

## Form F46 – 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:		
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 a company or organisation please also provide the following details

Legal name of business	AUSTRALIAN NURSING AND MIDWIFERY FEDERATION (ANMF)
Trading name of business	AUSTRALIAN NURSING AND MIDWIFERY FEDERATION (ANMF)
ABN/ACN	41 816 898 298
Contact person	KRISTEN WISCHER (Senior Federal Industrial Officer)

### 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 (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
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 are the names of the modern awards to which the application relates?



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

MA000018: Aged Care Award 2010

MA000034: Nurses Award 2010

### 1.2 What industry is the employer in?

Aged care (in the case of the Aged Care Award)

Health (in the case of the Nurses Award)

## 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?

Please refer to Annexure 1, **attached**.

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.



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.

Please refer to Annexure 2, **attached**.

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	17 May 2021
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 MODERN AWARDS

### ANNEXURE 1: DETAILS OF APPLICATION

#### A. Variation to MA000034: Nurses Award 2010

1. Insert new Schedule F, as follows:

#### “Schedule F — SCHEDULE OF MINIMUM WAGES FOR AGED CARE EMPLOYEES

##### F.1 General

F.1.1 The provisions of this schedule apply until [insert date 4 years after commencement].

F.1.2 The provisions of this schedule are to be applied to employees in the classifications listed in Schedule B, engaged in the provision of:

- (a) services for aged persons in a hostel, nursing home, aged care independent living units, aged care serviced apartments, garden settlement, retirement village or any other residential accommodation facility; and/or
- (b) services for an aged person in a private residence.

##### F.2 Nursing assistant

	<b>Per week</b>
	<b>\$</b>
Entry up to 6 months	1028.50
From 6 months	1045.40
From 12 months	1062.80
Experienced (the holder of a relevant Certificate III qualification)	1097.00

##### F.3 Enrolled nurses

- (a) Student enrolled nurse

	<b>Per week</b>
	<b>\$</b>
Less than 21 years of age	952.20
21 years of age and over	1001.80

- (b) Enrolled nurse

	<b>Per week</b>
	<b>\$</b>
Pay point 1	1117.40

Pay point 2	1132.10
Pay point 3	1147.10
Pay point 4	1163.60
Pay point 5	1175.40

**F.4 Registered nurses**

Minimum entry rate for a:

- (a) four year degree is \$998.40 \$1248 per week;
- (b) master's degree is \$1032.90 \$1291.13 per week.

Progression from these entry rates will be to level 1—Registered nurse pay point 4 and 5 respectively.

	<b>Per week \$</b>
<b>Registered nurse—level 1</b>	
Pay point 1	1195.30
Pay point 2	1219.80
Pay point 3	1249.80
Pay point 4	1282.90
Pay point 5	1322.40
Pay point 6	1360.60
Pay point 7	1400.00
Pay point 8 and thereafter	1436.40
<b>Registered nurse—level 2</b>	
Pay point 1	1474.50
Pay point 2	1497.90
Pay point 3	1523.90
Pay point 4 and thereafter	1548.90
<b>Registered nurse—level 3</b>	
Pay point 1	1598.80
Pay point 2	1628.10
Pay point 3	1656.30
Pay point 4 and thereafter	1686.00
<b>Registered nurse—level 4</b>	
Grade 1	1824.80
Grade 2	1955.50
Grade 3	2069.50
<b>Registered nurse—level 5</b>	
Grade 1	1841.40
Grade 2	1939.10
Grade 3	2069.50
Grade 4	2198.60

Grade 5	2424.90
Grade 6	2653.10

**F.5 Nurse practitioner**

	<b>Per week</b>
	<b>\$</b>
1st year	1839.80
2nd year	1894.40

**B. Variation to MA000018: Aged Care Award 2010**

2. Amend clause 14 as follows:

**14. Minimum weekly wages**

**14.1A Minimum wages— Personal care workers**

<u>Grade</u>	<u>Per week</u>
	<u>\$</u>
<u>Grade 1</u>	<u>1043.30</u>
<u>Grade 2</u>	<u>1084.10</u>
<u>Grade 3</u>	<u>1097.00</u>
<u>Grade 4</u>	<u>1134.10</u>
<u>Grade 5</u>	<u>1216.80</u>

3. Amend Schedule B as follows:

**B.1 Aged care employee—level 1**

**Entry level:**

An employee who has less than three months’ work experience in the industry and performs basic duties.

An employee at this level:

- 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.

