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Public Sector EBA Update No 9 - 16 November 2011

Victorian Public Sector Nurses and Midwives

Wednesday 16 November 2011, 3.20pm

Warren Friend SC, acting on behalf of the Australian Nursing Federation (Victorian Branch), has made the following conditional proposal to the Fair Work Australia Full Bench hearing the industrial action termination proceedings earlier today.

In order to resolve the matters before Fair Work Australia, the ANF will participate in the continuation of the process commenced under Section 240 of the Fair Work Act and being dealt with by Commissioner Gooley.

The ANF will consent to arbitration in that proceeding under Section 240 of the Act provided that the arbitration is to proceed as quickly as possible and will determine all of the matters still in dispute in that proceeding as identified by Commissioner Gooley, and that no jurisdictional objection will be raised regarding the key issues set out in paragraph 32 of Mr Djoneff's statement: wages, workload management, rosters and skill mix.

If the VHIA agrees to consent to arbitration on those terms, the ANF will today lift all of the bans imposed by the Notice given on 8 November 2011.

At the time of writing the Baillieu Government and the Victorian Hospitals' Industrial Association, nor its legal representatives, had responded to ANF's proposal. In the event that the Baillieu Government accepts the ANF proposal in full, ANF will outline to members the reasons we offered the proposal, including the lifting of the bans involving bed closures and theatre cancellations immediately.

The ANF's proposal is conditional and is based on the fact that under the Fair Work laws there are two very different types of arbitration which can result in two very different outcomes.

Consent arbitration: This was proposed this afternoon by the ANF and is identical to how ANF won the world's first nurse patient ratios in 2000. Importantly, no jurisdictional objections to any of our claims could be made by the Government. The consent arbitration would be a formal extension of the current conciliation talks being undertaken since last Wednesday at FWA. This would enable Commissioner Anne Gooley, who now has a thorough understanding of the issues in these negotiations, to make informed decisions on all matters including wages, ratios, staffing levels, rosters and skill mix when the parties cannot agree. As part of ANF's conditional offer this process must happen quickly.

Arbitration: In an arbitrated outcome Fair Work Australia is prevented from compelling a State Government to employ a mandated number of nurses and midwives in its health system, or determine the level of qualification or the hours and roster that they should work. This means Fair Work Australia could not decide to include nurse-patient ratios in its determination, it cannot decide the level of qualification of the nurses and midwives, and it cannot decide the nursing and midwifery numbers in the health system. As FWA also cannot determine the hours and rosters of nurses and midwives, it would be left to management to determine hours of work. The Baillieu Government and VHIA's proposals have included unlimited short shifts and split shifts.

The Fair Work Australia Full Bench hearing into the Victorian Hospitals' Industrial Association application to terminate the ANF's industrial action continues this afternoon. The Full Bench is expected to ask the VHIA its views on the ANF offer this afternoon.

It is important to understand that proceedings are happening at a rapid pace. ANF will provide members with more information as the proceedings unfold.

Meanwhile the conciliation talks between ANF, the Baillieu Government and the Victorian Hospitals' Industrial Association continue with the assistance of Commissioner Anne Gooley.

