

IN THE FAIR WORK COMMISSION

AM2014/250 and others

S 156 - Four Yearly Review of Modern Awards - Award Stage - Group 4 Awards

SUBMISSION OF THE HEALTH SERVICES UNION 19 APRIL 2018

1. The Health Services Union (HSU) make these submissions in accordance with the Decision of the Full Bench of 21 March 2018,¹ in relation to the technical, drafting and some substantive matters in Group 4 Awards.
2. The HSU has an interest in the following Group 4 awards:
 - a. *Aboriginal Community Controlled Health Services Award* ('ACCHS Award')
 - b. *Aged Care Award* ('Aged Care Award')
 - c. *Social, Community, Home Care and Disability Services Industry Award* ('SCHCDS Award')
 - d. *Supported Employment Services Award* ('SES Award')

Aboriginal Community Controlled Health Services Award

3. The HSU has read the submissions of United Voice in relation to the ACCHS Award and casual loading, and supports their proposal to amend clause 11.2 of the exposure draft, to replace the term '*ordinary hours*' with '*hours*'. We agree that the change in terminology from the current wording of the award would constitute a substantive change to the entitlement to casual loading under the Award.
4. The HSU supports the outstanding substantive claims pursued by the National Aboriginal and Torres Strait Islander Health Workers' Association (NATSIHWA).
5. We also intend to pursue our outstanding claims, which include casual loading (S5), allowances (S9), on call and recall (S11), rostering (S14) and tea breaks (S16).
6. Our view is that these claims will require an oral hearing, and we intend to file further submissions and evidence in support of these claims.

Aged Care Award

¹ [2018] FWCFB 1548

7. The HSU has a number of outstanding substantive claims in relation to this award, which we intend to pursue. We note per paragraph [41] of the decision that the substantive matters in the Aged Care Award will be referred to a separate Full Bench to consider and determine.

Social, Community, Home Care and Disability Services Industry Award

Item 4 – Minimum hourly rate

8. The Full Bench, in paragraph [666] of the decision states that it has declined to vary the SCHCDS Award to include a definition of *minimum hourly rate*.
9. In paragraph [667], the Full Bench proposes that where the terms *ordinary rate* and *appropriate rate* appear in the SCHCDS Award, these should be changed to *minimum hourly rate*.
10. The HSU has concerns with this approach. The phrase *minimum hourly rate* has a specific meaning in the Award. That phrase appears at the heading of the rightmost columns the minimum wages tables at clauses 15.1, 15.2 and 15.3. The rates listed in these columns are the minimum hourly wages according to each level and pay point in the Award.
11. The phrase '*% of employee's minimum hourly rate*' appears throughout the Award, at clauses 18.1(a)-(b), and 19.2(c), and in the wage tables in Schedule F. This refers to the percentage of the *minimum hourly rate* amounts in those tables at clauses 15.1, 15.2 and 15.3.
12. Accordingly, it is the HSU's view that the term *minimum hourly rate* should only be used where it refers to the amounts in the minimum wage tables at clauses 15.1, 15.2 and 15.3, and not otherwise. A different term must be used when referring to broader hourly rates which may include loadings and/or penalties. We therefore oppose the Full Bench's provisional view that the following terms be varied:

a. Clause 11.3

Clause 11.3 (ED) provides: '*For each engagement, a casual employee must be paid for the following number of hours at the appropriate rate*' (emphasis added).

Appropriate rate in this instance refers to the minimum hourly rate, plus the casual loading referred to in clause 11.2, plus any other penalty rates as relevant. (An employee to whom this clause applies may work on a public holiday or weekend, for example). The term *appropriate rate* adequately expresses that this rate may include loadings and penalties. The term *minimum hourly rate* is not a suitable substitution.

The HSU therefore objects to the variation of the term *appropriate rate*, as such a change would alter the meaning of clause 11.3.

b. Clause 14.1(c)

Clause 14.1(c) provides: '*Where an employee is required by the employer to have a meal with a client or clients as part of the normal work routine or client program, they will be paid for the duration of the meal period at the ordinary rate of pay, and clause 14.1(a) does not apply. The paid meal break is to be counted as time worked*' (emphasis added).

Ordinary rate of pay in this instance is broader than the term *minimum hourly rate*. If an employee affected by this clause worked weekends or public holidays, for example, they would be entitled to penalty rates as part of their ordinary rate of pay.

The HSU therefore objects to the variation of the term *ordinary rate of pay* in clause 14.1(c), as such a change would alter the meaning of the clause.

c. Clause 18.1(b)(iii)

Clause 18.1(b)(iii) (ED) provides: '*Time worked up to the hours prescribed in clause 18.1(b)(ii) will, subject to clause 18.1(b)(i), not be regarded as overtime and will be paid for at the ordinary rate of pay (including the casual loading in the case of casual employees)*' (emphasis added).

The term *minimum hourly rate* is not a logical substitution for *ordinary rate of pay*. The sub-clause provides that the *ordinary rate of pay* includes the casual loading, and is therefore clearly not equivalent to the minimum hourly rate. Moreover, an employee to whom this clause applied may also be entitled to weekend or public holiday penalty rates.

The HSU therefore objects to the variation of the term *ordinary rate of pay* in clause 18.1(b)(iii), as such a change would alter the meaning of the clause.

d. Clause 18.4

Clause 18.4 (ED) provides: '*An employee recalled to work overtime after leaving the employer's or client's premises will be paid for a minimum of two hours' work at the appropriate rate for each time recalled*' (emphasis added).

In this instance, *appropriate rate* refers to the overtime rate, as is apparent from the title of the clause, '*Recall to work overtime*'. If an employee to whom this clause applies is recalled to work on a weekend or public holiday, then penalty rates would also be applicable. *Minimum hourly rate* is therefore not a logical substitution for *appropriate rate*.

The HSU therefore objects to the variation of the term *appropriate rate*, as such a change would alter the meaning of clause 18.4.

e. Clause 20.3

Clause 20.3(a) (ED) provides: *'In addition to their ordinary pay, an employee, other than a shiftworker, will be paid an annual leave loading of 17.5% of their ordinary rate of pay'*.

In this instance, it is the HSU's view that *ordinary rate of pay* has an equivalent meaning to *minimum hourly rate*. We therefore do not object to the variation of *ordinary rate* in clause 20.3.

Item 32 – Minimum Wages

13. The HSU does not agree that the matter of which employment streams the Transitional Pay Equity Order applies to is difficult to determine, and does not agree that it is a substantive matter that needs to be determined by the substantive matters Full Bench, as stated in paragraph [679] of the decision. In our view, it is clear that the Transitional Pay Equity Order is relevant only to Schedules B and C of the award.

Item 49 – Quantum of Leave

14. The HSU does not agree that this matter is a substantive issue. Our view is that *'Definition of shiftworker for the NES'* is the more relevant heading for clause 20.2, as this is the only matter dealt with in the clause. We do not intend to pursue a substantive claim in relation to this issue. However, we suggest that it might be relevant to be referred to the plain language review.

Substantive issues

15. The HSU has a number of outstanding substantive claims in relation to the SCHCDS Award which we intend to pursue. We note per paragraph [684] of the decision that the outstanding substantive matters in the SCHCDS Award will be referred to a separate Full Bench to consider and determine.

Supported Employment Services Award

16. The HSU has read the Statement issued on 16 April 2019² in relation to the SES Award, and will participate in the next report back conference.

Health Services Union

² [2018] FWCFB 2196