

FAIR WORK ACT 2009

Matter Nos: AM2013/43

Title: Application to make a State reference public sector modern award:

Medical Scientists, Pharmacists and Psychologists (Public Sector - Victoria) Award 2003 [AT830467], and

Health and Allied Services - Public Sector - Victoria Consolidated Award 1998 [AT783945], and

Health Professional Services - Public Sector - Victoria Award 2003 [AT827096]

SUBMISSIONS

Filed on behalf of:	Health Services Union		
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Background

1. These submissions by the Health Services Union [HSU] are made in response to the statement of the President [2017] FWC 2189.
2. An application under Sch. 6A, Item 4 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* was made by the HSU to make a State Reference Public Sector Modern Award [AM2013/43] arising from the previous transitional awards: the Medical Scientists, Pharmacists and Psychologists (Public Sector - Victoria) Award 2003 [AT830467]; the Health and Allied Services - Public Sector - Victoria Consolidated Award 1998 [AT783945]; and the Health Professional Services - Public Sector - Victoria Award 2003 [AT827096].
3. Concurrent applications were made by the Victorian Hospitals Industrial Association [VHIA] to terminate the same awards; AM2013/33, AM2013/34, and AM2013/37.
4. Prior to the Full Bench finalising the above matters a member of the Full Bench resigned.

Submissions

5. 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.*"
6. The parties have reached an in-principle agreement to the making of a single State Reference Public Sector Modern Award in Health, and to the contents of that award.
7. The VHIA and the HSU have agreed to submit a final copy of the Health Award to the Commission by 2 June 2017.
8. It is also agreed between the HSU and the VHIA that the matters – AM2013/33; AM2013/34; and AM2013/37 will be discontinued immediately upon the finalisation of AM2013/43.
9. 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 these matters.
10. 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."
11. 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."

Outcome

12. The taking of any further step in this matter requires the President to direct that another FWC Member form part of the Full Bench.
13. The HSU submits that the President should make a direction under s622(3) to enable a reconstituted Full Bench to finalise AM2013/43.



14. Given the agreement between the parties concerning matters AM2013/33; AM2013/34; and AM2013/37 the HSU submits that the President need take no further action in these matters and that they should be discontinued, as agreed between the parties, following the finalisation of AM2013/43.



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