



# STATEMENT

*Fair Work Act 2009*

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

## **Applications by Australian Nursing and Midwifery Federation**

(AM2021/63, AM2024/11)

### **NURSES AWARD 2020**

[MA000034]

Health and welfare services

JUSTICE HATCHER, PRESIDENT

VICE PRESIDENT ASBURY

DEPUTY PRESIDENT O'NEILL

PROFESSOR BAIRD

DR RISSE

SYDNEY, 23 OCTOBER 2024

*Applications to vary the Nurses Award 2020 – work value cases – aged care industry – provisional views concerning award classification structure, rates of pay and phasing in.*

[1] This statement concerns the finalisation of our consideration of the work value of registered nurses (RNs) and enrolled nurses (ENs) in the aged care sector who are covered by the *Nurses Award 2020* (*Nurses Award*).

[2] In the decision which we issued on 15 March 2024<sup>1</sup> (*Stage 3 decision*), we relevantly determined that the current rates of pay for RNs and ENs prescribed by the *Nurses Award* were the subject of gender undervaluation and that, for the purpose of s 157(2)(a) of the *Fair Work Act 2009* (Cth), an adjustment to those rates of pay was justified by work value reasons. We further determined to establish benchmark rates for RNs and ENs as follows:

[204] The current minimum rate for a four-year degree qualified RN in aged care under the *Nurses Award* is \$1301.90 per week. The proper application of the C10 Metals Framework Alignment Approach in a manner free from gender assumptions and consistent with the principles stated by the Full Bench in the *Teachers decision* (see paragraph [955] of the *Stage 1 decision*) would result in this rate being set at \$1470.80 per week, with this becoming the benchmark rate for the fixation of minimum wages for RNs in aged care. We consider that this is a rate justified by the work value reasons identified in the Stage 1 decision and this decision. Having regard to our earlier discussion concerning the ERO applicable to social and community services employees under the *SCHADS Award*, the fixation of this rate could confidently be regarded as one free from gender assumptions since it approximately equates to the rate (\$1466.77 per week) for a four-year degree-qualified social and community services employee under the ERO.

[205] We also consider, having regard to the work value reasons identified in the *Stage 1 decision* and this decision, that the rate for an EN in aged care who has responsibility for supervising other PCWs should be set at the same rate which we propose for a Level 6 direct care employee (Team Leader) with supervisory responsibilities, namely \$1370.80 per week.  
(footnotes omitted)

[3] We note at this point that, following the *Annual Wage Review 2023–24 decision*,<sup>2</sup> the weekly rate identified for a four-year degree qualified RN would be \$1525.90, and the weekly rate for an EN supervising other personal care workers (PCWs) would be \$1422.20.

[4] We indicated at [207] in the *Stage 3 decision* that we would not at that time finalise the classification structure for nurses in aged care for three reasons, the first of which was as follows:

We do not consider that the proper application of the C10 Metals Framework Alignment Approach necessarily involves simply increasing all rates of pay for aged care nurses in the existing classification structure by the same percentage amount as for the benchmark rate. The Nurses Award contains a classification structure in which each classification allows for automatic annual increments in pay. In the *Teachers decision*, classification structures of this type were described as not properly reflective of ‘the essential elements of qualifications, displayed competence and acquired experience and responsibility’ and ‘an anachronism in the context of the current statutory regime for the fixation of minimum wage rates’. We do not consider that this issue has been properly addressed by the parties by way of evidence and submissions. Nor have other issues which would necessarily arise in any reform of the classification structure been properly addressed to date, including the appropriate pay relativity between a three-year and a four-year degree-qualified RN.

