

## Form F46 – Application to make, vary or revoke a modern award

Fair Work Act 2009, ss.157–161

This is an application to the Fair Work Commission to make a modern award or make a determination varying or revoking a modern award, in accordance with Part 2-3 of the [Fair Work Act 2009](#).

### The Applicant



These are the details of the person who is making the application.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address	Level 1, 365 Queen Street		
Suburb	Melbourne		
State or territory	Victoria	Postcode	3000
Phone number	(03) 9602 8500	Fax number	(03) 9602 8567
Email address	kwischer@anmf.org.au		

### If the Applicant is not an individual, please also provide the following details

Applicant's legal name	AUSTRALIAN NURSING AND MIDWIFERY FEDERATION
Applicant's trading name	
Applicant's ABN/ACN	41 816 898 298
Contact person	KRISTEN WISCHER

**Does the Applicant need an interpreter?**



If the Applicant has trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help for non-English speakers](#) on our website.

Yes – Specify language

No

**Does the Applicant require any special assistance at the hearing or conference (eg a hearing loop)?**

Yes – Please specify the assistance required

No

**Does the Applicant have a representative?**



A representative is a person or organisation who is representing the applicant. This might be a lawyer or paid agent, a union or employer organisation, or a family member or friend. There is no requirement to have a representative.

Yes – Provide representative’s details below

No

**Applicant’s representative**



These are the details of the person or organisation who is representing the Applicant (if any).

Name of person	NICHOLAS WHITE		
Firm, organisation or company	GORDON LEGAL		
Postal address	Level 22, 181 William Street		
Suburb	Melbourne		
State or territory	Victoria	Postcode	3000

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Phone number	(03) 9603 3035	Fax number	(03) 9603 3050
Email address	nwhite@gordonlegal.com.au		

**Is the Applicant’s representative a lawyer or paid agent?**

Yes

No

**1. Coverage**

**1.1 What is the name of the modern award to which the application relates?**



Include the Award ID/Code No. of the modern award.

Nurses Award 2020 [MA000034]

**1.2 What industry is the employer in?**

Health

**1.3 Does the application relate to the Care and Community Sector?**



The Care and Community Sector includes, but is not limited to, the aged care, early childhood education and care and disability care sectors. Applications to make, vary or revoke awards that relate to the Care and Community Sector are decided by Care and Community Sector Expert Panels. See sections 617(8) and (9) of the FW Act.

Yes

No

Unsure

**2. Application**

**2.1 What are you seeking?**

Specify which of the following you would like the Commission to make:

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a determination varying a modern award

a modern award

a determination revoking a modern award

**2.2 Does the application seek to vary modern award minimum wages?**

Yes

No

**2.3 Does the application relate to gender pay equity?**



Variations to awards relating to substantive gender pay equity matters are decided by pay equity Expert Panels. See sections 617(6) and (9) of the FW Act. See also work value reasons in s.157(2A) and (2B).

Yes

No

Unsure

**2.4 What are the details of your application?**

Outline the changes you are asking the Commission to make. For example - if you are asking the Commission to vary an existing award, you should set out which parts of the award you are asking the Commission to change and how you think these parts should be changed.

See Annexures 1 and 2.

Attach additional pages, if necessary.

**2.5 What are the grounds being relied on?**

Using numbered paragraphs, specify the grounds on which you are seeking the proposed variations.

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You must outline how the proposed variation etc is necessary in order to achieve the modern awards objective, and the minimum wages objective if it applies, as well as any additional requirements set out in the FW Act.

See Annexure 3.

Attach additional pages, if necessary.

**Signature**



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	NICHOLAS WHITE, GORDON LEGAL
Date	9 February 2024
Capacity/Position	Applicant's representative



Where this form is not being completed and signed by the Applicant, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

