

**FAIR WORK COMMISSION**

**AM2021/63**

**THE AUSTRALIAN NURSING AND MIDWIFERY FEDERATION**

Applicant

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

**AM2020/99**

**THE UNITED WORKERS UNION**

Applicant

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

**AM2021/65**

**THE HEALTH SERVICES UNION**

Applicant

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

**JOINT NOTE REGARDING THE DETERMINATION TO THE AGED CARE  
AWARD ISSUED 11 SEPTEMBER 2024.**

1. This note represents the joint position of the Australian Nursing and Midwifery Federation (“**the ANMF**”), United Workers Union (“**the UWU**”) and the Health Services Union (“**the HSU**”) (together “**the union parties**”).
2. On 11 September 2024, the Commission issued a Determination (PR779150) varying the *Aged Care Award 2010* (“**Determination**”), together with Determinations varying the *Social, Community, Home Care and Disability Services Industry Award 2010* and the *Nurses Award 2020*.
3. On 24 September 2024, the Chambers of Hatcher J released a note identifying the methodology employed by the Commission’s pay equity and awards team in arriving at the rates set out in paragraphs [2] and [3] of the Determination (“**Commission methodology note**”). Also prepared by the Commission’s pay equity and awards team and provided by the Chambers of Hatcher J on 24 September 2024 was a

spreadsheet of aged care work value rates calculation table in Excel format (“**Commission calculations spreadsheet**”).

4. Paragraphs [2] and [3] to the Determination set out the weekly rates that will apply as at 1 January 2025 in respect of the new classification structure under the Aged Care Award. These rates are to give effect to:
  - a. *The Stage 3 Decision* [2024] FWCFB 150 of 15 March 2024: at [193]-[194] setting out the new six-level classification structure under the Aged Care Award for “aged care employees – direct care”, their respective relativities and weekly rate of pay; at [197]-[198] the translation of existing PCWs and AINs to the new classification structure; and, at [280] the potential for further adjustment to these rates in accordance with any Annual Wage Review preceding the operative date of the final increase.
  - b. *The Annual Wage Review* [2024] FWCFB 3500 at [176] providing for a 3.75% increase, operative 1 July 2024, to the rates as set out in [194] of the *Stage 3 Decision*.
  - c. *The First Stage 3 Phasing-in Decision* [2024] FWCFB 298 of 27 June 2024 at [18] in respect of the operative dates and phasing in of the final increase for workers under the Aged Care Award, in two tranches effective 1 January 2025 and 1 October 2025.
  - d. *The Final Decision* [2024] FWCFB 367 of 11 September 2024 at [4] advising issue of the Determination to the Aged Care Award.
5. This note addresses the proper calculation of the rates at paragraphs [3] of the Determination, representing the first tranche of payment of the final increase, as at 1 January 2025.
6. Examining the Commission methodology note and the Commission calculation spreadsheet, it appears that an inadvertent error has been made in respect of the application of the new “*translated classification*” to the “*previous classification*” and the calculation of the “*actual rate as at 1 July 2024*” as applicable to direct care employees. The error — as the union parties perceive it — is that incorrect application of “*actual rate as at 1 July 2024*” as amongst some of these workers, has

affected calculation of “*half \$ amount of full increase*”, and by extension, the “*tranche 1 rates (operative 1 Jan)*” final calculation.

7. As demonstrated by the Commission methodology note and the Commission calculation spreadsheet, the “*actual rate as at 1 July 2024*” serves as a reference point for determination of the percentage increase operative 1 January 2025 as against the final increase (as set out at [194] of the *Stage 3 decision* together with the 3.75% AWR adjustment).
8. This affects the calculation of the 1 January 2025 rates in respect of new classifications for aged care – direct care workers at levels 1 - 6. The methodology and rates in respect of the 1 October 2025 final increase are unaffected.
9. One matter to be given particular attention is the calculation of the “*actual rate as at 1 July 2024*” in respect of the amalgamation of multiple previous classifications into new direct care classification levels 1, 2, 3 and 5.
10. The Commission methodology note helpfully states:

*“In SCHADS, the existing 11 pay points will be condensed into 6 new levels, according to the translation table. In the Aged Care Award, 7 direct carers levels are translating into 6. Of course, the increase an employee will receive depends [on] their previous rate. This is further complicated by a few employee classifications that are translated downwards or upwards in the classification levels and the fact that AINs are coming over from the Nurses Award into the Aged Care Award and SCHADS Award. However, for simplicity I have not factored in the value of increases to incoming AINs for the purposes of determining the phase-in category and it is unlikely to make any difference in any case. I have just used straight level 1 to level 1 comparisons, with the exception that where multiple classifications/pay points are condensing into one, I have averaged the incoming rates (column G) to find the workable percentage increases. Again, this is only for the purposes of determining the phase-in category.”*

11. Despite this, it appears that neither a “*straight level 1 to level 1 comparison*” nor an “*average [of] incoming rates*” approach has been consistently applied in arriving at “*the actual rate*” as at 1 July 2024 as applied in the Commission calculation spreadsheet.
  - a. *First, new classification levels have been incorrectly applied to previous classifications*. See D24 to the Commission calculation spreadsheet: “*aged*

*care employee - direct care - level 3 - Qualified*” has been incorrectly referenced to the previous level 3 (\$1173.3) classification when the correct translation is the previous level 4 (\$1187.1). The same can be said in respect of D25 to D27.