Indicative tasks performed at this level are:

**General and administrative services**

General clerk  
Laundry hand  
Cleaner

**Food services**

Food services assistant

Assistant gardener

### **B.2 Aged care employee—level 2**

An employee at this level:

- 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.

Indicative tasks performed at this level are:

<b>General and administrative services</b>	<b>Food services</b>	<b>Personal care</b>
General clerk/Typist (between 3 months' and less than 1 year's service)	Food services assistant	<del>Personal care worker</del> <del>grade 1</del>
Laundry hand		
Cleaner		
Gardener (non-trade)		
Maintenance/Handyperson (unqualified)		
Driver (less than 3 ton)		

### **B.3 Aged care employee—level 3**

An employee at this level:

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

Indicative 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**

~~**Personal care**~~

~~Personal care worker grade 2  
Recreational/Lifestyle activities officer (unqualified)~~

**B.4 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 qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work.~~

Indicative 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 grade 3~~

**B.5 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.

Indicative tasks performed at this level are:

**General and administrative services**

Secretary interpreter (unqualified)

**Food services**

Chef

**Personal care**

~~Personal care worker~~  
grade 4

**B.6 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 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 or Associate Diploma level and/or relevant skills training or experience.

Indicative tasks performed at this level are:

**General and administrative services**

Maintenance tradesperson (advanced)  
Gardener (advanced)

**Food services**

Senior chef

**B.7 Aged care employee—level 7**

An employee at this level:

- 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.

Indicative tasks performed at this level are:

**General and administrative services**

Clerical supervisor  
Interpreter (qualified )  
Gardener superintendent  
General services supervisor

**Food services**

Chef /Food  
supervisor

**Personal care**

services ~~Personal care worker~~  
grade 5

**B.8 Grade 1—Personal Care Worker (entry up to 6 months)**

An employee at this grade:

- 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.

**B.9 Grade 2—Personal Care Worker (from 6 months) & Recreational/  
Lifestyle activities officer (unqualified)**

An employee at this grade:

- is capable of prioritising work within established routines, methods 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 sound communication and/or arithmetic skills; and
- requires specific on-the-job training and/or relevant skills training or experience.

**B.10 Grade 3—Personal Care Worker (qualified)**

An employee at this grade:

- 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;
- requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience; and
- holds a relevant Certificate III qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work.

**B.11 Grade 4—Senior Personal Care Worker**

An employee at this grade:

- 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;
- 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.

### **B.12 Grade 5—Specialist Personal Care Worker**

An employee at this grade:

- 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 Certificate IV level and/or relevant skills training or experience in Dementia Care or Palliative Care.

## **ANNEXURE 2: GROUNDS OF APPLICATION**

### **A. Introduction**

1. This application is made to give effect to Recommendation 84 of the Royal Commission into Aged Care Quality and Safety, *Final Report: Care, Dignity and Respect* (“**Final Report**”). Recommendation 84, titled “Increases in award wages”, provides that employee organisations entitled to represent the industrial interests of aged care employees should collaborate with the Australian Government and employers and apply to vary wage rates in awards including the Aged Care Award 2010 (“**Aged Care Award**”) and the Nurses Award 2010 (“**Nurses Award**”).
2. The Final Report at Vol 3A, p 416 also recognised that:

*“... on the extensive evidence before this inquiry about the work performed by personal care workers and nurses in both home care and residential care, we consider that all three of the section 157(2A) reasons [pertaining to work value] may well justify an across-the-board increase in the minimum pay rates under the applicable award.”*
3. Attempts by the ANMF to collaborate about varying rates in those awards are ongoing. This application pursuant to s 157 of the *Fair Work Act 2009* (Cth) (“**FW Act**”) to vary the Nurses Award and the Aged Care Award is filed in accordance with a commitment by the ANMF to do so by 17 May 2021, notwithstanding pending collaboration.
4. Finally by way of introduction, in what follows when the ANMF refers to aged care, it (like the Royal Commission at p 416) is referring to work performed in both home care and residential care settings.

### **B. Variations sought by the ANMF**

5. There are two major amendments proposed to the Aged Care Award 2010 and the Nurses Award 2010:
  - (1) the amendment of the Nurses Award by inserting a new schedule, applicable to aged care workers only and expiring after four years, which increases rates of pay by 25 per cent (see Annexure 1, Part A); and
  - (2) the amendment of the Aged Care Award by removing Personal Care Workers (“**PCWs**”) from the main stream of “aged care employee” in Schedule B, and

creating a new classification structure for them—and increasing their rates of pay by 25 per cent (see Annexure 1, Part B).

