



Australian Federation of Employers and Industries (AFEI)

Submission pursuant to Amended Directions of the
Fair Work Commission on 15 July 2016 concerning Group 4 Exposure
Draft awards: AM2014/285, 266, 263, 250

AFEI

Australian Federation of
Employers & Industries

Australian Federation of Employers and Industries (AFEI)

Submission pursuant to Amended Directions of the Fair Work Commission on 15 July 2016 concerning Group 4 Exposure Draft awards: AM2014/285, 266, 263, 250

5 August 2016

1. The following submissions are made pursuant to Amended Directions of the Fair Work Commission (the Commission) on 15 July 2016 concerning the following Group 4 Exposure Draft awards:
 - a. Social, Community, Home Care and Disability Services Industry Award 2010;
 - b. Educational Services (Teachers) Award 2016;
 - c. Children’s Services Award 2016; and
 - d. Aboriginal Community Controlled Health Services Award 2016.

Social, Community, Home Care and Disability Services Industry Award 2010

Clause 2 - Definitions

2. AFEI has previously made submissions consistent with those made by Business SA, Aged Care Employers (“ACE”) and Jobs Australia as we consider the duplication of definitions is unnecessary.
3. AFEI does not oppose the submissions of the HSU and United Voice to include the second paragraph of the current award definition of the ‘social and community services sector’ in the Exposure Draft.
4. AFEI agree with the submissions by Business SA that the full definition of the sleepover should be retained at clause 14.5(a) of the Exposure Draft with clause 2 directing to this clause. AFEI considers this more appropriate than providing a reference to clause 14.5(a) in clause 2. The sleepover definition is better understood in the context of the sleepover clause.
5. AFEI opposes the submissions of the HSU, the AWU and United Voice to include the proposed definitions of the minimum hourly rate in the Exposure Draft.

Clause 10.3, 11 and 13 – the AWU’s submission concerning part-time and casual employees

6. The AWU has submitted the clauses relating to part-timers and casual employees are inconsistent with section 147 of the *Fair Work Act 2009* (Cth). AFEI does not consider these clauses are inconsistent with section 147. AFEI considers the definition of ordinary hours under the Award is sufficiently clear. It is unclear what the AWU is proposing with these submissions but insofar as it appears the AWU is seeking to extend the application of clause 19 (overtime) AFEI would likely oppose. Such a variation would be a substantive change to the Award.

Clause 11.3 – Casual employment

7. The ASU seeks to alter this clause so to increase the minimum engagement period as it applies to employees performing disability work. AFEI opposes this variation. Such a variation would be a substantive change to the Award.

Clause 12.2 - Classifications

8. We do not oppose the amendment sought by ACE to insert the word “*their*” in the Exposure Draft. AFEI considers this makes the Exposure Draft clearer and consistent with the current award.

Clause 14.1(b) – Rostered days off

9. AFEI does not oppose the ASU’s submission that the word “rostered” be deleted.

Clause 14.6 – 24 hour care

10. AFEI opposes United Voice’s proposal to amend the clause to include the words “*for eight hours*”. AFEI considers this would be a substantive change to the Award.
11. AFEI agrees with Ai Group’s submission that the Exposure Draft has introduced a substantive change at clause 14.6(c). The Exposure Draft now limits the provision of care so that it must relate to a specific care plan.

Clause 14.2 – Rest breaks between rostered work

12. AFEI does not oppose the HSU’s proposal that the phrasing under the current Award be retained in the Exposure Draft (using “*...a shift contiguous with...*” rather than “*a shift incorporating*”).

Clause 16.1, 16.2, 16.3– Minimum wages – SACS employees and crisis accommodation employees

13. AFEI agrees with the submissions of Business SA that the words prior to the table do not properly reflect the employer’s obligations to pay their employee a minimum wage appropriate to their classification. AFEI submits that any wording immediately prior to

the tables setting out minimum rates in the Exposure Draft be removed so these are consistent with the current award.

