<sup>11</sup> It relies on 2 propositions:

1. If the Commission is satisfied that there should be an increase in award rates for AINs and PCWs, but is *not* so satisfied in relation to general and administrative services worker and food services workers, then a separate classification structure for AINs/PCWs is an ‘obvious drafting technique or structure to give effect to those conclusions.’<sup>12</sup>
2. Even if the Commission *is* satisfied that there should be an increase in award rates for general and administrative services workers and food services workers, a separate classification structure is appropriate because AINs/PCWs work as part of the ‘nursing team’ and engage in case work that is not analogous to the work performed by other aged care employees, such as gardeners.<sup>13</sup> The current

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<sup>9</sup> ANMF submissions dated 29 October 2021 [5].

<sup>10</sup> Ibid.

<sup>11</sup> Ibid [205].

<sup>12</sup> ANMF submissions dated 29 October 2021 [209].

<sup>13</sup> Ibid [210].



classification, which places varieties of workers who perform very different work into a single classification ‘carries with it the risk of stultification of development of particular terms and conditions ... which take account of those qualitative differences between work.’<sup>14</sup>

[17] On 1 June 2021, the UWU [wrote](#) to the Commission confirming that, in the circumstances, it would not be making a separate application to vary the SCHADS Award.

[18] On 24 June 2021, a [conference](#) in respect of the applications was held before Commissioner O’Neill.

[19] On 1 July 2021, a [Statement and Directions](#) were issued confirming that the Applications (AM2020/99, AM2021/63 and AM2021/65) would be dealt with jointly by one Full Bench and any evidence given in the matters would be admissible in relation to all of them.

[20] Schedule 1 to the Directions contained requests from the ANMF and the HSU for information and data from the Australian Government. The Directions provided:

4. The Australian Government is to file its response to the request for information and data, specifying what information and data it can provide and by when, by 4pm on **16 July 2021**.

5. The Australian Government is to file the information and data then available by **23 July 2021**, and any additional information and data as soon as it is available.

[21] On 16 July 2021, the Australian Government filed a [submission](#) in response to Direction 4, setting out the information it could provide and the timeframe for providing it. On 23 July 2021, the Australian Government provided a further [submission](#) in response to Direction 5 that contained the information and data requested. This submission was accompanied by an [information and data spreadsheet](#).

[22] On 31 August 2021, the Australian Government provided a [submission](#) in response to questions 1-3 of the HSU’s schedule of requested information.

[23] On 15 September 2021, the HSU [responded](#) to the Australian Government’s submissions and requested clarification and additional information. The Australian Government provided a [response](#) on 24 September 2021.

[24] On 29 October 2021, further submissions and witness statements were filed by the [UWU](#), [ANMF](#) and [HSU](#).

[25] On 17 December 2021, a [Consensus Statement](#) was received from the following stakeholders in the aged care sector:

- Aged & Community Services Australia (ACSA)
- Aged Care Industry Association (ACIA)

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<sup>14</sup> Ibid [211].

- Aged Care Reform Network
- ANMF
- Carers Australia
- Council on the Ageing (COTA)
- Federation of Ethnic Communities' Councils of Australia (FECCA)
- HSU
- Leading Age Services Australia (LASA)
- National Seniors Australia
- Older Persons Advocacy Network (OPAN)
- UWU

[26] The Consensus Statement emerged from meetings convened by the Aged Care Workforce Industrial Council (ACWIC) of stakeholders from the aged care sector to consider the HSU and ANMF's applications. The Consensus Statement 'reflects the matters over which the parties have reached agreement but does not represent the entirety of the views of each of the stakeholders.'<sup>15</sup>

[27] The stakeholders agree that wages in the aged care sector need to be 'significantly increased' because the work of aged care workers has been historically undervalued and has not been properly assessed.<sup>16</sup>

[28] The employer interests in these proceedings are being represented by ACSA, LASA and Australian Business Industrial (ABI) (collectively the Joint Employers). On 4 March 2022, the Joint Employers made the following submissions:

- [Submission](#)
- [Witness statements and evidence](#)
- [Reference Material Document](#)

[29] The Joint Employers submit that although some decisions allude to the C10 framework, the classification structures in the awards were not based on a pre-reform award classification structure that was expressly mapped to the C10 framework and therefore that 'it does not appear that the minimum rates in [the Aged Care, Nurses and SCHADS awards] were properly set as part of the award modernisation process.'<sup>17</sup> Further, the Joint Employers submit that the concept of properly set rates should not be divided from work value assessment. The Joint Employers submit any increase to minimum rates in the Aged Care Award, Nurses Award and SCHADS Award should be preceded by a consideration of the C10 framework and work value principles. The Joint Employers do not support an arbitrary increase of 25%.<sup>18</sup>

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<sup>15</sup> Consensus Statement p.1.

