

SUBMISSIONS IN REPLY OF HEALTH SERVICES UNION

OVERVIEW

1. These submissions in reply are made by the Health Services Union (**HSU**) in accordance with the Decision [2019] FWCFB 5078 of 26 August 2019 (**the Decision**). Paragraph [203] of the Decision directed interested parties to file submissions in relation to the provisional views expressed in that decision.
2. The submissions are made in reply to:
 - a) Submission dated 20 September 2019 of Australian Business Lawyers and Advisors Pty Ltd (**ABL**) on behalf of Australian Business Industrial (**ABI**) the NSW Business Chamber (**NSWBC**); and
 - b) Submission dated 20 September 2019 of Aged Care Employers (**ACE**).
3. As noted in our submission of 23 September 2019, the HSU supports the provisional views set out in the Decision. We oppose the proposals of ABL and ACE for further delays to this timeframe.
4. The Full Bench proposed a reasonable timeframe for phasing in the casual loading, by providing for a small increase on 1 December 2019, and a longer period to implement the full increase by 1 July 2020.¹ This is a reasonable period of time for employers to

¹ [2019] FWCFB 5078, [202].

adjust to the changes, particularly as it only affects casual employees. Employers have a great deal of flexibility in how and when casual employees are engaged.

5. We note that the Full Bench found that the current rates for casual employees working on weekends and public holidays *'are not fair and proportionate to the disability experienced by casual employees working at these times'* and that existing penalty rates do not provide a *'fair and relevant minimum safety net'*.²
6. Any further delays would mean that casual employees will not be provided with a fair and relevant safety net for an extended period of time. This will adversely impact casual aged care employees who will receive lower incomes than they should be entitled to.
7. We note that the HSU's claims in relation to increases to penalty rates for casual employees have been on foot since 2015, and employers have had considerable notice of the variations to the Award that may occur as a result of the four yearly review process.³ This is a further reason against delays in implementation of the variations.
8. To the extent that ACE's submission relies on the StewartBrown reports for the 2018 financial year⁴ we note that leave was not granted to file these reports in the proceedings. The Full Bench observed at paragraph [41]:

[W]e have decided not to grant leave to file the material. This material was filed at a late stage in the proceeding and the Unions have not been afforded an opportunity to cross-examine the authors of the reports. Fairness dictates that leave to file the material be refused. We would also observe that the findings or conclusions sought to be drawn from the reports are very broad, lack specificity and ABI has not established the causal connection between the data and the proposed findings.

Health Services Union

4 October 2019

² [2019] FWCFB 5078, [157]-[158].

³ Health Services Union, Outline of Variations Sought, 2 March 2015, [16]-[17].

⁴ Aged Care Employers, Submission, 20 September 2019, [10].