References to “aged care employees”, “aged care workers” and similar expressions in the following refer to personal care workers for the Aged Care Award and to nursing assistants, enrolled nurses, registered nurses and nurse practitioners within the scope of proposed clause F.1.2 of the Nurses Award.

6. As to the pay increase in each of the variations contemplated in [5(1)] and [5(2)] above, this is justified by work value reasons and necessary to achieve the modern awards objective. The ANMF seeks flat, across-the-board, increases of 25 per cent to minimum rates notwithstanding that there exists some incongruity in internal relativities within the Nurses Award and as between the Aged Care Award and Nurses Award. Flat, across-the-board increases are sought where this recognises the chronic undervaluation of all relevant aged care employees.
7. It is important to emphasise this: the fact that the variation presently sought to the Nurses Award involves a pay increase only for aged care employees does not imply that a pay increase for other employees covered by that award is not also justified. As noted above, this application is brought to give effect to Recommendation 84 of the Final Report pertaining to “aged care employees”. A determination should here be made in the terms sought by the ANMF. Additionally, it is the ANMF’s position that pay increases for the non-aged-care classifications under the Nurses Award are also justified and necessary.
8. This is reflected in proposed clause F.1.1 to the Nurses Award. That clause provides that the specific Schedule of minimum wages for aged care employees shall apply for a period of four years only. Despite this limited operation, it is not intended that the increased minimum wages for aged care employees would be temporary. Rather, the ANMF will bring a further application to increase the minimum rates for all classifications under the Nurses Award prior to the expiry of any new schedule of minimum wages for aged care employees.
9. As to the balance of the amendment contemplated in [5(2)] above, this reflects that the nature of work done by PCWs differs qualitatively from the work done by general and administrative services and food services workers, so that it is appropriate that their

rates of pay should be treated separately (and, for work value reasons, increased). Any attempt to maintain PCWs and general and administrative services and food services workers in the same structure will lead to distortions in wage outcomes, and amounts payable to particular workers that do not reflect the underlying work value or nature of the work performed. Furthermore, recommendation 84 of the Final Report is focused upon “personal care workers and nurses in both residential and home care” rather than administrative services and food services workers.

**C. Legislative considerations**

10. Section 157(2) and (2A) provide as follows:

“(2) The FWC may make a determination varying modern award minimum wages if the FWC 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.

Note: As the FWC is varying modern award minimum wages, the minimum wages objective also applies (see section 284).

(2A) Work value reasons are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related 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.”

11. A variation of the rates of pay outside the system of annual wage reviews is necessary to achieve the modern award objective. The Aged Care Award and the Nurses Award do not presently provide a safety net of fair and relevant minimum wages. A variation is necessary to achieve the modern award objective. This is because the inherent work value of work performed under those Awards, and because of changes to that work which have caused the work value to increase.

**D. Work value reasons**

12. No proper work value assessment for minimum rates of pay under the Nurses Award or Aged Care Award occurred during the award modernisation process. There was no discussion of whether rates adopted were properly fixed minimum rates. The process



by which minimum rates were incorporated into each award during that process remains unclear. However, the minimum wages for Assistants in Nursing in the Nurses Award appear to reflect those fixed by the Federal Commission in 2005 (see *Nurses Private Employment (A.C.T.) Award 2002*, 21 November 2005 PR965496).

13. The minimum rates under the Aged Care Award also appear to be based on the rates as fixed by the Commission in 2005. To this end, it is noted that equivalent minimum wage rates currently apply:
  - (1) Under the Nurses Award for a Nursing assistant – Experienced (the holder of a relevant Certificate III qualification); and
  - (2) Under the Aged Care Award for a Personal care worker grade 3 - where such a PCW holds a relevant Certificate 3 qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work.
14. The minimum rates and relativities in the Nurses Award for Enrolled Nurses and Registered Nurses appear to have been based on the *Nurses (ANF – South Australian Private Sector) Award 1989*, as amended annually via safety net adjustments and Australian Fair Pay Commission adjustments. These were deemed to be properly fixed minimum rates by the Federal Commission in 1998 (see *Paid Rates Review Decision*, 20 October 1998, Print Q7661).
15. Notably, the minimum wages adopted under the Nurses Award and Aged Care Award for aged care workers during the Award Modernisation process were lower than minimum rates applicable in other states and territories. Those minimum rates under the Nurses Award and Aged Care Award have not been adjusted outside the system of annual wage reviews since the Awards were created.
16. The Final Report recognised that the aged care workforce is poorly paid for difficult and important work (Vol 3A, p 372). The current pay rates do not reflect the underlying work value of the work performed by workers covered by the two relevant Awards, and do not reflect changes in the work value over the last sixteen to twenty-two years. 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 all justify the payment of higher minimum wages. Changes to the work value of work performed by aged care employees include:

