



DECISION

Fair Work Act 2009

s.157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

s.160—Variation of modern award to remove ambiguity or uncertainty or correct error

Gender-based undervaluation — priority awards review — *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020*

(AM2024/22)

Variation on the Commission’s own motion — *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020*

(AM2025/2)

JUSTICE HATCHER, PRESIDENT
VICE PRESIDENT ASBURY
DEPUTY PRESIDENT O’NEILL
DEPUTY PRESIDENT SLEVIN
DEPUTY PRESIDENT GRAYSON

SYDNEY, 28 NOVEMBER 2025

Gender-based undervaluation – priority awards review – Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020 – variation of the award on the Commission’s own initiative – consent position – finalisation of variations to the award.

[1] On 7 June 2024, the Commission initiated a review of identified classifications in five modern awards to consider whether those classifications have been the subject of gender-based undervaluation (**Review**). This decision finalises the Review in respect of classifications applying to dental assistants and dental/oral health therapists covered by the *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020*¹ (**ATSIHW Award**). It also corrects some errors in the ATSIHW Award identified in the course of the Review.

[2] On 16 April 2025 we issued our initial decision in the Review² (**April decision**). In that decision, we found that dental assistants and dental/oral health therapists have been the subject of gender-based undervaluation and that, for the purpose of s 157(2)(a) of the *Fair Work Act 2009* (Cth) (**FW Act**), an adjustment to those rates of pay was justified by ‘work value reasons’ (as defined in s 157(2A)). We also expressed *provisional* views as to how the

¹ MA000115.

² [2025] FWCFB 74.

identified gender-based undervaluation should be rectified by way of variations to the classifications and rates of pay in the ATSIHW Award. In respect of dental assistants, our *provisional* view was that the current discrete classification structure applying to them should be abolished and that they should be incorporated within the existing Aboriginal Health Worker classification structure at Grades 2, 3 and 4. For dental/oral health therapists, we proposed the inclusion of a new classification structure which would mirror the structure proposed in the April decision for equivalent health professionals (with AQF Level 7 qualifications) under the *Health Professionals and Support Services Award 2020*.³

[3] In the April decision, we stated that interested parties would be provided with an opportunity to comment on the *provisional views* including, if they were implemented, the operative date and any timetable for phasing-in of the outcome which should apply.

[4] Following the decision, numerous conferences were conducted by a member of the Expert Panel to allow interested parties to explore the nature and scope of any issues that interested parties wished to raise in response to the *provisional views*, and whether consensus could be achieved as to the implementation process. In order to assist the parties, staff of the Commission prepared a draft award variation determination which would give effect to the *provisional views*. This was provided to the parties on 15 August 2025.

[5] On 19 September 2025, the Australian Council of Trade Unions, the Health Services Union, the United Workers' Union and the Australian Services Union (**Unions**) filed a joint submission and a draft award variation determination for our consideration. The submission and draft determination set out a consent position said to have been reached between the Unions, the National Aboriginal Community Controlled Health Organisation (**NACCHO**) and the Victorian Aboriginal Community Controlled Health Organisation (**VACCHO**). The NACCHO and the VACCHO are, respectively, the national and Victorian peak bodies representing many Aboriginal Community Controlled Health Organisations. The submission supported the implementation of the *provisional view* in respect of dental/oral health therapists. It likewise supported the implementation of the *provisional view* in respect of dental assistants subject to the inclusion of an explanatory note in the Award regarding the integration of dental assistants into the classification structure for Aboriginal Health Workers and the important distinctions between those roles.

[6] The submission and draft determination also proposed operative date and phasing-in arrangements as follows:

- (1) a two or three stage phasing-in timetable;
- (2) an operative date of 1 January 2026 for the first increase; with the following increases to operate from 1 January 2027 and (where applicable) 1 January 2028; and
- (3) inclusion of a retained minimum rates of pay provision for Dental Therapist Grade 2 Level 5 employees employed immediately prior to the first operative date.

