

IN THE FAIR WORK COMMISSION

Matter No:

AM2014/197 and AM2014/196

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4 Year Modern Award Review

Common Issues - Casual employment and Part-time employment

St Ives Group Pty Ltd – Final Submissions

Reliance on previous submissions

1. St Ives Group Pty Ltd (**St Ives**) relies on its previous submissions filed with the Fair Work Commission (Commission) on 13 October 2015 and 2 March 2016 respectively.

Background

2. On 17 July 2015, St Ives Group Pty Ltd (**St Ives**) submitted an application to vary the part-time provisions of the:
 - (a) *Social, Community, Home Care and Disability Services Industry Award 2010 (SCHADS Award)*;
 - (b) *Aged Care Award 2010*; and
 - (c) *Nurses Award 2010*.
3. On 13 July 2016, St Ives' wrote to the Commission discontinuing its proposal to vary the *Nurses Award 2010*, and confirming it intended to proceed with its application to vary the part-time provisions of the *SCHADS Award* and *Aged Care Award 2010 (Modern Awards) (Application)*.
4. As set out in its submissions dated 12 October 2015, St Ives' Application is a result of its need to seek greater flexibility in managing its workforce, due to the change to Consumer Directed Care which gives clients greater discretion over the services they engage and when they engage them.
5. The vast majority of St Ives staff are engaged on a part-time basis. Due to the nature of the changes in funding and care models in the aged and support services industry, St Ives is unable to guarantee fixed working days and times for its part-time home care staff, particularly prior to employment. Rather, flexibility of part-time employment to adapt to individual client requirements is vital for the long term viability of the home care services St Ives provides.

Issues Paper

In response to the Commission's Issues Paper on casual employment and part-time employment dated 11 April 2016, St Ives considers the following issues to be of particular relevance to its Application.

Conceptual differences between casual and part-time employment

6. Part-time employment is a secure form of employment with a known guaranteed minimum hours/payment for work performed. It contains the security of ongoing employment with attendant entitlements such as leave and termination benefits.
7. Casual employment lacks a certainty of minimum hours, with the ability for the engagement to fluctuate from shift to shift and week to week, with no guarantee of work. Casual work is intended to address ad-hoc and temporary needs and demands for services.

Flexible part-time employment

8. St Ives' Application proposes to provide all part-time staff with a minimum number of agreed hours of work each week and to schedule shifts in accordance with staff availability, including offering

additional hours. This is effectively a new category of part-time employment which can be termed 'flexible part-time employment'.

9. 'Flexible part-time employment' continues to provide the security of a guaranteed minimum number of hours per week, with the flexibility of a roster system where employees are rostered in accordance with their availability and can be offered additional hours.
10. St Ives wishes to continue to offer its aged, disability and home care support workers stable and ongoing employment while meeting the changing demands of client lead service delivery. In its view, this can be best achieved by St Ives engaging its part-time employees utilising flexible arrangements which balance service delivery requirements and the availability and necessary safeguards for employees.
11. To this end, St Ives supports the amended draft determination submitted by the Australian Business Industrial and New South Wales Business Chamber Ltd (**ABI**) in relation to the SCHADS Award clause 10.3. St Ives also supports the final submissions of ABI dated 30 September 2016, with the exception of paragraphs 5.4(c) and 5.5 of the submissions in relation to the timeframe for posting rosters. This is addressed by St Ives in paragraph 20 below.

Engagement of casuals

12. As identified in its previous submissions, factors which lead St Ives to engage casuals include an inability to guarantee permanent hours of work, the need for flexibility and adaptability in the workforce to meet client need and the need to have a pool of flexible coverage.
13. The current provisions of the Modern Awards require employers to reach agreement with part-time employees on inflexible rostering and work arrangements prior to employment commencing. If these provisions remain in their current form, this may result in St Ives maintaining an increasingly casualised workforce in order to effectively adapt to client requirements.
14. St Ives believes that an increasing casualisation of its workforce is likely to have a detrimental effect on employees needing security of employment, and will result in an erosion of workforce participation and the fair and relevant safety net as the workforce becomes more transient and temporary in nature. At present St Ives aims to minimise its casual workforce as it believes providing stable employment results in the best outcomes for its employees, its clients and its business.

Casual conversion

15. St Ives objects to the Australian Council of Trade Unions (**ACTU**) application to insert a mandatory casual conversion clause in the Modern Awards. Casual conversion will create significant financial and operational difficulties for home care providers such as St Ives, particularly in circumstances where the part-time provisions of the Modern Awards regarding rostering and work arrangements remain unchanged.
16. If however a casual conversion clause is included in the Modern Awards, St Ives submits that such a clause should not provide employees with an absolute right to convert to non-casual employment. Any casual conversion clause should enable the employer to refuse to convert employees to non-casual work on reasonable operational and business grounds. For casual employees engaged by St Ives, this would include where the part-time provisions of the Modern Awards do not provide for the pattern of ongoing part-time hours required to meet client needs.

Minimum shift lengths

17. St Ives opposes the submission of the ACTU in relation to minimum shift lengths of 4 hours. The SCHADS Award currently provides for minimum shift lengths for casuals and does not prescribe a minimum engagement period for part-time employees. The *Aged Care Award 2010* provides for minimum shift lengths for both casual and part-time employees.
18. The provision of home care work is based on client needs and demands on times and days that suit each client. As a result the majority of St Ives part-time employees do not currently work shifts of 4 hours or more. The ability to roster shifts of this length is significantly limited by customer needs and employee availability, and would be cost prohibitive for St Ives and other home care providers.

Rosters

19. In accordance with its Application, St Ives seeks to vary the Modern Awards to clarify that where employees are provided copies of rosters, by email, post or otherwise, this satisfies the intention of the rosters clauses of the Modern Awards without the requirement for the rosters to be displayed in an accessible area for employees. St Ives believes these changes are necessary in the current age where communication between employer and employees is frequently by email or other electronic means. Placing hard copies of documents on the head office notice board at St Ives is a less effective and direct means of communicating with employees, particularly in circumstances where employees attend the head office on an infrequent basis.
20. St Ives also seeks to reduce the time for provision of rosters in advance from two weeks to seven days, to enable greater flexibility to schedule shifts to meet demands for consumer lead services whilst still balancing the need for employees to have sufficient opportunity to schedule their personal activities around their work roster.

A handwritten signature in black ink that reads "Minter Ellison". The signature is written in a cursive, flowing style.

MinterEllison

on behalf of St Ives Group Pty Ltd

30 September 2016