<sup>16</sup> Consensus Statement p.2.

<sup>17</sup> ACSA, LASA and ABI submissions dated 4 March 2022 [3.10].

<sup>18</sup> Joint Employers submissions dated 4 March 2022 [3.20]; ACSA, LASA and ABI closing submissions dated 22 July 2022 Annexure P [3.2].

[30] The Chamber of Commerce and Industry of Western Australia (CCIWA) also made a [submission](#). CCIWA opposes the HSU and ANMF applications.

[31] Submissions were also received from the following aged care providers:

- [Uniting NSW, ACT](#)
- [Uniting Care Australia](#)
- [IRT Group](#)
- [Evergreen Life Care](#)
- [Tandara Lodge Community Care](#)
- [BaptistCare NSW & ACT](#)
- [MercyCare](#)

[32] The following state governments made submissions:

- [Queensland Government](#)
- [Victorian Government](#)

[33] A [submission](#) from an individual aged care worker was also received.

[34] On 21 April 2022, submissions in reply were received from the following parties:

- [HSU](#)
- [ANMF](#)
- [UWU](#)

[35] In total, the Unions relied on 6 expert witness reports and statements and 89 lay witness statements. The Unions lay witness evidence falls into 2 broad categories:

- 17 union officials
- 72 employee lay witnesses

[36] The Joint Employers relied on the statements of 9 lay witnesses.

[37] On 6 April 2022, a [Statement](#) directed the parties to file any objections to the evidence contained in the witness statements by Thursday 21 April 2022. The parties' responses noted that they considered that parts of the material upon which other parties proposed to rely were objectionable (including on the grounds of relevance and hearsay), but they did not propose to take any formal objection to that material.<sup>19</sup> Each of the parties reserved their right to address

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<sup>19</sup> ACSA, LASA and ABI [submission – objections to evidence](#) dated 21 April 2022; UWU [submission – hearing plan and evidence](#) dated 21 April 2022; HSU submissions – [hearing plan and objections to evidence](#) dated 22 April 2022; ANMF [submissions in reply](#) dated 21 April 2022.

such matters in their closing submissions in terms of the weight, if any, to be given to parts of the witness statements. The Commission proceeded on that basis.

[38] A [Mention](#) was held on 22 April 2022. The Commission proposed that in order to facilitate the efficient use of Commission resources, the Unions' employee lay witness evidence would be heard by a single member of the Full Bench, Commissioner O'Neill. Commissioner O'Neill would then prepare a report in respect of the evidence for the Full Bench, and the parties would have the opportunity to comment on the report before it was finalised. The remaining witnesses (the union officials, experts and employer lay witnesses) would be heard by the Full Bench. The parties did not object to the course proposed. The Full Bench determined these arrangements in a [Statement](#) published on 24 April 2022.

[39] On 28 April 2022, the ANMF [wrote to the Commission](#) proposing that, for abundant caution, the President formalise the position determined by the Full Bench by way of a written direction, under section 616(3D)(b), section 582(2) and/or section 590. The correspondence reflected a joint position of the HSU, UWU and the Joint Employers. The President issued a [Direction](#) in the proposed terms on 29 April 2022.

[40] On 20 May 2022, the HSU [wrote](#) to the Commission to request that the statements of five lay witnesses be accepted as evidence despite the witnesses not being available for cross-examination.

[41] On 24 May 2022, a [Hearing](#) was held before the Full Bench to determine the HSU's request. The Full Bench issued the following decision in respect of the HSU's request:

'The decision we've arrived at is we do not propose to accept the statements of the five witnesses who are not available for cross-examination. We will permit the HSU to withdraw the statement of Adrienne White. We will allow the HSU to file one further witness statement from a maintenance staff employee and that statement should be filed by no later than 4 pm on 30 May. That witness should be available for cross-examination on the morning of 2 June. Commissioner O'Neill will liaise with the parties in respect of that matter.'<sup>20</sup>

[42] Hearings of evidence were held from 26 April to 2 June 2022. Transcripts of those hearings may be found [here](#). 12 of the witnesses were not required for cross examination.<sup>21</sup>

[43] The Unions [also proposed](#) that the Commission conduct site visits at a number of aged care facilities. Site visits were undertaken by Deputy President Asbury in Sydney on 27 April 2022 and by Commissioner O'Neill on 28 April 2022.