[7] On 23 September 2025, the NACCHO filed a submission confirming its support of

³ MA000027; Ibid [447]-[451].

and consent for the submission and draft determination filed by the Unions. Specifically, the NACCHO advised that it endorsed a phased approach to implementation commencing on 1 January 2026 given the funding models that apply to dental services provided by Aboriginal Community Controlled Health Organisations.

[8] The Commonwealth indicated to the Commission via correspondence on 29 August 2025 that it did not intend to file any submissions or evidence in relation to the *provisional* views in the April decision with regards to the ATSIHW Award. It had previously advised in a conference on 30 June 2025 that it preferred a phased approach to implementation.

[9] In a directions hearing on 13 October 2025, the Unions and the VACCHO advised the presiding member that they agreed that we should finalise this part of the Review on the basis of the submission and draft determination filed by the Unions and the other written materials, and that it was not necessary to conduct a further hearing.

[10] No party other than the Unions, the NACCHO, the VACCHO and the Commonwealth has participated in the proceedings concerning matter AM2024/22 or has otherwise expressed an interest in the matter.

[11] Having regard to these matters, we consider it appropriate to finalise the Review in relation to the ATSIHW Award on the basis of the written materials that have already been filed.

[12] In relation to those aspects of the position agreed between the Unions, the NACCHO and the VACCHO which were not part of the *provisional* views stated in the April decision, we determine as follows:

- (1) We consider it appropriate to include the proposed explanatory note having regard to the differences between the roles of dental assistants and Aboriginal Health Workers including the nature of the work of Aboriginal Health Worker roles, the qualifications required to undertake these roles and the regulation of the profession of Aboriginal and/or Torres Strait Islander Health Practitioner. This note will be inserted into the classification structure at Schedule A.2.1.
- (2) We also consider the phasing-in arrangements for the wage increases proposed to be appropriate. Where the increases are in excess of a total of 20 per cent, they will be implemented in three stages, 12 months apart, with the first two stages involving 10 per cent increases and the third stage delivering the balance of the total increase. Where the total increase is less than 20 per cent, there will be a first stage increase of 10 per cent, and the second stage will implement the balance of the increase 12 months later. We have reached this conclusion having regard to the consent position of the industry parties, the significant quantum of some of the increases (up to a maximum of 35 per cent) and the publicly funded nature of the services offered by Aboriginal Community Controlled Health Organisations.
- (3) The proposed operative date of 1 January 2026 is appropriate, having regard to advice from the parties that the implementation of previous Award variations

had taken approximately one month.

- (4) We will insert the proposed retained minimum rates of pay provision to ensure that the rate of pay for Dental Therapist Grade 2 Level 5 employees employed immediately prior to the operative date is not reduced by the Award variation.

[13] We otherwise confirm the *provisional* views stated in the April decision. The ATSIHW Award will be varied to implement those *provisional* views and the additional matters referred to in [12] above.

Modern awards objective and minimum wages objective

[14] We are satisfied that the variations to the Award which will be made arising from this decision are necessary to achieve the modern awards objective. For the award safety net to be ‘fair and relevant’ (s 134(1)), modern award minimum wage rates must properly reflect work value and be free of assumptions based on gender.

[15] In reaching this conclusion, we have taken into account the considerations specified in s 134(1) of the FW Act in the following way (using the paragraph designations in the subsection):

Paragraph (a): Using the measure of ‘low paid’ as being two-thirds of median adult ordinary-time earnings for full-time employees, the ‘low paid threshold’ may be quantified in two ways: \$1139.65 per week (using the ABS Characteristics of Employment data for August 2024) or \$1131.33 per week (using the EEH data for May 2023). The classifications for Dental Assistants Grades 1-5 currently have a rate of pay that falls below both of these measures. Accordingly, because the wage rate adjustment will have the result of lifting most of the dental assistant classifications in the ATSIHW Award above the low paid threshold, this consideration weighs in favour of the variations.

Paragraph (aa): There is no evidence before us that the variations will have any effect, detrimental or otherwise, as to the need to improve access to secure work. This is therefore a neutral consideration.