(footnotes omitted)

[5] In directions issued on 4 April 2024, parties were invited to file submissions in relation to the following outstanding issues concerning RNs and ENs in the aged care sector:

- a. whether the registered nurse level 1, year 1 benchmark minimum rate of pay (aligned with classification C1(a) in the C10 Metals Framework) should apply to a registered nurse holding a three-year or a four-year university degree (refer paragraph [204] of the *Stage 3 decision* [\[2024\] FWCFB 150](#));
- b. which enrolled nurse classification should correspond to the new Level 6 – Team Leader direct care employee classification in the *Aged Care Award 2010* (refer paragraph [205] of the *Stage 3 decision*); and
- c. what the minimum rate increments within each classification of registered and enrolled nurses, and the relativities between those classifications, should be, including the relativity between a registered nurse holding a three-year university degree and one holding a four-year university degree (refer paragraph [207(1)] of the *Stage 3 decision*).

[6] In submissions filed on 26 April 2024, the ANMF relevantly submitted that:

- (1) The rate identified in the *Stage 3 decision* should become the RN Level 1 pay point 1 rate. The entry rates for a three-year degree-qualified RN and a four-year degree-qualified RN should be aligned at this level and the current prescribed entry-level rate for a four-year degree-qualified RN should be abolished.

- (2) The rate for an EN identified in the *Stage 3 decision* should become the rate for EN pay point 1, and the supervision of PCWs should be part of the role of an EN at all levels.
- (3) All RN classifications, and those for Nurse Practitioners, should retain their current relativity to RN Level 1 pay point 1. EN pay points would likewise retain their current relativity to EN pay point 1.

[7] In submissions filed on 16 May 2024 in reply to the ANMF's submissions, Aged & Community Care Providers Association Limited and Australian Business Industrial (Joint Employers) agreed with the ANMF's propositions (1) and (2) above. In relation to the classification structure for RNs, and the ANMF's third proposition above, the Joint Employers submitted that:

- classification structures based on service increments have been held to be inappropriate since before the modernisation of awards;
- however, a certain level of experience in an occupation will usually lead to an incrementally higher level of applied competence which may have work value relevance after a period of years, even if the nominal role of the employee has not changed;
- the historical development of the *Nurses Award 2010* does not support a conclusion that the incremental scale of pay points for each RN level are based on applied competence or acquiring experience and responsibility occasioning a discernible change in work value akin to a new classification, and this is even less clear with respect to the EN structure;
- there is no proper basis in principle, nor an exception enlivened by reference to the evidence, to justify annual increments in the classification structure of the *Nurses Award*;
- on the basis of the reasoning in the *Teachers decision*,<sup>3</sup> the pay points for ENs, the pay points for RN Levels 1–3 and the grades for RN Levels 4–5 would need to be removed or changed; and
- the existing RN classification levels are not themselves problematic.

[8] However, the Joint Employers did not advance any specific proposal for a modified classification and wage rate structure consistent with the above propositions.

[9] These outstanding issues concerning the classification structure and rates of pay were the subject of a hearing before us on 19 September 2024, at the conclusion of which we reserved our decision.

[10] Because of the complexity involved in the determination of the outstanding issues, we consider that we should identify our *provisional* views concerning the outcome and provide the parties with an opportunity to respond to these before we make our final decision. Having regard

to our reasoning in the *Stage 3 decision* and the submissions advanced by the ANMF and the Joint Employers, our *provisional* views on the outstanding issues are as follows:

- (1) We accept the agreed position that the entry-level wage rates for three-year degree qualified and four-year degree-qualified aged care nurses should be aligned. However, we consider that the benchmark rate of \$1525.90 per week should only apply upon the completion of the first year of employment, with an entry level rate set at 95 per cent of the benchmark rate.
- (2) In respect of ENs, it is sufficient for the purpose of the aged care sector to set a single pay level set at the benchmark rate of \$1422.20, on the basis that all such ENs will be required to supervise PCWs. A broader consideration of the roles of ENs in the nursing sector as a whole, and their classifications, will be required when the ANMF's application in matter AM2024/11 is fully considered.
- (3) The classification structure for RNs in aged care should be restructured to remove yearly increments and set proper minimum rates of pay align with the rates of pay for teachers under the *Educational Services (Teachers) Award 2020* established as a result of the *Teachers decision*.<sup>4</sup>

[11] A new classification structure for ENs and RNs in aged care consistent with our *provisional* views above, which includes the end-point rates of pay (subject to future annual wage review adjustments) is set out in Attachment A. A translation table explaining the proposed transition from the existing to the new structure is set out in Attachment B. Where the new rate is lower than the current rate, existing employees will have their current award rate of pay preserved.