[44] In a [Statement](#) issued on 12 May 2022, the Commission advised that it would prepare the following material and provide it to the parties on 7 June 2022:

- A draft agreed issues document (including the approach to work value cases). The document will also seek to identify the disputed matters.

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<sup>20</sup> Transcript, 24 May 2022, PN13990.

<sup>21</sup> Leigh Svendsen, Kevin Crank, Kristen Wischer, Melissa Coad, Lorri Seifert, Sally Fox, Tracy Roberts, Hazel Bucher, Maree Bernoth, Pauline Breen, Susan Toner and Cheyne Woolsey.

- A document summarising the major contentions of the parties.
- A background paper on the relevant award(s) history.
- A background document on the residential and home aged care sector.

[45] On 2 June 2022, the Commonwealth [wrote](#) to the Commission to advise that it wished to be heard in the proceedings and anticipated that it would require additional time in order to file its submissions.

[46] On 3 June 2022, a draft lay witness evidence report was circulated to the parties and the Commonwealth for comment.

[47] At a [Mention](#) on Monday 6 June 2022, the Directions were varied as follows:<sup>22</sup>

1. The parties will file closing written submissions regarding the evidence by **4pm on Friday 22 July 2022**.
2. The parties will file submissions in reply regarding the evidence by **4pm on Monday 8 August 2022**.
3. The Commonwealth will file written submissions by **4pm on Monday 8 August 2022**.
4. The parties will file submissions in reply to the Commonwealth's written submissions by **4pm on Wednesday 17 August 2022**.
5. The matter will be listed for oral hearing on:
  - a. **24 and 25 August 2022** for submissions by the Applicants and the Commonwealth to be held **in person** in at the Commission's Melbourne office.
  - b. **1 September 2022** (with 2 September reserved) for submissions by ABI, ACSA and LASA and reply submissions to be held **in person** at the Commission's Sydney office.

[48] On 8 June 2022, the Commonwealth, ANMF and the Joint Employers provided feedback on the draft lay witness report.

[49] On 9 June 2022, the Commission published the following documents:<sup>23</sup>

- [Background Document 1 – The Applications](#) setting out, amongst other things, a summary of the applications, the procedural history, the legislative framework relevant to the applications and the main contentions of the principal parties.

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<sup>22</sup> [2022] FWCFB 89.

<sup>23</sup> [2022] FWCFB 94.

- [Background Document 2 – Award Histories](#) setting out the history of wages and classifications in the Aged Care Award, the Nurses Award and the SCHADS Award.
- [Amended Digital Hearing Book](#) combining and indexing all material filed up to 7 June 2022, including amended witness statements.
- [Research Reference List](#) setting out all of the research materials and data sources referred to in the parties’ submissions and a list of cases referred to by the parties in their submissions.

**[50]** Background Document 1 and Background Document 2 posed a series of questions to parties with an interest in the proceedings. The answers to those questions were to be filed with the submissions due on Friday 22 July 2022.

**[51]** On 20 June 2022,<sup>24</sup> the Commission published the [Report to the Full Bench – Lay Witness Evidence](#) (Lay witness evidence report) which provides an overview of the evidence of lay witnesses called by the union parties, including:

- A summary of the lay witnesses who gave evidence (including charts);
- An overview of each witness’s evidence;
- An overview of the witnesses’ evidence about the duties of various roles in the aged care industry; and
- Illustrative examples of the witness evidence grouped by theme.

**[52]** The Commission also published the following additional Background Documents:<sup>25</sup>

- [Background Document 3 – Witness Overview](#) which contains a brief overview of each of the witness’ statements (including employers, union officials and expert witnesses); the relevant page number of each witness statement in version 2 of the Digital Hearing Book, links to the final witness statements and transcript reference; and specific paragraphs of the witnesses’ statements that they were taken to in cross-examination as well as links to any other documents referenced in the course of giving oral evidence.
- [Background Document 4 – The Royal Commission](#) sets out links and extracts from the submissions, witness evidence and the Research Reference List that are relevant to the findings and recommendations of the Royal Commission reports.