- b. Second, the lesser sum - as distinct from an average across variables – has been applied in amalgamating previous classifications. See D26 of the Commission calculation spreadsheet: the actual rate as at 1 July 2024 for the new classification “*aged care employee – direct care – level 5 – Specialist*” (\$1227.40) has been set by reference to the previous level 5 (\$1227.40) as distinct from the previous level 6 (\$1293.60) or any average of the two. The same can be said in respect of D22, D23 and D24.
- c. Third, an average across variables, in amalgamating previous classifications, has been applied incorrectly in respect of the new classification “*aged care employee – direct care – level 6 – Team Leader*” only. The new level 6 classification is the equivalent of the previous level 7 classification. It is not an amalgamation of previous levels 6 and 7. See D27 of the Commission calculation spreadsheet.

12. In addition to these apparent errors, the union parties identify two proposed changes to the methodology for identifying the “*actual rate as at 1 July 2024*” and thereby calculation of the first tranche of minimum wage increases.

13. *Firstly*, the union parties consider that averaging multiple incoming rates to identify the “*actual rate as of 1 July 2024*” would not be the preferred approach. Rather, the “*actual rate as of 1 July 2024*” would be better identified as the higher of the applicable amalgamated previous rates. This would:

- a. ensure that applicable employees receive minimum wage increases on 1 January 2025 that are not less than the amounts identified at [18] of the *First Stage 3 Phasing-in Decision* [2024] FWCFB 298; and
- b. remove a level of complexity to the transition that otherwise — as explained in the Commission methodology note — necessitates a remedy clause,

temporarily retaining the pay of certain workers as between 1 January and 1 October 2025, so as to prevent them being temporarily worse off.

14. It is noted that such an approach has a flow on effect in terms of the phase-in category that certain classifications sit within; the “aged care employee – direct care – levels 1 and 2” would receive their full increase (3%) on 1 January 2025 as distinct from a “3% then the rest approach”.
15. *Secondly*, contrary to the Commission methodology note, the union parties consider that it would be appropriate to “factor[.] in the value of increases to incoming AINs for the purposes of determining the applicable phase in category...” and actual rate as of 1 July 2024. The Commission methodology note does not identify why these rates have been excluded from the calculations, save that these would be unlikely to make any difference. Inclusion of the current rates for AINs, subject to translation to the Aged Care Award, in calculation of the “actual rate as of 1 July 2024” would ensure that applicable employees receive minimum wage increases on 1 January 2025 that are not less than the amounts identified at [18] of the *First Stage 3 Phasing-in Decision* [2024] FWCFB 298.
16. Adopting these two changes to methodology and addressing the translation issues identified at [11] above, the affected calculations, with brief explanatory notes, are as follows:

Applicable cell on Commission calculation spreadsheet	Issue identified by the union parties	Rationale
D22 By extension: J22, L22 and M22.	<p>The “actual rate as of 1/07/24” for the new classification “aged care employee – direct care – level 1 – <b>Introductory</b>” at D22 should be \$1114.6, being the higher amount of the now amalgamated previous classifications known as:</p> <ul style="list-style-type: none"> <li>- “aged care employee – direct care – level 1” under the Aged Care Award; and</li> <li>- “AIN first year (less than 3 months’ experience)” under the Nurses Award.</li> </ul> <p>This has ramifications in the calculation of “tranche 1 rates (operative 1 Jan)” by reference to the “\$ amount of full increase” and the “half \$ amount of full increase”.</p>	<p>The Stage 1 decision, at [197] and [198], as accurately represented at B4-D6 and B14-D14 on the Commission calculation spreadsheet.</p>

