

Form F46 Amended Application to vary a modern award

Fair Work Act 2009, ss.157–160

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: (see below)		
First name(s) and Surname (s)	<ol style="list-style-type: none"> 1. Ms Virginia Ellis, 2. Mr Mark Castieau, 3. Ms Sanu Ghimire, 4. Mr Paul Jones, and 5. <u>Health Services Union</u> 		
Postal address	C/O Health Services Union NSW/ACT/QLD Branch Level 2, 109 Pitt Street		
Suburb	Sydney		
State or territory	NSW	Postcode	2000
Phone number	1300 478 679	Fax number	<u>1300 329 478</u>
Email address	<u>james.fox@hsu.asn.au</u> ; <u>lauren.hutchins@hsu.asn.au</u> ; <u>ayshe.lewis@hsu.asn.au</u>		

If the Applicant is a company or organisation please also provide the following details

Legal name of business	<u>Health Services Union</u>
Trading name of business	<u>As Above</u>
ABN/ACN	<u>68 243 768 561</u>
Contact person	<u>james.fox@hsu.asn.au</u> ; <u>lauren.hutchins@hsu.asn.au</u> ; <u>ayshe.lewis@hsu.asn.au</u>

Does the Applicant need an interpreter?



If the Applicant requires an interpreter (other than a friend or family member) in order to participate in conciliation, a conference or hearing, the Fair Work Commission will provide an interpreter at no cost.

Yes—Specify language

No

Does the Applicant require any special assistance at the hearing or conference (e.g. a hearing loop)?

Yes— Please specify the assistance required

No

Does the Applicant have a representative?



A representative is a person or business who is representing the Applicant. This might be a lawyer, or a representative from a union or employer association. 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 business who is representing the Applicant.

Name of person	Alexandra Grayson and Penny Parker		
Organisation	Maurice Blackburn Lawyers		
Postal address	Level 32, 201 Elizabeth St		
Suburb	Sydney		
State or territory	NSW	Postcode	2000
Phone number	02 8267 0949	Fax number	(02) 9261 3318
Email address	agrayson@mauriceblackburn.com.au ; pparker@mauriceblackburn.com.au		

1. Coverage

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

Aged Care Award 2010 (MA18)

1.2 What industry is the employer in?

Aged care

2. Application

2.1 What are you seeking?

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

- a determination varying a modern award
 a modern award
 a determination revoking a modern award

2.2 What are the details of your application?

1. The Applicants apply to replace subclause 14.1 of the Aged Care Award (MA000018) with the following replacement subclause:

14.1 Minimum wages – Aged Care Employee

Classification	Per Week
	\$
Aged care employee – level 1	801.40 \$1001.75
Aged care employee – level 2	834.60 \$1043.25
Aged care employee – level 3	867.30 \$1084.13
Aged care employee – level 4	877.60 \$1097.00
Aged care employee – level 5	907.30 \$1134.13
Aged care employee – level 6	956.20 \$1195.25
Aged care employee – level 7	973.40 \$1216.75

2. The Applicants apply to replace Schedule B of the Aged Care Award (MA000018) with the replacement Schedule B contained in Annexure A to this application.

Attach additional pages, if necessary.

2.3 What are the grounds being relied on?

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

The grounds relied upon are contained in Annexure B to this application.

YOU MUST OUTLINE how the proposed variation etc is necessary in order to achieve the modern awards objective as well as any additional REQUIREMENTS set OUT in the FW Act.

Attach additional pages, if necessary.

Signature

A handwritten signature in black ink, consisting of a large, sweeping arch over a horizontal line, followed by a series of loops and a trailing line that ends in a small hook.

Name Alexandra Grayson, Maurice Blackburn Lawyers

Date 17 November 2020

Capacity/Position: Solicitor for the Applicants

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Annexure A

(with additions in underline and deletions in strikethrough)