## AUSTRALIAN NURSING AND MIDWIFERY FEDERATION (ANMF)

### APPLICATION TO VARY A MODERN AWARD

#### ANNEXURE 1: BACKGROUND TO THE APPLICATION

1. In the context of the ANMF’s existing work value application to increase minimum wages for aged care employees under the *Aged Care Award 2010* and the *Nurses Award 2020* (“**Aged Care Work Value Case**”),<sup>1</sup> the ANMF has foreshadowed an intention to bring a further application to increase the minimum rates for all classifications under the *Nurses Award 2020* (MA000034) (“**Nurses Award**”).<sup>2</sup>
2. This is that application. It is, as was (and is) the Aged Care Work Value Case, based on two headline propositions:
  - (1) *First*, the minimum rates for nurses, midwives and AINs under the Nurses Award were never “*properly fixed*,” and involve historical undervaluation because of assumptions based on gender.
  - (2) *Second*, the nature of the work, the level of skill and responsibility involved in doing the work, and the conditions under which the work is done have changed demonstrably over the past several decades (so as to make the work more valuable), whereas wage rates have not commensurately increased.
3. This application affects nurses, midwives and nursing assistants working across the health care system, in a number of distinct domains and within a number of diverse settings. The work encompasses acute care, palliative care, midwifery care, rehabilitation, disability care, primary health care, community health care, and mental health care. It is performed across metropolitan, regional, rural and remote settings. The application affects nurses and midwives working in the public sector in Victoria and the Territories, and in the private sector across the country.

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<sup>1</sup> *Aged Care Award 2010 and Nurses Award 2010* (AM2021/63) as lodged by the ANMF. See also *Aged Care Award 2010* (AM2020/99) and *Social, Community, Home Care and Disability Services Industry Award 2010* (AM2021/65).

<sup>2</sup> *Application by the ANMF dated 18 May 2021*, Annexure 2, at [7] and [8]; Reply Submissions of the ANMF filed in the Aged Care Work Value Case, dated 21 April 2022 at [71]; and ANMF Closing Submissions in Reply filed in the Aged Care Work Value Case, dated 17 August 2022 at [169].

4. The ANMF estimates some 250,000 nurses and midwives will be affected by this application. It will also affect assistants in nursing throughout Australia, predominantly working in acute care.

## ANNEXURE 2: DETAIL OF THE APPLICATION

### A. Variation to MA000034: *Nurses Award 2020*

5. The ANMF applies to vary the Nurses Award by amending clause 15.1 “*Minimum rates for employees other than aged care employees*” as follows:
  - (1) by increasing the minimum rate of pay for a Registered Nurse level 1, pay point 1 (“**RN1.1**”), such that it is fixed in accordance with the minimum rate for the C1(a) classification under the *Metals Framework*, to \$1,472.60 per week (148 per cent of the C10 rate);<sup>3</sup>
  - (2) by increasing the minimum rates of pay for all other classifications and pay points of Registered Nurses, Enrolled Nurses, Student Enrolled Nurses, Nurse Practitioners and Occupational Health Nurses by maintaining existing relativities as between those classifications and the RN1.1 classification;
  - (3) by increasing minimum rates for Nursing Assistants (“**AINs**”) by 26.5 per cent (such that the rate of pay would be the same as the ANMF seeks for aged-care AINs).<sup>4</sup> That equates to a rate of \$1,258.60 per week for the experienced AIN classification (the holder of a relevant certificate III qualification).
6. The minimum rates of pay for all classifications and pay points of Registered Nurses, Enrolled Nurses, Student Enrolled Nurses, Nurse Practitioners and Occupational Health Nurses would increase by about 35.8 per cent.

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<sup>3</sup> See *Independent Education Union of Australia* [2021] FWCFB 2051 at [561]–[562] where it is recognised that the full *Metals Award* classification structure was incorporated by the *Manufacturing and Associated Industries and Occupations Award 2010* when it was made on 19 December 2008, but that the highest C1 classification was deleted on 30 December 2009 on the basis that degree-qualified professional engineers and scientists previously covered by the classification would now be covered by the *Professional Employees Award 2010*. The C1(a) rate may be extrapolated from those appearing in the *Metals Award* as originally made on 19 December 2008, as adjusted consistently with Annual Wage increases since then. See also Aged Care Stage 1 decision at [944] and Table 18.

<sup>4</sup> In the Aged Care Work Value Case, a 15 per cent increase has already been awarded on an interim basis in aged care: [2023] FWCFB 40 (“**Aged Care Stage 2 decision**”) and the *Nurses Award 2020 determination* PR751294, 3 March 2023. The ANMF seeks, in Stage 3, a further 10 per cent, but calculated on the figure that has already been raised by 15 per cent. That would, if awarded, be an increase of 26.5 per cent on the figure obtaining prior to the interim increase, leaving to one side annual minimum wage increases during the interim period (*i.e.*,  $((x * 1.15) * 1.10 = 1.265x)$ ).



