



# STATEMENT

*Fair Work Act 2009*

s.160—Variation of modern award to remove ambiguity or uncertainty or correct error

**Variation on the Commission’s own motion - *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020***  
(AM2025/2)

Indigenous organisations and services

JUSTICE HATCHER, PRESIDENT

MELBOURNE, 6 JUNE 2025

*Variation on the Commission’s own initiative –Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020.*

[1] This matter has been commenced on the Commission’s own initiative under s 160 of the *Fair Work Act 2009* (Cth) (FW Act) to deal with potential errors in Schedule A to the *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020*<sup>1</sup> (ATSIHW Award).

[2] Section 160 of the FW Act provides that the Commission may make a determination varying a modern award to remove ambiguity or uncertainty or correct an error, and may do so on its own initiative.

## **Schedule A—Classification Definitions**

[3] Clause A.1.1 of Schedule A to the ATSIHW Award sets out definitions for ‘Aboriginal and/or Torres Strait Islander knowledge and cultural skills’ (Cultural Skills) levels 1, 2 and 3.

[4] Clause A.2 sets out the classifications for ‘Aboriginal and/or Torres Strait Islander Health Workers’, including any required Cultural Skills level. In summary form, clause A.2 provides:

Grade	Role	Cultural Skills Level
Grade 1	Aboriginal and/or Torres Strait Islander Health Worker Trainee (Entry) (Health Worker Trainee)	<i>None specified</i>
Grade 2	Aboriginal and/or Torres Strait Islander Health Worker Trainee (Health Worker Trainee)	<i>None specified</i>
Grade 3	Aboriginal and/or Torres Strait Islander Health Worker (Generalist Health Worker)	<i>None specified</i>

<b>Grade</b>	<b>Role</b>	<b>Cultural Skills Level</b>
Grade 4	Advanced Health Worker – Practice	Cultural Skills Level 3
	Health Practitioner	Cultural Skills Level 3
	Advanced Health Worker – Care	<i>None specified</i>
Grade 5	Senior Health Worker	Cultural Skills Level 3
	Senior Health Practitioner	Cultural Skills Level 3
	Health Worker Coordinator	Cultural Skills Level 3

## Background

[5] Schedule A was varied substantially during the 4 yearly review of modern awards. The National Aboriginal and Torres Strait Islander Health Worker Association (NATSIHWA) proposed that the classifications be amended to provide a clearer career path to incentivise the profession and better reflect the work actually being performed by covered employees.<sup>2</sup> NATSIHWA proposed the insertion of a new Grade 6,<sup>3</sup> made an application for a work value claim with respect to Grades 5 and 6<sup>4</sup> and sought to divide Grade 1 into two classifications.<sup>5</sup> NATSIHWA also submitted that the Senior Health Practitioner and the Health Worker Coordinator<sup>6</sup> roles (currently Grade 5) must have Cultural Skills—level 3.<sup>7</sup>

[6] The Full Bench declined to insert a new Grade 6 and the work value claim, but granted the application to vary the classification structure by dividing Grade 1 into two trainee classifications (Grade 1 and a new Grade 2)<sup>8</sup>. Consequentially, existing Grades 2–4 became Grades 3–5. Following this decision, NATSIHWA submitted a revised classification structure,<sup>9</sup> which was ultimately adopted as no responsive submissions were received.<sup>10</sup>

[7] Prior to this change, the ATSIHW Award provided that it was desirable for employees classified at Grades 2 or 3 to have Cultural Skills—Level 1. The variation to the ATSIHW Award, however, resulted in the omission of the reference to Cultural Skills for the Grade 3 (previously Grade 2) classification and one of the roles in the Grade 4 (previously Grade 3) classification. The following table summarises the provisions in clause A.2 to the ATSIHW Award, prior to, and after the variation took effect:

<b>Previous Award<sup>11</sup></b>		<b>Current Award<sup>12</sup></b>	
<b>Grade</b>	<b>Cultural Skills Level</b>	<b>Grade</b>	<b>Cultural Skills Level</b>
<b>Grade 1</b>	<i>None</i>	<b>Grade 1</b>	<i>None</i>
		<b>Grade 2</b>	<i>None</i>
<b>Grade 2</b>	Cultural Skills Level 1	<b>Grade 3</b>	<i>None</i>
<b>Grade 3 – all employees</b>	Cultural Skills Level 1	<b>Grade 4 – Advanced Health Worker – Practice</b>	Cultural Skills Level 3
		<b>Grade 4 – Health Practitioner</b>	Cultural Skills Level 3
		<b>Grade 4 – Advanced Health Worker – Care</b>	<i>None</i>
<b>Grade 4</b>	Cultural Skills Level 2	<b>Grade 5</b>	Cultural Skills Level 3

### ***Provisional view and next steps***

[8] My *provisional* view is that some of the changes made to the ATSIHW Award (identified at paragraph [7] above) were an unintended consequence of the amended classification structure. This constitutes an error of the type contemplated by s 160 of the FW Act.