**[53]** On 22 July 2022, the parties filed closing written submissions regarding the evidence and answers to the questions posed in Background Documents 1 and 2. Submissions were received from:

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<sup>24</sup> [2022] FWCFB 102.

<sup>25</sup> Ibid.

- HSU dated [22 July 2022](#) and [2 August 2022](#)
- ANMF dated [22 July 2022](#)
- UWU dated [25 July 2022](#)
- ACSA, LASA and ABI dated [22 July 2022](#) and [27 July 2022](#)

[54] On 5 August 2022, the Commission published [Background Document 5](#) which summarises the closing written submissions received and the answers to the questions posed in Background Documents 1 and 2. Background Document 5 posed a number of additional questions to the parties.

[55] In view of the range of issues canvassed in the parties' closing written submissions and the questions posed in Background Document 5, the [Directions](#) were amended as follows:

1. The Commonwealth will file written submissions by **4pm on Monday 8 August 2022.**
2. The parties will file submissions in reply to the Commonwealth's written submissions by **4pm on Wednesday 17 August 2022.**
3. By no later than **4pm on Friday 19 August 2022**, parties will file:
  - a. Submissions in reply to the closing submissions filed on 22 July 2022
  - b. Responses to the questions posed in Background Document 5.
4. The matter will be listed for oral hearing on:
  - a. **24 and 25 August 2022** for submission by the Applicants and the Commonwealth to be held in person at the Commission's Melbourne office.
  - b. **1 September 2022** (with 2 September reserved) for submissions by ABI, ACSA and LASA and reply submissions to be held in person at the Commission's Sydney office.
5. Submissions to be filed in both word and PDF formats to [amod@fwc.gov.au](mailto:amod@fwc.gov.au).
6. Liberty to apply.

[56] On 8 August 2022, the Commonwealth filed a [submission](#).

[57] On 17 August 2022, submissions in reply to the Commonwealth's submission were filed by:

- [Health Services Union](#) (HSU)
- [Aged & Community Services Australia \(ACSA\), Leading Age Services Australia \(LASA\) and Australian Business Industrial](#) (ABI) (collectively the Joint Employers)

[58] [The Australian Nursing and Midwifery Federation](#) (ANMF) filed both its submissions in reply to the Commonwealth, closing submissions in reply and responses to the questions posed in Background Document 5, on 17 August 2022.

[59] The UWU [advised](#) that it did not intend to file a submission in reply to the Commonwealth.

[60] On 19 August 2022, parties filed submissions in reply to the closing submissions and responses to the questions posed in Background Document 5. Submissions were received from the following:

- [HSU](#)
- [UWU](#)
- [Joint Employers](#)

[61] On 22 August 2022, the Commission published 3 further Background Documents:

- [Background Document 6](#) summarises the Commonwealth's submissions and the parties' submissions in reply to the Commonwealth.
- [Background Document 7](#) sets out the parties' submissions in relation to the modern awards objective.
- [Background Document 8](#) summarises the closing submissions in reply and the answers to the questions posed in Background Document 5.

[62] Background Documents 6, 7 and 8 posed a number of additional questions for the parties. The Applicants were invited to respond to these questions at the oral hearing on **24 and 25 August 2022**. The Commonwealth and the Joint Employers were to respond to the additional questions, in writing, by no later than **4pm on Monday 29 August 2022**.

[63] A Full Bench Hearing was held in Melbourne on 24 and 25 August 2022 for submissions by the Applicants.<sup>26</sup> During the Hearing, the Full Bench posed a number of questions. The parties provided the following written responses:

- [HSU – response to question on supervision](#)
- [ANMF – response to question 8 in Background Document 8 and AIN/PCW rates comparison](#)
- [ANMF – evidence of workers having left aged care for work value reasons](#)
- [ANMF – removing aged care workers from the \*Nurses Award 2020\*](#)

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<sup>26</sup> [Transcript](#) 24 August 2022; [Transcript](#) 25 August 2022.



**[64]** On 29 August 2022, the [Joint Employers](#) and the [Commonwealth](#) provided their responses to the questions posed in Background Documents 6, 7 and 8.

**[65]** The matter is listed for oral hearing on 1 September 2022 (with 2 September reserved) in Sydney for submissions by the Joint Employers, the Commonwealth and reply submissions.

**[66]** Any corrections or additions in respect of the procedural history should be made at the hearing on 1 September 2022.