General and Administrative Services	Food Services	Care Services
<p>Entry level: An employee who has less than three months' work experience in the industry and performs basic duties.</p> <p>An employee at this level:</p> <ul style="list-style-type: none"> ▪ works within established routines, methods and procedures; ▪ has minimal responsibility, accountability or discretion; ▪ works under direct or routine supervision, either individually or in a team; and ▪ requires no previous experience or training. <p>Indicative <u>roles</u> tasks performed at this level are:</p>		
<p>General and Administrative Services:</p> <p>General clerk Laundry hand Cleaner Assistant gardener</p>	<p>Food Services:</p> <p>Food services assistant</p>	
<p>Aged care employee—level 2</p> <p><u>An employee who has more than three months' work experience in the industry or is an entry level employee (up to 6 months) in the case of a Personal Care Worker.</u></p> <p>An employee at this level:</p> <ul style="list-style-type: none"> ▪ is capable of prioritising work within established routines, methods and procedures; ▪ is responsible for work performed with a limited level of accountability or discretion; ▪ works under limited supervision, either individually or in a team; ▪ possesses sound communication skills; and ▪ requires specific on-the-job training and/or relevant skills training or experience. <p>Indicative <u>roles</u> tasks performed at this level are:</p>		
<p>General and Administrative Services:</p> <p>General clerk/Typist (between 3 months' and less than 1 year's service) Laundry hand Cleaner Gardener (non-trade) Maintenance/Handyperson (unqualified) Driver (less than 3 ton)</p>	<p>Food Services:</p> <p>Food services assistant</p>	<p>Personal Care:</p> <p>Personal Care Worker Grade 4 <u>(entry- up to 6 months)</u></p>

Aged care employee—level 3

An employee at this level:

- is capable of prioritising work within established routines, methods and procedures (non admin/clerical);
- is responsible for work performed with a medium level of accountability or discretion (non admin/clerical);
- works under limited supervision, either individually or in a team (non admin/clerical);
- possesses sound communication and/or arithmetic skills (non admin/clerical);
- requires specific on-the-job training and/or relevant skills training or experience (non admin/clerical); and
- In the case of an admin/clerical employee, undertakes a range of basic clerical functions within established routines, methods and procedures.

Indicative roles ~~tasks performed~~ at this level are:

General and Administrative Services:

General clerk/Typist (second and subsequent years of service)
Receptionist
Pay clerk
Driver (less than 3 ton) who is required to hold a St John Ambulance first aid certificate

Food Services:

Cook

Personal Care:

Personal Care Worker Grade 2 (from six months)
Recreational/Lifestyle activities officer (unqualified) (entry- up to 6 months)

Aged care employee—level 4

An employee at this level:

- is capable of prioritising work within established policies, guidelines and procedures;
- is responsible for work performed with a medium level of accountability or discretion;
- works under limited supervision, either individually or in a team;
- possesses good communication, interpersonal and/or arithmetic skills; and
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience.
- in the case of a personal care worker, holds a relevant Certificate ~~3~~ III qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work.

Indicative roles ~~tasks performed~~ at this level are:

General and Administrative Services:

Senior clerk
Senior receptionist
Maintenance/Handyperson (qualified)
Driver (3 ton and over)
Gardener (trade or TAFE Certificate III or above)

Food Services:

Senior cook (trade)

Personal Care:

Personal Care Worker (qualified) ~~Grade 3~~
Recreational/Lifestyle activities officer (from 6 months)

Aged care employee—level 5

An employee at this level:

- is capable of functioning semi-autonomously, and prioritising their own work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability;
- works either individually or in a team;
- may assist with supervision of others;
- requires a comprehensive knowledge of medical terminology and/or a working knowledge of health insurance schemes (admin/clerical);
- may require basic computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- requires substantial on-the-job training, may require formal qualifications at trade or certificate level and/or relevant skills training or experience.
- in the case of a Senior Personal Care Worker, may be required to assist residents with medication and hold the relevant unit of competency (HLTHPS006), as varied from time to time.

Indicative roles ~~tasks performed~~ at this level are:

<p>General and Administrative Services:</p> <p>Secretary interpreter (unqualified)</p>	<p>Food Services:</p> <p>Chef</p>	<p>Personal Care:</p> <p><u>Senior Personal Care Worker-Grade 4-</u></p> <p><u>Recreational/Lifestyle activities officer (qualified)</u></p>
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Aged care employee—level 6

An employee at this level:

- is capable of functioning with a high level of autonomy, and prioritising their work within established policies, guidelines and procedures;
- is responsible for work performed with a substantial level of accountability and responsibility;
- works either individually or in a team;
- may have the responsibility for leading and/or supervising the work of others;
- may require comprehensive computer knowledge or be required to use a computer on a regular basis;
- possesses administrative skills and problem solving abilities;
- possesses well developed communication, interpersonal and/or arithmetic skills; and
- may require formal qualifications at post-trade or ~~Advanced~~ Certificate IV or ~~Associate~~ Diploma level and/or relevant skills training or experience.
- in the case of a Specialist Personal Care Worker, provides specialised care and may have undertaken training in specific areas of care (e.g. Dementia Care, Palliative Care, Household Model of Care).

