



# STATEMENT

*Fair Work Act 2009*

Schedule 1, cl.111C—FWC to vary certain modern awards

## **Variation of modern awards to include a right to disconnect term (AM2024/14)**

JUSTICE HATCHER, PRESIDENT  
VICE PRESIDENT ASBURY  
DEPUTY PRESIDENT O’NEILL  
COMMISSIONER MCKINNON

SYDNEY, 21 NOVEMBER 2025

*Variation of modern awards to include a right to disconnect term – review of the right to disconnect term in all modern awards – to be conducted approximately 12 months after the terms effect – next steps.*

[1] On 21 August 2025, we issued a statement<sup>1</sup> inviting submissions about:

1. Whether it is necessary to conduct a review of the model right to disconnect award term, either generally or in respect of specific awards, at this point in time, and if so, what aspects of it; and
2. Whether we should now make guidelines, noting the lack of any guiding case authority at this point.

[2] The following eight parties filed submissions by the due date of 3 October 2025:

- Housing Industry Association (HIA)
- Council of Small Business Organisations Australia (COSBOA)
- Australian Chamber of Commerce and Industry (ACCI)
- Australian Industry Group (Ai Group)
- Pharmacy Guild of Australia (PGA)
- Australian Nursing and Midwifery Federation (ANMF)
- Mr Jay Iyer and Ms Rashmika Krishnamoorthy
- Australian Council of Trade Unions (ACTU).

*Review of the model award term*

[3] There is a general consensus amongst the parties that a review of the model term is premature due to the lack of test cases and significant disputes, as well as the fact that the term only recently (on 26 August 2025) commenced operation in relation to small business employers.

[4] The HIA and the ACTU suggest that the review be revisited in 12 months, whilst the COSBOA suggest a deferral period of a minimum of two years (until after August 2028).

[5] The ANMF submits that a targeted review of the *Nurses Award 2020*<sup>2</sup> should be conducted to examine whether any changes are required to ensure the recall to work provisions in clause 19.7 do not nullify the model term.

#### *Guidelines*

[6] There is also, for the most part, a consensus that the Commission should not take steps to publish guidelines at this time due to the lack of guiding authority and significant disputes.

[7] The HIA submits that the development of the guidelines should coincide with the review to ensure a consistent approach.

[8] In their joint submission, Mr Iyer and Ms Krishnamoorthy submit that plain language guidelines, case studies and non-binding fact sheets, in multiple languages, should be published to assist employers and employees to understand the appropriate procedures in the event of a dispute regarding the right to disconnect.

#### *Conclusions*

[9] As the Commission has not yet considered any test cases nor resolved any significant disputes regarding the substantive right to disconnect provisions in the FW Act, we accept that a review at this time would have little to no utility. We think the appropriate course is to revisit whether a review should be conducted in about 12 months' time. We consider that the provision of guidelines at this time would also be lacking in utility for the same reasons. The Commission may be in a better position to develop guidelines concurrently with a review, if and when that occurs.

[10] We are not persuaded that we should, on the Commission's own initiative, undertake a targeted review of the *Nurses Award* as proposed by the ANMF. The ANMF may apply to vary the award pursuant to s 158 of the *Fair Work Act 2009* to address any issue which it identifies as being of concern in respect of the operation of the model term in the *Nurses Award*.



PRESIDENT

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<sup>1</sup> [\[2025\] FWCFB 185](#).

<sup>2</sup> MA000034.