[12] It is also our *provisional* view that the wage rates set out in Attachment A should be phased in over three tranches, from 1 January 2025, 1 October 2025 and 1 August 2026.

[13] We invite interested parties to file submissions in response to the above *provisional* views by **5:00 pm (AEDT) on Friday, 8 November 2024**.



PRESIDENT

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**ATTACHMENT A — AGED CARE NURSES CLASSIFICATION STRUCTURE**

Proposed aged care nurses classifications	Proposed weekly rate (\$)	Teachers' classifications — Long day care centres	Current weekly rate (\$)	Nurses — current classifications	Weekly rate (\$) — aged care	Weekly rate (\$) — non-aged care
				<b>Enrolled nurse</b>		
				Pay point 1	1209.10	1051.40
				Pay point 2	1225.20	1065.30
				Pay point 3	1241.50	1079.50
<b>Enrolled nurse supervising PCWs</b>	1422.20 <sup>5</sup>			Pay point 4	1259.30	1095.10
				Pay point 5	1272.00	1106.10
<b>Registered nurse</b>				<b>Registered nurse</b>		
<b>Level 1</b>				<b>Level 1</b>		
1 <sup>st</sup> year	1449.60 <sup>6</sup>	<b>Level 1</b> – provisional registration	1396.10	Pay point 1	1293.60	1124.80
Completion of 1 <sup>st</sup> year (1 year plus)	1525.90 <sup>7</sup>	<b>Level 2</b> – registered (1 year +)	1525.90	Pay point 2	1320.00	1147.90
				Pay point 3	1352.50	1176.00
				Pay point 4	1388.50	1207.30
Completion of 4 years (4 years plus)	1661.20	<b>Level 3</b> - 3 years at level 2 (4 years +)	1661.20	Pay point 5	1431.00	1244.40
				Pay point 6	1472.50	1280.40
				Pay point 7	1515.10	1317.40
		<b>Level 4</b> – 3 years at level 3 (7 years +)	1796.50	Pay point 8+	1554.50	1351.70
<b>Level 2</b>				<b>Level 2</b>		
1–3 years	1796.50			Pay point 1	1595.70	1387.60
				Pay point 2	1621.10	1409.70
				Pay point 3	1649.20	1434.10
Completion of 3 years	1887.10 <sup>8</sup>			Pay point 4+	1676.20	1457.60
<b>Level 3</b>				<b>Level 3</b>		
All years at this level	1931.70			Pay point 1	1730.20	1504.50
				Pay point 2	1762.00	1532.20
				Pay point 3	1792.40	1558.60
				Pay point 4+	1824.50	1586.60
<b>Level 4</b>				<b>Level 4</b>		
All years at this level	2204.80 <sup>9</sup>			Grade 1	1974.80	1717.20
				Grade 2	2116.30	1840.20
				Grade 3	2239.80	1947.60
<b>Level 5</b>				<b>Level 5</b>		
All years at this level	2500.70 <sup>10</sup>			Grade 1	1992.70	1732.80
				Grade 2	2098.60	1824.80
				Grade 3	2239.80	1947.60
				Grade 4	2379.40	2069.00
				Grade 5	2624.30	2282.00
				Grade 6	2871.40	2496.80
<b>Nurse practitioner</b> <sup>11</sup>		<b>Level 5</b> – highly accomplished/ lead teacher accreditation		<b>Nurse practitioner</b>		
1 <sup>st</sup> year	1991.00		1931.70	1 <sup>st</sup> year	1991.00	1731.30
2 <sup>nd</sup> year	2050.10			2 <sup>nd</sup> year	2050.10	1782.70

<sup>5</sup> Rate of \$1370.80 as per March decision at [205], adjusted by AWR increase of 3.75%.

