

From: Stephen Bull [mailto:Stephen.Bull@unitedvoice.org.au]
Sent: Friday, 28 July 2017 2:12 PM
To: AMOD; Chambers - Lee C
Cc: Leigh Svendsen; Ruchi Bhatt; 'Sina Mostafavi'; Jennifer Zadel
Subject: Review of Age Care Award 2010

Dear Associate and Amod

Please find attached our draft determinations, a brief submission and what I hope is the document referred to in paragraph 3 of the Commissioner's statement of 26 July 2017 concerning this award.

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Aged Care Award 2010

REVIEW OF MODERN AWARDS

(AM2014/251)

Submission by United Voice

1. We refer to the direction of the President, Justice Ross, made on 8 June 2017 concerning the review of the Aged Care Award.
2. We refer here and in our draft determinations to the most current exposure draft of the Aged Care Award 2016 which was republished on 10 July 2017.
3. We attach a draft determination concerning the claims we wish to progress.
4. The case concerning the insertion of a note proposed after clause 15.1 will be able to be conducted by way of submission.
5. The case concerning the amendments to clause 15 in relation to sleep overs will require some evidence from employees who routinely perform sleep overs. We anticipate that this may entail 2-3 witness statements.
6. The case concerning the amendment to clause 18.3(iii) will be conducted by way of submission.
7. The case concerning the amendment to one of the classifiers for a level 4 Aged Care Employee may require some evidence from a personal care workers who is not receiving the benefit of their qualifications but is likely able to be dealt with by submission.

United Voice

28 July 2017

DRAFT DETERMINATION

Fair Work Act 2009

Part 2-3, Div 4 – 4 yearly reviews of modern awards

Exposure draft of the Aged Care Award 2016

(MA000018)

REVIEW OF MODERN AWARDS

(AM2014/251)

ROSS, PRESIDENT SYDNEY, XX YYY 2017

Review of modern awards to be conducted.

- [1] Further to the Decision and Reasons for Decision <<DecisionRef>> in <<FileNo>>, it is determined pursuant to section 156(2) (b) (i) of the *Fair Work Act 2009*, that the *Aged Care Award 2010* be varied as follows.

[Note as consideration of the exposure draft of this award is advanced, these draft variations address the current exposure draft as of 19 May 2017, republished on 10 July 2017.]

- [2] After the current clause 15.1 insert the following note:

Note: the provisions of 14.4 will apply to a sleepover. An employee may refuse a sleepover in the circumstances contemplated by 14.4 (d) but only with reasonable cause.

- [3] Delete the current clause 15.3 and insert:

15.3 The following conditions will apply to each night of sleepover:

- (a) The span for a sleepover will be **a continuous span of 8 hours**.
- (b) Employees will be provided with free board and lodging for each night on which they are required to sleepover.
- (c) Employees will be provided with a separate room with a bed and use of staff facilities or client facilities **where staff facilities are unavailable**.
- (d) In addition to the provision of free board and lodging for sleepovers, the employee will be entitled to a sleepover allowance of **\$44.37** for each night on which they sleep over. **This allowance is in addition to any payment for hours worked during the sleepover and the free board and lodging provided by clause 15.3 (e).**

(e) **An employee may refuse to perform work other than in an emergency.** For the purposes of this clause an emergency is any unplanned occurrence or event requiring prompt action.

(f) An employee directed to perform work other than that of an emergency nature during any sleepover will be paid the appropriate hourly rate from the start of the sleepover to the end of the non-emergency work, or from the start of the non-emergency work to the end of the sleepover, whichever is the lesser, in addition to the sleepover allowance in clause 15.3(d).

[4] Delete the current clause 15.4 and insert:

15.4 Payment for time worked during sleepover

(a) In the event of the employee on a sleepover being required to perform work during the sleepover period, the employee will be paid for the time worked at the prescribed overtime rate with a minimum payment as for one hour worked. Where such work exceeds one hour, payment will be made at the prescribed overtime rate for the duration of the work.

[4] Delete the current clause 18.3 (iii) and insert:

(ii) Any uniforms provided by the employer to an employee remain the property of the employer. An adequate number of uniforms means the number of uniforms that allows an employee to work their agreed hours of work in a clean uniform without having to launder work uniforms more than once a week.

