

From: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>
Sent: Friday, 13 December 2024 2:08 PM
To: Angelica Nippard <ANippard@gordonlegal.com.au>
Cc: Nigel Ward <Nigel.Ward@ablawyers.com.au>; Nick White <nwhite@gordonlegal.com.au>; Awards <Awards@fwc.gov.au>; Besemeres, Clare <Clare.Besemeres@ags.gov.au>; Penelope Parker <PParker@mauriceblackburn.com.au>; Alana Rafter <Alana.Rafter@ablawyers.com.au>; Kate.Plowman@minterellison.com; Bernadette McCabe <bernadette.mccabe@minterellison.com>; Mia Pantechis <MPantechis@mauriceblackburn.com.au>; Vermeesch, Paul <Paul.Vermeesch@ags.gov.au>; Larissa Harrison <Larissa.Harrison@unitedworkers.org.au>; Zara.Dwyer@minterellison.com
Subject: RE: AM2021/63; AM2024/11: Work value case

OFFICIAL

Thank you, Ms Nippard; the President will accept these as having been filed within time.

Edrea Venal (she/her)

Associate to Justice Hatcher, President

Member Support Team, Tribunal Support Branch



Fair Work Commission

Australia's national workplace relations tribunal

T (02) 9308 1812

E chambers.hatcher.j@fwc.gov.au

Level 11, Terrace Tower

80 William Street, EAST SYDNEY NSW 2011

In the Sydney office on Tuesdays (usually!)



At the Fair Work Commission we respect and celebrate the diversity of our communities and we are committed to creating a safe and welcoming space for all.

We acknowledge that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander people. We acknowledge their continuing connection to Country and pay our respects to their Elders past and present. This email was sent from Gadigal land.

Important: This message may contain private or confidential information. If you think this email was sent to you by mistake, please immediately notify the sender and delete all copies of the email from your system. Please refer to our [privacy policy](#) for more information on how we collect and handle personal information.

From: Angelica Nippard <ANippard@gordonlegal.com.au>
Sent: Friday, 13 December 2024 1:40 PM
To: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>
Cc: Nigel Ward <Nigel.Ward@ablawyers.com.au>; Nick White <nwhite@gordonlegal.com.au>; Awards <Awards@fwc.gov.au>; Besemeres, Clare <Clare.Besemeres@ags.gov.au>; Penelope Parker <PParker@mauriceblackburn.com.au>; Alana Rafter <Alana.Rafter@ablawyers.com.au>; Kate.Plowman@minterellison.com; Bernadette McCabe <bernadette.mccabe@minterellison.com>; Mia Pantechis <MPantechis@mauriceblackburn.com.au>; Vermeesch, Paul <Paul.Vermeesch@ags.gov.au>; Larissa Harrison <Larissa.Harrison@unitedworkers.org.au>; Zara.Dwyer@minterellison.com
Subject: RE: AM2021/63; AM2024/11: Work value case

Dear Associate

We refer to the *Decision* [2024] FWCFB 452 at [70] and my email below seeking a short extension of time.

Please find attached the comments of the ANMF in PDF and Word format by way of filing.

Regards

Angelica Nippard (*she/her*)

Lawyer – Industrial & Employment Law



Level 22, 181 William Street

Melbourne VIC 3000

T: +61 (3) 9603 3053

F: +61 (3) 9603 3050

E: anippard@gordonlegal.com.au

W: www.gordonlegal.com.au

This email and any attachments are confidential and may contain privileged information or protected by copyright. If you are not the intended recipient, you must not disclose, print, or use this email or any attachments. If you have received this message in error, please notify the sender immediately and delete it from your system.

Gordon Legal does not accept liability for any loss or damage (whether direct, indirect, consequential, or economic) however caused, and whether by negligence or otherwise, which may result directly or indirectly from this email or any attachments (including as a result of your failure to scan this email for viruses or as a result of interference or unauthorised access during communication). In any event, our liability is limited to the cost of re-supplying this communication.

Cyber Security Warning: We take cyber security seriously. Please call us to verify our bank account details verbally before transferring money.

We acknowledge the Traditional Owners and Custodians of the Wurundjeri people of the Kulin Nation where this email comes from, and all Traditional Owners of Country, as we pay our respect to their Elders past and present.

From: Angelica Nippard

Sent: Friday, 13 December 2024 11:54 AM

To: Chambers - Hatcher J <Chambers.Hatcher.J@fwc.gov.au>

Cc: Nigel Ward <Nigel.Ward@ablawyers.com.au>; Nick White <nwhite@gordonlegal.com.au>; Besemeres, Clare <Clare.Besemeres@ags.gov.au>; Kate.Plowman@minterellison.com; Bernadette McCabe <bernadette.mccabe@minterellison.com>; Zara.Dwyer@minterellison.com

Subject: AM2021/63; AM2024/11: Work value case

Dear Associate,

We refer to *Decision* [2024] FWCFB 452 at [70], which invites the parties to provide any comments by 12pm today.

We request an extension of time to file a submission on behalf of the ANMF to 2pm today, 13 December 2024.