7. The ANMF also applies to vary the Nurses Award to make specific provision for the role of the midwife by amending the name of the Nurses Award as recorded in the title and at cl 1.1 to be the “*Nurses and Midwives Award 2020*”.

**B. Legislative basis**

8. The ANMF makes this application to vary the Nurses Award pursuant to s 158(2), item 1 of the *Fair Work Act 2009* (“**FW Act**”). As a consequence of the Aged Care Work Value Case, the Nurses Award now provides separate minimum rates for “*employees other than aged care employees*”<sup>5</sup> and for “*aged care employees*”.<sup>6</sup> This application is made in respect of all employees covered by the award, other than aged care employees. That is, this application and the Aged Care Work Value Case together address all persons covered by the Nurses Award, but without overlap.
9. The ANMF’s intention is that, assuming the further increases sought by the ANMF in the Aged Care Work Value case were granted, and were the Commission to make the orders sought by this Application, the separate provision for aged care employees would be eliminated (*i.e.*, this application and the Aged Care Work Value Case, together, are intended to bring about an outcome where the rates of pay are the same for aged care, and non-aged-care, employees).<sup>7</sup>
10. The Commission has the power to make a determination to vary modern award wages in respect of employees covered by the Nurses Award, other than aged care employees, pursuant to s 157(2) of the FW Act, provided the Commission is satisfied that:
  - “(a) the variation of modern award minimum wages is justified by work value reasons; and
  - (b) making the determination outside the system of annual wage reviews is necessary to achieve the modern awards objective.”

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<sup>5</sup> Nurses Award clause 15.1 as substituted by PR751294 with effect from 20 June 2023.

<sup>6</sup> Nurses Award clause 15.2 as substituted by PR751294 with effect from 20 June 2023.

<sup>7</sup> If the further increases sought by the ANMF in the Aged Care Work Value Case were not granted, then the ANMF would consider the Commission’s reasons and identify whether, in their light, it changes its position expressed in this paragraph.

11. As identified in s 157(2A), work value reasons are “*reasons justifying the amount*” an employee should be paid for “*doing a particular kind of work,*” being reasons relating to any of the following:
  - “(a) the nature of the work;
  - (b) the level of skill or responsibility involved in doing the work;
  - (c) the conditions under which the work is done.”
12. Section 157(2B) requires the Commission’s consideration of work value reasons to:
  - “(a) be free of assumptions based on gender; and
  - (b) include a consideration of whether historically the work has been undervalued because of assumptions based on gender.”
13. In giving effect to the modern awards objective, in accordance with s 134 of the FW Act, the Commission must ensure “*modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions*”, taking into account the factors prescribed by that provision. In accordance with s 284(2)(b) of the FW Act, the minimum wages objective will also apply to the performance of the Commission’s functions, given that the ANMF seeks a variation to minimum wages under the Nurses Award.<sup>8</sup> The minimum wages objective, as defined in s 284, requires the Commission to “*establish and maintain a safety net of fair minimum wages*” taking into account the factors prescribed by that provision.
14. Section 578(a) of the FW Act provides that the Commission must take into account the objects of the Act when performing functions or exercising powers under the Act. The object identified at s 3 is, “*to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians*” by, *inter alia*,
  - “(a) providing workplace relations laws that are fair to working Australians [and] promote ... gender equality; and
  - (b) ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through ... modern awards.”

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<sup>8</sup> The proposed variation to the title of the Nurses Award does not involve any variation to modern award minimum wages. In accordance with s 157(1), the Commission may make that amendment where satisfied it is necessary to achieve the modern awards objective to do so.

15. Section 578(c) requires the FWC to take into account the need to respect and value the diversity of the work force by helping to prevent and eliminate discrimination on the basis of (*inter alia*) sex and gender identity.
16. Given that the nursing and midwifery workforce (including AINs) is overwhelmingly female, the legislative provisions in regard to eliminating gender-based undervaluation are of real significance in this application.