Indicative roles ~~tasks performed~~ at this level are:

<p>General and Administrative Services:</p>	<p>Food Services:</p> <p>Senior chef</p>	<p><u>Personal Care:</u></p>
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Maintenance tradesperson (advanced) Gardener (advanced)		<u>Specialist Personal Care Worker</u> <u>Senior Recreational/Lifestyle activities officer</u>
<p>Aged care employee—level 7 An employee at this level:</p> <ul style="list-style-type: none"> ▪ is capable of functioning autonomously, and prioritising their work and the work of others within established policies, guidelines and procedures; ▪ is responsible for work performed with a substantial level of accountability and responsibility; ▪ may supervise the work of others, including work allocation, rostering and guidance; ▪ works either individually or in a team; ▪ may require comprehensive computer knowledge or be required to use a computer on a regular basis; ▪ possesses developed administrative skills and problem solving abilities; ▪ possesses well developed communication, interpersonal and/or arithmetic skills; and ▪ may require formal qualifications at trade or Advanced Certificate or Associate Diploma level and/or relevant skills training or experience. <p>Indicative <u>roles</u> tasks performed at this level are:</p>		
General and Administrative Services: Clerical supervisor Interpreter (qualified) Gardener superintendent General services supervisor	Food Services: Chef /Food services supervisor	<u>Personal Care:</u> Personal care worker grade 5 <u>Personal Care Supervisor</u>

Annexure B

This Annexure provides the grounds and reasons that support the Applicants' application pursuant to s157 of the *Fair Work Act 2009* (Cth) (**the Act**) to vary the Aged Care Award 2010 (**the Award**).

INTRODUCTION

1. The current Award wage rates do not recognise the nature of work, the level of skill and responsibility involved in performing the work or the conditions under which work is performed by employees covered by the Award and working in personal care services, general and administrative services and food services.
2. The Award should be varied so as to achieve the modern award objective and the minimum wages objective.
3. The Award rates were not evaluated during the award modernisation process which led up to the making of the Award. No consideration of the minimum wages (other than by annual minimum wage adjustments) or the work value of the work performed by employees covered by the Award has been conducted since the Award commenced to operate in 2010.
4. The current Award minimum wage undervalues the work of employees covered by the Award by more than 25%. The Applicants, being employees covered by the Award, seek an increase to wages of 25% for all classification levels in the Award to rectify the undervaluation. The Applicants also seek a variation to the classification structure in Schedule B of the Award to provide for an additional pay level for personal care workers who have undertaken specialised training in a specific area of care and use those skills.
5. The claimed increase would address the historic establishment of Award wages and recognise significant increases in work value of employees covered by the Award.

CURRENT WAGE RATES

6. The rates in the Award were not subject to any work value assessment at the time of the making of the Award or subsequently and the precise origin of the rates remains unclear.
7. The rates in the Award do not reflect any recent (or possibly any) assessment of the wages by reference to the:
 - a. Nature of the work;
 - b. Level of skill and responsibility involved in doing the work; and
 - c. The conditions under which work is performed.
8. The award rates that apply in New South Wales for similar roles and in other modern awards where a work value or equal remuneration assessment has been conducted are substantially higher than those in the Award.

S.157(2)(A) - WORK VALUE REASONS

9. S 157(2) (a) requires the Commission to establish whether it is satisfied that a variation to minimum wages is justified by work value reasons. This satisfaction will be dependent on a consideration of the “work value reasons” defined at s 157(2)(2A) of the Act.
10. Whilst no specific datum point is required for an analysis of work value the Commission should have regard to changes in the nature of the work, the skills required to perform that work; the responsibility involved in doing the work and the conditions under which work is performed which have occurred over time.
11. Any consideration by the Commission should readily ascertain that the variation is justified based on the following work value reasons:

The nature of the work (s 157(2A))

Personal Care Stream

12. The nature of the work of workers in the Personal Care Stream justifies the variation to award minimum wages sought by the Applicants. The work performed includes a broad range of duties and requires a broad range of knowledge, skills and sound judgement in order to:
 - a. Understand and assess the needs of an aging population with an increased level of frailty, vulnerability and or behavioural and psychological symptoms of dementia or equivalent;
 - b. Provide high quality physical, social and emotional care that is appropriate to the needs of people who require it;
 - c. Provide care that protects the safety, health and wellbeing of aged care residents;
 - d. Provide care that supports psychological, cultural and emotional wellbeing of aged care residents;
 - e. Provide restoration and rehabilitation to the aged;
 - f. Provide specialist care in key areas of need, such as palliative care or dementia care.
 - g. Provide care in an increasingly diverse aged care population;
 - h. Allow the aged to be able to exercise choice and be treated as individuals;
 - i. Liaise with clinical and health professional staff to ensure the changing care needs of aged care residents are met;
 - j. Facilitate the engagement, social participation and independence of aged care residents in an aging population; and/or
 - k. Communicate effectively with a range of stakeholders, from family members to clinical and health professionals, on issues which are often of a sensitive nature.
13. There have been significant changes in the nature of the work performed by employees in the Personal Care stream resulting from:
 - a. Changes in the acuity levels of aged care residents (with an increase in those with higher needs requiring a higher degree of responsibility from personal care workers, a higher level of care and a greater breadth of care and assistance);
 - b. Changes in theories and models of care provision (including a move to the household model of care);

