



# STATEMENT

*Fair Work Act 2009*

s.158—variation of a modern award to achieve the modern award objective

## **Health Sector Awards – Pandemic Leave** (AM2020/13)

Ambulance and patient transport

JUSTICE ROSS, PRESIDENT

MELBOURNE, 1 MAY 2020

[1] On 8 April 2020 a Full Bench of the Commission issued a Decision<sup>1</sup> (the April 2020 Decision) varying 99 modern awards to insert a new Schedule – ‘Schedule X: additional measures during the COVID-19 pandemic’.

[2] During the course of the proceedings relating to the April 2020 Decision the ACTU, AMNF, the HSU and APESMA made submissions regarding the particular circumstances of health care workers. The awards which were the subject of those submissions are as follows:

- Aboriginal Community Controlled Health Services Award 2010;
- Aged Care Aware 2010;
- Ambulance and Patient Transport Industry Award 2010;
- Health Professionals and Support Services Award 2010;
- Medical Practitioners Award 2010;
- Nurses Award 2010;
- Pharmacy Industry Award 2010;
- Social, Community, Home Care and Disability Services Industry Award 2010; and
- Supported Employment Services Award 2010.

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<sup>1</sup> [2020] FWC 1837

[3] In the April 2020 Decision the Full Bench responded to these submissions as follows:

‘We will shortly convene a conference of interested parties with a view to establishing a separate process to address the issues raised by the ACTU, ANMF, APESMA and HSU.’<sup>2</sup>

[4] On 9 April 2020 a Statement<sup>3</sup> was published in respect of these issues and I convened a conference on Tuesday 14 April 2020, at 2pm, to discuss the following matters:

- the coverage and application of each of the awards mentioned in [2] above. In particular, whether the practical application extends to each award extends to each State and Territory and the extent of enterprise agreement coverage;
- the nature of the claim advanced by the relevant unions; and
- the process for dealing with the claims advanced.

[5] The following materials were attached to the 9 April Statement to assist in the discussion at the conference:

(i) Article ‘[SARS-CoV-2 viral load and the severity of COVID-19](#)’ – published by the Centre for Evidence-Based Medicine at the University of Oxford and referenced in the HSU submission to AM2020/12.

(ii) [Information note](#) on employees mapped to the Health industry awards.

[6] The conference was attended by:

- Ms J Baulch, APESMA
- Ms A Moussa, Victorian Ambulance Union (VAU)
- Ms R Liebhaber, Health Services Union (HSU)
- Mr T Clarke, ACTU
- Mr S Bull, United Workers Union (UWU)
- Ms M De Vecchis, Australian Salaried Medical Officers Federation (ASMOF)
- Ms L Fisher, Private Hospital Industry Employers’ Association (PHIEA)
- Mr M Robson, Australian Services Union (ASU)
- Ms R Bhatt and Mr B Ferguson, Ai Group
- Mr M Pegg, National Disability Services (NDS)

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<sup>2</sup> [2020] FWC 1837 at [59]

<sup>3</sup> [2020] FWC 1905

- Ms K Wischer, Australian Nursing and Midwifery Federation (ANMF)
- Ms P Thomson, Australian Federation of Employers and Industry (AFEI)
- Ms S Harris, Pharmacy Guild of Australia (PGA)
- Mr M Skulley, Workplace Express (observing)

[7] A transcript of the conference is available [here](#).

[8] On 15 April 2020 a Statement<sup>4</sup> was published in relation to the conference.

[9] The key issues arising from the conference were as follows:

1. A separate page has been set up in the major cases part of the Commission’s website, which can be viewed here: [health sector awards – pandemic leave](#). Interested parties can [subscribe](#) to updates to be notified when documents are published on the major case site, by creating an account or logging in and selecting the Health sector awards – pandemic leave announcement service.
2. The ACTU is coordinating the finalisation of the unions’ claims in respect of this matter and s.158 applications to vary will be filed shortly.
3. The ACTU will advise the President’s chambers when the unions are in a position to advance a proposed timetable for the hearing and determination of the claims. The ACTU will discuss the proposed timetable with the various employer interests.
4. As to the coverage and application of each of the awards mentioned in [2] above, the list below breaks down the [agreements](#) in the health sector that have a nominal expiry dates from 1 June 2019 into the following industry sub-groups:

<b>Industry</b>	<b>Current agreements</b>
Aged care industry	474
Ambulance and patient transport	11
Health and welfare services	655
Indigenous organisations and services	4
Social, community, home care and disability services	201
<b>Grand Total</b>	<b>1345</b>

[10] The Health and welfare agreements cover nurses, allied health professionals, support and administrative staff. Consistent with the national system jurisdiction, there are agreements for public hospitals in Victoria and the territories but not elsewhere. Most agreements are for

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<sup>4</sup> [\[2020\] FWC 1956](#)

private hospitals (including nurses), large private sector employers such as Ramsey and pathology/radiology services. There appear to be some local government services (primarily Victoria and Tasmania) and not for profits such as the Red Cross.

[11] The SCHADS agreements are primarily the larger not for profits, local government and State government (Victoria) in the disability and social services sectors. There do not appear to be many agreements for smaller private sector providers especially in the home care sector who are contracted to provide NDIS support.

[12] Aged care agreements cover nurses, support and administrative staff. While there are a large number of agreements in this sector, these are predominantly for the larger providers such as BUPA and religious organisations; there do not appear to be many agreements for smaller private sector providers.