### ANNEXURE 3: BASIS FOR THE APPLICATION

#### C. Introduction

17. The proposed increases sought by this application, to minimum wages for employees other than aged care employees in the Nurses Award, are justified by work value reasons in two respects:
- (1) *First*, the minimum rates for nurses, midwives<sup>9</sup> and AINs under the Nurses Award were never “*properly fixed*,” and involve historical undervaluation because of assumptions based on gender.
  - (2) *Second*, the nature of the work, the level of skill and responsibility involved in doing the work, and the conditions under which the work is done have changed demonstrably over the past several decades (so as to make the work more valuable), whereas wage rates have not commensurately increased.
18. A variation to the Nurses Award to make specific provision for the role of a midwife is sought in circumstances where the Nurses Award covers:<sup>10</sup>
- “employers who employ a nurse/midwife, principally engaged in nursing/midwifery duties comprehended by the classifications listed in Schedule A—Classification Definitions.”
19. The Schedule A.2 Classification Descriptors also defines “*Nursing Care*” to also include “*care provided by midwives*”.<sup>11</sup>
20. Midwives represent a large and increasing cohort of employees who are not covered by any other modern award. Data published by the Nursing and Midwifery Board of Australia for the quarter 1 July 2023 to 30 September 2023 records 25,420 persons registered as both a midwife and registered nurse, and 7,560 people with midwife-only registration.<sup>12</sup> Properly identifying the role of a midwife in the title to the Nurses Award is necessary to provide clarity in identifying that cohort within the Nurses

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<sup>9</sup> Where specific reference to the Nurses Award covering midwives was only included in the Nurses Award from March 2011 – see Nurses Award Variation AM2011/8 Transcript of Proceedings, Vice President Watson, 1 March 2011.

<sup>10</sup> Nurses Award clause 4.1(b) as inserted by PR507190 with effect from 9 March 2011.

<sup>11</sup> Nurses Award Schedule A.2 as inserted by PR507190 with effect from 9 March 2011.

<sup>12</sup> Nursing and Midwifery Board of Australia Registrant data - Reporting period: 01 July 2023 to 30 September 2023 at p 5.

Award, thereby ensuring the award is simple and easy to understand, and to ensure that the Award properly and accurately describes the workforce to which it applies.

### **C.1 Minimum wage rates not properly fixed**

21. The minimum wage rates for employees in the Nurses Award have not been properly fixed. In the case of aged care employees, proper fixation is in the process of occurring via the Aged Care Work Value Case. For non-aged-care employees, this application seeks such proper fixation.
22. In the Aged Care Work Value Case, the Commission found minimum wage rates in the Nurses Award were not properly fixed.<sup>13</sup> That finding was based upon consideration of the history of wages and classifications in the Nurses Award.<sup>14</sup> That history involves no relevant distinction between the fixation of minimum rates for aged care and non-aged care employees. The finding that minimum wage rates in the Nurses Award have not been properly fixed applies with equal force to “*employees other than aged care employees*” under that award.
23. Although no finding has been made in the Aged Care Work Value Case as to why minimum rates in the Nurses Award have not been properly fixed, the Commission did state the following:<sup>15</sup>

“[W]e accept the expert evidence that as a general proposition work in feminised industries, including care work, has been historically undervalued and that the reason for that undervaluation is likely to be gender based. We also accept that the evidence pertaining to gender undervaluation provides a useful context for the assessment of the work value and skills utilised in feminised industries...”
24. Nurses, midwives, and AINs perform care work in feminised industries. The Gender pay equity research - Stage 1 report, *Gender-based Occupational Segregation: A National Data Profile*, highlights the gendered nature of this work and the industries in which it is performed.<sup>16</sup> That research recognised the industry subdivision of Hospitals

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<sup>13</sup> *Aged Care Award 2010* (2022) 319 IR 127; [2022] FWCFB 200 (“**Stage 1 Decision**”) at [353.1].

<sup>14</sup> *Aged Care Award 2010* [2022] FWCFB 94 at [7.1] and *Background Document 2 – Award Histories 9* June 2022, published in the Aged Care Work Value Case (“**Background Document 2**”) at [38] to [78].

<sup>15</sup> *Stage 1 Decision* at [356].