[5] Delete the current last dot point at **A.4 -Aged Care Employee – Level 4** and insert:

- In the case of a Personal care worker, **where the employee holds** a relevant Certificate III qualification

The determination shall operate on and from XX YYY 2017.

PRESIDENT

| United Voice Claim | Exposure Draft |
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| <p>18.3 (a) Clothing and Equipment</p> <p>(i) Where the employer requires an employee to wear a uniform, the employer must:</p> <ul style="list-style-type: none"> • supply the employee with an adequate number of uniforms appropriate to the occupation free of cost; and • launder and maintain the uniforms. <p>(ii) Any uniforms provided by the employer to an employee remain the property of the employer.</p> <p><i>(iii) An adequate number of uniforms means the number of uniforms that allows an employee to work their agreed hours of work in a clean uniform without having to launder work uniforms more than once a week.</i></p> | <p>18.3 (a) Clothing and equipment</p> <p>(i) Where the employer requires an employee to wear a uniform, the employer must:</p> <ul style="list-style-type: none"> • supply the employee with an adequate number of uniforms appropriate to the occupation free of cost; and • launder and maintain the uniforms. <p>(ii) Any uniforms provided by the employer to an employee remain the property of the employer.</p> |
| <p>15. Sleepovers</p> <p>15.1 Employees may, in addition to normal rostered shifts, be required to sleepover.</p> <p><i>Note: the provisions of 14.4 will apply to a sleepover. An employee may refuse a sleepover in the circumstances contemplated by 14.4 (d) but only with reasonable cause.</i></p> <p>15.2 A sleepover means sleeping in at night in order to be on call for emergencies.</p> <p>15.3 The following conditions will apply to each night of sleepover:</p> <p>(a) The span for a sleepover will be a continuous span of 8 hours.</p> <p>(b) Employees will be provided with free board and lodging for each night on which they are required to sleepover.</p> <p>(c) Employees will be provided with a separate room with a bed and use of staff facilities or client facilities where staff facilities are unavailable.</p> <p>(d) In addition to the provision of free board and lodging for sleepovers, the employee will be entitled to a sleepover allowance of \$44.37 for each night on which they sleep over. This allowance is in addition to any payment for hours worked during the sleepover and the free board and lodging provided by clause 15.3 (e).</p> <p>(e) An employee may refuse to perform work other than in an emergency. For</p> | <p>15. Sleepovers</p> <p>15.1 Employees may, in addition to normal rostered shifts, be required to sleepover.</p> <p>15.2 A sleepover means sleeping in at night in order to be on call for emergencies.</p> <p>15.3 The following conditions will apply to each night of sleepover:</p> <p>(a) The span for a sleepover will be not less than eight hours and not more than 10 hours on any one night.</p> <p>(b) Employees will be provided with free board and lodging for each night on which they are required to sleepover.</p> <p>(c) Employees will be provided with a separate room with a bed and use of staff facilities or client facilities where applicable.</p> <p>(d) In addition to the provision of free board and lodging for sleepovers, the employee will be entitled to a sleepover allowance of \$44.37 for each night on which they sleep over.</p> <p>(e) No work other than that of an emergency nature will be required to be performed during any sleepover. For the purposes of this clause an emergency is any unplanned occurrence or event</p> |

the purposes of this clause an emergency is any unplanned occurrence or event requiring prompt action.

(f) An employee directed to perform work other than that of an emergency nature during any sleepover will be paid the appropriate hourly rate from the start of the sleepover to the end of the non-emergency work, or from the start of the non-emergency work to the end of the sleepover, whichever is the lesser, in addition to the sleepover allowance in clause 15.3(d).

15.4 Payment for time worked during sleepover

(a) In the event of the employee on sleepover being required to perform work during the sleepover period, the employee will be paid for the time worked at the prescribed overtime rate with a minimum payment as for one hour worked. Where such work exceeds one hour, payment will be made at the prescribed overtime rate for the duration of the work.

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(f) An employee directed to perform work other than that of an emergency nature during any sleepover will be paid the appropriate hourly rate from the start of the sleepover to the end of the non-emergency work, or from the start of the non-emergency work to the end of the sleepover, whichever is the lesser, in addition to the sleepover allowance in clause 15.3(d).