[13] During the course of the conference a number of parties expressed views about the coverage and application of some of the awards mentioned at [2] above. Those parties are asked to confirm their views, in writing, to [chambers.ross.j@fwc.gov.au](mailto:chambers.ross.j@fwc.gov.au) as soon as practicable.

[14] Following the conference, the following s.158 applications were filed:

- [Application](#) on behalf of the HSU and UWU to vary the *aboriginal Community Controlled Health Services Award 2010*;
- [Application](#) on behalf of the HSU, UWU and ANMF to vary the *Aged Care Award 2010*;
- [Application](#) on behalf of Alan Stokes, Member of the Victorian Ambulance Union Incorporated and others to vary the *Ambulance and Patient Transport Industry Award 2010*;
- [Application](#) on behalf of the UWU, HSU and Ai Group to vary the *Ambulance and Patient Transport Industry Award 2010*;
- [Application](#) on behalf of the HSU and UWU to vary the *Health Professionals and Support Services Award 2010*;
- [Application](#) on behalf of the Australian Salaried Medical Officers Federation and the UWU to vary the *Medical Practitioners Award 2010*;
- [Application](#) on behalf of the ANMF, UWU and HSU to vary the *Nurses Award 2010*;
- [Application](#) on behalf of Professionals Australia and the SDA to vary the *Pharmacy Industry Award 2010*;
- [Application](#) on behalf of the ASU, HSU and UWU to vary the *Social, Community, Home Care and Disability Services Industry Award 2010*; and

- [Application](#) on behalf of the ASU, HSU and UWU to vary the *Supported Employment Services Award 2010*.

[15] The 15 April Statement noted that this matter would be relisted for a further conference after the ACTU has advised that the unions were in a position to propose a timetable.

[16] On 28 April 2020 the ACTU advised the Commission, by [email](#), of its proposed timetable in respect of these applications. The directions proposed by the ACTU are as follows:

1. The Applicants lodge with the Commission any lay witness statements by 4:00PM on Wednesday 6 May 2020.
2. The Applicants lodge with the Commission any expert reports or statements by 4PM on 11 May 2020.
3. Any persons opposing the Applications lodge any witness statements and expert material by the sooner of:
  - a. 18 May 2020; or
  - b. 7 days after the day on which the ACTU lodges notice with the Commission informing the Commission that Applicants have lodged all of the evidence in chief that they propose to rely on.
4. The matter be listed for conference on 19 May 2020, with a view to:
  - a. Programming witnesses;
  - b. informing the parties if the Commission requires written outlines;
  - c. giving directions as to any written reply material, if necessary;
  - d. giving such further or other directions or assistance that the Commission considers necessary or convenient for the prompt hearing and determination of the matter.
5. The matter be fixed for hearing in the week commencing 25 May.
6. There be liberty to apply.

[17] The ACTU's correspondence also attached a [Background Paper](#) on award reliance and the practical operation of the awards sought to be varied.

[18] On 30 April 2020 [ABI](#) wrote to the ACTU and the other interested parties stating that the seven day period proposed in the ACTU's timetable was unreasonable and proposed to amend direction 3 to provide a period of 4 weeks to file material in reply.

[19] [AFEI](#) advised that it supported ABI's view.

[20] For completeness I also note that on 30 April 2020 the VAU filed an [Information Note](#) in relation to the application of the *Ambulance and Patient Transport Industry Award 2010*.

[21] A conference to discuss the ACTU's proposed directions was convened on Thursday 30 April 2020, at 1pm and attended by:

- Mr S Bull, UWU
- Ms A Moussa, VAU
- Ms P Thomson, AFEI
- Ms L Fisher, PHIA
- Ms K Biddlestone, Shop Distributive and Allied Employees' Association (SDA)
- Ms R Bhatt and Mr B Ferguson, Ai Group
- Mr D Pullin and Mr R Richards, Victorian Hospitals' Industrial Association (VHIA)
- Mr S Harris, PGA
- Ms K Wischer, ANMF
- Mr M Pegg, NDS
- Mr T Clarke, ACTU
- Mr M Robson, ASU
- Ms M De Vecchis, ASMOF
- Mr W O'Donnell, Australian Dental Association Limited (ADAL)
- Ms R Liebhaber, HSU
- Ms C Bailey, Leading Age Services Australia (LASA)
- Mr J Arndt, Australian Business Lawyers (ABI)
- Ms J Baulch, APESMA
- Mr M Skulley, Workplace Express (observing)

[22] A transcript of the conference is available [here](#).

[23] Arising out of discussions at the conference the directions **attached** were not opposed. A mention will be held after the appellants material is filed in according with those directions.

PRESIDENT

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# DIRECTIONS

*Fair Work Act 2009* (Cth)

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## **Health Sector Awards – Pandemic Leave**

(AM2020/13)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 1 MAY 2020

[24] The parties are directed as follows:

1. The Applicants are to file with the Commission an outline of submissions in support of the applications, any witness statements and any other material upon which they wish to rely on by **4:00pm on Monday 11 May 2020**.
2. All material lodged with the Commission to be filed in both Word and PDF format by email to [AMOD@fwc.gov.au](mailto:AMOD@fwc.gov.au).
3. The matter will be listed for a directions mention after the Applicants have filed their material.
4. There be liberty to apply.

PRESIDENT

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