



DECISION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—*Nurses Award 2010* (AM2019/17)

Health and welfare services

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER BISSETT

MELBOURNE, 29 JULY 2021

4 yearly review of modern awards – finalisation of Exposure Drafts and draft variation determinations – Tranche 3 – Nurses Award 2010.

Introduction and background

[1] This decision deals with the finalisation of the variation determination for the *Nurses Award 2010* (Nurses Award).

[2] In a decision issued on 5 November 2020 (the *November 2020 Decision*),¹ we outlined the background to the finalisation of the exposure draft for the Nurses Award.

[3] That background included a separate application by Ai Group to vary the Nurses Award ([AM2020/1](#)). In response to that application a Full Bench was established to hear argument regarding the quantum of the casual loading payable.

[4] In the *November 2020 Decision* we decided to incorporate a number of changes into the draft variation determination for the Nurses Award and noted that any clause that was the subject of the ongoing proceedings in AM2020/1 would appear in the draft variation determination as it currently appears in the Nurses Award. A draft variation determination was published concurrently with the *November 2020 Decision*.

[5] The claim in AM2020/1 affected a number of clauses in the award relating to casual loadings. AM2020/1 was heard on 20 October 2020 and a decision in the matter was reserved.

¹ [\[2020\] FWCFB 5883](#).

[6] In a statement issued on 4 December 2020 (*December 2020 Statement*),² after considering the submissions of the parties filed in response to the *November 2020 decision*, we determined not to publish a final variation determination for the Nurses Award until the claims in matter AM2020/1 had been determined.

[7] A decision in matter AM2020/1 was issued on 13 January 2021 (*January 2021 decision*)³ in which the Full Bench dismissed Ai Group's application and the terms of the Nurses Award were not varied.

[8] On 18 May 2021 we issued a decision (*May 2021 decision*)⁴ dealing with the revised exposure draft following the decision of the Full Bench in the *January 2021 decision*.

May 2021 decision

[9] In the *May 2021 decision*, we stated that in dismissing the Ai Group application in AM2020/1, the Full Bench in the *January 2021 decision* had confirmed that overtime, weekend and public holiday rates payable to casual employees under the Nurses Award are calculated on a base hourly rate that includes the casual loading (Compounding Basis).

[10] We decided that given the decision of the Full Bench in AM2020/1, we would revert a number of affected clauses, back to the wording contained in the Nurses Award Exposure Draft published immediately prior to the 5 November 2020 draft, as these clauses were not varied by AM2020/1. The clauses affected and the changes made were listed in the *May 2021 decision* at [10] and [11].

[11] We also outlined a number of amendments to the exposure draft that had been made as noted in the *December 2020 Statement* and as determined by the Overtime for Casuals Full Bench (AM2017/51).⁵

[12] In a decision published on 29 January 2020⁶ (*January 2020 decision*) we expressed the *provisional view* that that the variation of the modern awards in Tranche 3 in accordance with the draft variation determinations set out at Attachment C (which included the Nurses Award) was necessary to achieve the modern awards objective. In reaching that conclusion we adopted the reasons set out in the decisions at Attachment B to the *January 2020 decision* insofar as they are relevant to the Nurses Award and, in particular, to the considerations in ss.134(1)(a) to (h), which are addressed in each of those decisions. In the *May 2021 decision* we said that the *provisional view* from the *January 2020 decision* was subject to the amendments that we detailed in the *May 2021 decision*.

[13] A revised Exposure Draft and revised draft variation determination were issued with the *May 2021 decision* for comment. We proposed to finalise the revised variation determination on the basis of the written submissions filed.

² [\[2020\] FWCFB 6499](#).

³ [\[2021\] FWCFB 115](#).

⁴ [\[2021\] FWCFB 2800](#).

⁵ See [2021] FWCFB 2800 at [12] to [15].

⁶ [\[2020\] FWCFB 421](#) at [6].

[14] We received a submission from the Australian Nursing & Midwifery Federation (ANMF)⁷ in response to the revised variation determination. No other submissions were received.

ANMF submission

Definition of “casual hourly rate”

[15] The ANMF submits that inserting a definition of the “casual hourly rate” into the Nurses Award is appropriate. However, it contends that as currently worded the Nurses Award will effectively have two definitions of a “casual hourly rate”, being:

- a) one at clause 2, which references the rates at clause 15; and
- b) one at clause 11.2, which details how the “casual hourly rate” is calculated.

