

Senate Standing Committees on Education and Employment

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

QUESTION ON NOTICE

Date of hearing: 11 November 2022

Outcome: Workplace Relations

Department of Employment and Workplace Relations Question No. IQ22-000368

Senator Barbara Pocock on 11 November 2022, Proof Hansard page 72

Bargaining Streams | Low-paid workers

Question

Senator BARBARA POCOCK: My question is really about inequality not just feminised work. What scope do you see in, say, the support of bargaining streams for other types of low-paid workers outside the public sector? I'm thinking of security guards and cleaners, for example. Is there scope for lifting that class of workers through supportive bargaining?

Mr Manning: That's a good segue. I might get my bargaining colleagues to answer that part.

Ms Anderson: As you may well be aware, the current low-paid bargaining stream hasn't been as successful as we would have hoped—

Senator BARBARA POCOCK: I think that's putting it kindly.

Ms Anderson: so the government, in its amendments, is removing some of the barriers to that low-paid bargaining stream, now the supported stream. To date there has only been one authorisation granted that didn't actually lead to agreements being bargained. In that particular one case, for example, the commission declined to make the authorisation, in part because the majority of those employees in scope of that authorisation sort of fell outside of this concept of low paid because it hasn't been defined in the act. Some of the barriers that this bill seeks to reduce involves actually having the commission consider the prevailing pay and conditions within the relevant industry or sector, including whether low rates of pay prevail in the industry or sector. We think that change, in particular, should hopefully allow for more cases to be brought through that stream.

Ms Godden: If I may add to that, Senator: the concept of low-paid, while it's defined for a couple of other purposes in the Fair Work Act, is not defined for part 2-4, which is the enterprise bargaining part of the Fair Work Act. One of the consequences was that a very narrow definition of the term low-paid was taken in one of those

previous cases. I believe it was practice nurses that were excluded as not being low paid, which may not really reflect community expectations of what that low-paid bargaining stream was really put in place for. If you look at some of the commentary and some of the media around those who are low paid there's often a focus on essential workers and those essential workers who were critical to us during the pandemic. I think a lot of that focuses around workers in the nursing sector, for example, who are nurses who may be in aged care, disability services or child care, but that didn't necessarily line up with one of those previous authorisation decisions. I can take the details of that decision on notice if you would like further detail of that.

Answer

Australian Nursing Federation v IPN Medical Centres Pty Limited and Others (Practice Nurses Case) [2013] FWC 511 (17 June 2013) Watson VP

Overview

The Australian Nursing Federation (ANF) lodged an application on 11 November 2011 for a low-paid authorisation under section 242 of the *Fair Work Act 2009* (FW Act) in respect of nurses employed in general practice clinics and medical centres, performing nursing work, as described in Schedule B of the Nurses Award 2010 (referred to as 'practice nurses'). The authorisation sought would have covered 'practice nurses' in Victoria and Tasmania and involved 682 employers.

Key findings

Watson VP dismissed the application. The Vice President concluded that the case for the authorisation was not strong and several important factors indicated that multi-employer bargaining may be undesirable or less appropriate than genuine enterprise-based bargaining.

Taking into account the factors in s 243(2), he was not satisfied that it was in the public interest to make the authorisation.

Watson VP found as follows:

- Very few practice nurses the subject of the application were low paid, particularly as many were registered nurses and commonly paid above award rates of pay [98], [102], [103].
- Multi-employer bargaining was less likely to identify improvements in productivity and service delivery than enterprise bargaining.
- Multi-employer bargaining covering several hundred general practice employers was likely to be cumbersome.
- There are considerable doubts that the process will be manageable, even though there is substantial commonality in the general practices involved.

Multi-employer bargaining is supported by a large proportion of employees, but it is strongly opposed by most employers and some employees.

The Vice President found that very few of the practice nurses the subject of the application were 'low-paid'.

In considering the meaning of 'low-paid' in this context, the Vice President referred to in *United Voice v The Australian Workers Union of Employees, Queensland (Aged Care case)* [2011] FWA 2633 and Annual Wage Review Decisions.

'Low-paid' has been variously described by the Fair Work Commission (FWC) as those paid at or around the award rate of pay and at lower award classification levels (excluding any consideration of salary packaging arrangements) (*Aged Care Case* [17]-[19]), those earning less than two-thirds of median adult full-time ordinary-time earnings, or those on rates at or below the C10 classification in the Manufacturing and Associated Industries and Occupations Award 2020 (see [86]-[103]; Annual Wage Review 2009-10 [2010] FWAFB 4000 [237]; Annual Wage Review 2012-13 [2013] FWCFB 4000 [362]).