- (1) workloads and time pressure have increased, as has the inadequacy of staffing levels;
- (2) the increased prevalence of higher-acuity residents, with greater complexity of care needs including in relation to:
  - (a) wound care;
  - (b) medication;
  - (c) pain management;
  - (d) food, nutrition, and hydration;
  - (e) continence care;
  - (f) mobility and falls;
  - (g) social supports;
  - (h) quality of life;
  - (i) end of life / palliative care;
  - (j) greater and increased levels of co-morbidities;
- (3) there is an increased percentage of residents with dementia;
- (4) there is an increased requirement for documentation of care, including with the implementation of computerised care planning and documentation systems;
- (5) the regulatory environment is considerably more complex;
- (6) substantial changes to the model and philosophy of care, including a shift to person-centred care;
- (7) there has been a reduction in registered nurse numbers, leading to a greater supervisory burden for those nurses who remain;

- (8) COVID-19 has resulted in additional work and regulation (as well as stress and danger);
  - (9) greater technological requirements, including (*e.g.*) medication aids, lifting and mobility equipment, continuous positive airway pressure equipment;
  - (10) workers are having to interact with patients' animals and visitors to a greater degree;
  - (11) increasing requirement for formal qualifications and additional specialised training of workers;
  - (12) greater need for restraint management and reporting, especially in the context of a higher prevalence of dementia; and
  - (13) the number of, and complexity of administration of, medication has increased.
17. To an ever-increasing degree, the nature of the work of aged care employees:
- (1) involves the provision of direct care;
  - (2) is complex and demanding;
  - (3) is co-operative and team-based;
  - (4) is personal and intimate;
  - (5) is stressful and time pressured;
  - (6) involves exposure to workplace violence and aggression;
  - (7) is physically and emotionally demanding;
  - (8) is wide ranging in scope;
  - (9) carries significant responsibilities; and
- that work is, and has been, overwhelming performed by females and as such has been undervalued.
18. As recognised in the Royal Commission Final Report:

- (1) there is a clear and pressing need for a substantial development of the workforce in the aged care sector (Vol 3A, p 371);
- (2) the current aged-care workforce is not large enough to provide high quality aged care services on a consistent basis (Vol 3A, p 374);
- (3) the need for direct care workers will double by 2050 (Vol 3A, pp 374–375), as a result of a one-third increase in people aged 65–69 and a doubling of the number of people aged over 85 (Vol 3A, p 377);
- (4) the proportion of professionally-qualified staff such as nurses is too low (and declining—see Vol 3A, p376), which does not reflect the increasing medical acuity of people receiving aged care (Vol 3A, p 371, 374);
- (5) it is difficult work including because it is in stressful and sometimes unsafe workplaces (Vol 3A, p 372); and
- (6) a wages gap exists between aged care workers and workers performing equivalent functions in the acute health sector (Vol 3A, p 414), which gap persists despite attempts to narrow it (Vol 3A, p 414).

**E. The modern awards objective**

***A fair and relevant minimum safety net of terms and conditions***

19. A significant number of aged-care workers are paid at Award rates. As summarised above, the current Award rates considerably undervalue the work value of the work performed by aged-care workers. This does not provide a “fair” safety net because, among other things, it does not properly recognise work value and there is a significant disparity between these Award rates and bargained outcomes.
20. Further, as outlined above, there is a wages gap between aged care workers and workers performing equivalent functions in the acute health sector (Final Report, Vol 3A, p 414).
21. Low wages contribute to the perception that work in aged care is undervalued, under-appreciated, and not respected. Insufficient remuneration is a factor in the difficulty in attracting staff to, and in causing workers to leave, the sector. Improved pay would be a factor in influencing workers to begin, continue in, or return to work in aged care.

22. An increase in Award wages is therefore necessary in order to ensure that a fair and relevant minimum safety net of terms and conditions (especially wages) is provided by the Awards.

***(a) relative living standards and the needs of the low paid***

23. A threshold of two-thirds of median full-time wages provides a suitable benchmark for identifying who is “low paid”, within the meaning of s 134(1)(a). On this measure, all Nursing Assistants and Enrolled Nurse classifications under the Nurses Award and PCW classifications under the Aged Care Award are currently close to or below this “low paid” threshold.
24. The variations sought by the ANMF would elevate each of these classifications beyond being “low paid”.