[16] To avoid confusion, the ANMF suggested there should be only one definition of the “casual hourly rate” and that this should be the detailed wording at clause 11.2. It proposed to change the wording at clause 2 so that it refers readers to clause 11.2 as follows (changes underlined and struck out):

~~‘casual hourly rate has the meaning given in clause 11. Means the hourly rate for a casual employee’s classification and pay point specified in clause 15, inclusive of the casual loading.’~~

[17] The “casual hourly rate” as described at clause 2 of the draft variation determination produces the same rate of pay as that described at clause 11.2, being a rate of pay consisting of the minimum hourly rate for the employee’s classification and pay point and a loading of 25% of that minimum hourly rate. However, to avoid confusion and maintain consistency of terminology, we agree that the draft variation determination should only contain one definition of “casual hourly rate”.

[18] We consider it appropriate that the definition of “casual hourly rate” is contained within clause 2. We will amend the definition of ‘casual hourly rate’ in clause 2 as proposed by the ANMF, save that the definition will refer to ‘clause 11.2’, instead of clause 11.

[19] We will also amend clause 11.2 to remove the words ‘This is the **casual hourly rate**’.

Interaction of casual loading and shiftwork

[20] The ANMF submits that in updating the language of the Nurses Award at 11.5 of the draft variation determination (the equivalent of clause 10.4(d) in the current award), the words “calculated on the minimum rate of pay applicable to their classification and pay point” in clause 11.5 have been equated with the words “calculated on the ordinary rate of pay” in clause 10.4(d). It submits that the ordinary rate of pay for casual employees *includes* the casual loading, whereas the minimum rate of pay applicable to the classification and pay point *does*

⁷ ANMF [submission](#), 8 June 2021.

not include the casual loading. It submits that this concept was outlined in *Domain Aged Care (Qld) Pty Ltd v DPG Services Pty Ltd T/A Opal Aged Care*⁸ (Domain Aged Care).

[21] Clause 11.5 in the draft variation determination states:

‘A casual employee will be paid shiftwork loadings calculated on the minimum rate of pay applicable to their classification and pay point, excluding the casual loading with the casual loading component then added to the penalty rate of pay.’

[22] Clause 10.4(d) in the current award states:

‘A casual employee will be paid shift allowances calculated on the ordinary rate of pay excluding the casual loading with the casual loading component then added to the penalty rate of pay.’

[23] The ANMF submits that in order to use consistent language and ensure that clause 11.5 of the draft variation determination accurately reflects the current conditions of the Nurses Award, clause 11.5 of the draft variation determination should be drafted as follows (changes underlined):

‘A casual employee will be paid shiftwork loadings prescribed in clause 20.2 calculated on the minimum hourly rate of pay applicable to their classification and pay point, (i.e. excluding the casual loading) with the casual loading component prescribed in clause 11.2(b) then added to the penalty rate of pay.’

[24] We agree that the ‘ordinary rate of pay’ for casual employees in the Nurses Award is the casual loaded rate, as has been expressed in *Domain Aged Care* and by the *Overtime for Casuals Full Bench*.⁹ We will amend clause 11.5 as follows:

‘A casual employee will be paid shiftwork loadings prescribed in clause 20—Shiftwork calculated on the minimum hourly rate of pay applicable to their classification and pay point (i.e. excluding the casual loading) with the casual loading ~~component~~ prescribed in clause 11.2(b) then added to the penalty rate of pay.’

Consistency of language concerning rates of pay

[25] The ANMF submits that throughout the draft variation determination there are various descriptions used to describe the hourly rates of pay for full-time and part-time employees, including ‘minimum hourly rate applicable to their classification and pay point’, ‘the minimum hourly rate’ and ‘their minimum hourly rate’. The ANMF also submits that there are various descriptions used to describe the casual hourly rates of pay including ‘casual hourly rate of pay applicable to their classification and pay point’ and ‘casual hourly rate’.

[26] The ANMF contends that the “minimum hourly rate applicable to their classification and pay point” should be used for full-time and part-time employees whenever describing the

⁸ [2019] FWCFB 1716

⁹ [2020] FWCFB 4350 at [17] to [19].

rate of pay as this is the clearest wording. It submits that for casual employees, 'casual hourly rate' at clause 11.2 of the draft variation determination already includes as part of its definition the concept of 'the minimum hourly rate applicable to their classification and pay point' and therefore describing rates of pay for casual employees can simply be the 'casual hourly rate'.

