



STATEMENT

Fair Work Act 2009

s.158 - Application to vary or revoke a modern award

Aged Care Award 2010

(AM2020/99, AM2021/63, AM2021/65)

Nurses Award 2010

(AM2021/63)

Social, Community, Home Care and Disability Services Industry Award 2010

(AM2021/65)

Aged care industry

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT ASBURY
COMMISSIONER O'NEILL

MELBOURNE, 5 AUGUST 2022

Applications to vary modern awards – work value – Aged Care Award 2010 – Nurses Award 2010 – Social, Community, Home Care and Disability Services Industry Award 2010 – Background Paper Published

- [1] On 22 July 2022, parties filed closing written submissions regarding the evidence.
- [2] The remaining steps in the proceeding are as follows:
1. The parties will file submissions in reply regarding the evidence by **4pm on Monday 8 August 2022**.
 2. The Commonwealth will file written submissions by **4pm on Monday 8 August 2022**.
 3. The parties will file submissions in reply to the Commonwealth's written submissions by **4pm on Wednesday 17 August 2022**.
 4. The matter will be listed for oral hearing on:
 - a. 24 and 25 August 2022 for submissions by the Applicants and the Commonwealth to be held in person in at the Commission's Melbourne office.

- b. 1 September 2022 (with 2 September reserved) for submissions by ABI, ACSA and LASA and reply submissions to be held in person at the Commission's Sydney office.

5. Submissions to be filed in both word and PDF formats to amod@fwc.gov.au.

6. Liberty to apply

[3] The Full Bench has published the following documents:

- [Background Document 1 – the Applications](#)
- [Background Document 2 – Award Histories](#)
- [Background Document 3 – Witness Overview](#)
- [Background Document 4 – The Royal Commission](#)
- [Report to the Full Bench - Lay Witness Evidence](#)

[4] Background Document 1 and Background Document 2 posed a series of questions to parties with an interest in these proceedings. The answers to those questions were to be filed with the submissions due on Friday 22 July 2022. Interested parties were also invited to comment on Background Documents 3 and 4 and the Lay witness evidence report in their submissions.

[5] Submissions were received from:

- Health Services Union (HSU) dated [22 July 2022](#) and [2 August 2022](#)
- [Australian Nursing and Midwifery Federation](#) (ANMF) dated 22 July 2022
- [United Workers Union](#) (UWU) dated 25 July 2022
- Aged & Community Services Australia (ACSA), Leading Age Services Australia (LASA) and Australian Business Industrial (ABI) (collectively the Joint Employers) dated [22 July 2022](#) and [27 July 2022](#).

[6] The Commission has prepared Background Document 5 that will be published with this statement.

Provisional Views

[7] In a [Statement](#) published on 9 June 2022, the Full Bench expressed the following *provisional* views:

1. The relevant wage rates in the Aged Care Award 2010, the Nurses Award 2020 and the Social, Community, Home Care and Disability Services Industry Award 2010 have *not* been properly fixed.

2. It is not necessary for the Full Bench to form a view about why the rates have not been properly fixed.

3. The task of the Full Bench is to determine whether a variation of the relevant modern award rates of pay is justified by ‘work value reasons’ (and is necessary to achieve the modern awards objective), being reasons related to any of s.157(2A)(a)-(c) the nature of the employees’ work, the level of skill or responsibility involved in doing the work and the conditions under which the work is done

[8] Parties were invited to address the *provisional* views in their submissions. Chapter 2 of Background Paper 5 summarises the parties’ responses.

[9] We confirm our *provisional* views and note the ANMF’s submission in response to Provisional View 2 and the Joint Employer’s submission in response to Provisional View 3.

[10] Background Document 5 summarises the closing written submissions received and the answers to the questions posed in Background Documents 1 & 2. Background Document 5 poses a number of additional questions to the parties, which are set out at Annexure A to this statement.

[11] In view of the range of issues canvassed in the parties’ closing written submissions and the questions posed in Background Document 5 we have decided to give the parties the opportunity to file further written submissions:

1. Submissions in reply to the closing submissions filed on 22 July 2022 (see [5] above)
2. Responses to the questions posed in Background Document 5 set out at Annexure A.

[12] The above submissions are to be filed by no later than **4pm on Friday 19 August 2022** to amod@fwc.gov.au in both word and PDF.



