

**FAIR WORK COMMISSION**

**MATTER NUMBERS AM2020/99; AM2021/63; AM2021/65**

**WORK VALUE CASE – AGED CARE INDUSTRY**

**COMMONWEALTH’S SUBMISSIONS IN RESPONSE TO 8 JULY 2024 DIRECTIONS**

1. The Commonwealth makes the following submission in relation to rates of pay, operative date and phasing-in in respect of any wage increases that the Commission may determine for registered and enrolled nurses in the aged care sector (**aged care nurses**) as a consequence of the *Stage 3 Aged Care decision* ([2024] FWCFB 150) (**Stage 3 decision**).<sup>1</sup>
2. The Commonwealth reiterates its support for any further wage increases for aged care nurses that the Commission considers are justified by work value reasons having regard to the *Stage 3 decision (aged care nurse wage increases)*, and is committed to funding those wage increases, including on-costs incurred by aged care providers as a result of the wage increases, in all Commonwealth-funded aged care.
3. The Commonwealth notes that the quantum of any aged care nurse wage increases has not yet been determined by the Commission. For the reasons set out in paragraphs [3] to [5] of the Commonwealth’s submissions dated 24 November 2023, the Commonwealth submits that the Commission should not award any additional wage increases exceeding those sought in the original applications before the Commission at this time.
4. The Commonwealth has previously submitted that until the quantum of any increase is determined by the Commission, the Commonwealth is unable to properly consider the fiscal impact and provide information on the appropriate approach to timing and phasing-in of additional funding to support any further increases to award wages (24 November 2023 at [7]).
5. In line with the Directions published on 8 July 2024, the Commonwealth has considered the issues of funding, operative date and phasing-in the context of the submissions, evidence and draft determinations filed by the ANMF on 26 April 2024, and correspondence submitted by the ANMF dated 18 July 2024.
6. The Commonwealth notes that further wage increases for registered and enrolled nurses in the aged care sector is not without cost to the Commonwealth and will require significant additional funding to be provided to the aged care sector.
7. While some aged care providers pay ‘market rates’ that are in line with the ANMF proposed pay rates, this is not true for all providers. Commonwealth funding for the

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<sup>1</sup> In accordance with [2] of the Commission’s directions dated 8 July 2024.

aged care sector is predominantly provided through the payment of subsidies to providers. As a result, any further increases to award wage rates for aged care nurses will increase the funding required of the Commonwealth in respect of all providers, and therefore the overall cost to the Commonwealth.

8. In this regard, the Commonwealth notes that in relation to the \$11.3 billion committed over four years (from 2023-24 to 2026-27) to meet the cost of the 15% increase in award wages for direct care workers, including registered and enrolled nurses, approximately \$2.6 billion is estimated as relating to wage increases for aged care employed nurses.
9. Without detracting from this submission, the Commonwealth's position on funding for any aged care nurse wage increases is as follows (**Commonwealth funding commitment**):<sup>2</sup>
  - 9.1. for any wage increases up to 3 per cent – on 1 July 2025;
  - 9.2. for any wage increases up to a further 3 per cent (i.e. up to 6 per cent total) – on 1 October 2025;
  - 9.3. for any wage increases up to a further 7 per cent (i.e. up to 13 per cent total) – on 1 October 2026;
  - 9.4. for any wage increases up to a further 7 per cent (i.e. up to 20 per cent total) – on 1 October 2027.
10. In the event that the aged care nurse wage increases differ for different classifications of aged care nurses (for example, because of a change in internal relativities), the Commonwealth funding commitment as set out above applies on a classification-by-classification basis.
11. As the Commonwealth has previously submitted,<sup>3</sup> having regard to the Commonwealth's role as the principal funder in the aged care sector,<sup>4</sup> the Commission can be satisfied that making any aged care nurse wage increases in alignment with the timing of the Commonwealth funding commitment would result in those increases having a non-material impact on business and employer costs.
12. The result is that, having regard to the modern awards objective in s 134(1)(f) of the *Fair Work Act 2009* (Cth) (**FW Act**):

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<sup>2</sup> References to wage increases below are to increases above the interim wage increases made as a result of the *Stage 2 decision* [2023] FWCFB 40, and include on-costs associated with the corresponding percentage wage increase in accordance with the approach set out in paragraphs [14] to [18] of the Commonwealth's Stage 2 submissions dated 16 December 2022 (**Stage 2 submissions**).