<sup>16</sup> Cortis, N., Naidoo, Y., Wong, M. and Bradbury, B. (2023). *Gender-based Occupational Segregation: A National Data Profile*. Sydney: UNSW Social Policy Research Centre (“**Gender pay Equity - Stage 1 Research Report**”).

(except Psychiatric Hospitals) to be feminised (77.4 per cent female).<sup>17</sup> Highly feminised hospital occupations were also found to include Midwives (98.9 per cent female), Enrolled and Mothercraft Nurses (89.9 per cent female), Registered Nurses (87.9 per cent female), and Nurse Managers (86.6 per cent female).<sup>18</sup> In the industry subdivision of Medical and Other Health Care Services, three quarters of employees were recognised to be women, with 95.6 per cent Registered Nurses in General Practice Medical Services being female.<sup>19</sup>

## **C.2 The need to identify skills and fairly remunerate same**

25. Historically, the work of nurses, midwives and AINs has been perceived as inherently feminine in nature. The true nature of the work has been concealed by oversimplification and grossly undervalued as a result. While the focus to date, via the Aged Care Work Value Case, has been on varying the Nurses Award in respect of nurses and AINs employed in aged care,<sup>20</sup> a similarly-strong claim may (and will, in this application) be made in respect of non-aged-care AINs, Enrolled Nurses, Registered Nurses, Nurse Practitioners and Occupational Health Nurses.
26. Nurses, midwives and AINs perform a critical role in the healthcare system. Nurses and midwives are the largest group of registered health professionals in Australia, comprising over 50 per cent of all registered health professionals.<sup>21</sup> Nursing and midwifery care covers all phases of life: from fertility treatment to conception, to birth, to acute illness and injury, to management of chronic health conditions, to rehabilitation, right through to end of life care. Nurses and midwives are at the forefront of the system's ability to meet demand, by identifying and managing acuity and transitioning people between different models of care.
27. Nursing and midwifery work involves a high degree of skill and responsibility. The work is broad and varied, as is the cohort and needs of the communities nurses, midwives, and AINs serve. Advanced clinical (*i.e.*, technical) and interpersonal skills

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<sup>17</sup> Gender pay Equity - Stage 1 Research Report, Part 6, p 30.

<sup>18</sup> Gender pay Equity - Stage 1 Research Report, Table 5.2, p 29.

<sup>19</sup> Gender pay Equity - Stage 1 Research Report, Table 5.2, p 29.

<sup>20</sup> Following recommendation 84 of the Royal Commission into Aged Care Quality and Safety, Final Report.

<sup>21</sup> Australian Government, Australian Institute of Health and Welfare, Health workforce data as at 7 July 2022 - <https://www.aihw.gov.au/reports/workforce/health-workforce#overview>

are employed on a daily basis in meeting the needs of the “*the whole person*” seeking healthcare, engaging with their loved ones and collaborating effectively with other professionals and providers.

28. Nursing encompasses autonomous and collaborative care of individuals of all ages, families, groups and communities, sick or well, and in all settings. Nursing includes the promotion of health, prevention of illness, and the care of ill, disabled and dying people. Advocacy, promotion of a safe environment, research, participation in shaping health policy in patient care and in health systems of management, and education are also key nursing roles.<sup>22</sup>
29. Nurses and midwives are trusted professionals subject to rigorous regulatory requirements governing their practice and their suitability to practise.
30. Nursing care has been overwhelming performed by women. These women have been tirelessly serving the community in an economic and industrial relations system that has failed to recognise their skill and the complexity of their task. In the past, nurses were seen as mere assistants to (stereotypically male) doctors. While that erroneous view may be passing from contemporary currency, a situation to which it has contributed—wages that fail to reflect the true value of the work performed—remains. The fundamental nature and importance of nursing work, the skill it involves, and its impact on the overall health and wellbeing of the community, have been overlooked and underappreciated—and undervalued.
31. The current rates of pay for employees in the Nurses Award fail to reflect a proper work value assessment that encompasses the full spectrum of skills brought to bear in the work of nurses, midwives, and AINs. Like their aged care colleagues,<sup>23</sup> their work involves “*invisible skills*”—historically overlooked and undervalued—that require identification and recognition in order that work value may properly also be recognised. These workers have been underpaid and undervalued as a result, in part, of a system premised on traditional gender roles and unpaid care work.