PRESIDENT

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ANNEXURE A – QUESTIONS POSED IN BACKGROUND DOCUMENT 5

Question 1 for the HSU: Where does the HSU derive the proposition of the ‘social utility of the work’ from? In particular, which part of the legislative framework supports the proposed construction? How should the ‘social utility of the work’ be measured?

Question 2 for all other parties: do you agree with the HSU submission that the above additional propositions are uncontentious?

Question 3 for the CCIWA: the CCIWA is asked to respond to question 17 of BD1. If the CCIWA does not respond, the Commission may assume that the CCIWA does not represent anyone covered by any of the awards subject to these proceedings and as a result may not place weight on their submissions.

Question 4 for the ANMF: Does the ANMF agree with the Joint Employer’s characterisation of their application (at sections 3.12 – 3.19 of the Joint Employer’s closing submissions)?

Question 5 for the Joint Employers: What is being proposed in this aspect of the submission? What, if any, changes to the Aged Care Award classification structure are being proposed by the Joint Employers?

Question 6 for the Joint Employers: What, if any, changes to the Nurses Award classification structure are being proposed by the Joint Employers?

Question 7 for the Joint Employers: What is being proposed in this aspect of the submission?

Question 8 for the Joint Employers: Are the Joint Employers contending that an increase in minimum wages is justified on work value grounds in respect of these classifications of employees? If so, what quantum of increase is proposed in respect of each classification of employees? Do the Joint Employers oppose any increase in respect of any classification not mentioned at [174] above?

Question 9 for the Joint Employers: A comparison with the C10 framework suggests if the Joint Employer submission is accepted, that the minimum rates for RNs should be increased by 35 per cent, is that what is being proposed by the Joint Employers?

Question 10 for the ANMF and the HSU: what is the ANMF and the HSU’s response to the Joint Employers submission about the expert evidence and the weight that should be placed on that evidence?

Question 11 for all parties: Noting that the summary of submissions is a high-level summary only, are there any corrections or additions that should be made?

Question 12 for all parties: To the extent that there is a degree of tension between the *Pharmacy Decision* and the *Teachers Decision* in the application of the principles in the *ACT Child Care Decision* is it common ground that the *ACT Child Care Decision* was made under a different statutory regime to the Commission’s statutory task under s.157(2A)?

Question 13 for all parties: At [16] of its closing submissions, the HSU suggests that ‘all significant stakeholders agree that some variation to wages is justified by work value reasons and that the view of all major stakeholders is that wages need to be “significantly increased”’. What do the other parties say in response to the HSU’s submission?

Question 14 for all parties: Do the parties agree with the points of agreement identified at paragraphs [194]–[201] above? Are there any other significant points of agreement that should be identified?

Question 15 for the ANMF: The ANMF’s attention is drawn to the above paragraphs. How does the ANMF reconcile the Penalty Rates Review with its submission that s.157(2A) exhaustively defines ‘work value reasons’?

Question 16 for the ANMF: is the ANMF suggesting that attraction and retention are considerations relevant to the assessment of ‘work value’ under s.157(2A)? If so, on what authority does the ANMF rely to support that proposition? Alternatively, is it being put that the proposition that the increases sought are ‘necessary to attract and retain the number of skilled workers needed to deliver safe and quality aged care’ is a consideration relevant to the achievement of the modern awards objective?

Question 17 to all parties: do the parties agree with the points of contention identified at paragraph [202]–[219] above?

Question 18 for the ANMF and HSU: what is the basis for the difference between the number of classification levels in the HSU and ANMF’s proposed classification structure for personal care workers?

Question 19 for the ANMF and HSU: there are some differences in the classification definitions proposed by each party. How does each party respond to the classification definitions proposed by the other party?

Question 20 for the Joint Employers: What is the Joint Employers’ position in respect of the ANMF and HSU classification proposals?

Question 21 for the ANMF: Why is it necessary, in the sense contemplated by s.138, that the schedule expire after 4 years?

Question 22 for the ANMF: How does the proposition advanced by the ANMF at [57](4) of its closing submissions fit with the observations in the SCHADS decision? On what basis is it put that the funded nature of the sector is relevant to a consideration of work value?

Question 23 for all parties: What do the parties say about the *Aged Care Amendment (Implementing Care Reform) Bill 2022* (Cth). Will it affect the propositions in Contention 6?

Question 24 for the ANMF: What authority is relied on in support of that proposition? Is the ANMF contending that dangerous work warrants a work value increase?