



# 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, 23 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 – Variation to Directions.*

[1] On 17 November 2022, the Full Bench issued a [Statement](#) in relation to Stage 2 and Stage 3 of these proceedings.

[2] A Mention was conducted before the Full Bench on Tuesday, 22 November 2022. In accordance with the Statement issued on 17 November 2022, the views of the parties were canvassed in relation to the Full Bench's *provisional view* as to the programming, set out in our 17 November 2022 Statement at [11].

[3] As we also set out in our 17 November 2022 Statement, Stage 2 of these proceedings will consider submissions and evidence in relation to:

- the timing and phasing in of the interim increase to 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*.

[4] 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.

[5] 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.

[6] It was agreed at the Mention on Tuesday 22 November 2022, that the provisional view expressed by the Full Bench as to programming for Stage 2 would be amended in terms of dates by which submissions and evidence is to be filed. The amended dates and other consequential amendments, are as follows:

1. The Commonwealth to file submissions or evidence regarding the matters set out at paragraph [3] above and, if relevant, paragraph [10] of the 17 November 2022 Statement (consultation in respect of increases to minimum wages for Head Chefs/Cooks and Recreational Activities Officers/Lifestyle Officers), by **5pm 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 [3] and, if relevant, paragraph [10] of the 17 November 2022 Statement (consultation in respect of increases to minimum wages for Head Chefs/Cooks and Recreational Activities Officers/Lifestyle Officers), by **5pm Friday 20 January 2023 (AEDT)**.

3. All parties to file any submissions and evidence in reply by **5pm Thursday 9 February 2023 (AEDT)**.

4. The matters will be listed for Hearing (if required) in Melbourne at **10am Monday 13 February 2023 (AEDT)**.

[7] The programming of the matters for Stage 3, set out at paragraphs [13] and [14] of the 17 November 2022 Statement, is confirmed. Accordingly, the Commission will publish a background document regarding outstanding issues in mid to late December 2022.

[8] The parties are directed to have discussions to attempt to narrow the further issues to be determined and to report back to the Full Bench by the end of February 2023.

[9] As we have previously observed, 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>1</sup> We note that the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022* is currently before the Australian Parliament and that if the Bill is passed as currently drafted, the provisions contained therein may affect these

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<sup>1</sup> [2014] FWCFB 3500 at [299].

proceedings. Should legislative change come into force at a time which affects the timetable finalised after the Mention on 22 November 2022, parties are at liberty to apply for further amendment.



DEPUTY PRESIDENT

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