



FairWork  
Commission

5 November 2021

Mr Jimmy Parel

By email: [foi+request-7936-92060dd0@righttoknow.org.au](mailto:foi+request-7936-92060dd0@righttoknow.org.au)

Dear Mr Parel

**Freedom of Information**  
**FOI Reference number: 21/22 - 14**

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I refer to your emails to the Fair Work Commission (**Commission**) on 6 and 14 October 2021, as well as a telephone conversation between yourself and my colleague Jessica Gelsumini on 27 October 2021.

On the basis of these emails and your conversation with Ms Gelsumini, I understand you have requested the following documents under the *Freedom of Information Act 1982 (FOI Act)*:

*Documents containing the salaries of Australian Nursing and Midwifery Federation (ANMF) Victorian Branch employees for the last 10 years.*

The 30-day statutory time period for processing your request commenced on the day after your request was received.<sup>1</sup> The due date for a decision on your request is **5 November 2021**.

I am authorised to make a decision in relation to your request.<sup>2</sup>

**Documents located**

Commission staff searched the Commission's [agreements database](#) on our website using the following search criteria: "ANMF" and "Vic Branch", "ANMF" and "Victorian Branch", "ANMF (Victoria Branch)", "ANF" and "Vic Branch", "ANF" and "Victorian Branch" and "ANF (Victoria Branch)".<sup>3</sup>

Staff located two published Commission decisions (both **enclosed**) which approve the following enterprise agreements:

1. [ANMF \(Victorian Branch\) \(Staff and Council\) Enterprise Agreement 2020-2024 \(15 September 2021\) \(2020 Agreement\)](#)
2. [ANMF \(Victorian Branch\) \(Staff and Council\) Enterprise Agreement 2016-2020 \(11 May 2017\) \(2016 Agreement\)](#).

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<sup>1</sup> *Freedom of Information Act 1982* (Cth) s.15(5).

<sup>2</sup> *Freedom of Information Act 1982* (Cth) s.23.

<sup>3</sup> I understand that in or around 2013, the Australian Nursing Federation was re-named the Australian Nursing and Midwifery Federation.

I note that clause 3 of both the 2016 and 2020 Agreements state that the Agreements cover 'all Employees as defined in subclause 8.6'. Subclause 8.6 defines 'Employee' as 'all non-elected Employees' of the ANMF Victorian branch. This means that the 2016 and 2020 Agreements may not cover all employees of the ANMF Victorian branch.

Searches were also conducted of the Commission's case management system for any documents (in addition to the Agreements listed above) that fit within the scope of your request. The following documents were located:

In respect of the 2016 Agreement

1. Form F17 - Employer's statutory declaration in support of an application for approval of an enterprise agreement (other than a greenfields agreement) dated 20 April 2017.
2. Item 3.3 of Form F17 – Translating classifications
3. Signed ANMF (Victorian Branch) (Employees and Council) Agreement 2016-2020
4. Single Enterprise Agreement Legislative Checklist prepared on 24 April 2017 (**2017 Single Enterprise Agreement Checklist**).
5. Revised Form F17 Employer's statutory declaration in support of an application for approval of an enterprise agreement (other than a greenfields agreement) dated 5 May 2017.
6. Signed ANMF (Victorian Branch) (Employees and Council) Agreement 2016-2020 (with noted inclusion of model flexibility term)
7. Commission decision, including approved enterprise agreement, that was sent to the parties in the matter on 11 May 2017.

In respect of the 2020 Agreement

1. Form F17 Employer's declaration in support of an application for approval of an enterprise agreement (other than a greenfields agreement) dated 2 September 2021.
2. Signed ANMF (Victorian Branch) (Employees and Council) Agreement 2020-2024.
3. Single Enterprise Agreement Legislative Checklist prepared in relation to the 2020 Agreement (**2021 Single Enterprise Agreement Checklist**).
4. Final signed ANMF (Victorian Branch) (Employees and Council) Agreement 2020-2024.

5. Commission decision, including approved enterprise agreement, that was sent to the parties in the matter on 15 September 2021.