- c. Increased requirements to assess the medical needs of residents and to assist residents with medication and medical needs;
- d. Increases in the need to devise and provide individualised and complex physical, social and emotional care for each resident;
- e. Increased skills required in providing resident choice-centred care and assessing, planning and implementing same;
- f. Industry implementation of a requirement for minimum qualifications and training;
- g. Introduction of additional duties not previously performed including (without limitation) cleaning, kitchen duty, food preparation, food service, personal shopping, meal planning, physical therapy, recreational activity support and provision;
- h. Increased interaction with other health professionals with a focus on individual treatment and rehabilitation of residents;
- i. Assessment, planning and implementation arising from increased community engagement and external attendances for residents;
- j. Changes to infection control procedures;
- k. Changes to requirements when preparing residential care documentation arising from (without limitation) altered governmental regulation, increased governance and accreditation requirements;
- l. Increased use and implementation of technology in aged care facilities and instruction of residents on same;
- m. Increased mentoring, supervisory and performance management responsibilities at a senior level, and/or
- n. Other related productivity measures.

The level of skill and responsibility in doing the work

Personal Care Stream

- 14. The work of employees in the Personal Care stream increasingly requires Certificate III or IV qualifications and additional formal specialised training (for example, in dementia care or medication dispensation).
- 15. Personal Care Workers have a high level of responsibility in a broad range of areas arising from their role as carers of the uniquely vulnerable, highly dependent aged people of Australia. This responsibility is to provide care in all aspects for the aged and extends to responsibility for the physical, emotional and mental wellbeing of one of the most acutely ill and highly dependent cohorts in Australian society.
- 16. Personal Care Worker roles have become increasingly complex with the necessary attainment and exercise of a higher level of skill arising from (without limitation):
 - a. New duties being introduced such as cleaning, kitchen duty, food preparation, food service, personal shopping, meal planning, physical therapy, recreational activity support and provision;
 - b. Changes in qualification requirements;
 - c. Increased accreditation requirements for employers;
 - d. Changes in technology utilised in aged care homes;
 - e. Changes in the model of care (including the household model, specialist dementia care

- and palliative care);
- f. Increased responsibility for assessing the medical needs of residents and assisting residents with medication and medical needs;
 - g. Increased skills required in providing resident choice-centred care and assessing, planning and implementing same; and
 - h. Evolution of a more complex regulatory environment resulting in increased responsibility for care workers and a greater emphasis on regulatory compliance.
17. The level of responsibility of workers in the Personal Care stream has increased arising from (without limitation):
- a. Increased reliance on workers to assess the medical needs of residents, to assist residents with medication and medical needs (rather than reliance on Allied Health Professionals, nurses and doctors) and liaise with medical practitioners;
 - b. Increased prevalence of high acuity residents with more varied and more high needs and a consequential need to assess, plan around and treat increasingly complex, physical, social and emotional needs of residents;
 - c. Increased responsibilities arising from the shift to the provision of resident choice-centred care and assessing, planning and implementing same;
 - d. More responsibility for the provision of physical, social and emotional care of residents;
 - e. The move to the household model of care has required workers to take responsibility for all needs of residents including (without limitation) cleaning, kitchen duty, food preparation, food service, personal shopping, meal planning, physical therapy, recreational activity support and provision; and/or
 - f. Increasing ongoing quality assessment and accreditation requirements.

The conditions under which the work is done

Personal Care Stream

18. Workers in the Personal Care stream perform work in a diverse range of environments (including specialised dementia care, palliative care, household cottages and traditional nursing homes).
19. The provision of aged care has changed markedly since the Award was made or since the work was last evaluated arising from (without limitation):
 - a. Changes in the model of care (including the household model, specialist dementia care and palliative care);
 - b. Changes in the philosophy of care (including the shift to the provision of resident choice-centred care and the decreased role of clinical staff in the residential aged care environment);
 - c. Increased prevalence of high acuity residents with more varied and more high needs;
 - d. Changes arising from COVID-19 that will likely continue including-
 - Changes in infection control procedures;
 - Changes in use of technology; and
 - Changes in emotional needs of residents arising from increased isolation.
20. In addition, it is anticipated that further changes to the conditions under which work is performed will result from the Royal Commission into Aged Care Quality and Safety (legislated to hand

down its report on 26 February 2021).