Clause 17.3(b)(i) – Meal allowance

14. AFEI does not oppose ACE’s proposal that the wording in the Exposure Draft be replaced with wording more consistent with the current award. We note AFEI has previously proposed, for further clarity, this clause reads *“subject to clause 17.3(b)(iii) where an employee is required...”*.

Clause 17.3(c)(iii) – Travelling, transport and fares

15. AFEI does not oppose the HSU’s proposal that the wording in the Exposure Draft be replaced with the wording consistent with the current award.

Clause 20 - Saturday and Sunday work

16. AFEI agrees with the proposal of Business SA to add the words *“for those hours worked”* at the end of each of the sub-clauses (a) and (b). AFEI considers this to be more consistent with the current award.

Clause 21.2 – Additional leave for shift workers

17. AFEI does not oppose the wording suggested by ACE specifying *“10 or more weekends in each year of service”*.

Educational Services (Teachers) Award 2016

Clause 6.1 – Award flexibility for individual arrangements

18. AFEI opposes the IEU and AIS proposal to vary the award flexibility term of the Exposure Draft. This variation would be inconsistent with the current award.

Clause 7.2 – Facilitative provisions for flexible work practice

19. AFEI agrees with the inclusion of the updated table of facilitative provisions at paragraph 6.1 of ABI's submissions. AFEI considers the current Exposure Draft table is incomplete.

Clause 11 – Part-time employment

20. AFEI agrees with the submission of the IEU and AIS that the Exposure Draft should not specify the hour value for part-time employees. The wording in the current award is sufficiently clear.
21. AFEI does not oppose the removal of the reference to "*full-time employee*" as proposed by the IEU and AIS. AFEI is of the view this reference is illogical in the context of the clause.
22. AFEI considers Exposure Draft clause 11.4 to be consistent with the current award 10.4(b). AFEI does not consider the IEU and AIS' proposal necessary. Despite this, AFEI is not opposed to the proposal and would prefer this to any other proposed method displaying a calculation (such as that proposed in ABI's submissions).
23. AFEI considers Exposure Draft clause 11.5 to be consistent with the current award 10.4(d)(ii). AFEI does not consider the IEU and AIS's proposals necessary but is not opposed to returning to the wording of the current award.

Clause 13.1 – Fixed term employment

24. AFEI considers the Exposure Draft fixed term employment provisions to be consistent with the current award. AFEI does not consider the IEU and AIS proposal necessary but is not opposed to returning to the wording of the current award.

Clause 14.2 – Recognition of previous service

25. AFEI opposes the proposal of the IEU and the AIS to vary the award by deleting the word "*previous*" from "*recognition of previous service*". AFEI considers this variation unnecessary and is of the view Exposure Draft clause title is consistent with both the current award and the context of the clause.

Clause 14.4 – Progression

26. AFEI agrees with ABI, United Voice, the IEU and AIS. We do not support the inclusion of a definition for years of service.

Clause 17.1 – Minimum wages

27. AFEI agrees with the submission of the IEU and the AIS and we oppose the inclusion of a table of minimum hourly rates in the award.

Clause 17.4 – Casual employee

28. The IEU and the AIS have made submissions to include a clause relating to payment of part-time employees into this clause. AFEI considers the Exposure Draft is sufficiently clear on the calculation of rates for a part-time employees and any such variation would likely result in unnecessary duplication.

Clause 18.2 – Wage related allowances (director’s allowance)

29. AFEI considers the Exposure Draft clause is consistent with the current award and the proposal by ABI to reintroduce levels into this clause is unnecessary.

Clause 18.3 – Allowances

30. AFEI agrees with the submissions of the IEU and the AIS and does not support the inclusion of a further definition for Level 2 and Level 3 leadership allowances. We consider these levels to be sufficiently clear, allowing for application of allowances to positions of responsibility appropriate to school structure.

Clause 21.2 – Pro rata payment of salary inclusive of annual leave

31. AFEI does not consider the IEU and AIS proposal to alter this clause necessary. AFEI considers the Exposure Draft clause 21.2 to be sufficiently clear and consistent with the current award.