<sup>3</sup> Commonwealth's submissions concerning operative date and phasing in dated 12 April 2024 (**12 April 2024 submissions**) at [5].

<sup>4</sup> As recognised in the *Stage 1 decision* [2022] FWCFB 200 at [904], [911].

- 12.1. 1 July 2025 would be an ‘appropriate’ operative date for any aged care nurse wage increases for the purposes of s 166(2) of the FW Act; and
  - 12.2. phasing-in any aged care nurse wage increases above 3 per cent in alignment with the Commonwealth funding commitment would be appropriate and consistent with the principles summarised in paragraphs [28] to [30] of the Commonwealth’s Stage 2 submissions dated 16 December 2022 (**Stage 2 submissions**) and paragraphs [985] to [990] of the *Stage 1 decision*.<sup>5</sup>
13. However, the Commonwealth again acknowledges the presumption in s 166(1) of the FW Act and the fact that the timing of the Commonwealth funding commitment, including its implications for the modern awards objective in s 134(1)(f) of the FW Act, is not determinative of the Commission’s decision with respect to the timing or phasing in of any aged care nurse wage increases.<sup>6</sup>
14. For the reasons previously submitted,<sup>7</sup> the Commission need not consider whether it would be theoretically possible for the Commonwealth to fund any aged care nurse wage increases sooner than it has decided. However, by way of explanation, the Commonwealth identifies the following matters that have informed its funding commitment:
  - 14.1. The Commonwealth anticipates that any wage increases for aged care nurses will be implemented in a similar way to the interim wage increases and the Stage 3 wage increases for direct and indirect care workers, summarised in paragraph [11] of the Stage 2 submissions.
  - 14.2. Implementing funding for wage increases in the aged care sector takes time for the reasons set out in paragraph [8.2] of the 12 April 2024 submissions.
  - 14.3. The significant majority of aged care nurses, over 80 per cent, are estimated to work in residential aged care. As for residential aged care workers (addressed in paragraph [8.3.1] of the 12 April 2024 submissions), the increased funding needed to fund any wage increases for aged care nurses in residential aged care settings needs to be correctly calculated and applied based on independent pricing advice from the Independent Health and Aged Care Pricing Authority (IHACPA). This advice is subject to the following timeframes:
    - 14.3.1. From 2024, IHACPA’s annual pricing advice is provided mid-year to support changes in the Australian National Aged Care Classification (AN-ACC) price which take effect on 1 October of the same year.

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<sup>5</sup> [2022] FWCFB 200.

<sup>6</sup> As recognised in the *Stage 1 decision* [2022] FWCFB 200 at [911]-[916] and the *Stage 2 decision* [2023] FWCFB 93 at [415].

<sup>7</sup> Commonwealth’s 12 April 2024 submissions at [7].

