



# STATEMENT

*Fair Work Act 2009*

s.285—Annual wage review

## **Annual Wage Review 2018–19** (C2019/1)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 30 MAY 2019

*Annual wage review 2018–19—inquiry proposed by Australian Catholic Bishops Conference*

[1] The Australian Catholic Bishops Conference (ACBC) has proposed an award relativities review and adjustment process, commencing with an inquiry by the Fair Work Commission (Commission) into the appropriate margins for skills and responsibilities (ie work value) of the C10 rate in the *Manufacturing and Associated Industries and Occupations Award 2010* (Manufacturing Award) and the Level 1 graduate employee rate in the *Professional Employees Award 2010* (Professional Employees Award).<sup>1</sup>

[2] The ACBC contends that the current award relativities are inadequate. It submits that its proposed inquiry could be conducted as an investigation and report under s.290 of the *Fair Work Act 2009* (Act) or by a similar process, and envisages an interim report being published in February 2020 and a final report by December 2020.<sup>2</sup> Section 290 provides for the President to direct that a matter be investigated and a report prepared, for consideration in an annual wage review. Such a direction may be given to an Expert Panel of the Commission, an Expert Panel Member or a Full Bench that includes one or more Expert Panel Members.<sup>3</sup>

[3] If the proposed inquiry found that the C10 and Level 1 rates were insufficient on the basis of work value and identified appropriate new rates, the ACBC proposes that a relativities adjustment process would commence in July 2021. In that process, wage rates in all modern awards may be adjusted by reference to the new C10 and Level 1 rates.<sup>4</sup> The ACBC submits that these award rate adjustments could be made by the Commission in an annual wage review pursuant to s.285 of the Act.<sup>5</sup>

[4] On 3 April 2019 the Commission published a question on notice, asking whether any other party supported the inquiry proposed by the ACBC. The ACTU, Ai Group, ACCI and NRA responded to this question.

[5] The ACTU raised issues as to the feasibility of the proposed review and its timing. The ACTU considers that the issue of anomalies in work value across the award system has arisen for broader consideration as a result of observations of the Full Bench in the 4 yearly

review of the *Pharmacy Industry Award 2010*.<sup>6</sup> In the circumstances, the ACTU does not offer a view as to whether a work value reassessment of the type proposed by the ACBC should be pursued.<sup>7</sup>

[6] Ai Group strongly opposed the ACBC's proposed inquiry, including because Ai Group does not agree that current award relativities are inadequate and as it is unclear whether the Expert Panel has a sufficiently broad jurisdiction. Further, any party with standing can apply to vary the classifications and wages rates in the Manufacturing Award and the Professional Employees Award on the basis of an alleged change in work value, at any time. Ai Group suggests that the proposal appears to be an attempt to circumvent the relevant provisions of the Act.<sup>8</sup>

[7] ACCI does not support such an inquiry. ACCI submits that it is neither necessary nor merited and that the Act does not allow such an inquiry to arise from the annual wage review.<sup>9</sup> Amongst other concerns, in ACCI's view work value proceedings are provided for in s.157 of the Act and are not the role of an Expert Panel. Further, the ACBC lacks standing pursuant to s.158 of the Act to make such a work value claim.<sup>10</sup>

[8] The NRA also does not support the inquiry proposed by the ACBC. Amongst other matters, the NRA raises concerns as to the practicability of the proposed inquiry in the context of the annual wage review.<sup>11</sup> The NRA further submits that if the ACBC wishes to pursue the inquiry further, a separate application should be made to the Commission for variation of specific modern awards under s.157 of the Act.<sup>12</sup>

[9] It is not necessary at this time to determine whether the Act would permit an award relativities review and adjustment process to be conducted in the manner proposed by the ACBC, as I do not consider it would be appropriate to make the proposed direction under s.290.

[10] Outside the 4 yearly review, there remains clear jurisdiction under s.157 of the Act for the Commission to consider applications for award variations based on work value, in respect of the Manufacturing Award, the Professional Employees Award and any other modern award. In my view, such an application is the appropriate manner in which to address the issues raised by the ACBC.

## PRESIDENT

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<sup>1</sup> ACBC Living Wage Claim and Submission 15 March 2019, [66] and [103]–[116].

<sup>2</sup> Ibid [106].

<sup>3</sup> Section 290(2).

<sup>4</sup> See further ACBC Living Wage Claim and Submission, 15 March 2019, [107]–[115].

<sup>5</sup> Ibid [116].

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<sup>6</sup> The ACTU cites [2018] FWCFB 7621 [194]–[198].

<sup>7</sup> ACTU Reply Submission to the Annual Wage Review 2018-19, [117]–[118].

<sup>8</sup> Ai Group Reply Submission, Post-Budget Submission and Responses to Questions on Notice, 12 April 2019, 17. See further 18–22.

<sup>9</sup> Supplementary Submission of the Australian Chamber of Commerce and Industry, 12 April 2019, [45].

<sup>10</sup> Ibid [59]–[63]. See further [46]–[58] and [64]–[75].

<sup>11</sup> NRA Submissions in Reply to the Expert Panel of the Fair Work Commission, April 2019, 2.

<sup>12</sup> Ibid, 3.