<p>D23</p> <p>By extension: J23, L23 and M23.</p>	<p>The “<i>actual rate as of 1/07/24</i>” for the new classification “<i>aged care employee – direct care – level 2 – Direct Carer</i>” <b>at D23 should be \$1173.3</b>, being the higher amount of the now amalgamated previous classifications known as:</p> <ul style="list-style-type: none"> <li>- “<i>aged care employee – direct care – level 2</i>” and “<i>aged care employee - direct care – level 3</i>” under the Aged Care Award; and</li> <li>- “<i>AINs first year (3 months experience or more), second year and third year</i>” under the Nurses Award.</li> </ul> <p>This has ramifications in the calculation of “<i>tranche 1 rates (operative 1 Jan)</i>” by reference to the “<i>\$ amount of full increase</i>” and the “<i>half \$ amount of full increase</i>”.</p>	<p><i>The Stage 1 decision</i>, at [197] and [198], as accurately represented at B5/6-D5/6 and B15/16/17-D15/16/17 on the Commission calculation spreadsheet.</p>
<p>D24</p> <p>By extension: J24, L24 and M24</p>	<p>The “<i>actual rate as of 1/07/24</i>” for the new classification “<i>aged care employee – direct care – level 3 – Qualified</i>” <b>at D24 should be \$1187.1</b>, being the previous classifications known as:</p> <ul style="list-style-type: none"> <li>- “<i>aged care employee – direct care – level 4</i>” in the Aged Care Award; and</li> <li>- “<i>Experienced AIN (holder of a relevant Certificate III qualification)</i>” in the Nurses Award</li> </ul> <p>This has ramifications in the calculation of “<i>tranche 1 rates (operative 1 Jan)</i>” by reference to the “<i>\$ amount of full increase</i>” and the “<i>half \$ amount of full increase</i>”.</p>	<p><i>The Stage 1 decision</i>, at [197] and [198], as accurately represented at B7-D7 and B18-D18 on the Commission calculation spreadsheet.</p>
<p>D25</p> <p>By extension: J25, L25 and M25</p>	<p>The “<i>actual rate as of 1/07/24</i>” for the new classification “<i>aged care employee – direct care – level 4 – Senior</i>” <b>at D25 should be \$1227.4</b>, being the previous classification known as “<i>Aged care employee—direct care—level 5 (without relevant Certificate IV qualification)</i>”.</p> <p>This has ramifications in the calculation of “<i>tranche 1 rates (operative 1 Jan)</i>” by reference to the “<i>\$ amount of full increase</i>” and the “<i>half \$ amount of full increase</i>”.</p>	<p><i>The Stage 1 decision</i>, at [197], as accurately represented at B8-D8 on the Commission calculation spreadsheet.</p>
<p>D26</p> <p>By extension: J26, L26 and M26</p>	<p>The “<i>actual rate as of 1/07/24</i>” for the new classification “<i>aged care employee – direct care – level 5 – Specialist</i>” <b>at D26 should be \$1293.6</b>, being the higher amount of the now amalgamated previous classifications known as:</p> <ul style="list-style-type: none"> <li>- “<i>aged care employee—direct care—level 5 (with relevant Certificate IV qualification)</i>”; and</li> <li>- “<i>aged care employee—direct care—level 6</i>”.</li> </ul> <p>This has ramifications in the calculation of “<i>tranche 1 rates (operative 1 Jan)</i>” by reference to the “<i>\$ amount of full increase</i>” and the “<i>half \$ amount of full increase</i>”.</p>	<p><i>The Stage 1 decision</i>, at [197], as accurately represented at B9/10-D9/10 on the Commission calculation spreadsheet.</p>

D27 By extension: J27, L27 and M27	The “ <i>actual rate as of 1/07/24</i> ” for the new classification “ <i>aged care employee – direct care – level 6 – Team Leader</i> ” <b>at D27 should be \$1316.7</b> , being the previous classification known as “ <i>Aged care employee—direct care—level 7</i> .” This has ramifications in the calculation of “ <i>tranche 1 rates (operative 1 Jan)</i> ” by reference to the “ <i>\$ amount of full increase</i> ” and the “ <i>half \$ amount of full increase</i> ”.	<i>The Stage 1 decision</i> , at [197], as accurately represented at B11-D11 on the Commission calculation spreadsheet.
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17. The union parties have prepared a marked-up version of the released methodology, with the above referenced values marked by red outlined cells.
18. The union parties invite the Commission to correct or amend the errors, defect or irregularities in the Determination as identified above in accordance with the second (shaded) column of the below table, pursuant to section 602 of the *Fair Work Act 2009*.

Classification (clause 14.3)	Per week \$ as at 1 January 2025	Per week \$ as at 1 October 2025 (may be adjusted by AWR 24-25).
Aged care employee – direct care – level 1 - Introductory	\$1142.8	n/a
Aged care employee – direct care – level 2 - Direct Carer	\$1206.3	n/a
Aged care employee – direct care – level 3 - Qualified	\$1228.4	\$1269.8
Aged care employee – direct care – level 4 - Senior	\$1274.0	\$1320.6
Aged care employee – direct care – level 5 - Specialist	\$1332.5	\$1371.4
Aged care employee – direct care – level 6 – Team Leader	\$1369.5	\$1422.2