[9] It does not appear that omitting Cultural Skills for current Grades 3 or 4 was the specific subject of submissions during the 4 yearly review of what is now the ATSIHW Award. Similarly, the Commission's decision does not indicate that this was an intended outcome of the variation.

[10] Other classification definitions contained in Schedule A to the ATSIHW Award retain references to Cultural Skills. Grades 2–8 of the Administrative stream,<sup>13</sup> Dental Assistant Grades 2–5<sup>14</sup> and all Dental Therapist Grades in the Dental stream,<sup>15</sup> and all ancillary roles<sup>16</sup> make reference to a desirability that the employee have some level of Cultural Skills to perform the relevant role. Relevantly, two out of the three roles identified in Grade 4 of Schedule A.2 refer to Cultural Skills. Neither the submissions nor the decision suggest that the omission from one of the roles was intended.

[11] In this context, it is unlikely that it was intended for the requirement for Cultural Skills to be removed from any of the roles in clause A.2.

[12] Additionally, my *provisional* view is that the reference to the role of 'Coordinator Care' in the heading of clause A.2.15 should instead be a reference to the role of 'Health Worker Coordinator'. This would be consistent with the description of the Health Worker Coordinator role in subsequent clauses A.2.15(c) and A.2.22–A.2.24 of the ATSIHW Award. The words 'Coordinator Care' do not appear anywhere else in the award.

[13] For completeness, I do not consider that the omission of Cultural Skills from Grade 2 is in error, as it was split from the pre-existing Grade 1, which made no reference to a requirement for Cultural Skills. Similarly, I do not consider that the increased level of Cultural Skills currently required at Grade 5 is in error, noting that specific submissions were made on that issue.<sup>17</sup> I also do not consider that the increase in required Cultural Skills at Grade 4 (from Cultural Skills level 1 to level 3) is an error.

[14] My *provisional* view is that the errors identified should be corrected by:

- inserting a new clause A.2.7(c) that reads 'It is desirable that employees at this grade should have Aboriginal and/or Torres Strait Islander knowledge and cultural skills—level 1.'
- inserting a new clause A.2.12(b)(v) that reads: 'have Aboriginal and/or Torres Strait Islander knowledge and cultural skills-level 3.'; and
- replacing the words 'Coordinator Care' with the words 'Health Worker Coordinator' in the heading of clause A.2.15.

[15] A draft determination is published with this statement. Interested parties are invited to comment on the *provisional* views expressed in this statement and the draft determination as part of the conference listed before Deputy President Grayson for the ATSIHW Award in respect of matters arising from the gender-based undervaluation – priority awards review matter. The conference is listed for **10:00 am on Monday, 30 June 2025**.<sup>18</sup>

[16] In the absence of any responsive views, the variation will be made in the same terms as proposed in the draft determination.



## PRESIDENT

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<sup>1</sup> MA000115 ('ATSIHW Award').

<sup>2</sup> [NATSIHWA submission](#), 18 June 2019, cited in [\[2020\] FWCFCB 3827](#).

<sup>3</sup> [\[2020\] FWCFCB 3827](#) [15], [126].

<sup>4</sup> Ibid [128]–[160].

<sup>5</sup> Ibid [13], [124].

<sup>6</sup> Referred to as 'Coordinator Care' in earlier drafts of the revised classification structure.

<sup>7</sup> [\[2020\] FWCFCB 3827](#) [159] citing NATSIHWA submission, 18 June 2019 [126].

<sup>8</sup> Ibid [192]–[193].

<sup>9</sup> [\[2020\] FWCFCB 6535](#) [44]–[57].

<sup>10</sup> [\[2020\] FWCFCB 6906](#).

<sup>11</sup> *Aboriginal Community Controlled Health Services Award 2020* as at 20 November 2020.

<sup>12</sup> *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020* as at 27 August 2024 (current version).

<sup>13</sup> ATSIHW Award Schedule A.3.

<sup>14</sup> Ibid Schedule A.4.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid Schedule A.5.

<sup>17</sup> [\[2020\] FWCFCB 3827](#) [159].

<sup>18</sup> [Amended notice of listing and directions – 30 June 2025](#).