The nature of the work (s 157(2A))

Food Services Stream

21. The nature of the work of employees in the Food Services stream of the Award justifies the variation to award minimum wages sought by the Applicants. The work performed includes a broad range of duties and requires a broad range of knowledge, skills and sound judgement in order to:
 - a. Understand and assess the dietary needs of an aging population with an increased level of frailty, vulnerability and ill health and often compromised capacity to communicate dietary needs or preferences;
 - b. Provide high quality nutritional food that is appropriate to the needs of people who require it;
 - c. Provide food tailored to meet the needs of an increasingly diverse aged care population;
 - d. Allow the aged to be able to exercise choice and be treated as individuals; and
 - e. Integrate food services into the overall provision of quality care, to enhance the physical, social and emotional wellbeing of aged care residents.

22. There have been significant changes in the nature of the work performed by employees in the Food Services stream resulting from:
 - a. Changes required to meet stricter and increased regulatory compliance requirements including food safety standards, accreditations and aged care quality standards (including dealing with auditors and food safety authorities);
 - b. Changes required in order to service a 24 hour/seven day a week food service environment;
 - c. Introduction of additional duties not previously performed including (without limitation) managing stock levels, ordering food, dealing with suppliers, designing many and varied menus as opposed to a simple, universal menu for all residents, understanding and assessing allergies and intolerances, budget management (at a senior level);
 - d. Increased skills required in liaising with residents and personal care staff and providing resident choice-centred meals and assessing, planning and implementing same;
 - e. Increased requirements to assess the dietary needs of residents;
 - f. Increases in the need to devise and provide individualised and complex meal solutions for residents rather than deliver a standardised menu;
 - g. Increased expectations of residents with regard to the quality and variety of meals offered;
 - h. Increases in the need to liaise with dietitians and understand diet and nutritional theories to provide best practice care to residents;
 - i. Changes to infection control procedures;
 - j. Increased use and implementation of technology in aged care facilities (including food preference/dietary need databases, complex ordering systems, online food safety records and online computer programs) and instruction of more junior colleagues on same;

- k. Changes in the acuity levels of aged care residents (with an increase in those with higher needs requiring a higher degree of responsibility from food services staff to deliver food that residents are physically capable of eating including modified texture foods and food that is tailored to meet the physical, social and emotional needs of residents);
- l. Industry implementation of a requirement for minimum qualifications and training;
- m. Increased mentoring/training, supervisory and performance management responsibilities at a senior level (including work allocation and quality control), and/or
- n. Other related productivity measures.

The level of skill and responsibility in doing the work

Food Services Stream

- 23. The work of employees in the Food Services stream increasingly requires Certificate III or IV qualifications and/or formal specialised training (dependent on classification).
- 24. Food Services workers have a high level of responsibility in a broad range of areas arising from their role as custodians of the nutritional and emotional needs of the uniquely vulnerable, highly dependent aged people of Australia. This responsibility is to ensure that nutritional food, tailored to the emotional and physical needs of residents is provided. The provision of appropriate food has a profound effect on the physical and emotional wellbeing of residents (leading to less medical issues requiring intervention and more dignity in dependence).
- 25. Food Services roles have become increasingly complex with the necessary attainment and exercise of a higher level of skill arising from (without limitation):
 - a. New duties being introduced including (without limitation) managing stock levels, ordering food, dealing with suppliers, designing many and various menus as opposed to a simple, universal menu for all residents, understanding and assessing allergies and intolerances and budget management (at a senior level);
 - b. Changes in qualification requirements;
 - c. Increased minimum standards, accreditation and regulatory requirements for employers;
 - d. Changes in technology utilised in food service, planning and delivery in aged care homes;
 - e. Increased responsibility for assessing the nutritional and hydration needs of residents;
 - f. Increased skills required in providing resident choice-centred meals and assessing, planning and implementing same rather than delivering a standard menu;
 - g. The requirement to deliver nutritious food on demand, often in a 24/7 environment; and
 - h. Increased expectations of residents with regard to the quality and variety of meals offered.
- 26. The level of responsibility of workers in the Food Services stream has increased arising from (without limitation):
 - a. Increased reliance on workers to assess the dietary needs of residents, to assist residents with meals and liaise with dietitians;
 - b. Increased prevalence of high acuity residents with more varied and more high needs and a consequential need to assess, plan around and deliver food to a cohort of residents with increasingly complex physical, social and emotional needs;

- c. Increased responsibilities arising from the shift to the provision of resident choice-centred resident care and assessing, planning and implementing same;
- d. More emphasis on the provision of nutritious food as a fundamental element of the care of residents; and
- e. Increasing ongoing quality assessment and accreditation requirements.

