



4 March 2020

President Ross  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3000

Via email: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Dear President,

**4 yearly review of modern awards - finalisation of exposure drafts - tranche 3 awards (AM2019/17)**

The ANMF refers to the Decision of the Full Bench in the above matter dated 29 January 2020<sup>1</sup> and makes the following comments with respect to the '2020 Exposure Draft'<sup>2</sup> and '2020 Draft Award Variation Determination'<sup>3</sup> published on the same date.

The *Nurses Award 2010 (Award)* is part of Tranche 3. With respect to the Award, the ANMF draws the attention of the Full Bench to the Australian Industry Group (**AI Group**) application AM2020/1 of 14 January 2020 to vary the Award in accordance with s157 and/or s160 of the *Fair Work Act 2009*.<sup>4</sup>

Regarding the quantum of the casual loading payable, the AI Group seeks "a determination retrospectively varying" the Award so that it expressly requires, with respect to casual employees:

- (a) The Saturday and Sunday penalty rates prescribed by clause 26 of the Award are calculated on the minimum hourly rate prescribed by the Award and not on a rate that includes the separate casual loading prescribed by clause 10.4(b).
- (b) The overtime rates prescribed by clause 28 of the Award are calculated on the minimum hourly rate prescribed by the Award and not on a rate that includes the separate casual loading prescribed by clause 10.4(b).
- (c) The public holiday penalty rates prescribed by clause 32.1 of the Award are calculated on the minimum hourly rate prescribed by the Award and not on a rate that includes the separate casual loading prescribed by clause 10.4(b).<sup>5</sup>

<sup>1</sup> [4 yearly review of modern awards - finalisation of exposure drafts - tranche 3 awards \[2020\] FWCFB 421](#)

<sup>2</sup> [Exposure draft – Nurses Award – changes tracked](#) (29 January 2020)

<sup>3</sup> [Draft award variation determination – Nurses Award](#) (29 January 2020)

<sup>4</sup> [Nurses Award 2010](#) (AM2020/1)

<sup>5</sup> AI Group, [Application to vary Nurses Award 2010](#), (14 January 2020) (AM2020/1)

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The AI Group application was partially in response to an ANMF submission of 13 June 2019<sup>6</sup> concerning the version of the Exposure Draft of the Award published on 22 February 2019<sup>7</sup>. The ANMF submission concerned the interpretation of the Award in light of the Full Bench decision in *Opal*.<sup>8</sup>

The ANMF considers that it would be detrimental to all parties involved in matter AM2020/1 if the 2020 Exposure Draft and 2020 Draft Award Variation Determination proposed on 29 January 2020 are adopted prior to the outcome of AM2020/1. Consequently, we submit that the Award needs to maintain its current wording until AM2020/1 is determined, as the outcome of this matter will decide a number of contested entitlements in the Award.

Pursuant to Directions issued on 19 February 2020, AM2020/1 is listed for hearing on 1 September 2020. In the circumstances, the ANMF submits that the Award Exposure Draft should be removed from the matters for determination in the oral hearing listed on 6-7 April 2020.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Daniel Crute'.

Daniel Crute  
Federal Industrial Officer

cc: Ruchi Bhatt, AI Group ([ruchi.bhatt@aigroup.com.au](mailto:ruchi.bhatt@aigroup.com.au))

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<sup>6</sup> ANMF, [Submission - exposure draft](#) (13 June 2019)

<sup>7</sup> FWC, [Exposure draft - Nurses Award - revised](#) (22 February 2019)

<sup>8</sup> [Australian Nursing and Midwifery Federation v Domain Aged Care \(QLD\) Pty Ltd T/A Opal Aged Care](#) [2019] FWCFB 1716.