***(b) the need to encourage collective bargaining***

25. Employees covered by the Aged Care Award, and aged-care employees covered by the Nurses Award, have experienced the compounding effect over many years of difficulty bargaining successfully in the sector.
26. Difficulty bargaining in the sector arises including because of:
- (1) high levels of casual and part-time employment;
  - (2) low hours contracts;
  - (3) the female-dominated nature of the industry (which workforces have, historically, been less industrially organised);
  - (4) the shift-based nature of the work and rostering arrangements;
  - (5) the proportion of workers from culturally and linguistically diverse backgrounds (which presents as a barrier to effective communication in bargaining);
  - (6) a cultural reluctance (arising out of a sense of professional commitment) to take industrial action that may be seen to negatively affect residents;
  - (7) industrial regulation limiting rights to take industrial action;

- (8) a lack of union density; and
  - (9) the impact of insecure work.
27. An increase in the rates of pay provided by the Aged Care Award and for aged-care employees covered by the Nurses Award would encourage collective bargaining in that:
- (1) it would increase the incentive or necessity to negotiate enterprise-specific trade-offs and productivity benefits;
  - (2) it removes any disincentive to continue collective bargaining for employees who have negotiated rates at or higher than the correct work value of the work they perform, by removing the gap between these rates and the Award minimum.

***(c) the need to promote social inclusion through increased workforce participation***

28. The Final Report emphasised the absence of clear career paths for persons in the aged-care industry (Final Report, Vol 3A, pp 385–391 in particular). Increased minimum rates will lead to:
- (1) a greater ability to attract and retain staff;
  - (2) an incentive for career progression for workers in the industry;
  - (3) accordingly, higher-quality care and quality of life for aged-care residents.
29. Further, women make up the majority of: (1) employees in aged care; and (2) people providing unpaid aged care domestically. Increasing the wages payable to aged-care workers will in two ways promote social inclusion. First, assuming that (1) remains true, increasing rates of pay and creating a clearer career path will attract or retain female employees and thus increase the workforce participation of women. Second, increased wages will enhance confidence in the aged-care sector, so that women presently providing domestic unpaid aged care are more likely to entrust aged care to the paid sector, enabling them themselves to return to or enter the workforce (in aged care or otherwise).

***(d) the need to promote flexible modern work practices and the efficient and productive performance of work***

30. Given Australia's aging population and the requirement for aged care of increasing numbers of the "baby boomer" generation, there will be a need for the aged care workforce significantly to grow.
31. An increase in minimum rates will attract new workforce participants to meet the growing demand for labour, and will assist in addressing current recruitment and retention problems and facilitate the upskilling of the existing workforce.

***(da) the need to provide additional remuneration for: (i) employees working overtime; or (ii) employees working unsocial, irregular or unpredictable hours; or (iii) employees working on weekends or public holidays; or (iv) employees working shifts***

32. By its nature, aged care work involves unsocial hours, weekend and public holiday work and shift work. Under the Nurses Award and Aged Care Award, employees are compensated for work on weekends, public holidays and shifts by loadings based on their ordinary hourly rate. The need to provide additional remuneration for employees working unsocial hours, weekends, public holidays and shift work will only be properly met where the underlying ordinary rate of pay is appropriate.

***(e) the principle of equal remuneration for work of equal or comparable value***

33. The Final Report recognised that the aged care workforce is predominantly female (Final Report, V3, p 374). The Final Report also recommended an application pursuant to s 302 of the FW Act to ensure equal remuneration for men and women workers for work of equal or comparable value further or in the alternative to the present application.
34. The fact that the ANMF have not, at this time, brought an application pursuant to s 302 of the FW Act does not amount to concession that aged care workers currently enjoy equal remuneration for work of equal or comparable value.

***(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden***

35. It is the intention of the ANMF to continue to collaborate with the Australian Government and employers to minimise the likely impact of any award variation on business.

***(g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards***

36. The proposed amendments perpetuate some overlap of modern award coverage between Assistants in Nursing under the Nurses Award and PCWs under the Aged Care Award. Such overlap is not “unnecessary” (see *Award Modernisation Decision* [2009] AIRCFB 345 at [152]).

***(h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy***

37. The Final Report identified a clear and pressing need for a substantial development of the workforce in the aged care sector. Increased wages will be a critical element of the development of the workforce.

**E.1 The minimum wages objective**

***A safety net of fair minimum wages***

38. For the same reasons as given above at [19]–[37], an increase in the minimum wages provided for by the Aged Care Award and the Nurses Award would ensure that there is a safety net of fair minimum wages having regard to the minimum wages objective.