[27] The ANMF proposed changes to the draft variation determination at clause 19.2(a), 19.3(b), 20.2(a), 20.2(b), 21.1 and 21.2. The proposed changes are set out at paragraph 13 of the ANMF submission.¹⁰

[28] For consistency with clauses 19.1 and 19.4, we will insert the words 'applicable to their classification and pay point' in clauses 19.3(b), 20.2(a), 20.2(b), 21.1 and 21.2 as proposed by the ANMF.

[29] We agree that the 'casual hourly rate' in the draft variation determination encompasses the minimum hourly rate applicable to a casual employee's classification and pay point and so the inclusion of the words 'applicable to their classification and pay point' after the term 'casual hourly rate' is unnecessary. We will delete the words 'applicable to their classification and pay point' whenever they appear in clauses 19.2(a)(i), 19.2(a)(ii), 19.2(a)(iii) and 28.2(a)(ii).

References to 'time'

[30] The ANMF proposes amendments to clauses 13.4(c) and 19.4(c) of the draft variation determination, which are expressed as clause 23.3 and 28.3(c) respectively in the current Nurses Award.

[31] Clauses 13.4(c) and 19.4(c) of the draft variation determination state:

'13.4 Rest breaks between rostered work

...

(c) If, on the instruction of the employer, an employee resumes or continues to work without having had 10 consecutive hours off duty, or 8 hours as agreed, they will be paid at the rate of **200%** until released from duty for such period.'

'19.4 Rest period after overtime

...

(c) If, on the instruction of the employer, an employee resumes or continues to work without having had 10 consecutive hours off duty, they will be paid at the rate of **200%** of the minimum hourly rate applicable to their classification and pay point until released from duty for such period. The employee will then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during the absence.'

[32] Clauses 23.3 and 28.3(c) of the Nurses Award currently state:

'23. Rest breaks between rostered work

...

¹⁰ See ANMF [submission](#), 8 June 2021 at 13.

23.3 If, on the instruction of the employer, an employee resumes or continues to work without having had ten consecutive hours off duty, or eight hours as agreed, they will be paid at the rate of double time until released from duty for such period.’

‘28.3 Rest period after overtime

...

(c) If, on the instruction of the employer, an employee resumes or continues to work without having had 10 consecutive hours off duty, they will be paid at the rate of double time until released from duty for such period. The employee will then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during the absence.’

[33] The ANMF submits that the decision in *Domain Aged Care*, which has subsequently been followed in the *Overtime for Casuals* decisions and the *January 2021 decision*, makes it clear that “time” in the context of casual employees is calculated on a compounding basis unless there is some provision which expressly indicates otherwise.

[34] The ANMF submits that clause 13.4(c) in the draft variation determination provides for the payment at the “...rate of 200%...” as opposed to the current clause which provides for the “...rate of double time...”. It submits that similarly, clause 19.4(c) in the draft variation determination provides for payment at the “...rate of 200% of the minimum hourly rate applicable to their classification and pay point...” as opposed to the current clause which provides for the “...rate of double time...”.

[35] The ANMF submits that the wording in the draft variation determination with respect to clauses 13.4(c) and 19.4(c) would disadvantage casual employees who are currently paid double time on their casual rate of pay (i.e. the ‘compounding method’) per *Domain Aged Care*, and the *Overtime for Casuals* decisions of 18 August 2020 and 30 October 2020.¹¹

[36] The ANMF proposes that clauses 13.4(c) and 19.4(c) be amended as follows (changes struck out and underlined):

‘13.4 Rest breaks between rostered work

...

(c) If, on the instruction of the employer, an employee resumes or continues to work without having had 10 consecutive hours off duty, or 8 hours as agreed, they will be paid ~~at the rate of 200%~~ of the minimum hourly rate applicable to their classification and pay point (200% of the casual hourly rate in the case of casual employees) until released from duty for such period.’

‘19.4 Rest period after overtime

...

(c) If, on the instruction of the employer, an employee resumes or continues to work without having had 10 consecutive hours off duty, they will be paid ~~at the rate of 200%~~ of the minimum hourly rate applicable to their classification and pay point (200% of the casual hourly rate in the case of casual employees) until released from duty for such period. The employee

¹¹ [\[2020\] FWCFB 4350](#) and [\[2020\] FWCFB 5636](#).

will then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during the absence.’

[37] The ANMF also submits that the wording in the draft variation determination with respect to clause 28.2(b) uses language that is inconsistent with the rest of the Award, stating that the decisions referred to above have made it clear what ‘ordinary time’ means in the context of casual employees and their penalty rates.

