



# STATEMENT

*Fair Work Act 2009*

s.158—Application to vary or revoke a modern award

## **Aged Care Award 2010**

(AM2020/99 and AM2021/63)

## **Nurses Award 2020**

(AM2021/63)

## **Social, Community, Home Care and Disability Services Industry Award 2010**

(AM2021/65)

DEPUTY PRESIDENT ASBURY

DEPUTY PRESIDENT O'NEILL

COMMISSIONER BISSETT

BRISBANE, 17 NOVEMBER 2022

*Applications to vary modern awards – work value – Aged Care Award 2010 – Nurses Award 2020 – Social, Community, Home Care and Disability Services Industry Award 2010 – Next Steps – Stages 2 and 3.*

[1] This case deals with 3 applications to vary modern awards to increase the minimum wages of aged care sector workers:

1. [AM2020/99](#) – an application by the Health Services Union (HSU) and a number of individuals to vary the minimum wages and classifications in the *Aged Care Award 2010* (Aged Care Award)
2. [AM2021/63](#) – an application by the Australian Nursing and Midwifery Federation (ANMF) to vary the Aged Care Award and the *Nurses Award 2010*, now the *Nurses Award 2020* (Nurses Award),<sup>1</sup> and
3. [AM2021/65](#) – an application by the HSU to vary the *Social, Community, Home Care and Disability Services Award 2010* (SCHADS Award) (the Applications).

[2] On 4 November 2022, the Full Bench constituted to hear and determine the Applications issued a decision<sup>2</sup> (*November 2022 decision*) which set out a summary of the Applications, an overview of the legislative framework, summarised submissions and evidence received in the

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<sup>1</sup> The *Nurses Award 2010* was varied and renamed the *Nurses Award 2020* on 9 September 2021 per [\[2021\] FWCFB 4504](#).

<sup>2</sup> [\[2022\] FWCFB 200](#).

course of these proceedings, considered the aged care sector and made a number of evidentiary findings.

[3] The Full Bench in the *November 2022 decision* determined to deal with these Applications in three stages, with the *November 2022 decision* constituting Stage 1 of this process. As part of Stage 1, the Full Bench made a decision that an interim increase to modern award minimum wages applicable to direct care workers was justified by work value reasons.

[4] Stage 2 of these proceedings will consider submissions and evidence in relation to:

- the timing and phasing in of the interim increase modern award minimum wages applicable to direct care workers, including the appropriateness and application of the principles canvassed at paragraphs [974]-[990] in the *November 2022 decision*;
- whether making the interim increases to modern award minimum wages applicable to direct care aged care employees in these proceedings is necessary to achieve the modern awards objectives and the *provisional views* outlined at [1001]-[1072] in the *November 2022 decision*; and
- Whether the interim increases to modern award minimum wages applicable to direct care aged care employees are necessary to achieve the minimum wages objective and the *provisional views* outlined at [1073]-[1083] in the *November 2022 decision*.

[5] Stage 3 will consider submissions and evidence related to the classification definitions and structures in the modern awards subject of the Applications and will consider submissions and evidence in relation to whether wage adjustments are justified by work value reasons for employees not dealt with in Stage 1.

[6] Stage 3 will also consider whether further wage adjustments are justified by work value reasons for direct care workers granted interim increases in Stages 1 and 2.

### **Reconstitution of the Full Bench**

[7] On 7 November 2022, Justice Ross, President wrote to the Governor General resigning his Commission as President of the Fair Work Commission and as a judge of the Federal Court, effective midnight 18 November 2022.

[8] Justice Ross was the presiding member of these proceedings and has now reconstituted the Full Bench. The reconstituted Full Bench comprises Deputy President Asbury, Deputy President O'Neill and Commissioner Bissett.

### **Further proceedings – Stage 2**

[9] As indicated in the *November 2022 decision*, these matters are now listed for **Mention** at **9:30am** on **Tuesday 22 November 2022 (AEDT)**.

[10] The Mention will canvass further programming of these matters and whether the interested parties have consulted in respect of increases in minimum wages for Head Chefs/Cooks and Recreational Activities Officers/Lifestyle Officers.

[11] The Full Bench's *provisional view* as to the programming of Stage 2 is set out below as follows:

1. The Commonwealth to file submissions or evidence regarding the matters set out at paragraph [4] [and if relevant paragraph [10]] above by **noon Friday 16 December 2022 (AEDT)**.
2. The Applicant Unions, Joint employers and other interested parties to file submissions and evidence regarding the matters set out at paragraph [4] [and if relevant paragraph [10]] above by **noon Friday 13 January 2023 (AEDT)**.
3. All parties to file any submissions and evidence in reply by **noon Friday 3 February 2023 (AEDT)**.
4. The matters will be listed for Hearing (if required) in Melbourne at **10am Monday 9 February 2023 (AEDT)**.

[12] The parties will be asked to comment on the above timeline for Stage 2 at the **Mention on 22 November 2022**.

### **Further proceedings – Stage 3**

[13] We foreshadow that to assist with the undertaking of Stage 3, the Commission will publish a Background Document regarding outstanding issues in mid to late December 2022.

[14] It is proposed that parties will be directed to have discussions to narrow the further issues to be determined and to report back to the Full Bench by the end of February 2023.

### ***Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022***

[15] We note the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022* which is currently before the Australian Parliament. If the Bill is passed as currently drafted, the provisions contained therein may affect these proceedings.

[16] It has been the longstanding practice of the Commission and its predecessors to determine the matters before it on the basis of the existing legislative framework and not otherwise.<sup>3</sup> However, should legislative change come into force at a time which affects the

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<sup>3</sup> [2014] FWCFB 3500 at [299].

timetable finalised after the Mention on 22 November 2022, parties will be at liberty to apply to amend.



DEPUTY PRESIDENT

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