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<sup>22</sup> International Council of Nursing “Definition of Nursing”, 2002.  
<sup>23</sup> Stage 1 decision at [759]–[784] and [856].

32. The Full Bench in the *Stage 1 decision* of the Aged Care Work Value Case carefully considered the expert evidence in respect of historical undervaluation and accepted the following propositions at [42] (citations omitted):

- “1. The valuation of work is influenced by social expectations and gendered assumptions about the role of women as workers. In turn these social practices influence institutional and organisational practices.
2. Undervaluation occurs when work value is assessed with gender-biased assumptions. The reasons for gender-based undervaluation in Australia include the continuation of occupational segregation, the weaknesses in job and work valuation methods and their implementation, and social norms, gender stereotypes and historical legacies.
3. Gender-based undervaluation in the employment context occurs when work value is assessed with gender-biased assumptions which means the skill level of occupations, work or tasks is influenced by subjective notions about gender and gender roles in society. Skills of the job occupant are discounted or overlooked because of gender.
4. Gender-based undervaluation of work in Australia arises from social norms and cultural assumptions that impact the assessment of work value. These assumptions are impacted by women’s role as parents and carers and undertaking the majority of primary unpaid caring responsibilities. The disproportionate engagement by women in unpaid labour contributes to the invisibility and the under recognition of skills described as creative, nurturing, facilitating or caring skills in paid labour. ...”

33. These findings will also be sought in the current application. There is a real need to vary the minimum rates of pay for employees other than aged care employees in the Nurses Award in order to “*promote gender equality*” and recognise that, historically, the work has been undervalued because of assumptions based on gender.

### **C.3 The need to recognise a change in work value**

34. No proper work value assessment for minimum rates of pay in the Nurses Award occurred during the award modernisation process.<sup>24</sup>

35. Minimum rates for employees, other than aged care employees, in the Nurses Award reflect rates derived from pre-modern awards. For nurses (and midwives) outside aged care, minimum rates reflect those fixed by the Federal Commission in 1998 in the *Paid*

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<sup>24</sup> See Aged Care Work Value Case, Background Document 2 at [38]–[78]. See also Statement dated 9 June 2022 [2022] FWCFB 94, and *Re Aged Care Award 2010* (2022) 319 IR 127 at 221 [353]–[354].



*Rates Review Decision*<sup>25</sup> as amended annually via safety net adjustments and Australian Fair Pay Commission Adjustments. However, the 1998 *Paid Rates Review Decision* did not involve any specific work value consideration. The most recent relevant assessment of work value occurred in 1990<sup>26</sup> and 1991<sup>27</sup> for registered nurses and for in 1992 for enrolled nurses.<sup>28</sup> Minimum rates for non-aged care AINs reflect those fixed by the Federal Commission in 2005 as amended annually.<sup>29</sup> The minimum rates for employees other than aged care employees in the Nurses Award have not been adjusted outside the system of annual wage review since the Award was created.

36. There have been fundamental changes to work value since the 1990s (with respect to nurses and midwives) and since 2005 (with respect to AINs). The value of the work performed has increased substantially. The work of nurses and midwives outside of aged care is wide and varied, and often dependent on the setting in which care is delivered. All this will be explored in evidence. However, some common features of change are apparent.
37. *First*, the nature of the work has changed on account of a fundamental cultural shift in the way in which care is delivered. The hierarchical relationship of the health professional “*treating*” the “*patient*” is no longer. In contemporary nursing and midwifery, “*person-centred*” care is a daily commitment and expectation of competent practice. Person-centred care (or “*people-centred care*”) treats each person respectfully as an individual human being, and not just a condition to be treated. Care is delivered collaboratively with the person receiving care, and health professionals work inclusively with family, friends, and community supports to share decision-making and plan care.
38. Delivering person-centred care requires ever-greater skills in managing complex interpersonal relationships, coordinating multiple people, and collaborating across the healthcare professions and support services. It takes time to seek out and understand what is important to the person receiving care: their preferences, needs and values.

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<sup>25</sup> *Nurses (ANF – South Australian Private Sector) Award 1989*, 20 October 1998, Print Q7661.

<sup>26</sup> *Registered Nurses National Rates Case Levels 1 - 3*, 21 August 1990, Print J4011.