[38] The ANMF proposes the following amendment to clause 28.2(b) (changes struck out and underlined):

‘28.2 Payment for work done on public holidays

...

(b) Businesses that operate seven days a week shall recognise work performed on 25 December which falls on a Saturday or Sunday and, where because of substitution, is not a public holiday within the meaning of the NES with the Saturday or Sunday payment (as appropriate) plus an additional loading of **50%** of the minimum hourly rate applicable to the relevant classification and pay point (50% of the casual hourly rate in the case of casual employees) ~~employee’s ordinary time rate~~ for the hours worked on that day. All work performed on the substitute day by an employee will receive an additional loading of **50%** of the minimum hourly rate applicable to the relevant classification and pay point (50% of the casual hourly rate in the case of casual employees) ~~ordinary time rate~~ for the hours worked on that day instead of the rate referred to in clause 28.2(a).’

[39] In Domain Aged Care the Full Bench said:

‘[17] Clause 10.4(b) of the Award says that a casual employee will be paid an hourly rate equal to 1/38th of the weekly wage plus a casual loading of 25%. On a plain reading of the clause, the hourly rate includes the loading; the loaded casual rate is the ‘ordinary rate of pay’. When a casual employee works ordinary hours on a Saturday or Sunday, clause 26 of the Award requires the weekend loading to be applied to the ordinary rate of pay. For casual employees, this rate is the casual rate. The same is the case with the public holiday penalty in clause 32.1.

....

[19] The Commissioner’s conclusion that overtime penalties are also paid on the loaded casual rates of pay is in our view also correct. Clause 28.1 simply speaks of ‘time and a half for the first two hours and double time thereafter’ for Monday to Saturday work, ‘double time’ for Sunday and ‘double time and a half for public holidays.’ The relevant ‘time earnings’ for a casual under clause 10.4 include the casual loading. Further, clause 28.1(c) provides that overtime rates are in substitution for and are not cumulative upon shift and weekend premiums. Nothing is said of the casual loading being excluded. We appreciate that this sub-clause is concerned with applying one penalty to the exclusion of another, rather than precluding the calculation of a penalty based on a loaded rate, which is the focus of the interpretative controversy in this instance. Nonetheless, clause 28.1(c) is a limitation on the interaction of different penalties, and nothing is said about confining the application of the casual loading.’¹²

[40] As noted by the ANMF, the decision in Domain Aged Care in relation to the casual ordinary rate was endorsed by the Full Bench in the *4 Yearly Review of Modern Awards* –

¹² [\[2019\] FWCFB 1716](#).

Overtime For Casuals Decision (AM2017/51)¹³ and in the *4 Yearly Review of Modern Awards – Overtime For Casuals Decision (Final Determination) Decision* (AM2017/51)¹⁴. It was also supported by the Full Bench in AM2020/1.¹⁵

[41] We consider that the reference to ‘double time’ in clauses 23.3 and 28.3(c) of the Nurses Award for casual employees is a reference to the ordinary rate which includes the casual loading.

[42] We will amend clause 13.4(c) to insert the words ‘of the minimum hourly rate applicable to their classification and pay point (or 200% of the casual hourly rate in the case of a casual employee)’ after the words ‘at the rate of 200%’

[43] We will amend clause 19.4(c) to insert the words ‘(or 200% of the casual hourly rate in the case of a casual employee)’ after the words ‘at the rate of 200% of the minimum hourly rate applicable to their classification and pay point’.

[44] In relation to clause 28.2 of the draft variation determination, we note that the term in the current Nurses Award (clause 32.1) refers to the ‘ordinary rate of pay’ and ‘ordinary time rate’ as follows (underline added):

‘32.1 Payment for work done on public holidays

(a) All work done by an employee during their ordinary shifts on a public holiday, including a substituted day, will be paid at double time of their ordinary rate of pay.

(b) Businesses that operate seven days a week shall recognise work performed on 25 December which falls on a Saturday or Sunday and, where because of substitution, is not a public holiday within the meaning of the NES with the Saturday or Sunday payment (as appropriate) plus an additional loading of 50% of the employee’s ordinary time rate for the hours worked on that day. All work performed on the substitute day by an employee will receive an additional loading of 50% of the ordinary time rate for the hours worked on that day instead of the rate referred to in clause 32.1.’

[45] We consider the words ‘ordinary time rate’ in clause 32.1(b) of the Nurses Award to refer to the ‘ordinary rate of pay’.

