

WHAT ARE WORK VALUE CASES

Introduction

The ANMF is currently running two Work Value cases at the Fair Work Commission.

This FAQ sets out general information about what is involved in making and running a Work Value Case.

Please see our FAQ, *Current ANMF Work Value Cases*, for specific details about the ANMF's applications.

1. What is a Work Value application?

- A Work Value application is made under section 157 of the *Fair Work Act 2009 (FW Act)*. The application is made at the Fair Work Commission (FWC), which is Australia's industrial and employment tribunal.
- The purpose of the application is to ask that wage rates set in an award be increased, because the current rates in the award do not adequately reflect the value of the work.
- A Work Value application is made in relation to a specific award or awards. It is different to Annual Wage Review (**AWR**) proceedings, which run every year to review minimum award rates across all awards.
- Before the FWC can make a decision to vary award wages in a Work Value case, it must be satisfied that the variation is justified for 'work value reasons.'

2. What are "work value reasons"?

- Sections 157(2A) and (2B) of the FW Act set out what 'work value reasons' are:
 - (2A) **Work value reasons** are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:
 - (a) the nature of the work;
 - (b) the level of skill or responsibility involved in doing the work;
 - (c) the conditions under which the work is done.
 - (2B) The FWC's consideration of **work value reasons** must:
 - (a) be free of assumptions based on gender; and
 - (b) include consideration of whether historically the work has been undervalued because of assumptions based on gender.

- What this means is that the FWC must look carefully at work performed by employees who are covered by the award. This involves hearing evidence from people doing the work, union officials, academic experts and employer representatives. The FWC must assess whether on the basis of the evidence, it should increase award wage rates, because the current rates either never truly reflected the value of the work, or over time, the work has changed so much, that the rates are no longer adequate.

3. Why are Work Value Cases necessary?

- There are circumstances where award wage rates may have fallen behind where they should be properly set, which is why the FW Act makes provision for making Work Value applications.
- For example, one of those circumstances is gender-based assumptions about the value and importance of work performed in female dominated industries, such as nursing and caring work. A Work Value Case is a way of remedying, often decades of, gender-based undervaluation.
- Other circumstances relate to how the nature of work, the level of skill and responsibility and conditions under which work is done have changed over time, or have never been recognised. Work that requires greater levels of training, skill and responsibility than when rates were first set, can be recognised in a Work Value Case.
- In addition, skills that are not visible, such as those used to assess care needs, sequence work and deliver care, may not have been considered at all. A Work Value Case provides for those skills to be acknowledged.

4. What is the role of the Fair Work Commission in Work Value Cases?

- The Fair Work Commission serves as an independent tribunal that sets the program for running cases, which includes filing evidence and submissions and holding hearings. The FWC may also conduct its own research and ask questions of parties to assist it in decision making. The FWC must consider all the material before it makes a decision to vary an award. Once the FWC makes a decision, this is reflected in a determination which sets out how and when an award must be varied.

5. How does a union initiate Work Value Cases?

- A union may initiate a Work Value Case by submitting an application to the FWC. The case must be supported by detailed evidence and submissions that demonstrate that an award variation is justified for work value reasons. This is what we do on behalf of and with members.
- The FWC also has the power to initiate its own work value proceedings.

6. What outcomes can be expected from Work Value Cases?

- If a Work Value Case is successful, it means the award wage rates will change. Current wage rates will be increased by a certain percentage that the FWC considers necessary to reflect the correct work value. However, the percentage increase may vary depending on the employee's classification under the award.

- As wage rates are used as the basis for other award entitlements, such as penalty rates, shift allowances and other allowances, these rates are also likely to be varied in accordance with the work value determination.
- Once an award has been varied, the new rates become the minimum award rates and are enforceable by law.

7. How long do Work Value Cases typically take to resolve?

- There are many things to consider so the duration can vary. Factors include the complexity of the issues and whether the application is made with consent or partial consent from other parties, such as employer representatives. Where evidence and contentions are disputed, resolution of cases takes longer because all parties must have the opportunity to put forward their case. Factors such as availability of witnesses and the workload of the Fair Work Commission also play a part. Most cases take several years to reach a conclusion.

8. How are the outcomes of Work Value Cases implemented?

- Once the FWC issues a final or interim decision on a Work Value Case, the outcome is set out in a determination to vary an award. This will set out the operative date of the variation. Once the award is varied, it must be implemented. Employers are required to pay employees no less than the relevant award wage rate. Unions, employer representatives, government agencies, the FWC and the Fair Work Ombudsman's office all have a role to play in implementing new rates.

9. Can individuals or organisations participate in Work Value Cases?

- Where a union commences an application, it can do so on behalf of the union and or individuals who are members of the union and who are covered by the relevant award. Members may also be witnesses in work value cases.
- In addition to the individual or union that is the applicant in a work value case, organisations that represent the interests of other parties who will be affected by the outcome of the case may also be allowed to appear in the case. For example, employer representatives, government representatives and other unions may all participate to ensure all interests are considered. In some cases, an individual may also be granted leave to appear.

10. Where can I find more information about ongoing Work Value Cases?

- Information about the ANMF's ongoing Work Value Cases can be found at:
 - [ANMF website](#)
 - [FAQ: Current ANMF Work Value Cases](#)
 - [Work value case – Aged care industry | Fair Work Commission \(fwc.gov.au\)](#)
 - [Work value case – Nurses and midwives | Fair Work Commission \(fwc.gov.au\)](#)