We would be grateful if this request could be brought to the attention of the President.

Yours sincerely,

Angelica Nippard (*she/her*)

Lawyer – Industrial & Employment Law



Level 22, 181 William Street

Melbourne VIC 3000

T: +61 (3) 9603 3053

F: +61 (3) 9603 3050

E: anippard@gordonlegal.com.au

W: www.gordonlegal.com.au

This email and any attachments are confidential and may contain privileged information or protected by copyright. If you are not the intended recipient, you must not disclose, print, or use this email or any attachments. If you have received this message in error, please notify the sender immediately and delete it from your system.

Gordon Legal does not accept liability for any loss or damage (whether direct, indirect, consequential, or economic) however caused, and whether by negligence or otherwise, which may result directly or indirectly from this email or any attachments (including as a result of your failure to scan this email for viruses or as a result of interference or unauthorised access during communication). In any event, our liability is limited to the cost of re-supplying this communication.

Cyber Security Warning: We take cyber security seriously. Please call us to verify our bank account details verbally before transferring money.

We acknowledge the Traditional Owners and Custodians of the Wurundjeri people of the Kulin Nation where this email comes from, and all Traditional Owners of Country, as we pay our respect to their Elders past and present.

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 *AGED CARE AWARD 2010* AND *NURSES AWARD 2020***

First Matter

AM2024/11

THE AUSTRALIAN NURSING AND MIDWIFERY FEDERATION

Applicant

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

Second Matter

**ANMF COMMENTS OF A TECHNICAL NATURE IN RESPECT OF THE DRAFT
DETERMINATION ACCOMPANYING THE DECISION [2024] FWCFB 405**

A. Introduction

1. On 06 December 2024 the Expert Panel published its most recent *Decision* [2024] FWCFB 452 (“*the Decision*”) in the aged care proceeding, finalising the classification and pay structures for RNs and ENs in the aged care sector and the operative dates and phasing-in of final increases. A draft determination of amendments to the Nurses Award 2020 was published alongside the *Decision*.
2. At [70] of the *Decision*, the Expert Panel afforded an opportunity to make comments of a technical nature about the draft determination by 12.00pm Friday 13 December 2024.
3. The ANMF makes two such comments:
 - (1) The *first* is in respect of the language at item A.4.6 of Schedule A – see [7] of the draft determination [**Part B**].
 - (2) The *second* is in respect of the inclusion of amounts for RNs at levels 4 and 5 at three distinct places of the draft determination [**Part C**]. That is:
 - (a) the table at cl. B.2.2(a), in respect of the columns allocated to Monday to Friday afternoon and night shifts – see [11] of the draft determination;
 - (b) the table at cl. B.2.2(b), in respect of all columns – see [12] of the draft determination; and
 - (c) the table at cl. B.2.2(c), in respect of the columns allocated to Monday to Friday afternoon and night shifts – see [13] of the draft determinations.

B. The first comment of a technical nature

4. The ANMF considers the language at [7] of the draft determination in respect of cl A.4.6 of Schedule A could be improved for clarity.
5. The ANMF broadly agrees with the amendments proposed by the Joint Employers in their submissions of 13 December 2024 (**JES**), for the reasons identified in those submissions. In addition to those submissions and observations, the ANMF notes that the evidence before the Expert Panel includes evidence of an EN in home or community care (Report to the Full Bench, 20 June 2022 at Part C.2.4 at [102] to [103]).

6. The ANMF adopts the Joint Employer’s proposed amendments to cl A.4.6. The ANMF proposes three minor additional amendments to provide clarity and give effect to the issues identified in JES.
7. Firstly, the chapeau to cl A.4.6 would be amended to reflect the revised classification title of “*enrolled nurse—aged care*”.
8. Secondly, the chapeau to cl A.4.6 would identify that the relevant EN is an “*aged care employee*”.
9. Accordingly, cl A.4.6 would read:

A.4.6 Enrolled nurse - aged care

An enrolled nurse - aged care is an aged care 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) may have responsibility for supervising other direct care employees.

10. Thirdly, the amended title would require consequential amendments to items 4, 8, 9, 10 and 14 of the draft determination.

C. The second comment of a technical nature

11. The ANMF considers specified rates for RNs at levels 4 and 5 should not be included in the following portions of the determination:
 - (1) the table at cl. B.2.2(a), in respect of the columns allocated to Monday to Friday afternoon and night shifts – see [11] of the draft determination;

- (2) the table at cl. B.2.2(b), in respect of all columns – see [12] of the draft determination; and
 - (3) the table at cl. B.2.2(c), in respect of the columns allocated to Monday to Friday afternoon and night shifts – see [13] of the draft determinations.
12. This approach is consistent with the footnotes to those tables (and the approach adopted at cl B.1.3 of the Nurses Award) which specify that shiftwork loadings and overtime rates do not apply to RNs at levels 4 and 5.

J C McKenna

J E Hartley

V M G Jones

Counsel for the ANMF

13 December 2024

.....

Gordon Legal

Solicitors for the ANMF