Paragraph (ab): As set out in our decision, the variations will rectify undervaluation in a female-dominated occupation and therefore aid in achieving gender equality, ensuring equal remuneration for work of equal value and eliminating gender-based undervaluation of work. This weighs significantly in favour of making the variations.

Paragraph (b): There is no evidence that collective bargaining is currently a feature of the Aboriginal Community Controlled Health sector. It is not possible, based on the evidence before us, to make any finding as to whether the variations will encourage collective bargaining to occur. We will therefore treat this as a neutral factor.

Paragraph (c): It is possible that the variations, by implementing minimum rates of pay which fairly reflect work value, may attract more persons, especially women and Aboriginal and Torres Strait Islander people, to the occupations of dental assistant or

dental/oral health therapist in the Aboriginal Community Controlled Health sector over the longer term and thus increase workforce participation. However, this is largely speculative, and we will also treat this as a neutral factor.

Paragraph (d): We do not consider that this is a relevant consideration in this matter.

Paragraph (da): We do not consider that this is a relevant consideration in this matter.

Paragraph (f): We accept that the variations will have an impact on employment costs for employers in the Aboriginal Community Controlled Health sector. This must be taken to be a factor adverse to the making of the variations to the ATSIHW Award. However, the negative weight to be given to this is significantly diminished by the fact that, on the basis of the phasing-in timetable which will be implemented, the NACCHO and the VACCHO support the making of the variations, presumably indicating a capacity and readiness to pay the wage increases involved. There is no reason to think that the variations will affect productivity or the regulatory burden.

Paragraph (g): This consideration is largely irrelevant and will be given neutral weight.

Paragraph (h): The increases relate only to a small cohort of employees and are therefore in our view incapable of having any material effect upon the national economy. We therefore assign this factor neutral weight.

[16] We also consider that the variations are consistent with the achievement of the minimum wages objective in s 284(1) of the FW Act. In respect of the considerations in ss 284(1)(a), (aa), (b) and (c), we make the same findings as in relation to ss 134(1)(h), (ab), (c), and (a) respectively. Section 284(1)(e) is not relevant to this matter.

[17] A determination varying the ATSIHW Award to implement the revised classification structures and the first phase of the pay increases is published together with this decision.

Errors in Schedule A to the Award

[18] On 6 June 2025 the President published a Statement⁴ containing a *provisional* view that some of the changes made to the classification structure in the ATSIHW Award during the 4 yearly review of modern awards had involved a number of unintended drafting errors and that these should be amended under s 160 of the FW Act. A draft determination containing corrections to the identified errors was published with the Statement.⁵ Interested parties were invited to comment on the *provisional* views expressed in the Statement and the draft determination in a conference conducted on 30 June 2025. None of the interested parties opposed the Commission amending the Award in the same terms as the 6 June draft determination.

[19] Following the publication of the Statement, further errors in the Award have been identified. These are cross referencing errors in the footnotes in Schedule B.3.2 and B.4.2.

⁴ [Statement \[2025\] FWC 1567](#).

⁵ [Draft determination](#).

[20] Section 160 of the Act allows the Commission to make a determination varying a modern award to remove ambiguity or uncertainty or correct an error. Section 160(2)(a) provides that the Commission may make such a determination on its own initiative. The principles applicable to the interpretation and application of s 160 are well established. In order to establish that there is an error, it is necessary to show that some sort of mistake occurred, in that a provision of the award was made in a form which did not reflect the tribunal's intention.⁶

[21] It is our view that the issues identified in the Statement and those identified at [19] above constitute errors for the purpose of s 160 and should be corrected.

[22] The amendments proposed in the 6 June draft determination and those identified at [19] above have been incorporated into the determination that is published together with this decision.



PRESIDENT

Written submissions:

Australian Council of Trade Unions, United Workers' Union, Health Services Union, and Australian Municipal, Administrative, Clerical and Services Union: 19 September 2025.

National Aboriginal Community Controlled Health Organisation: 23 September 2025.

Printed by authority of the Commonwealth Government Printer

<PR794315>

⁶ 4 yearly review of modern awards - Vehicle Manufacturing, Repair Services and Retail Award 2010 [2016] FWCFB 4418 [73].