- 14.3.2. In circumstances where IHACPA's annual pricing advice for 2024 has already been provided, it will be necessary to seek out-of-session advice to support any funding for wage increases to take effect through the AN-ACC price before 1 October 2025.
- 14.3.3. As the Commonwealth has previously submitted,<sup>8</sup> IHACPA must undertake significant work to provide the necessary advice to the Commonwealth, which may take several months after a final decision of the Commission in respect of any aged care nurse wage increases (including quantum).
- 14.3.4. It follows that, even if a decision by the Commission were to be made by October 2024, it would not be possible for IHACPA to provide the necessary advice to the Commonwealth until the first quarter of 2025.
- 14.3.5. Once IHACPA's advice is provided, advice will need to be provided to Government in line with the Budget process, with further steps also required to develop subordinate legislation and make necessary information and communications technology changes as set out in paragraphs [8.3.2] and [8.3.3] of the 12 April 2024 submissions.
- 14.3.6. To be confident that the necessary time is available to progress through these steps following the receipt of a decision (timing of which is not known), a 1 July 2025 operative date is proposed.
- 14.3.7. The subsequent proposed increases from 1 October 2025 will be factored into the regular IHACPA pricing advice.
- 14.4. Significant aged care reforms are due to be introduced in 2025, following the introduction and expected passage of the new Aged Care Act. Preparation for commencement of the new Act is a complex undertaking for the Commonwealth, providers and care recipients.
- 14.5. These reforms include the introduction of Support at Home (to replace the Home Care Packages program), which will incorporate new pricing arrangements for in-home care that will be similar to residential aged care. The Commonwealth's position is to include any wage increase for aged care nurses within the pricing arrangements commencing on 1 July 2025.
- 14.6. Preparations are also underway for the Commonwealth Home Support Programme (CHSP) to be recontracted for another two years, commencing 1 July 2025. This includes new contract arrangements being put in place and significant changes to the architecture of the program as part of systemic reforms to the in-home aged care system. It is not possible to vary existing CHSP grant agreements in addition to the changes already being progressed to implement the wage increase for aged care workers on 1 January 2025. Instead, any funding for wage increases for aged care nurses would be rolled

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<sup>8</sup> Reply submissions of the Commonwealth dated 10 February 2022 at Annexure, [3]-[7].

into the new grant arrangements once the CHSP extension is finalised in July 2025.

- 14.7. The Commonwealth otherwise repeats paragraphs [8.3.4] and [8.3.5] of its 12 April 2024 submissions.
- 14.8. As for the Commonwealth's decision to implement funding for aged care nurses over a period of up to 29 months, the Commonwealth repeats the observations in paragraph [8.4] of the 12 April 2024 submissions and makes the following further observations:
  - 14.8.1. While the labour market has softened, with a gradual increase in the unemployment rate over the past year, it has remained quite resilient,<sup>9</sup> and wages growth remains elevated relative to its pre-pandemic rate.<sup>10</sup>
  - 14.8.2. The largest contributor to wages growth in the September quarter 2023 was the health care and social assistance industry, which experienced a wages increase of 3.1 per cent in the quarter, the strongest increase on record.<sup>11</sup> The 15 per cent interim wage increase for aged care workers was a significant contributor to that increase.<sup>12</sup>
  - 14.8.3. In this context, the Government has already committed \$11.3 billion over four years to fund the Stage 2 increase and is currently working through the funding impact of its commitment to fund the Stage 3 decision, which is expected to be in the order of an additional several billion dollars of the four year forward estimates.
  - 14.8.4. Similarly, the Government is conscious that there could be further successive decision for wage increases in relation to the Nurses and Midwives Work Value Case and Gender undervaluation – priority awards review given the requirement for the Commission to consider gender undervaluation and relativities, potentially adding to the Government's funding commitments over the near future and spillover effects to other sectors.
  - 14.8.5. The Commonwealth funding commitment has also been determined by reference to the Government's fiscal strategy, which continues to

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<sup>9</sup> See, eg, Australian Bureau of Statistics (**ABS**), Labour Force, Australia – June 2024 <<https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/latest-release>>.

<sup>10</sup> See, eg, ABS, Wage Price Index – March 2024 <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/wage-price-index-australia/latest-release>>.

<sup>11</sup> See, eg, ABS, Wage Price Index for September 2023 <<https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/wage-price-index-australia/latest-release>>.

<sup>12</sup> Ibid.

be calibrated to current economic conditions with a focus on providing relief from cost-of-living pressures without adding to inflation, the need for budget repair and reducing gross debt.<sup>13</sup>

15. The Commonwealth does not otherwise wish to make any submissions concerning the matters referred to in [1] or [2] of the Commission's 8 July 2024 directions.

Date: 26 August 2024



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for and on behalf of the  
Australian Government Solicitor,  
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These submissions were settled by Kate Eastman SC and Dan Fuller, counsel for the Commonwealth of Australia.

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<sup>13</sup> Commonwealth of Australia, *Budget Paper No. 1: Budget Strategy and Outlook*, 'Statement 3: Fiscal Strategy and Outlook', pp 79-81.