



30 September 2016

Our Ref: 20160096

Your Ref: AM2014/263

BY EMAIL

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Dear Sir / Madam

**4 YEARLY REVIEW OF MODERN AWARDS - GROUP 4 AWARDS - AM2014/263 -
CHILDREN'S SERVICES AWARD 2010**

- 1.1 We refer to the abovementioned proceedings and to the Fair Work Commission's Statement and Directions [2016] FWC 6062 issued on 26 August 2016 (**Statement**).
- 1.2 We represent the Australian Childcare Alliance (**ACA**), Australian Business Industrial (**ABI**) and the NSW Business Chamber (**NSWBC**).
- 1.3 At [5]-[6] the Statement provides as follows:

[5] The parties are requested to file a short submission confirming the substantive claims being pursued. This is not expected to be a full submission, but should include the following

- (i) the nature of the change sought;*
- (ii) a draft variation determination;*
- (iii) the type of case to be run (merits or evidentiary based); and*
- (iv) if the case is evidence-based, how many witnesses will be called?*

*[6] This process will give parties the opportunity to reframe existing claims or to raise additional substantive claims. Parties are also requested to advise the Commission if they are no longer pursuing any of their earlier claims. The filing date for this submission is on or before **4pm on Friday 30 September 2016**.*

- 1.4 By letter filed 2 March 2015, our clients indicated that they wished to pursue a number of variations to the Children's Services Award 2010 (**Award**). In accordance with the Statement, we provide confirmation of those proposed variations as follows.

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2. THE NATURE OF THE CHANGES SOUGHT

2.1 Our clients intend to pursue two variations to the Award:

Variation One: to provide employers with greater flexibility to change rosters other than with 7 days notice

2.2 This variation is pursued on the basis that the current rostering arrangements at clause 21.7 of the Award do not provide a fair and reasonable safety net having regard to:

- (a) the legislative obligations in relation to rostering faced by employers in the children's services industry; and
- (b) the inevitability that circumstances will arise where employees will be unavailable at short notice and employers will be required to "call-in" replacement employees to satisfy legislative obligations.

2.3 The variation seeks to expand the circumstances where an employer is relieved of the obligation to provide the full seven days' notice for a change of employee's rostered hours.

Variation Two: to allow ordinary hours to be worked before 6.00am or after 6.30pm

2.4 This variation is pursued so as to allow ordinary hours to be worked up until 7.30 pm instead of the current 6.30 pm.

2.5 This variation is pursued on the basis that requiring an employer to pay overtime between 6.30 and 7.30 pm is inconsistent with the Modern Awards objective and a fair and reasonable safety net.

3. DRAFT VARIATION DETERMINATION

3.1 A draft determination giving effect to the two proposed variations is annexed to this submission.

4. THE TYPE OF CASE TO BE RUN (MERITS OR EVIDENTIARY BASED)

4.1 Our clients propose to run an evidentiary case and intend to file witness statements outlining the position of employers and efficacy of the proposed variations at both an industry and individual operator level.

5. IF THE CASE IS EVIDENCE-BASED, HOW MANY WITNESSES WILL BE CALLED?

5.1 It is proposed that 2-4 witnesses will be called in support of the proposed variations.

If you have any questions, please contact Julian Arndt on (02) 9458 7565.

Yours faithfully



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FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

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

Children's Services Award 2010

[MA000120]

Children's services industry

COMMISSION MEMBER

SYDNEY, XX YYY 2016

Review of modern awards to be conducted.

Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2014/263, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Children's Services Award 2010* be varied as follows:

[1] By renumbering existing clause 10.4(d)(iii) as 10.4(d)(iv), and inserting a new 10.4(d)(iii) as follows:

The employer is not required to provide the full seven days' notice in circumstances where:

- (a) another employee has provided less than seven days' notice of his/her inability to perform a rostered shift; and
- (b) in order to comply with its statutory obligations in respect of maintaining staff to child ratios, the employer is required to change an employee's rostered hours so as to replace the absent employee.

[2] By amending clause 21.3 as follows:

Ordinary hours may be worked between 6.00 am and ~~6.30~~ 7.30 pm. Where broken shifts are worked the spread of hours can be no greater than 12 hours per day.

- [3] By renumbering existing clause 21.7(b)(ii) as 21.7(b)(iii), renumbering 21.7(b)(iii) as 21.7(b)(iv) and inserting a new 21.7(b)(ii) as follows:

The employer is not required to provide the full seven days' notice in circumstances where:

- (a) another employee has provided less than seven days' notice of his/her inability to perform a rostered shift; and
- (b) in order to comply with its statutory obligations in respect of maintaining staff to child ratios, the employer is required to change an employee's rostered hours so as to replace the absent employee.

- [4] By amending clause 23.4(d)(ii) as follows:

Afternoon shift means any shift finishing after ~~6.30~~ 7.30 pm and at or before midnight.

- [5] The determination shall operate on and from XX YYY 2016.

BY THE COMMISSION