



STATEMENT

Fair Work Act 2009

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

Aged Care Award 2010

(AM2020/99)

Aged care industry

JUSTICE ROSS, PRESIDENT

MELBOURNE, 18 MARCH 2021

Aged Care Award 2010 – application to vary an award – further application foreshadowed – request to vary directions received.

[1] The Health Services Union (HSU) and a number of individuals have made an [application](#) to vary the minimum wages and classifications in the *Aged Care Award 2010*.

[2] On 18 December 2020, the following [directions](#) were issued:

1. The Applicants and other union parties to file evidence and submissions by 4pm on Thursday 1 April 2021.
2. Employers and Employer Associations to file evidence and submissions by 4pm on Monday 16 August 2021.
3. The matter will be listed for Mention at 9:30am on Monday 23 August 2021. The purpose of the Mention is to discuss witness scheduling and which witnesses will be called for cross-examination.
4. The Applicants and other union parties to file evidence and submissions in reply by 4pm on Monday 18 October 2021.
5. Submissions to be filed in both Word and PDF formats to amod@fwc.gov.au.
6. The parties are granted liberty to apply to vary the above directions.

[3] On 13 January 2021, parties were [notified](#) that 10 to 26 November 2021 have been provisionally reserved for hearings of the evidence in relation to the claim.

[4] On 16 March 2021, the Australian Nursing and Midwifery Federation (ANMF) wrote to the Commission. A copy of the correspondence is available [here](#). The ANMF notes the

following recommendation made in the final report of the Royal Commission into Aged Care Quality and Safety which was tabled in Parliament on 1 March 2021:

Recommendation 84: Increases in award wages

Employee organisations entitled to represent the industrial interests of aged care employees covered by the *Aged Care Award 2010*, the *Social, Community, Home Care and Disability Services Industry Award 2010* and the *Nurses Award 2010* should collaborate with the Australian Government and employers and apply to vary wage rates in those awards to:

- a. reflect the work value of aged care employees in accordance with section 158 of the *Fair Work Act 2009* (Cth), and/or
- b. seek to ensure equal remuneration for men and women workers for work of equal or comparable value in accordance with section 302 of the *Fair Work Act 2009* (Cth).

[5] The ANMF foreshadows that it will be making an application in relation to the *Nurses Award 2010* which will be filed by 17 May 2021 and have sought to vary the directions set out at [2] above. The ANMF expresses the following concerns with the current timetable:

1. The employee organisations, employers and the Australian Government have not had the opportunity to collaborate with each other on the basis of the Royal Commission's recommendation.
2. The prospect of any agreed position involving unions, employers and the principal funder, the Australian Government, that could be presented to the FWC in the manner contemplated by the Royal Commission ought to be considered.
3. The Royal Commission's recommendation was not confined to the *Aged Care Award 2010*. In conjunction with collaboration with the Australian Government and employers as recommended, our client proposes to make an application to vary the wage rates in the *Nurses Award 2010* as recommended by the Royal Commission. Much of the evidence in these matters will be inextricably linked. In view of the FWC's encouragement to progress in a manner that is helpful to the FWC, our client considers that the applications recommended by the Royal Commission should not be conducted in isolation from each other.

[6] The ANMF is directed to file the variation sought to the directions by **4 pm on Wednesday 24 March 2021**. This should be sent to amod@fwc.gov.au. A directions hearing will take place at **1pm** (AEDT) on **Friday 26 March 2021**. Any party who wishes to attend the directions hearing should send an email to Chambers.Ross.j@fwc.gov.au specifying a name and contact telephone number by **4pm on Thursday, 25 March 2021**.

[7] A dedicated subscription service called 'Work Value Case–Aged Care Award' has been established for this matter. Interested parties are encouraged to subscribe to receive notifications

on the [subscription services page](#) on our website. Any questions about the subscription service can be sent to amod@fwc.gov.au.

PRESIDENT

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