**ANNEXURE A—HSU’s proposed amendment to Schedule B of the *Aged Care Award 2010***

**Schedule B—Classification Definitions**

**B.1 Aged care employee—level 1**

**Entry level:**

An employee who has less than three months’ work experience in the industry and performs basic duties.

An employee at this level:

- works within established routines, methods and procedures;
- has minimal responsibility, accountability or discretion;
- works under direct or routine supervision, either individually or in a team; and
- requires no previous experience or training.

Indicative ~~roles~~ tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>
General clerk	Food services assistant
Laundry hand	
Cleaner	
Assistant gardener	

**B.2 Aged care employee—level 2**

An employee who has more than three months’ work experience in the industry or is an entry level employee (up to 6 months) in the case of a Personal Care Worker.

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a limited level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

Indicative ~~roles tasks performed~~ at this level are:

**General and administrative services**

General clerk/Typist (between 3 months' and less than 1 year's service)

Laundry hand

Cleaner

Gardener (non-trade)

Maintenance/Handyperson (unqualified)

Driver (less than 3 ton)

**Food services**

Food services assistant

**Personal care**

Personal care worker  
~~grade 1~~

(entry- up to 6 months)

### **B.3 Aged care employee—level 3**

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures (non admin/clerical);
- is responsible for work performed with a medium level of accountability or discretion (non admin/clerical);
- works under limited supervision, either individually or in a team (non admin/clerical);
- possesses sound communication and/or arithmetic skills (non admin/clerical);
- requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical); and
- In the case of an admin/clerical employee, undertakes a range of basic clerical functions within established routines, methods and procedures.

Indicative ~~roles tasks performed~~ at this level are:

**General and administrative services**

General clerk/Typist (second and subsequent years of service)

Receptionist

Pay clerk

Driver (less than 3 ton) who is required to hold a St John Ambulance first aid certificate

**Food services**

Cook

**Personal care**

Personal care worker  
~~grade 2~~ (from 6 months)

Recreational/Lifestyle activities officer (unqualified) (entry- up to 6 months)

### **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, holds a relevant Certificate 3 **III** qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work.

Indicative **roles** ~~tasks performed~~ at this level are:

**General and administrative services**

Senior clerk  
 Senior receptionist  
 Maintenance/Handyperson (qualified)  
 Driver (3 ton and over)  
 Gardener (trade or TAFE Certificate III or above)

**Food services**

Senior cook (trade)

**Personal care**

Personal care worker  
~~grade 3~~ **(qualified)**  
**Recreational/Lifestyle activities officer (from 6 months)**

**B.5 Aged care employee—level 5**

An employee at this level:

- is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability;
- works either individually or in a team;
- may assist with supervision of others;
- requires a comprehensive knowledge of medical terminology and/or a working knowledge of health insurance schemes (admin/clerical);
- may require basic computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and

- requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.
- in the case of a Senior Personal Care Worker, may be required to assist residents with medication and hold the relevant unit of competency (HLTHPS006), as varied from time to time.

Indicative ~~roles~~ ~~tasks performed~~ at this level are:

**General and administrative services**  
Secretary interpreter (unqualified)

**Food services**  
Chef

**Personal care**  
~~Senior~~ personal care worker ~~grade 4~~  
Recreational/Lifestyle activities officer (qualified)

## B.6 Aged care employee—level 6

An employee at this level:

- is capable of functioning with a high level of autonomy, and prioritising their work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- works either individually or in a team;
- may have the responsibility for leading and/or supervising the work of others;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at post-trade or ~~Advanced~~ Certificate IV or ~~Associate~~ Diploma level and/or relevant skills training or experience.
- in the case of a Specialist Personal Care Worker, provides specialised care and may have undertaken training in specific areas of care (e.g. Dementia Care, Palliative Care, Household Model of Care).

Indicative ~~roles~~ ~~tasks performed~~ at this level are:

**General and administrative services**

**Food services**

**Personal care**

Maintenance tradesperson (advanced)  
Gardener (advanced)

Senior chef

Specialist Personal Care  
Worker  
Senior  
Recreational/Lifestyle  
activities officer

## B.7 Aged care employee—level 7

An employee at this level:

- is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- may supervise the work of others, including work allocation, rostering and guidance;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses developed administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative **roles** ~~tasks performed~~ at this level are:

### General and administrative services

Clerical supervisor  
Interpreter (qualified )  
Gardener superintendent  
General services supervisor

### Food services

Chef /Food services  
supervisor

### Personal care

Personal Care  
Supervisor  
~~Personal care worker  
grade 5~~

**ANNEXURE B—ANMF’s proposed amendment to Schedule B of the Aged Care Award 2010**

**Schedule B—Classification Definitions**

**B.1 Aged care employee—level 1**

**Entry level:**

An employee who has less than three months’ work experience in the industry and performs basic duties.