<sup>6</sup> Relativity of 95% of benchmark rate of \$1525.90 for undergraduate degree-qualified professional occupation.

<sup>7</sup> Benchmark rate for undergraduate degree-qualified professional occupation of \$1470.80 as per March decision at [204], adjusted by AWR increase of 3.75%.

<sup>8</sup> Maintains existing relativity of Level 2 pay point 4 to Level 2 pay point 1.

<sup>9</sup> Maintains existing relativity of Level 4 grade 1 to Level 3 pay point 1.

<sup>10</sup> Maintains existing relativity of Level 5 grade 3 to Level 4 grade 1.

<sup>11</sup> Masters degree-qualified nurse plus higher level of registration. No further increase is warranted since relativity to new benchmark rate for undergraduate degree-qualified nurse is already 130.5% at first year.

## ATTACHMENT B — AGED CARE NURSES TRANSLATION TABLE

Aged care nurses — current classifications	Current weekly rate (\$)	New aged care nurses classifications	New wage rate	% change
<b>Enrolled nurse</b>				
Pay point 1	1209.10	<b>Enrolled nurse supervising PCWs</b>	1422.20	+17.6
Pay point 2	1225.20		1422.20	+16.1
Pay point 3	1241.50		1422.20	+14.6
Pay point 4	1259.30		1422.20	+12.9
Pay point 5	1272.00		1422.20	+11.8
<b>Registered nurse</b>		<b>Registered nurse</b>		
<b>Level 1</b>		<b>Level 1</b>		
Pay point 1	1293.60	1 <sup>st</sup> year	1449.60	+12.1
Pay point 2	1320.00	Completion of 1 <sup>st</sup> year (1 year plus)	1525.90	+15.6
Pay point 3	1352.50		1525.90	+12.8
Pay point 4	1388.50		1525.90	+9.9
Pay point 5	1431.00	Completion of 4 years (4 years plus)	1661.20	+16.1
Pay point 6	1472.50		1661.20	+12.8
Pay point 7	1515.10		1661.20	+9.6
Pay point 8+	1554.50		1661.20	+6.9
<b>Level 2</b>		<b>Level 2</b>		
Pay point 1	1595.70	1-3 years	1796.50	+12.6
Pay point 2	1621.10		1796.50	+10.8
Pay point 3	1649.20		1796.50	+8.9
Pay point 4+	1676.20	Completion of 3 years	1887.10	+12.6
<b>Level 3</b>		<b>Level 3</b>		
Pay point 1	1730.20	All years at Level 3	1931.70	+11.6
Pay point 2	1762.00		1931.70	+9.6
Pay point 3	1792.40		1931.70	+7.8
Pay point 4+	1824.50		1931.70	+5.9
<b>Level 4</b>		<b>Level 4</b>		
Grade 1	1974.80	All years at Level 4	2204.80	+11.6
Grade 2	2116.30		2204.80	+4.2
Grade 3	2239.80		2204.80	Existing rate preserved
<b>Level 5</b>		<b>Level 5</b>		
Grade 1	1992.70	All years at Level 5	2500.70	+25.5
Grade 2	2098.60		2500.70	+19.2
Grade 3	2239.80		2500.70	+11.6
Grade 4	2379.40		2500.70	+5.1
Grade 5	2624.30		2500.70	Existing rate preserved
Grade 6	2871.40		2500.70	Existing rate preserved
<b>Nurse practitioner</b>		<b>Nurse practitioner</b>		
1 <sup>st</sup> year	1991.00	1 <sup>st</sup> year	1991.00	0
2 <sup>nd</sup> year	2050.10	2 <sup>nd</sup> year	2050.10	0

<sup>1</sup> [2024] FWCFB 150.

<sup>2</sup> [2024] FWCFB 3500.

<sup>3</sup> [2021] FWCFB 2051.

<sup>4</sup> Ibid.