

## **BEFORE THE FAIR WORK COMMISSION**

*Fair Work Act 2009 (Cth)*

**Title of matter:** *Social, Community, Home Care and Disability Services Industry Award 2010 — Fair Work Commission proposal to vary the Award*

**Section:** *s.157, Fair Work Act 2009 (Cth)*

**Matter Number:** AM2020/100

**Document:** Submissions pursuant to Statement dated 26 November 2020

**Date:** 21 December 2020

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## AFEI Submissions

1. On 26 November 2020 the Full Bench of the Fair Work Commission issued a Statement (**'the Statement'**) in which it expressed a provisional view that it should vary the *Social, Community, Home Care and Disability Services Industry Award 2010 ('SCHADS Award')* under s.157 of the *Fair Work Act 2009* (Cth).

2. The Commission's reasons for its provisional view appear to be included at paragraph [4] of the Statement:

*At present the existence of the equal remuneration order is noted in the Social, Community, Home Care and Disability Services Industry Award 2010 (the SCHADS Award). From 1 December 2020, the transitional provisions of the equal remuneration order will have been implemented. As at 1 December 2020, the final instalment from the equal remuneration order (modern award rate plus the final equal remuneration payment) will apply for Social and Community Services and Crisis Accommodation classifications which are found in Schedules B and C of the SCHADS Award.*

3. The Equal Remuneration Order was made by the Commission in 2012 following proceedings throughout 2010 – early 2012 presided over by a five-member full bench. In those proceedings, the full-bench concluded that the equal remuneration order 'should stand alone' from the SCHADS Award, and noted that this was consistent with the views of most parties to the proceedings.<sup>1</sup>

4. AFEI objects to the final rates of pay from the equal remuneration order being incorporated into Schedules B and C of the SCHADS Award. This includes for the following reasons:

(a) **Firstly**, Schedules B and C of the SCHADS Award are operative terms of the Award. Incorporating the equal remuneration order rates into Schedules B and C would therefore result in the equal remuneration order rates becoming operative terms of the Award. That outcome would be inconsistent with the conclusion reached by the five-member full bench that the order should stand alone.

(b) **Secondly**, in reaching its conclusion that the order should stand alone, the Full Bench in its February 2012 Decision took into account the positions of the parties. The five-member Full Bench's conclusion that the order should stand alone was not expressed as being solely due to the equal remuneration order containing transitional provisions. The fact that the transitional provisions have come to an end are not a sufficient basis to alter the conclusion reached by the Full Bench in its February 2012 Decision.

(c) **Thirdly**, the draft determination does not include all terms of the order which continue in effect from 1 December 2020. The proposed variation could therefore give rise to claims in relation to the independent operation of the modern award terms. Even if the award contained the full terms of the equal remuneration order, this would result in unnecessary overlapping entitlements.

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<sup>1</sup> [2012] FWAFB 1000 at [78].

(c) **Fourthly**, the equal remuneration order was made under s302 of the Act, being separate statutory powers to those for making or varying a modern award. It is therefore appropriate that the entitlement to the equal remuneration rates arises solely from that order.

5. While AFEI objects to the Award including any operative terms related to the equal remuneration order rates, AFEI would not object to the note in Clause 15 of the Award being amended to draw the reader's attention to Clause 6 of the equal remuneration order, by stating the following:

*An equal remuneration order [PR525485] also applies to employees (other than SACS Level 1) in the classifications at Schedule B and C. From 1 December 2020, Clause 6 of the equal remuneration order requires a specified percentage amount to be paid in addition to the rates in Clause 15 of the Award.*