
Fair Work Commission: 4 yearly Review of modern awards

SUBMISSION

**4 YEARLY REVIEW OF MODERN AWARDS: (AM2018/26)
SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES
INDUSTRY AWARD 2010 - SUBSTANTIVE ISSUES**

FILED ON BEHALF OF:

- **AUSTRALIAN BUSINESS INDUSTRIAL**
- **THE NSW BUSINESS CHAMBER LTD**
- **AGED & COMMUNITY SERVICES AUSTRALIA**
- **LEADING AGE SERVICES AUSTRALIA**

10 JULY 2019

1. INTRODUCTION

1.1 This submission is made on behalf of:

- (a) Australian Business Industrial (**ABI**);
- (b) the New South Wales Business Chamber Ltd (**NSWBC**);
- (c) Aged & Community Services Australia (**ACSA**); and
- (d) Leading Age Services Australia Limited (**LASA**),

collectively, '**our clients**'.

1.2 During the course of the tranche 1 hearing in this matter, the Commission determined to undertake a survey of members of various employer parties participating in the proceeding (**Survey**), including members of each of our clients.

1.3 This submission is filed in accordance with the Directions of the Fair Work Commission (**Commission**) issued on 11 June 2019.

1.4 The results of the Survey were summarised in a document published by the Commission on 26 June 2019 titled '*Survey analysis of the Social, Community Home Care and Disability Services Industry Award 2010*' (**Survey Results**).

1.5 The Survey Results are particularly relevant to two categories of variation that were sought by the Union parties in this matter:

- (a) firstly, a claim by the HSU to delete the 24 hour care clause; and
- (b) secondly, claims to increase the rates of pay payable to casual employees when working overtime and when working on weekends and public holidays.

1.6 The Survey Results are relevant to both of those categories of claims, and we address these below.

2. REPLY TO SUBMISSIONS OF OTHER PARTIES

2.1 The Union parties assert that there are issues with the credibility of the survey. We disagree with those assertions.

2.2 The survey size of 854 gives the survey statistical validity in terms of sample size.

2.3 The ASU makes an assertion that the survey is not representative of the industries covered by the Award because it is a survey of employers who are members of an industrial association that is a party to these proceedings. It is not clear how the ASU came to this conclusion, given that they do not know the membership of the employer parties and whether that is representative of the award coverage or not.

2.4 United Voice asserts that census data is generally the most accurate means to conduct empirical research.¹ We generally agree with this assertion; however census data does not provide the information that was sought by the Survey. Census data cannot tell us how often 24 hour care clauses are used by providers in the industry, nor can it tell us how often casual employees are rostered to work overtime, on the weekend, or on Public Holidays.

2.5 In relation to the matters before the Commission and in particularly in relation to the use of the 24 hour care clause and the rostering of casual employees, the Survey Results provide the best evidence before the Commission, and so it should be given weight.

3. ISSUES RELEVANT TO THE 24 HOUR CARE CLAUSE

3.1 The HSU proposed that the 24 hour care clause be deleted. The basis for their claim was an assertion that the 24 hour care clause is unclear and rarely used.²

3.2 The HSU also advanced witness evidence about people's direct experience within parts of the industry and particular geographical areas as to the use of the 24 hour care clause.

3.3 The evidence given by those witnesses is limited to their own direct experiences and cannot be taken as evidence of what takes place in every Award covered business.

3.4 The Survey Results show that around one in ten enterprises (11.2%) that responded to the Survey used 24 hours shifts in the one year period.³ This supports our clients' position as advanced during the hearing that 24 hour care shifts are indeed used in the industry.

3.5 Importantly, of those providers that do use the 24 hour care clause, the Survey Results show that on average the number of times they rostered a home care employee to work a 24 hour shift was 304 per year. This shows that while not every employer uses the clause, those who do use it use it very regularly.

3.6 Ultimately, the Survey results represent the best evidence before the Commission about this issue of 24 hour care and the Survey Results should be accepted by the Commission.

4. ISSUES RELEVANT TO CASUAL EMPLOYMENT

4.1 We refer to the submissions of the Australian Industry Group of 3 July 2019⁴ in respect of casual employment, and support those submissions.

¹ United Voice Submission of 3 July 2019, at paragraph 6.

² HSU Submissions of 15 February 2019, at paragraph 64.

³ Page 11.

⁴ Ai Group Submissions of 3 July 2019, at paragraphs 8-18.

- 4.2 The Survey Results demonstrate that the proposed variations advanced by the HSU and United Voice in respect of casual employees would materially increase the rates of pay payable to casual employees when working overtime, on weekends and on Public Holidays.
- 4.3 Those Survey Results support the submissions that were advanced by a number of employer parties during the hearing, including by our clients. Whilst there was limited evidence as to the impact of the proposed variations to employers at the time of the hearing, the Survey Results now provide that evidence.
- 4.4 The Survey Results should be given weight in respect of the considerable cost that would be imposed on employers if there was an increase in the rate of pay payable to casual employees when working overtime, on weekends and on Public Holidays.

AUSTRALIAN BUSINESS LAWYERS & ADVISORS



Kyle Scott
Associate Director
Australian Business Lawyers & Advisors Pty Limited
(02) 4989 1010
Kyle.Scott@ablawyers.com.au



Madeleine Tiedeman
Associate
Australian Business Lawyers & Advisors Pty Limited
(02) 4989 1004
Madeleine.Tiedeman@ablawyers.com.au

10 July 2019