



STATEMENT

Fair Work Act 2009

s.158— variation of a modern award to achieve the modern award objective

Health Sector Awards – Pandemic Leave

(AM2020/13)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 15 APRIL 2020

[1] On 8 April 2020 a Full Bench of the Commission issued a Decision¹ (the April 2020 Decision) varying 99 modern awards to insert a new Schedule – ‘Schedule X: additional measures during the COVID-19 pandemic’.

[2] During the course of the proceedings relating to the April 2020 Decision the ACTU, AMNF, the HSU and APESMA made submissions regarding the particular circumstances of health care workers. The awards which were the subject of those submissions are as follows:

- Aboriginal Community Controlled Health Services Award 2010
- Aged Care Aware 2010
- Ambulance and Patient Transport Industry Award 2010
- Health Professionals and Support Services Award 2010
- Medical Practitioners Award 2010
- Nurses Award 2010
- Pharmacy Industry Award 2010
- Social, Community, Home Care and Disability Services Industry Award 2010
- Supported Employment Services Award 2010

[3] In the April 2020 Decision the Full Bench responded to these submissions as follows:

‘We will shortly convene a conference of interested parties with a view to establishing a separate process to address the issues raised by the ACTU, ANMF, APESMA and HSU.’²

[4] On 9 April 2020 I published a Statement³ in respect of these issues and convened a conference on Tuesday 14 April 2020, at 2pm, to discuss the following matters:

¹ [2020] FWCFCB 1837

² [2020] FWCFCB 1837 at [59]

³ [2020] FWCFCB 1905

- the coverage and application of each of the awards mentioned in [2] above. In particular, whether the practical application extends to each award extends to each State and Territory and the extent of enterprise agreement coverage;
- the nature of the claim advanced by the relevant unions; and
- the process for dealing with the claims advanced.

[5] The following materials were attached to the 9 April Statement to assist in the discussion at the Conference:

- (i) Article '[SARS-CoV-2 viral load and the severity of COVID-19](#)' – published by the Centre for Evidence-Based Medicine at the University of Oxford and referenced in the HSU submission to AM2020/12.
- (ii) [Information note](#) on employees mapped to the Health industry awards.

[6] The conference was attended by:

- Ms J Baulch, APESMA
- Ms A Moussa, Victorian Ambulance Union
- Ms R Liebhaber, Health Services Union
- Mr T Clarke, ACTU
- Mr S Bull, United Workers Union
- Ms M De Vecchis, Australian Salaried Medical Officers Federation
- Ms L Fisher, Private Hospital Industry Employers' Association
- Mr M Robson, Australian Services Union
- Ms R Bhatt and Mr B Ferguson, Ai Group
- Mr M Pegg, National Disability Services
- Ms K Wischer, Australian Nursing and Midwifery Federation
- Ms P Thomson, Australian Federation of Employers and Industry
- Ms S Harris, Pharmacy Guild of Australia
- Mr M Skulley, Workplace Express

[7] A transcript of the conference is available [here](#).

[8] The key issues arising from the conference are as follows:

1. A separate page has been set up in the major cases part of the Commission's website, which can be viewed here: [health sector awards – pandemic leave](#). Interested parties can [subscribe](#) to updates to be notified when documents are published on the major case site, by creating an account or logging in and selecting the Health sector awards – pandemic leave announcement service.
2. The ACTU is coordinating the finalisation of the unions' claims in respect of this matter and s.158 applications to vary will be filed shortly.
3. The ACTU will advise my chambers when the unions are in a position to advance a proposed timetable for the hearing and determination of the claims. The ACTU will discuss the proposed timetable with the various employer interests.

4. As to the coverage and application of each of the awards mentioned in [2] above, the list below breaks down the agreements in the health sector that have a nominal expiry dates from 1 June 2019 into the following industry sub-groups:

Industry	Current agreements
Aged care industry	474
Ambulance and patient transport	11
Health and welfare services	655
Indigenous organisations and services	4
Social, community, home care and disability services	201
Grand Total	1345

The Health and welfare agreements cover nurses, allied health professionals, support and administrative staff. Consistent with the national system jurisdiction, there are agreements for public hospitals in Victoria and the territories but not elsewhere. Most agreements are for private hospitals (including nurses), large private sector employers such as Ramsey and pathology/radiology services. There appear to be some local government services (primarily Victoria and Tasmania) and not for profits such as the Red Cross.

The SCHADS agreements are primarily the larger not for profits, local government and State government (Victoria) in the disability and social services sectors. There do not appear to be many agreements for smaller private sector providers especially in the home care sector who are contracted to provide NDIS support.

Aged care agreements cover nurses, support and administrative staff. While there are a large number of agreements in this sector, these are predominantly for the larger providers such as BUPA and religious organisations; there do not appear to be many agreements for smaller private sector providers.

During the course of the conference a number of parties expressed views about the coverage and application of some of the awards mentioned at [2] above. Those parties are asked to confirm their views, in writing, to chambers.ross.j@fwc.gov.au as soon as practicable.

- [9] This matter will be relisted for a further conference after the ACTU has advised my chambers that the unions are in a position to propose a timetable.

PRESIDENT

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