An employee at this level:

- works within established routines, methods and procedures;
- has minimal responsibility, accountability or discretion;
- works under direct or routine supervision, either individually or in a team; and
- requires no previous experience or training.

Indicative tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>
General clerk	Food services assistant
Laundry hand	
Cleaner	
Assistant gardener	

**B.2 Aged care employee—level 2**

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a limited level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

Indicative tasks performed at this level are:

**General and administrative services**

General clerk/Typist (between 3 months' and less than 1 year's service)

Laundry hand

Cleaner

Gardener (non-trade)

Maintenance/Handyperson (unqualified)

Driver (less than 3 ton)

**Food services**

Food services assistant

**Personal care**

~~Personal care worker  
grade 1~~

### **B.3 Aged care employee—level 3**

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures (non admin/clerical);
- is responsible for work performed with a medium level of accountability or discretion (non admin/clerical);
- works under limited supervision, either individually or in a team (non admin/clerical);
- possesses sound communication and/or arithmetic skills (non admin/clerical);
- requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical); and
- In the case of an admin/clerical employee, undertakes a range of basic clerical functions within established routines, methods and procedures.

Indicative tasks performed at this level are:

**General and administrative services**

General clerk/Typist (second and subsequent years of service)

Receptionist

Pay clerk

Driver (less than 3 ton) who is required to hold a St John Ambulance first aid certificate

**Food services**

Cook

**Personal care**

~~Personal care worker  
grade 2~~

~~Recreational/Lifestyle  
activities officer  
(unqualified)~~

### **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, 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.~~

Indicative tasks performed at this level are:

**General and administrative services**

Senior clerk  
 Senior receptionist  
 Maintenance/Handyperson (qualified)  
 Driver (3 ton and over)  
 Gardener (trade or TAFE Certificate III or above)

**Food services**

Senior cook (trade)

~~**Personal care**~~

~~Personal care worker  
 grade 3~~

**B.5 Aged care employee—level 5**

An employee at this level:

- is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability;
- works either individually or in a team;
- may assist with supervision of others;
- requires a comprehensive knowledge of medical terminology and/or a working knowledge of health insurance schemes (admin/clerical);
- may require basic computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and

- requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

**General and administrative services**

Secretary interpreter (unqualified)

**Food services**

Chef

~~**Personal care**~~

~~Personal care worker  
grade 4~~

## **B.6 Aged care employee—level 6**

An employee at this level:

- is capable of functioning with a high level of autonomy, and prioritising their work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at post-trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

**General and administrative services**

Maintenance tradesperson (advanced)  
Gardener (advanced)

**Food services**

Senior chef

## **B.7 Aged care employee—level 7**

An employee at this level:

- is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;

- may supervise the work of others, including work allocation, rostering and guidance;
- works either individually or in a team;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses developed administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

**General and administrative services**

Clerical supervisor  
 Interpreter (qualified )  
 Gardener superintendent  
 General services supervisor

**Food services**

Chef /Food services  
 supervisor

~~**Personal care**~~

~~Personal care worker  
 grade 5~~

**B.8 Grade 1—Personal Care Worker (entry up to 6 months)**

An employee at this grade:

- is capable of prioritising work within established routines, methods and procedures;
- is responsible for work performed with a limited level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses sound communication skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

**B.9 Grade 2—Personal Care Worker (from 6 months) & Recreational/Lifestyle activities officer (unqualified)**

An employee at this grade:

- is capable of prioritising work within established routines, methods 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 sound communication and/or arithmetic skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

### **B.10 Grade 3—Personal Care Worker (qualified)**

An employee at this grade:

- 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;
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience; and
- holds a relevant Certificate III qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work.

### **B.11 Grade 4—Senior Personal Care Worker**

An employee at this grade:

- is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability;
- works either individually or in a team;
- may assist with supervision of others;
- may require basic computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and

- requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.

## **B.12 Grade 5—Specialist Personal Care Worker**

An employee at this grade:

- is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- may supervise the work of others, including work allocation, rostering and guidance;
- works either individually or in a team;