<sup>27</sup> *Registered Nurses National Rates Case Levels 4 and 5*, 17 July 1991, Print J8402.

<sup>28</sup> EN National Rates Case, 10 July 1992, Print K3662.

<sup>29</sup> *Nurses Private Employment (ACT) Award 2002*, 21 November 2005 PR965496.

Nurses, midwives and AINs understand that building rapport is critical in establishing trust and confidence in the delivery of care. Person-centred care is widely recognised as the foundation to all safe, high-quality healthcare.<sup>30</sup> It underpins all settings in which nursing and midwifery care is delivered.

39. Second, the needs of people requiring healthcare have changed significantly:

- (1) People are presenting with greater acuity and greater complexity in their care needs. As a population, we are older, sicker, and more affected by co-morbidities than before. In 2020–21, nearly half of Australians (47 per cent, or 11.6 million people) were estimated to have one chronic condition. An estimated 20 per cent of people (4.9 million) had two or more conditions in 2017–18.<sup>31</sup> This change in the needs of people seeking care necessarily impacts the nature of the work in providing appropriate care, and the level of skill and responsibility involved in monitoring, assessing and reacting to patient care needs. The stakes are higher than they were, and the work is more complex.
- (2) The population has changed significantly, with associated changes to determinants of health. Nurses and midwives have a significant and growing role in combating social inequities in order to facilitate quality healthcare for all community members. Culturally safe care—that meets the needs of Aboriginal and Torres Strait Islander people, culturally and linguistically diverse people, and members of the LGBTQIA+ community—is an expectation of competent practice. The many varied cultural and socio-demographic factors—often referred to as determinants of health—combine to impact the health of individuals and populations. The work of the nurse, midwife and AIN in understanding and navigating these factors is far greater than it once was. Their work in delivering high-quality healthcare is necessarily more complex, and more nuanced, as a result.

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<sup>30</sup> Australian Commission on Safety and Quality in Health Care, Person-centred care - <https://www.safetyandquality.gov.au/our-work/partnering-consumers/person-centred-care>, as at 6 February 2024.

<sup>31</sup> Australian Institute of Health and Welfare (2022). *Australia's health 2022: in brief*, catalogue number AUS 241. Australia's health series number 18, AIHW, Australian Government, p 28.

- (3) People receiving healthcare have greater access to information and are more informed (or mis-informed) about healthcare than before. This has placed a greater educative burden on nurses and midwives, and necessitates new skills in combating misinformation and engaging with patients.

40. Third, the level of health care and intervention has increased exponentially with associated changes in the delivery of nursing and midwifery care:

- (1) People who are unwell and receiving care are living longer. This affects the number of co-morbidities they have and the complexities of their care. There is far greater work in managing chronic illness. Nurses are managing long-term therapeutic relationships, monitoring people in their care and continually adjusting to their changing needs.
- (2) Developments in health care have necessitated ever-increasing levels of upskilling for nurses and midwives. These workers have to be up-to-date with advances in healthcare services and technology, consequently scope of practice for nurses and midwives is continuously evolving and expanding.
- (3) With advances in treatment (e.g., less invasive surgical care) and greater efficiencies across the healthcare system, come flow-on effects that greatly increase the work of nurses and midwives. There are far greater levels of admission, discharge, and re-admission with more people coming through the system than ever before. There is significant work for nurses, midwives and AINs in establishing care plans and transitioning care from an acute setting to a primary health or community health setting.

41. Fourth, nurses and midwives have a much greater level of responsibility in managing persons receiving care. The nurse or midwife is the primary professional responsible for monitoring patients and collaborating with other health professionals. There is more communication about care of the person than ever before. Similarly, and by extension, the responsibility to keep correct and comprehensive notes—to effectively share care and document the impact of different interventions—is ever present.

42. Fifth, medical and nursing care is being delivered in new and varied ways that rely, fundamentally, on nurses and midwives. People are receiving treatment and care across

a broader range of settings, including but not limited to an increasing number of home-based settings. Nurses, midwives, and AINs are at the forefront of delivering these new forms of care and are, in the process, alleviating pressure on the acute or primary healthcare system.