Commission staff also conducted searches of the Commission's case management system to determine whether the Australian Nursing Federation made any applications for approval of an enterprise agreement that related to employees in Victoria prior to the 2016 Agreement, but this search returned no results.

The Commission's Agreements Team and Registered Organisations Division also confirmed that they are not in possession of any documents that fall within the scope of your request.

## **Decision**

I have decided to:

- grant access to edited copies of some of the documents listed above, and
- grant access to the remaining documents listed above.

The documents are **enclosed**.

The reasons for my decision are below.

## **Information considered**

In reaching my decision I have taken the following material into account:

- the terms of your request;
- the FOI Act;
- relevant case law; and
- the Australian Information Commissioner's FOI Guidelines issued under s.93 of the FOI Act.

## **Reasons for decision**

Section 11A of the FOI Act relevantly provides:

### *Scope*

- (1) This section applies if:
  - (a) a request is made by a person, in accordance with subsection 15(2), to an agency...for access to:
    - (i) a document of the agency...

...

### *Mandatory access – general rule*

- (3) The agency...must give the person access to the document in accordance with this Act, subject to this section.

### *Exemptions and conditional exemptions*

(4) The agency...is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

...

(5) The agency...must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

...

### 2017 Single Enterprise Agreement Checklist

Section 47C of the FOI Act relevantly states:

(1) A document is conditionally exempt if its disclosure...would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:

(a) an agency...

...

(2) Deliberative matter does not include either of the following:

(a) operational information (see section 8A);

(b) purely factual material.

...

(3) This section does not apply to any of the following:

(a) reports...of scientific or technical experts...

(b) reports of a body or organisation, prescribed by the regulations...

(c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

...

The 2017 Single Enterprise Agreement Checklist contains the opinions of the staff member who prepared the document, regarding the ANMF's application for approval of an enterprise agreement. It is not a record of a final decision given by the Commission 'in the exercise of a power or of an adjudicative function' within the meaning of s.47C(3)(c).

The document was prepared for consideration by the Commission Member who was handling the ANMF's application. It therefore contains 'deliberative matter' within the meaning of s 47C(1).<sup>4</sup>

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<sup>4</sup> See also *Robert Leonard and Commonwealth Ombudsman (No 1)* [2014] AICmr 134, paragraphs [13]-[14] and *'VT' and Commonwealth Ombudsman* [2020] AICmr 51, paragraphs [68], [70] and [72].

Under the *Fair Work Act 2009* (Cth), the functions of the Commission include handling applications for approval of enterprise agreements.<sup>5</sup> The 2017 Single Enterprise Agreement Checklist was therefore prepared 'for the purposes of, the deliberative processes involved in the functions' of the Commission, within the meaning of s 47C(1).<sup>6</sup>

I consider that the 2017 Single Enterprise Agreement Checklist is conditionally exempt under s.47C.

### 2021 Single Enterprise Agreement Checklist

For the reasons explained above in relation to the 2017 Single Enterprise Agreement Checklist, I consider that the 2021 Single Enterprise Agreement Checklist is also conditionally exempt under s.47C.

### Public Interest Test

As I have concluded that the 2017 and 2021 Single Enterprise Agreement Checklists are conditionally exempt, I am required to apply the public interest test under s.11A(5) of the FOI Act to determine whether to give you access to those documents.

Section 11B(3) of the FOI Act states:

Factors favouring access to the document in the public interest include whether access to the document would do any of the following:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
- (b) inform debate on a matter of public importance;
- (c) promote effective oversight of public expenditure;
- (d) allow a person to access his or her own personal information.

I consider the factors weighing in favour of disclosure are that disclosure could promote the objects of the FOI Act.

I consider the factors weighing against disclosure are that disclosure could expose for public comment documents that were prepared for internal consultation and consideration.<sup>7</sup>

Taking the above into account, I consider that the public interest is weighed more heavily in favour of disclosure of the 2017 and 2021 Single Enterprise Agreement Checklists.

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<sup>5</sup> *Fair Work Act 2009* (Cth), Part 2-4.