15.4 Payment for time worked during sleepover

(a) All time worked during any sleepover will count as time worked and be paid for in accordance with the provisions of clause 15.4.

(b) Full-time employees

All time worked by a full-time employee during any sleepover will be paid for at overtime rates.

(c) Part-time employees

(i) All time worked by a part-time employee during any sleepover will be paid for at the ordinary hourly rate plus applicable shift and weekend penalties.

(ii) Overtime rates in clause 22.2(a) will be paid for all hours worked:

- in excess of the total number of hours worked on any day by full-time employees or in excess of 11 hours where there are no full-time employees; and
- in excess of 38 hours in one week or in excess of 76 hours in a fortnight.

(d) Casual employees

(i) All time worked by a casual employee during any sleepover will be paid for at the ordinary hourly rate plus applicable shift and weekend penalties.

(ii) If the total number of hours worked in the week exceeds 38 hours, or exceeds 76 hours in the fortnight, the excess hours worked in that week or fortnight will be paid for at overtime rates.

15.5 A sleepover must be rostered:

- (a) to commence immediately at the conclusion of the employee's shift and continuous with that shift; and/or
- (b) immediately prior to the employee's shift and continuous with that shift.

15.6 No employee will be required to sleepover during any part of their rostered days off or ADOs.

15.7 Breaks between shifts

(a) If an employee performs so much work during the sleepover periods between the end of their ordinary work on one day or shift and the start of their ordinary work on the next day or shift that they do not receive at least eight consecutive hours off duty, the employer must:

- (i) release the employee after the sleepover after the completion of such work until the employee has had at least eight consecutive hours off duty without loss of pay; and
- (ii) pay the employee for any ordinary working time that falls within this period of absence.

(b) If the employer requires the employee to resume or continue work, and the employee has not had eight consecutive hours off duty, the employer must:

- (i) pay the employee at 200% of the ordinary hourly rate until the employee is released for eight consecutive hours; and
- (ii) once the employee is released from duty, allow the employee 10 consecutive hours off duty without loss of pay and pay the employee for any ordinary working time that falls within the period of absence.

15.8 Casual employees may only be used for sleepovers when full-time employees or part-time employees are not available for that duty. In no case will casual employees be used

(iii) If the employee does not have eight consecutive hours off duty between ordinary rostered duty on successive days, then the provisions of clause 15.7 will apply.

15.5 A sleepover must be rostered:

(a) to commence immediately at the conclusion of the employee's shift and continuous with that shift; and/or

(b) immediately prior to the employee's shift and continuous with that shift. 15.6 No employee will be required to sleepover during any part of their rostered days off or ADOs.

15.7 Breaks between shifts

(a) If an employee performs so much work during the sleepover periods between the end of their ordinary work on one day or shift and the start of their ordinary work on the next day or shift that they do not receive at least eight consecutive hours off duty, the employer must:

- (i) release the employee after the sleepover after the completion of such work until the employee has had at least eight consecutive hours off duty without loss of pay; and
- (ii) pay the employee for any ordinary working time that falls within this period of absence.

(b) If the employer requires the employee to resume or continue work, and the employee has not had eight consecutive hours off duty, the employer must:

- (i) pay the employee at 200% of the ordinary hourly rate until the employee is released for eight consecutive hours; and
- (ii) once the employee is released from duty, allow the employee 10 consecutive hours off duty without loss of pay and pay the employee for any ordinary working time that falls within the period of absence.

15.8 Casual employees may only be used for sleepovers when full-time employees or part-time employees are not available for that duty. In no case will casual employees be used

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| <p>exclusively, or almost exclusively, for sleepovers.</p> <p>15.9 Nothing in this clause will stop the employer from rostering an employee to work shiftwork instead of undertaking sleepovers.</p> | <p>exclusively, or almost exclusively, for sleepovers.</p> <p>15.9 Nothing in this clause will stop the employer from rostering an employee to work shiftwork instead of undertaking sleepovers.</p> |
| <p>Aged Care Employee – Level 4</p> <ul style="list-style-type: none"> • In the case of a Personal care worker, holds a relevant Certificate III qualification | <ul style="list-style-type: none"> • In the case of a Personal care worker, is required to hold a relevant Certificate III qualification. |