

IN THE FAIR WORK COMMISSION

AM2020/12

Fair Work Act 2009

S 157 – Variation of a modern award to achieve the modern awards objective

Variation of awards on the initiative of the Commission

SUBMISSIONS OF HEALTH SERVICES UNION

6 April 2020

1. The Health Services Union (HSU) makes these submissions in response to the Fair Work Commission Statement of 1 April 2020, [2020] FWCFB 1760 ('the Statement'), which expressed the provisional view that 103 modern awards be varied to insert a new *Schedule X – Additional measures during the COVID-19 pandemic* ('Schedule X') into selected modern awards. Schedule X contains two new model clauses: *Unpaid Pandemic Leave* and *Annual leave at half pay*.
2. The HSU has an interest in the following awards listed in the Statement:
 - *Aboriginal Community Controlled Health Services Award 2010*
 - *Aged Care Award 2010*
 - *Ambulance and Patient Transport Industry Award 2020*
 - *Health Professionals and Support Services Award 2010*
 - *Medical Practitioners Award 2020*
 - *Nurses Award 2010*
 - *Pharmacy Industry Award 2010*
 - *Social, Community, Home Care and Disability Services Industry Award 2010*
 - *Supported Employment Services Award 2010*
3. The HSU supports the *Unpaid pandemic leave* and *Annual leave at half pay* award terms proposed by the Commission being inserted into the awards as a minima. However, we make some additional submissions in relation to health and community services workers covered by the awards listed above. We also

support the submissions of the Australian Council of Trade Unions (ACTU) of 6 April 2020.

4. The HSU broadly supports the Commission's effort to address the regulatory gap as outlined in paragraphs [48] – [55] of the Statement. We agree with the Commission that employees who lack entitlements to sufficient personal leave ought to be protected against dismissal where they are required to self-isolate for 14 days in line with government regulations for control of the COVID-19 pandemic.
5. However, for employees working in the health, aged care and social and community services, including disability support (SACS) sectors, and covered by the nine awards listed above, we submit that further temporary award variations are required in order to provide these employees access to paid leave per occasion they are required to isolate. We outline the reasons for this below:
 - a) There is a significant public health interest to ensure that health, aged care and SACS workers do not attend work while carrying the SARS-CoV-2 virus as these workers are in contact with the most vulnerable members of the community, including people with disabilities, elderly people, and patients who are sick or immunocompromised.
 - b) Due to the nature of their work and workplaces, health, aged care and SACS workers are more likely to be exposed to the virus, and exposed multiple times, compared to employees in the general population.
 - c) The need for additional personal leave for health, aged care and SACS workers has been reflected historically in awards. There are numerous examples of premodern awards in the health, aged care and SACS sectors which provided employees with increased personal leave,¹ leave for dangerous medical conditions,² infectious disease leave,³ or

¹ See, eg, *Nurses (Victorian Health Services) Award 2000*, clause 19.23 which provided up to 159 hours and 36 minutes paid personal leave; clause 30.1.2(c) of the *Ambulance Services and Patient Transport Employees Award, Victoria 2002* provided up to 168 hours paid personal leave.

² See, eg, *Victorian Health and Community Services (Psychiatric, Disability and Alcohol and Drug Services) Award 2003*, clause 26.4.

³ See, eg, *Nursing Homes Award (Tasmania) 2009*, clause 33(f) – Personal leave and infectious diseases; *Hospitals Award (Tasmania) 2009*, clause 39(f) – Personal leave and infectious diseases.

responded to specific health crises with additional leave provisions, such as tuberculosis leave.⁴

d) There is emerging evidence that healthcare workers are at risk of contracting more severe forms of COVID-19.⁵

e) It is in the public interest to promote adequate leave for health, aged care and SACS workers to ensure retention of staff in the health care workforce as the number of confirmed COVID-19 cases continue to rise and the workforce demand surges.

6. For the reasons cited above, the HSU supports the insertion of the proposed Schedule X in the modern awards identified in the Statement. Additionally, we urge the Commission to convene an urgent, separate process to deal with the issues addressed above in relation to the relevant health awards we have identified. We seek an opportunity to be heard on additional proposed variations in relation to these awards.

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⁴ See, eg, *Victorian Health and Community Services (Psychiatric, Disability and Alcohol & Drug Services) Award (1995)*, clause 25.5; *Nurses (Tasmanian Private Sector) Award (2007)* clause 25.3.3.

⁵ The Centre for Evidence-Based Medicine, Oxford University, *SARS-CoV-2 viral load and the severity of COVID-19* (April 2020) <<https://www.cebm.net/covid-19/sars-cov-2-viral-load-and-the-severity-of-covid-19/>>.