The conditions under which the work is done

Food Services Stream

- 27. Food Services workers perform work in a diverse range of environments with a diverse range of resident needs. Whilst operationally distinct from care or clinical roles Food Services employees are environmentally integrated. This means that they need to be sensitive to and responsive to the particular circumstances that they operate in. Food Services employees will interact with residents in the course of their duties directly and casually, they need to conduct themselves with awareness of resident's emotional, social and physical needs.
- 28. The provision of aged care has changed markedly since the Award was made or since the work was last evaluated arising from (without limitation):
 - a. Changes in the philosophy of food provision to residents (including the shift to the provision of resident choice-centred care);
 - b. Increased prevalence of high acuity residents with more varied and more high needs;
 - c. Changes arising from COVID-19 that will likely continue including-
 - Changes in infection control procedures;
 - Changes in use of technology;
 - Changes in food preparation; and
 - Changes in emotional needs of residents arising from increased isolation.
- 29. In addition, it is anticipated that further changes to the conditions under which food preparation and provision work is performed will result from the Royal Commission into Aged Care Quality and Safety (legislated to hand down its report on 26 February 2021).

The nature of the work (s 157(2A))

General and Administrative Services Stream

- 30. The nature of the work of employees in the General and Administrative Services stream justifies the variation to award minimum wages sought by the Applicants. The work performed includes a broad range of duties and requires a broad range of knowledge, skills and sound judgement in order to:
 - a. Deal with regulators and accrediting authorities;
 - b. Liaise with visitors to facilities including families, guests and external contractors;
 - c. Manage day to day compliance with an increasingly complex regulatory regime (including quality and safety standards) and Aged Care industry policies and guidelines;
 - d. Manage an increasingly complex accreditations process;
 - e. Perform a broad range of administrative and human resource related duties including recruitment processes, rostering, induction, orientation, staff liaison and event organisation;

- f. Perform sales and promotional functions, targeted at prospective residents;
 - g. Manage and assess new or respite residents including (without limitation) responding to enquiries from potential new clients, reviewing their Aged Care Assessment (**ACATs**) and government funding, considering resident suitability for care, making arrangements with potential residents, preparing paperwork for new residents including contracts, reconciling payments for care, admitting new residents and discharging residents;
 - h. deal with external auditors and compliance officers;
 - i. deal with resident, family and staff complaints and enquiries;
 - j. oversight of outsourced providers (including cleaning and catering) and internal providers including gardening and maintenance;
 - k. manage the financial affairs of an aged care facility (including accounts payable and receivable, payment of invoices, checking of invoices, purchasing, managing petty cash, banking, receiving residents' payments); and
 - l. operate in an increasingly sophisticated care environment.
31. There have been significant changes in the nature of the work performed by employees in the General and Administrative Services stream resulting from:
- a. Changes in the acuity levels of aged care residents (with an increase in those with higher needs requiring a higher and more diverse range of paperwork and assessments to be performed prior to joining a facility, whilst in care or while maintenance, driving and other functions are being performed);
 - b. Increased skills required in the administering of resident choice-centred care and assessing, planning and implementing same;
 - c. Introduction of additional duties not previously performed including (without limitation – financial management, oversight of outsourced providers, dealing with external auditors and compliance officers, human resource functions, managing accreditations and ensuring compliance, visitor, regulator and staff liaison);
 - d. Changes to infection control procedures;
 - e. Increased use and implementation of technology in aged care facilities (including Customer Relationship Management systems, Human Resources and payroll systems, file management systems, financial and billing software and systems, Health record management systems) and ensuring that policies and protocols regarding same are complied with such as data security and confidentiality requirements;
 - f. Increased delegation of more sophisticated work, once associated with specialist management roles, such as procurement, human resources/employee relations, finance, governance, regulatory and compliance and facilities management;
 - g. Increased mentoring, supervisory and performance management responsibilities at a senior level, and/or
 - h. Other related productivity measures.

The level of skill and responsibility in doing the work

General and Administrative Services Stream

32. Workers in this stream of Aged Care have a high level of responsibility in a broad range of areas arising from their role as administrators, cleaners and laundry workers, drivers and maintenance workers interacting and liaising with the uniquely vulnerable, highly dependent

aged people of Australia. This work has developed from work that happens quite separate from the care of residents to something that is integrated and part of holistic models of care. This has developed alongside an industry that has developed more focus on autonomy, independence, agency and respect for residents.