<sup>6</sup> See *Robert Leonard and Commonwealth Ombudsman (No 1)* [2014] AICmr 134, paragraphs [19]-[20] and '*VT and Commonwealth Ombudsman* [2020] AICmr 51, paragraph [71].

<sup>7</sup> *Timmins and Attorney-General's Department* [2015] AICmr 32 [27].

## Remaining documents

I do not consider that any exemptions under the FOI Act apply to the remaining documents and have therefore decided to grant you access to those documents (or edited copies of those documents, as explained below).

## Redacting documents

Section 22 of the FOI Act relevantly states:

- (1) This section applies if:
  - (a) an agency...decides:
    - (i) to refuse to give access to an exempt document; or
    - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
  - (b) it is possible for the agency...to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:
    - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
    - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
  - (c) it is reasonably practicable for the agency...to prepare the edited copy, having regard to:
    - (i) the nature and extent of the modification; and
    - (ii) the resources available to modify the document; and
  - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.
- ...  
(2) The agency...must:
  - (a) prepare the edited copy as mentioned in paragraph (1)(b); and
  - (b) give the applicant access to the edited copy.
- ...  
(3) The agency...must give the applicant notice in writing:
  - (a) that the edited copy has been prepared; and
  - (b) of the grounds for the deletions; and
  - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- ...

The following documents contain the signatures, residential addresses and mobile numbers of some individuals:

- Form F17 - Employer's statutory declaration in support of an application for approval of an enterprise agreement (other than a greenfields agreement) dated 20 April 2017.
- Revised Form F17 Employer's statutory declaration in support of an application for approval of an enterprise agreement (other than a greenfields agreement) dated 5 May 2017.

I consider that the signatures, residential addresses and mobile numbers would reasonably be regarded as irrelevant to your request and I have redacted these details from the above documents in accordance with s.22.

## Registered Organisations Commission

The [Registered Organisations Commission \(ROC\)](#) may also have documents that fall within the scope of your request. The ROC is the independent regulator of Unions and Employer Associations in Australia. The ROC monitors registered organisations and their compliance with legal requirements. It also publishes records of information, which can be accessed here: [Find a registered organisation - Registered Organisations Commission \(roc.gov.au\)](#).

The [ANMF's profile](#) on the ROC's website includes officer and related party disclosure statements and financial reports which may include some information relevant to your request. For example, the [2021 ANMF - Victorian Branch's Officer and related party disclosure statement](#) includes information related to the salaries of the Branch Assistant Secretaries.

The Fair Work Commission and the ROC are separate organisations. If you have any questions about material published on the ROC's website, you will need to contact the ROC directly to discuss.

If you wish, you can also make an FOI request to the ROC. Further information about how to make an FOI request to the ROC is available here: [Freedom of information | Registered Organisations Commission \(roc.gov.au\)](#)

## Review rights

### Internal review

If you disagree with my decision, you have the right to apply for an internal review by the Commission. If you want to apply to the Commission for internal review, you should do so within 30 days after you are notified of my decision. The internal review will be conducted by an officer other than myself, and the Commission must make a review decision within 30 days.

Applications for internal review should be sent to:

Murray Furlong  
General Manager  
Fair Work Commission  
GPO BOX 1994  
Melbourne VIC 3001  
Email: [generalmanager@fwc.gov.au](mailto:generalmanager@fwc.gov.au)

### Review by the Information Commissioner

Under s.54L of the FOI Act, you can apply to the Information Commissioner for review of my decision. If you want to apply to the Information Commissioner for review, you must do so in writing within 60 days after you are notified of my decision.

More information is available on the Information Commissioner website at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

How to make a complaint

You can make a complaint to the Information Commissioner about action taken by the Commission in relation to your FOI request.

Enquires to the Information Commissioner can be directed to:  
Phone: 1300 363 992 (local call charge)

For more information, visit: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint>.

If you have any queries about this matter, please contact me on (03) 8656 4544 or via email at [foi@fwc.gov.au](mailto:foi@fwc.gov.au).

Yours sincerely

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