

IN THE FAIR WORK COMMISSION

Matter No: AM2014/286

Title: s156 – 4 yearly review of modern awards –
Supported Employment Services Award –
Exposure Draft

SUBMISSIONS

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Introduction

1. The Health Services Union [HSU] makes these submissions in accordance with the directions issued by the Full Bench on 10 May 2016¹, in relation to the exposure draft of the Supported Employment Services Award [SES].
2. In making these submissions the HSU notes the comments included at the commencement of the commencement of the aged care exposure draft *'This exposure draft does not seek to amend any entitlements under the Supported Employment Services Award 2010 but has been prepared to address some of the structural issues identified in modern award'*.
3. The exposure draft has incorporated variations to the order of content proposed as a consequence of the plain language pilot project for the Pharmacy Industry Award. The HSU reiterates its acceptance of the new reordering of the content of modern awards.
4. These submissions deal with the exposure draft as follows:
 - a. Proposed relocation of clauses

¹ [2016FWC2924](#)



- b. Changes to language or meaning
- c. Responses to questions from the AMOD drafting team
- d. Any additional matters not dealt with elsewhere

Relocation of clauses

Clause 12 Classifications

- 5. There appears to be no rationale for clause 12 existing as a separate clause in the SES award. In other awards clause 12.1 is part of further provisions, including specifically those around written notification to employees about their classification. In this case, as a stand-alone provision, the HSU submits it might be better located at clause 15 only.

Changes to language or meaning

Ordinary hourly rate

- 6. Throughout the various phrases of the 4 yearly review process and in multiple exposure drafts for various awards, concerns relating to the terms *minimum* or *ordinary* rate of pay as varied have been raised.
- 7. The decision of the Commission in AM2014/01² concerning general and technical drafting issues made a determination at PN[44] concerning the use of the terms minimum hourly rate and ordinary hourly rate. The decision differentiates between the use of the term minimum and ordinary based on the issue of all purposes allowances and proposes a definition for ordinary hourly rate.
- 8. In the SES award contains a single classification structure which contains grades 1-7. The HSU submits the definition of *ordinary hourly rate* as proposed by the bench is not altered by the use of the language relevant to the award in which it's contained and that the clause should therefore reference an employee's grade as opposed to the '*employee's classification*'.

'ordinary hourly rate means the hourly rate for the employee's grade specified in clause 15.2, plus any allowances specified as being included in the employee's ordinary hourly rate or payable for all purposes'.

Allowances and Wages tables

- 9. The HSU submits that the tables throughout the exposure draft would benefit from each figure being identified as a percentage or dollar figure with the use of the relevant signs for each individual figure, in addition to the use of the sign at the top of the column.
- 10. Using as an example the figures in the table at C.1; the leading hand allowance rate for 3-10 employees is 4.52 percent and the quantum applicable is 34.57 per week. There isn't any doubt

² [2014FWCFB9412](#)



which each represents when you carefully read the table, but the visual effect of 4.52% and \$34.57 makes the figures vastly more comprehensible at a glance.

11. The HSU submits this is relevant for all the wage and allowances tables, even where the only figures within the tables are dollar amounts.

Definitions

12. The phrase '*casual ordinary hourly rate*' is defined in clause 2 but is not used at any point in the award. The HSU submits that for the sake of clarity the definition of '*casual ordinary hourly rate*' should be deleted.

National Employment Standards and this award

13. At clause 3.3 of the exposure draft the final words '*whichever makes them more accessible*' currently contained in clause 5 have been removed. The HSU can see no logic to the removal and submits the phrase should be retained.

Clause 24.2 Public holidays

14. The HSU has no objection to the new clause at 24.2, however the clause should accurately cross reference the applicable part of the penalty rates clause, and therefore should read:

'..paid in accordance with clause 20.4 –penalty rates.'

Questions from the drafting team

Employees with disabilities

15. The parties are asked to consider whether the amount of \$6.00 per week is still appropriate. The HSU notes its relevance to several matters being discussed by interested parties to this award and believes the matter should be considered as part of the award phase for the SES award. There should be no changes at this time.

Matters not covered elsewhere

Clause 4 Coverage

16. The HSU doesn't dispute that the drafting reflects the current award, however it makes note that two features of the majority of coverages clauses are not completely followed in this award and suggest that the clause might be improved with the following changes.
17. Clause 4.1 could be split into 2 at the start of the second paragraph.
18. Clause 4.3 should sit under clause 4.5 as another sub-clause and one of the areas the award does not cover.



Clause 15.2 Minimum wages

19. Clause 15.2, accurately reflecting the current award, cross references the application of the minimum rate of pay according to the grades in the table, with clause 15.3 payment of wages, clause 15.5 higher duties and clause 16 wages assessment. Of these clauses the HSU submits that only clause 16 is actually relevant to the minimum applicable rates of pay.

Clause 16.9 Transitional arrangements

20. The HSU submits this clause can be removed from the award. Although the clause is not part of the standard transitional provisions contained in modern awards, it has nonetheless already clearly past it's expiry date.



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