

**FAIR WORK COMMISSION**

**AM2021/63; AM2024/11**

**APPLICATIONS BY AUSTRALIAN NURSING AND MIDWIFERY FEDERATION**

**SUBMISSION COMMENTING ON THE DRAFT DETERMINATION**

**AGED & COMMUNITY CARE PROVIDERS ASSOCIATION LTD**

**AUSTRALIAN BUSINESS INDUSTRIAL**

**(“THE JOINT EMPLOYERS”)**

**13 DECEMBER 2024**

## SUBMISSION COMMENTING ON THE DRAFT DETERMINATION

### Overview

1. On 6 December 2024, the Expert Panel published *Decision* [2024] FWCFB 452 (**the Decision**), together with a draft determination to give effect to the Decision.<sup>1</sup>
2. Leave was granted to comment on matters of a “*technical nature*” by 12:00pm on Friday, 13 December 2024.<sup>2</sup>
3. This submission comments upon an inadvertent consequence arising from the wording of the following:
  - (a) the proposed description for the new singular classification for enrolled nurses working in aged care (namely, “*enrolled nurse supervising other direct care employees*”) (**the proposed description**); and
  - (b) the proposed definition for “*enrolled nurse supervising other direct care employees*” (**the proposed definition**).
4. The inadvertent consequence that arises is the possible exclusion of enrolled nurses working in aged care that may not (or may not yet) be delegated the responsibility of supervising other direct care employees.
5. Whilst the Decision finds that “*supervisory responsibility*” is a central role of the enrolled nurse working in the aged care sector,<sup>3</sup> the exclusion addressed in this submission does not appear to be the intended effect of the Decision. Rather, the intended effect is to recognise that all enrolled nurses working in aged care have the capacity to supervise other direct care employees; supervisory responsibility falls within the enrolled nurse scope of practice.

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<sup>1</sup> [2024] FWCFB 452; [Draft Determination – Nurses Award 2020](#) (published 6 December 2024).

<sup>2</sup> [2024] FWCFB 452 at [70].

<sup>3</sup> [2024] FWCFB 452 at [48].

## How does the exclusion arise?

### Proposed description

6. The classification description must necessarily be distinguishable from its non-aged care counterpart.
7. Currently, the classification description counterparts are “*enrolled nurse – aged care employee*” and “*enrolled nurse – other than aged care employees*”.
8. The proposed description goes further by referring to a possible duty performed by the enrolled nurse: “*enrolled nurse supervising other direct care employees*” (emphasis added).
9. The reference to “*supervising other direct care employees*” suggests that absent the current and active performance of that expressly identified task, an enrolled nurse working in aged care does not fall within the classification.
10. It does not appear that the intent of the Decision was to create a further demarcation within the enrolled nurse aged care employee classification.

### Proposed Definition

11. The draft determination includes the following definition:

**“A.4.6 Enrolled nurse supervising other direct care employees**

*An enrolled nurse supervising other direct care employees is an employee who:*

*(a) has satisfactorily completed:*

- *a hospital based course of training in nursing leading to enrolment as an EN; or*
- *500 hours or more theory content or a course accredited at advanced certificate, diploma or advanced diploma level leading to enrolment as an EN; or*
- *a course of training in a specified branch of nursing leading to enrolment on a register or roll maintained by the Nursing and Midwifery Board of Australia or its successor; and*

*(b) has responsibility for supervising other direct care employees.”*  
(emphasis added)

12. The construction of paragraphs (a) and (b) make it clear that having “*responsibility for supervising other direct care employees*” is a *requirement* to meet the definition of the new singular classification. Absent being delegated to perform that responsibility at the direction of a registered nurse, an enrolled nurse working in aged care may not meet the proposed definition.

### **The Decision: Supervisory Responsibility of the Enrolled Nurse**

13. The supervisory responsibility of the enrolled nurse is addressed in the Decision as follows:

(a) The submissions of both the ANMF and Joint Employers are cited, which refer to enrolled nurses working in aged care as being “*generally involved in the supervision of personal care workers*”.<sup>4</sup>

(b) The evidence of Ms Brooks is cited, including:

(i) “*Because of the scope of their educational preparation, all ENs are equipped to supervise and assist PCWs in all aspects of the care PCWs deliver*” (emphasis added);<sup>5</sup> and

(ii) ENs (including an entry-level EN) in aged care are “*expected to assist the RN in the supervision of PCWs, including orientation and providing day-to-day supervision as relevant to the EN scope of practice*” (emphasis added).<sup>6</sup> That assistance will be subject to the direction and delegation of the RN.

(c) At [48] of the Decision, the Expert Panel observe:

*“As was made clear at paragraph [205] of the Stage 3 decision, which we have earlier quoted, the establishment of the alignment with the new Level 6 Team Leader rate in the Aged Care Award was based on the*

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<sup>4</sup> See [2024] FWCFB 452 at [19], [24].

<sup>5</sup> [2024] FWCFB 452 at [24].

<sup>6</sup> [2024] FWCFB 452 at [25].

*proposition that ENs and Team Leaders would both have responsibility for supervising PCWs. The further evidence of Ms Brooks to which we have earlier referred establishes that such supervisory responsibility, involving oversight of and assistance to PCWs, is a central role of all ENs in residential aged care. There was no evidence of ENs in aged care not having this responsibility.” (original emphasis)*

## Observations

14. The primary purpose of the classification description is to create a singular classification for enrolled nurses working in aged care. The accompanying definition is to provide additional certainty and recognise the supervisory responsibility that falls within the enrolled nurse scope of practice (i.e. all enrolled nurses have the capacity to supervise other direct care employees).
15. To avoid any inadvertent carve out or demarcation amongst enrolled nurses working in aged care and to avoid any confusion amongst employers and employees, the following suggestions are raised for the consideration of the Expert Panel:
  - (a) Simplify the classification title to “*enrolled nurse—aged care*”. This would ensure that a distinction is maintained between enrolled nurses working in aged care and enrolled nurses working in other sectors.
  - (b) Amend “*has responsibility for supervising other direct care employees*” to “*may have responsibility for supervising other direct care employees*” (emphasis added). This amendment continues to recognise the supervisory responsibility attached to the enrolled nurse scope of practice but ensures that enrolled nurses working in aged care that may not (or may not yet) have responsibility for supervising other direct care employees are not inadvertently excluded.

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**13 December 2024**