



25 September 2019

The Hon. Justice IAK Ross  
President  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3000

By email: [chambers.Ross.j@fwc.gov.au](mailto:chambers.Ross.j@fwc.gov.au)

Dear President

#### **4 yearly review of modern awards - Payment of Wages (AM2016/8)**

This submission is made on behalf of the Australian Nursing and Midwifery Federation (ANMF) in response to the Decision issued on 23 August 2019<sup>1</sup>, requesting parties to make submissions in reply by 25 September 2019.

#### **Nurses Award**

The Australian Industry Group (AIG) has quoted the June 2018 decision of the Full Bench of the Fair Work Commission (FWC) in its submission<sup>2</sup>. The AIG submission states that the ANMF's proposal "may have the consequence of overriding private contractual arrangements by which such payments are made, in circumstances where [the Commission has] no knowledge as to the terms of such arrangements"<sup>3</sup>.

The full sentence of that quoted paragraph in the Full Bench decision is:

*It seems to us that authorising deductions from over award payments may have the consequence of overriding private contractual arrangements by which such payments are made, in circumstances where we have no knowledge as to the terms of such arrangements.*<sup>4</sup>

It is clear that the Full Bench of the FWC was directing its attention to the discrete issue of authorising deductions from over award payments. The ANMF submits that nothing additional should be made of this statement.

<sup>1</sup> [4 yearly review of modern awards - Payment of wages](#) [2019] FWCFB 5868

<sup>2</sup> [4 yearly review of modern awards - Plain language re-drafting - Standard clauses](#) [2018] FWCFB 3009

<sup>3</sup> [AIG submission](#), dated 21 August 2019 at [69].

<sup>4</sup> [2018] FWCFB 3009 at [67]

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#### **ANMF Journals**

Australian Nursing and  
Midwifery Journal (ANMJ)  
E [anmj@anmf.org.au](mailto:anmj@anmf.org.au)

Australian Journal of  
Advanced Nursing (AJAN)  
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ABN 41 816 898 298



AIG also stated in its submission:

*The Commission decided to draft the Model Clause to apply only to entitlements arising from the safety net for this very reason. There is no cogent reason to depart from that decision in the context of the Nurses Award.*<sup>5</sup>

With respect to this statement, the FWC Full Bench unambiguously addressed the question of changes to modern award clauses with respect to payment of wages in its decision of 17 July 2018:

*...The review of the remaining 36 modern awards (including the Nurses Award 2010) will proceed on an **award by award basis** and **any variation will have to be justified on its merits**. We do not think it appropriate to proceed from the prima facie position that existing provisions in respect of payments on termination should be replaced by the model term.*<sup>6</sup> (emphasis added)

Since July 2018, the Full Bench has not departed from the above approach and AIG has provided no reason to do so. The ANMF simply propose a clause that preserves the status quo, whilst duplicating the model term as far as possible.<sup>7</sup> The ANMF also notes the recent support of the Private Hospital Industry Employer Associations<sup>8</sup> with respect to our proposed clause.

If the Full Bench forms the view that the ANMF's proposed clause is not suitable, then the alternative is to keep the provisions concerning payment on termination of employment as they are currently worded. This necessitates keeping the wording in clause 18.3 of the current *Nurses Award 2010*, which provides:

18.3 *When notice of termination of employment has been given by an employee or an employee's services have been terminated by the employer, payment of all wages and other monies owing to an employee will be made to the employee.*

The ANMF does not request an oral hearing on this matter and believes the matter should be determined on the papers.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Daniel Crute', written over a circular stamp or mark.

Daniel Crute  
Federal Industrial Officer

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<sup>5</sup> AIG, *op. cit.* at [69]

<sup>6</sup> [4 yearly review of modern awards - Payment of wages](#) [2018] FWCFB 3566 at [156]

<sup>7</sup> [ANMF submission](#), dated 7 September 2018

<sup>8</sup> [Private Hospital Industry Employer Associations submission](#), dated 16 August 2019