[46] In the draft variation determination clause 28.2(a) has been drafted to refer to the ‘minimum hourly rate’ and the ‘casual hourly rate’ in place of the term ‘ordinary rate of pay’. For consistency with clause 28.2(a), we will amend clause 28.2(b) of the draft variation determination as follows (underline to be added, strikethrough to be deleted):

‘**28.2 Payment for work done on public holidays**

...

(b) Businesses that operate 7 days a week shall recognise work performed on 25 December which falls on a Saturday or Sunday and, where because of substitution, is not a public holiday

¹³ [2020] FWCFB 4350.

¹⁴ [2020] FWCFB 5636 at [15]-[21].

¹⁵ [2021] FWCFB 115 at [38].

within the meaning of the NES with the Saturday or Sunday payment (as appropriate) plus an additional loading of **50%** of the employee's minimum hourly rate applicable to their classification and pay point (or 50% of the casual hourly rate in the case of a casual employee) ordinary time rate for the hours worked on that day. All work performed on the substitute day by an employee will receive an additional loading of **50%** of the employee's minimum hourly rate applicable to their classification and pay point (or 50% of the casual hourly rate in the case of a casual employee) ordinary time rate for the hours worked on that day instead of the rate referred to in clause 28.2(a).'

Additional leave days by mutual agreement

[47] The ANMF submits that based on the language in the clause concerning existing leave arrangements, it appears clause 28.6(a) of the draft variation determination (clause 32.5(a) of the current Nurses Award) is not applicable to casual employees, but the clause does not specifically state this.

[48] Clause 32.5 of the Nurses Award states:

32.5 Additional leave days by mutual agreement

- (a) In lieu of being paid double time under clause 32.1, where the employer and employee mutually agree in writing at the time the public holiday is worked, an employee may be paid their ordinary rate of pay for time worked on a public holiday and have the same number of hours worked accrued, to be taken as leave, including in conjunction with a period of annual leave.
- (b) Payment for any days taken as leave, accrued in accordance with clause 32.5(a) shall be at the employee's ordinary rate of pay, excluding shift and/or weekend penalties and annual leave loading.
- (c) The taking of any additional days accrued as leave in accordance with 32.5(a) shall be by mutual agreement between the employer and employee, provided that such agreement shall not be unreasonably withheld.
- (d) Any untaken additional days accrued as leave in accordance with clause 32.5(a) shall be paid out to the employee upon termination of employment.
- (e) Provided that any additional days accrued as leave in accordance with clause 32.5(a) shall not be considered annual or personal/carer's leave for any purpose.

[49] Clause 28.6 of the draft variation determination currently states:

28.6 Additional leave days by mutual agreement

- (a) Instead of being paid 200% of the minimum hourly rate applicable to their classification and pay point under clause 28.2(a), where the employer and employee mutually agree in writing at the time the public holiday is worked, an employee may be paid their ordinary rate of pay for time worked on a public holiday and have the same number of hours worked accrued, to be taken as leave. This leave may be taken in conjunction with a period of annual leave.

- (b) Payment for any days taken as leave, accrued in accordance with clause 28.6(a) will be at the employee's ordinary rate of pay, excluding shiftwork loadings and/or weekend penalty rates and annual leave loading.
- (c) The taking of any additional days accrued as leave in accordance with 28.6(a) will be by mutual agreement between the employer and employee, provided that such agreement will not be unreasonably withheld.
- (d) Subject to clause 28.6(e), any untaken additional days accrued as leave in accordance with clause 28.6(a) will be paid out to the employee upon termination of employment.
- (e) Any additional days accrued as leave in accordance with clause 28.6(a) will not be considered annual or personal/carer's leave for any purpose.

[50] The ANMF proposes that it is made clear that clause 28.6 is not applicable to casual employees by inserting clause 28.6(f) as follows:

‘(f) The provisions of clause 28.6 will not apply to casual employees.’

[51] Clause 32.5(a) was inserted in the Nurses Award during the Modern Awards Review 2012 following an application by the ANMF to insert a subclause after clause 32.1 providing for employees to be able to select to have a day added to their annual leave entitlement in lieu of payment for work on a public holiday. The proposed clause was as follows:

‘In the alternative, a full-time employee may elect to be paid their ordinary rate of pay for the public holiday and have one ordinary working day added to their annual leave entitlement. A part time employee may elect to be paid their ordinary rate of pay for the public holiday and have the equivalent hours worked added to their annual leave entitlement. The election shall be made in writing at the commencement of each year and shall not be revocable during that year except with the agreement of the employer.’