33. A radical shift in duties, skills and responsibilities has been implemented in administrative roles in Aged Care. Traditionally administrative roles in Aged Care have been more narrow in focus and responsibility, for example, roles such as a 'typist' or a 'senior receptionist' with a job of greeting and providing directions to enquiries. Administrative stream employees are now engaged in the running of aged care facilities to a highly sophisticated degree and across a broad range of functions, requiring many and varied skills.
34. General and Administrative roles have become increasingly complex with the necessary attainment and exercise of a higher level of skill arising from (without limitation):
 - a. New duties being introduced such as financial management, oversight of outsourced providers, dealing with external auditors and compliance officers, human resource functions, managing accreditations and ensuring compliance, visitor, regulator and staff liaison and more varied and more complicated maintenance and other functions;
 - b. Increased responsibility for this cohort of employees to fulfil and/or manage the accreditation, regulatory and compliance requirements for employers;
 - c. Changes in technology utilised in aged care homes;
 - d. Increased responsibility for assessing the needs of residents when organising services and providing assistance and/or services;
 - e. Increased skills required in administering a broad range of resident choice-centred care and assessing, planning and implementing same;
 - f. Increased skills arising from financial management of a facilities affairs;
 - g. More diverse skills required as a result of oversight of outsourced functions;
 - h. Sales and promotion work, particularly in the arranging and facilitation of 'facility tours' and similar activities;
 - i. The implementation and oversight of policies, protocols, etc. based on (without limitation):
 - i. The Charter of Aged Care Rights,
 - ii. Aged Care Quality Standards,
 - iii. organisational policy,
 - iv. facility policy,
 - v. cultural or religious particulars relevant to organisation, facility or residential composition; and
 - j. Complying with complex and evolving reporting, accreditation, assessment guidelines in all areas of the business.
35. The level of responsibility of workers in the General and Administrative Services stream has increased arising from (without limitation):
 - a. Increased prevalence of high acuity residents with more varied and more high needs;
 - b. the shift to the provision of resident choice-centred care and assessing, planning and implementing same;
 - c. Devolution to administrative staff of financial management, oversight of outsourced providers, dealing with external auditors and compliance officers, human resource functions, visitor, regulator and staff liaison;

- d. Delegation to manage and assess new or respite residents including (without limitation) responding to enquiries from potential new clients, reviewing their Aged Care Assessment (**ACATs**) and government funding, considering resident suitability for care, making arrangements with potential residents, preparing paperwork for new residents including contracts, reconciling payments for care, admitting new residents and discharging residents;
- e. an increasingly complex regulatory regime (including quality and safety standards) and Aged Care industry policies and guidelines; and
- f. Increasing ongoing quality assessment and accreditation requirements.

The conditions under which the work is done

General and Administrative Services Stream

- 36. General and Administrative Services workers perform work in a diverse range of environments (including dementia facilities, household cottages and traditional nursing homes). Whilst operationally distinct from care or clinical roles General and Administrative stream employees are environmentally integrated. This means that they need to be sensitive to and responsive to the particular circumstances that they operate in. General and Administrative employees will interact with residents in the course of their duties directly and casually, they need to conduct themselves with awareness of resident's emotional, social and physical needs.
- 37. Dignity in care requires greater and greater direct interaction between employees and residents. It is no longer sufficient that a maintenance employee or driver (for example) takes directions and executes work. They must be responsive to residents, requiring heightened sophistication, adaptability and communication skills.
- 38. Similarly, an administrative employee will need to undertake their work, and duties that go above and beyond mere-administration type tasks, with care and emotional intelligence.
- 39. The provision of aged care has changed markedly since the Award was made or since the work was last evaluated arising from (without limitation):
 - a. Increased prevalence of high acuity residents with more varied and more high needs;
 - b. An increase in the sophistication of care and the regulatory framework that care operates in;
 - c. Changes arising from COVID-19 that will likely continue including-
 - Changes in infection control procedures;
 - Changes in use of technology; and
 - Changes in emotional needs of residents arising from increased isolation.
- 40. In addition, it is anticipated that further changes to the conditions under which work is performed will result from the Royal Commission into Aged Care Quality and Safety (legislated to hand down its report on 26 February 2021).

SS157(1)(B) AND 284(1) - THE VARIATION IS NECESSARY TO ACHIEVE THE MODERN AWARD AND MINIMUM WAGES OBJECTIVE

A fair and relevant safety net of minimum wages

- 41. Many employees in the aged care sector are paid minimum Award rates. The Award rates do not provide a relevant safety net of minimum wages. For the reasons set out above, the current Award rates significantly undervalue the work performed by aged care workers. Even where rates of pay are set by enterprise agreements these rates are heavily referable to the Award rates of pay.