43. The nature of nursing and midwifery work has necessarily changed as a result. Nursing and midwifery care is being delivered in increasingly autonomous settings. In a healthcare system struggling to keep up with population increase and acuity, people with more and more complex needs are being cared for, primarily and on a regular basis, by nurses and midwives. These workers have upskilled significantly in order to meet the responsibilities of delivering care in these settings.
  44. Sixth, nursing care has become increasingly specialised—necessitating greater levels of training and education. The nurse has always been a “*generalist*,” equipped to provide healthcare to whoever needs it. But these days, many nurses and midwives—faced with the demands of their role—are electing to specialise. Nurse practitioners, in particular, have developed highly-specialised skills and now practice with ever-greater levels of specificity and responsibility. While the evolution of specialist skills in nurses and midwives has played a critical role in meeting public demand and alleviating pressures within the healthcare system, the value of this work has not been properly recognised in award minimum wages.
  45. Seventh, nurses and midwives, as trusted professionals, are subject to increasing regulatory requirements governing their practice.
  46. These and other factors will demonstrate a change in work value having regard to “*the nature of the work, the level of skill or responsibility involved in doing the work [and] the conditions under which the work is done.*”
- D. Making the determination outside the system of annual wage reviews is necessary to achieve the modern award objective**
47. This application is made in the context of important work in regard to gender pay equity being conducted for the purpose of the Annual Wage Review 2023–24. Stage 1 of the Expert Panel’s research program has concluded, with publication of the Gender pay Equity - Stage 1 Research Report, as mentioned above.

48. Stage 2 of the research program is underway. The ANMF understands that this work will explore the history of wage fixing and work value assessments in each of the twelve Awards the focus of the Expert Panel’s work. Parties will be able to make submissions about it and the Stage 1 Report as part of the Annual Wage Review 2023–24 process.<sup>32</sup>
49. However, it is understood that the scope of the Annual Wage Review process will not extend to consideration of the particular “*invisible skills*” exercised by nurses, midwives, and AINs in classifications other than aged care employees under the Nurses Award. Nor is it understood that the Annual Wage Review process will consider changes to the work value of those employees. As was emphasised by the President’s statement in the Annual Wage Review, the scope of that review does not constrain interested parties from separately advancing proposals for changes to modern awards.<sup>33</sup>
50. Accordingly, the ANMF envisages that this application will supplement, but also draw upon, the work of the Panel by involving specific evidence of the invisible skills exercised by nurses, midwives and AINs. It will address changes in work value arising from the changes to work performed by those employees, including the skill and responsibilities involved in the delivery of safe, competent nursing and midwifery practice. It will involve a proper assessment of the work value reasons justifying the amount that nurses, midwives, and AINs should be paid.
51. For the reasons articulated above, the Nurses Award does not presently provide a safety net of fair or relevant minimum wages. A variation of the rates of pay outside the system of annual wage reviews is necessary to achieve the modern awards objective. Existing minimum rates are not fair or relevant where they fail to reflect the proper value of the work having regard to work value reasons.

**E. The minimum wages objective**

52. For similar reasons, an increase in the minimum wages in the Nurses Award would also provide a safety net of fair minimum wages, and give effect to the minimum wages objective.

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<sup>32</sup> President’s statement *Gender pay equity research — Stage 2 research to be conducted*, Justice Hatcher, President Sydney, 5 December 2023 at [6].

<sup>33</sup> President’s statement *Annual Wage Review 2023–24*, Justice Hatcher, President, Sydney, 2 February 2024 [2024] FWC 278 at [6] and [7].

**F. Conclusion**

53. That variations described above to the *Nurses Award* are:

- (1) “*justified by work value reasons*”— s 157(2)(a) of the FW Act—having regard to the “*nature of the work, the level of skill of responsibility involved in doing the work and the conditions under which the work is done*”, and with a view to ensuring that the award rates are set free of gendered historical undervaluation—s 157(2A) and (2B) of the FW Act;
- (2) “*necessary to achieve the modern awards objective*”, including but not limited to “*eliminating gender based undervaluation of work*”—ss 157(2)(b) and 134(ab) of the FW Act; and
- (3) part of the Commission’s task to “*maintain a safety net of fair minimum wages*” in order to “*achieve gender equality*”—s 284(a)(a) of the FW Act.