Clause 21.3 – Pro rata payment of salary inclusive of annual leave

32. Whilst we do not consider ABI’s proposal to include the word “or” after 21.23(b)(i) to be necessary, AFEI is not opposed to this inclusion.

Clause 21.6 – Employees who commence employment after the commencement of school or preschool year

33. AFEI does not oppose the IEU and AIS submission to return the wording of this clause to that in clause 22.7 of the current award.

Clause 21.7 – Employees who take approved leave without pay

34. AFEI does not oppose the proposals made by the IEU and the AIS concerning salary payments where an employee takes approved leave without pay.

Clause 31.6 – Redundancy

35. AFEI does not oppose the IEU and AIS submission to replace the phrase “*this clause 31*” with “*this clause*”.

Schedule C.2 - Expense related allowances

36. AFEI agrees with ABI's submission that a note should be included specifying the vehicle allowance is capped at 400km per week. AFEI considers this would be consistent with the remainder of the award.

Schedule B – Summary of Rates of Pay

37. AFEI agrees with the submissions of the IEU and the AIS and does not support the inclusion of hourly rates of pay in the Exposure Draft.

Children's Services Award 2016

Clause 2 – Definitions

38. AFEI agrees with the submissions by Business SA that the duplication of definitions is unnecessary.
39. AFEI agrees with the inclusion of a definition of “*ordinary hourly rate*” at clause 2 of the Exposure Draft consistent with Ai Group’s submissions. AFEI does not, however, consider it is necessary to duplicate this definition at B.1.1. AFEI considers the definition is more appropriately and logically placed at clause 2 of the Exposure Draft.

Clause 4 - Coverage

40. AFEI opposes the proposal by United Voice to include a reference to the *Clerks – Private Sector Award 2010* at clause 4.1. This is a substantive change to the award.

Clause 11.1 – Casual employment

AFEI agrees with the submissions of Ai Group and ABI and NSW Business Chamber to retain the words “*as such*” consistent with the current award.

Clause 17.2(c) – Broken shift allowance

41. AFEI does not oppose the submissions of Ai Group and ABI and the NSW Business Chamber submission to insert the word “*who*” after “*employee*”.

Clause 17.3(d) – Expense related allowances – Use of vehicle allowance

42. AFEI considers the proposal by Business SA concerning the wording of this clause to be unnecessary.

Clause 13.9(g) – Hours of work – out-of-school hours care, preschools and kindergartens

43. AFEI agrees with the submissions of Business SA and United Voice that the reference to award based transitional instruments and Division 2B State awards in this clause are no longer necessary.

Schedule B – Summary of Hourly Rates of Pay

44. AFEI agrees with the submissions of Ai Group that the tables contained at Schedule B are misleading. AFEI agrees with either the proposed wording, “*% of minimum hourly rate*” (rather than “*% of ordinary hourly rate*”), or the inclusion of some indication that different rates may be applicable where an employee is entitled to an allowance.

Schedule C.2.1(a) – Summary of Monetary Allowances

45. AFEI does not oppose the proposal by ABI and the NSW Business Chamber to change the word “*increased*” to “*adjusted*” although we note the Exposure Draft wording appears to be consistent with the current award.

Aboriginal Community Controlled Health Services Award 2016

Clause 15 – Unpaid Meal Breaks

46. AFEI agrees with NATISHWA’s submission that clause 15 of the Exposure Draft is sufficiently clear and does not require amendment. AFEI opposes the HSU’s submission at paragraph 52-54 as it is proposing substantive changes to the award.

Clause 17.3(a)(ii), 17.3(b)(v) – Travelling, transport and fares

47. AFEI does not consider the HSU’s proposal to insert the words “*not less than*” into clause 17.3(b)(i) to be necessary but is not opposed.
48. AFEI does not consider the United Voice proposal to insert the words “*and classification*” into clause 17.3(b)(v) to be necessary but is not opposed.