The need to encourage collective bargaining

42. There are significant and widespread difficulties associated with collective bargaining in the aged care sector with the result that the majority of employees are being paid minimum rates pursuant to the Award or rates set under enterprise agreements that are usually no higher than 5% above the minimum rates set under the Award.
43. Factors impeding enterprise bargaining include:
 - a. the lack of incentive for employers to bargain with employees due to the existing low wage rates;
 - b. the dispersed nature of the work;
 - c. the undesirable interruptions to resident's care posed by industrial action; and
 - d. the fact that the majority of funding for the sector comes from the Commonwealth Government.
44. The variations sought in this application would encourage employers to engage in collective bargaining by:
 - a. increasing the relevance of the minimum rates applicable to the work performed;
 - b. encouraging industrial parties to bargain for particular arrangements in workplaces to improve productivity and properly utilise a skilled workforce; and
 - c. increasing the competitiveness of enterprises who currently engage in enterprise bargaining;

The need to promote social inclusion through increased workforce participation

45. Given an overwhelming majority of employees in the aged care sector are women, creating an incentive for employees to remain in the sector (by increased rates of pay and an enhanced classification structure), has the potential to increase the workforce participation of women. Further, given women still perform the majority of unpaid caring responsibilities to the elderly outside of paid employment, increased confidence in the aged care sector may allow those women providing unpaid care to their elderly relatives, the opportunity to return to the workforce.

The need to promote flexible modern work practices and the efficient and productive performance of work

46. The undervaluation of the work performed in the aged care sector is a significant obstacle to attracting and retaining skilled aged care workers. This presents a material risk to the efficient and productive performance of work in the sector given that it is estimated that in order to maintain adequate levels of care, three times the current numbers of aged care workers will be required to sustain the sector by 2050. This is largely due to the aging population, and the expectation that the number of residents in aged care is likely to increase significantly during that time.
47. The challenges in retaining and attracting staff as a result of disproportionately low wages is well documented. The inability to retain and attract staff is a contributing factor to understaffing, increased workloads and more challenging working conditions within the sector which necessarily has a negative impact on the quality of care provided to residents. As a result, the persistence of the undervaluation of aged care work is likely to dramatically decrease the efficient delivery of a high standard of care within the sector.
48. Further, granting the variation sought, is also likely to provide incentives for aged care workers to increase their qualifications and skills, which would necessarily translate into productivity gains.

Equal remuneration for work of equal or comparable value

49. As demonstrated comprehensively above, unlike other comparable professions, an increase in the qualifications, knowledge and skills required to perform work in the aged care sector, has not led to an increase in wages.
50. The workforce is female dominated. The undervaluation of aged care work has been contributed to significantly by the fact that the work has commonly been considered 'women's work' and is therefore inherently undervalued. Granting the variation sought would address the inherent undervaluation of feminised work and would be an important step in closing the gender pay gap that currently exists and is concentrated in the caring sectors (including in aged care).

Likely impact on business, including on productivity, employment costs and the regulatory burden

51. The variation sought is likely to address the skill shortage that currently exists in the aged care sector. This skill shortage is forecast to dramatically increase in the coming decade, addressing this issue will increase productivity and benefit business.

The need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards

52. Granting the variation sought is crucial to ensuring a stable and sustainable modern award system. The variation will simplify progression in the Personal Care Stream, through the inclusion of tenure-based progression and will set wages that accurately reflect the value of the work performed. This is fundamental to the integrity of the modern award system and maintaining its relevance to the labour market. Indeed, maintaining wage rates that are fair and equitable is a key component of an Award system that is simple and easy to understand.

Likely benefit to the sustainability, performance and competitiveness of the national economy

53. An aged care system which provides good quality and reliable care to the elderly is critical in permitting the working aged population to contribute to the economy, reducing pressures on the health care system and supporting economic activity, competitiveness and growth.
54. The setting of proper and fair rates of remuneration for employees in the aged care sector will foster an efficient, productive and skilled workforce and support an aged care system which is able to contribute to the maintenance of a sustainable, productive and competitive national economy.

Other discretionary reasons

55. The correlation between adequate remuneration and the provision of a high level of care to elderly Australians is well documented. Increasing the minimum wage rates in the Award is fundamental to attracting and retaining skilled members of the workforce in the aged care sector. Without the ability to retain employees in the sector, the standard of care able to be provided is significantly reduced. Providing a level of care to elderly Australians which affords them dignity in their old age, is an essential feature of a just and prosperous society.

Conclusion

56. On the basis of the above the variations sought are:
 - a. justified by work value reasons pursuant to s.157(2)(a);
 - b. meet the minimum wages objective pursuant to Part 2-6 of the Act; and
 - c. necessary to be varied as soon as possible in order to achieve the modern awards objective pursuant to s.157(2)(b).