[52] Amongst other things the ANMF submitted that ‘the new sub clause would allow employees who perform work on a public holiday to elect to either be paid double time (as per the existing clause) or, be paid single time and have the equivalent hours worked added to their annual leave entitlement.’¹⁶

[53] Concerns with the proposed term were raised by the Private Hospital Industry Employer Association (PHIEA) who submitted a proposed re-draft of the term that provided the entitlement upon mutual agreement between the employee and employer and expressed that any time added to annual leave under the clause would not attract annual leave loading.¹⁷

[54] The Aged Care Employers submitted that they would consent to a variation enabling an employer and individual employee to agree to allow an employee who works on a public holiday to elect to have an additional day added to their leave, not being a day added to or as annual leave (or additional annual leave) and not being a day that attracts annual leave loading

¹⁶ ANF [submission](#) at p 3.

¹⁷ PHIEA [submission](#), September 2012 at [36] to [38].

or shift and weekend penalties when taken as leave’ and proposed alternative drafting of the clause accordingly.¹⁸

[55] Following a hearing, the relevant parties reached an agreement as to the terms of the clause. Clause 32.5 was then inserted into the Nurses Award as it currently reads.¹⁹

[56] In the Nurses Award the payment of ‘double time’ is provided by clause 32.1(a), and the entitlement to accrue leave in lieu of being paid double time by mutual agreement is provided in clause 32.5(a). There is nothing in clauses 32.1(a) or 32.5(a) to suggest that these terms are limited in application to full-time and part-time employees. However, the entitlement in subclause 32.5(a) is conditioned by clauses 32.5(b) to 32.5(e). Notably, clause 32.5(d) provides for any untaken additional days accrued as leave in accordance with clause 32.5(a) to be paid out to the employee upon termination of employment. This cannot be practically applied in the case of casual employees who are “engaged as such on an hourly basis” as per clause 10.4.

[57] Taking the above into consideration we are of the view that the entitlement to additional leave days by mutual agreement as provided in clause 32.5 of the Nurses Award is not applicable to casual employees.

[58] Clause 32.5 is set out in substantially the same terms at clause 28.6 of the draft variation determination.

[59] We will amend the draft variation determination to insert clause 28.6(f) as follows.

‘(f) Clause 28.6 will not apply to casual employees.’

Minor drafting amendments

[60] In addition to the amendments noted at paragraphs [16] to [59] above, we will also make the following minor drafting amendments:

- Amend clause X.1 in line with the decision issued by the Full Bench in AM2021/15 and ors on 26 March 2021.²⁰
- Amend the example at clause 19.3(b) to refer to 150% of the casual hourly rate in the case of ‘a casual employee’ instead of ‘casual employees’, for consistency with the wording throughout clause 19.
- Replace the word ‘their’ appearing after the words ‘12.5% of’ and ‘15% of’ in clauses 20.2(a) and 20.2(b) respectively with the word ‘the’.

¹⁸ Aged Care Employers [submission](#) 17 September 2012 and [submission](#), 14 December 2012.

¹⁹ See [\[2013\] FWC 5369](#) at [4] to [7].

²⁰ [\[2021\] FWCFB 1622](#).

Annual Wage Review 2020-21

[61] Rates have been updated in line with the adjustment provided for in the 2020-2021 Annual Wage Review (AWR) decision.²¹ In accordance with AWR decision adjusted rates in the Nurses Award are operative from the start of the first full pay period on or after 1 July 2021 the draft determination has been amended accordingly.²²

Next steps

[62] As outlined above, in the *January 2020 decision*, we expressed the *provisional view* that the variation of the Tranche 3 modern awards in accordance with the published draft variation determinations was necessary to achieve the modern awards objective. In reaching that conclusion we adopted the reasons set out in the decisions at Attachment B of the *January 2020 decision* insofar as they are relevant to the Nurses Award and, in particular, to the considerations in ss.134(1)(a) to (h), which are addressed in each of those decisions. Subject to the amendments set out in the *May 2021 decision* and those detailed in this decision, we confirm our *provisional view*.

[63] A final variation determination incorporating the changes outlined in this decision will be issued shortly, with an operative date of **9 September 2021**.

PRESIDENT

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²¹ [\[2021\] FWCFB 3500](#) at [175].

²² [\[2021\] FWCFB 3500](#) at [295].