

From: Alana Rafter <Alana.Rafter@ablawyers.com.au>
Sent: Wednesday, 27 July 2022 5:52 PM
To: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>
Cc: Jordan Lombardelli <jordan.lombardelli@ablawyers.com.au>; Nigel Ward <Nigel.Ward@ablawyers.com.au>
Subject: RE: AM2020/99, AM2021/63, AM2021/65 - Aged Care Work Value - Provisional Views

Dear Associate,

The Full Bench seek clarification as to whether the submissions filed by ACSA, LASA and ABI dated 22 July 2022 (**the closing submissions**) included a response to the provisional views set out in the Statement issued on 9 June 2022. The response of the employer interests appears at Section 7 of closing submissions.

For ease reference, the response together with cross-references to the relevant paragraphs in the closing submissions, appear below:

1. Based on the submissions of the Unions and the Joint Employers, the relevant wage rates in the Aged Care Award 2010, the Nurses Award 2020 and the Social, Community, Home Care and Disability Services Industry Award 2010 have not been properly fixed.

In the *Aged Care Award* and *SCHADS Award* the Commission has never undertaken an exercise to properly set the minimum rates: [7.3].

For the *Nurses Award* it is a little less clear, although it is clear that such an exercise was not undertaken in award modernisation or since 2010: [7.4]-[7.5].

2. It is not necessary for us to form a view about why the rates have not been properly fixed.

It is not necessary for the Full Bench to form a view about why the rates have not been properly fixed. However, the position of the employer interests is that consideration of the C10 framework is relevant to the exercise of the Commission's discretion under s 157(2): [7.8]-[7.21].

3. Our task is to determine whether a variation of the relevant modern award rates of pay is justified by 'work value reasons' (and is necessary to achieve the modern awards objective), being reasons related to any of s.157(2A)(a)-(c) the nature of the employees' work, the level of skill or responsibility involved in doing the work and the conditions under which the work is done.

When moving to assess the impact of proposed "*work value reasons*", that evaluative task is informed by the relevant legal principles that inform the construction of s 157(2) and (2A). The Commission will need to identify "*work value reasons*" sufficient to "*justify*" a variation to minimum award wages and with this determine what the extent of that variation should be in properly setting the minimum rates: [7.22]-[7.31].

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From: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>

Sent: 27/07/2022 4:09 PM

To: Nigel Ward <Nigel.Ward@ablawyers.com.au>

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Subject: AM2020/99, AM2021/63, AM2021/65 - Aged Care Work Value - Provisional Views

Good afternoon Mr Ward,

On 9 June 2022, the Full Bench issued a [Statement](#) in the above matter. Paragraph [7] of the Statement set out the following *provisional views*:

1. Based on the submissions of the Unions and the Joint Employers, the relevant wage rates in the Aged Care Award 2010, the Nurses Award 2020 and the Social, Community, Home Care and Disability Services Industry Award 2010 have not been properly fixed.
2. It is not necessary for us to form a view about why the rates have not been properly fixed.
3. Our task is to determine whether a variation of the relevant modern award rates of pay is justified by 'work value reasons' (and is necessary to achieve the modern awards objective), being reasons related to any of s.157(2A)(a)-(c) the nature of the employees' work, the level of skill or responsibility involved in doing the work and the conditions under which the work is done.

Parties were invited to address the *provisional views* in their submissions due on Friday 22 July 2022.

Can you please confirm if the submissions filed by ACSA, LASA and ABI dated 22 July 2022 included a response to the *provisional views*?

Kind regards,

Madeleine Castles (she/her)

Associate to the Hon. Justice Ross AO
President



Fair Work Commission

Australia's national workplace relations tribunal

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The Fair Work Commission acknowledges that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander people. We acknowledge their continuing connection to country and pay our respects to their Elders past, present and emerging.

This email was sent from Wurundjeri Woi Wurrung Country.