

FAIR WORK ACT 2009

Matter Nos: AM2013/30 and AM2014/286

Title: Section 160 – Application to vary a Modern Award

Section 156 – Four Yearly Review of Modern Awards

SUBMISSIONS ON BEHALF OF HEALTH SERVICES UNION AND UNITED VOICE

Filed on behalf of:	Health Services Union and United Voice		
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Background

1. These submissions by the Health Services Union [HSU] are made on behalf of the HSU and United Voice in response to the statement of the President [2017] FWC 2189.
2. An application was made jointly but the HSU and United Voice [AM2013/30] concerning a variation to the Supported Employment Service Award [SESA].
3. On 5 June 2015 DP Booth issued a consent order removing the Business Services Wage Assessment Tool and inserting agreed transitional arrangements. Since that date conferencing between the interested parties in the AM2013/30 application continued but has, by consent, been co-listed with AM2014/285, the Supported Employment Services Award four-year review proceedings.
4. In AM2014/286 an outline of submissions was requested and several parties filed in accordance with those directions in early March 2015. These directions were issued as part of the overarching directions for Groups 3 and 4 of the four-yearly review process.
5. Since that time no further directions concerning substantive submissions have been made, although more recently additional interested parties have provided an outline of substantive matters they wish to pursue.
6. The SESA Exposure Draft technical and drafting matters were completed before President Ross on 15 December 2016. A subsequent revised draft was issued 20 December 2016, and further comment was due 31 January 2017.
7. All outstanding matters in AM2014/286 are substantive in nature and remain part of the ongoing conferences before DP Booth. The conferences before DP Booth have resulted in significant variations to the positions of interested parties.
8. No comprehensive submissions concerning substantive matters in AM2014/286 have been filed to date.
9. Prior to the Full Bench finalising AM2013/30, or considering substantive matters in AM2014/286 one member of the Full Bench resigned.

AM2013/30 Discontinuance

10. The applicant parties have decided to discontinue AM2013/30 as a stand-alone application to vary the SESA under s160 of the *Fair Work Act 2009*.
11. The outstanding part of the application is the application to remove all competency components contained in the remaining wage assessment tools, or in the alternative, to remove the wage assessment tool containing a competency component.
12. HSU and United Voice intend to pursue the application as a substantive change as part of the four-year review of the SESA under AM2014/186.
13. A notice of discontinuance is attached to these submissions.



AM2014/286 Submissions

14. Section 622 of the FW Act is engaged when a member of a Full Bench "*becomes unavailable to continue dealing with a matter before the matter is completely dealt with.*"
15. In our submission AM2014/286 matter has effectively not commenced because no substantive submissions have been filed and no hearings held concerning substantive matters.
16. Because Watson VP is no longer a FWC member it is clear that a member of a Full Bench is no longer available to continue to deal with the matter.
17. Section 622(3) stipulates that in these circumstances the President "*must direct another FWC Member to form part of the Full Bench.*" After that direction has been issued the reconstituted Full Bench "*may continue to deal with the matter without the unavailable member.*"
18. Section 623 further requires that the new member of the Full Bench "*must take into account everything that occurred before the FWC, and everything that the FWC did, in relation to the matter before the FWC member began to deal with the matter.*"

Applying these submissions to this matter

19. The taking of any further step in this matter requires the President to direct that another FWC Member form part of the Full Bench.
20. As the matter has effectively not commenced beyond the initial outline of substantive variations to be pursued by parties, the HSU submits that the President should direct another member to form part of the Full Bench under s622(3).



Leigh Svendsen
Senior National Industrial Officer



Form F50—Notice of discontinuance

Fair Work Act 2009, s588; Fair Work Commission Rules 2013, rule 10 and Schedule 1

This is a notice of discontinuance of an application with the Fair Work Commission in accordance with section 588 of the Fair Work Act 2009.

Fair Work Commission matter number

Matter number AM2013/30

The Applicant

Name United Voice and the Health Services Union

The Respondent

Contact person N/A

Legal name of business

Trading name of business

The Applicant:

- Wholly discontinues this matter
 Wholly discontinues this matter as part of a settlement agreement
 Wholly discontinues this matter to pursue an alternate application

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

Stephen Bull for United Voice

Capacity/Position

Union Official/legal practitioner

Date

5 May 2016

Signature



Name

Leigh Svendsen for Health Services Union

Capacity/Position

Senior National Industrial Officer

Date

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