

IN THE FAIR WORK COMMISSION

Matter No: AM2014/285

Section 156 - Four Yearly Review of Modern Awards – Social, Community, Home Care and Disability Services Industry Award 2010

**JOINT REPORT OF THE INTERESTED PARTIES TO THE SOCIAL,
COMMUNITY, HOME CARE AND DISABILITY SERVICES
INDUSTRY AWARD 2010**

1. This report is made pursuant to the direction of Justice Ross on 29 November 2016. This report regards the progress of conciliation in the *Social, Community, Home Care and Disability Services Industry Award 2010* („the SCHDS Award“). This report is filed on behalf of the interested parties to the SCHDS Award: Aged and Community Services Australia, Australian Business Industrial & the NSW Business Chamber, Australian Federation of Employers and Industries, Australian Services Union, the Health Services Union, Leading Age Services Australia, Jobs Australia and United Voice.
2. The parties discussed many of the substantial issues in this Award at length. There is a real prospect that the parties will agree on a number of substantive issues. However, the parties request the assistance of the Fair Work Commission to finalise some outstanding matters. We request a further conference before Deputy President Booth be held before any material be filed in the substantive matters.
3. A summary of the employer claims between the parties that may be agreed between the parties can be found at **Annexure A**. A summary of the employer claims that may remain in dispute can be found at **Annexure B**.
4. A summary of the union claims between the parties that may be agreed between the parties can be found at **Annexure C**. A summary of the union claims that may remain in dispute can be found at **Annexure D**.
5. **Annexure E** describes matters that have been referred to separate benches.
6. Proposed directions are attached at **Annexure F**.

**Aged and Community Services
Australian Business Industrial & the NSW Business Chamber Ltd
Australian Federation of Employers and Industries**

Australian Services Union'
Business SA
Health Services Union
Leading Age Services Australia
Jobs Australia
United Voice.

3 February 2017

ANNEXURE A: EMPLOYER CLAIMS THAT MAY BE AGREED

Item	Party	Document	Clause (current award)	Summary of Issue	Their Reference	Notes
Ordinary hours and flexi-time						
25	JA	JA subs	25.1	Hours of Work Propose that there should be explicit provision for other mutually agreed forms of Flexible working arrangements such as flexitime and make up time, and that the time frame for averaging weekly hours of work be extended beyond the 4 weeks.	Para 10	Consent proposed
25	ABI&NSW BC	ABI&NSW BC subs	25.1	Variation to clause to increase the maximum ordinary hours of work per shift.	Para 2	Consent proposed
Rosters and client cancellation						
29	JA	JA subs	25.5	Rosters and Client cancellation Vary client cancellation provisions to apply to disability support work carried out in private residences and also for individualised activities taking place away from home.	Para 11	Consent proposed
31	ACE	ACE subs	25.5	Rosters Vary clause to allow for a roster to be changed at any time where the employer and employee/s affected agree and/or in circumstances where there is an unexpected absence of an employee.	Para 3	Consent proposed
Telephone/remote communication/recall to work overtime						
5	ACE	ACE subs	xx	Telephone Advice Payment Insert a new clause which provides a payment to an employee who makes their services available and participates in an approved roster to provide telephone advice outside their normal rostered ordinary hours of work.	Para 3	Consent proposed
23	AFEI	AFEI subs	20.9	Recall and Overtime Vary clause to clarify what amounts to a recall to duty to perform over-time so that employees (whether on-call or not) who answer telephone or respond to a text are not deemed to have been recalled. Alternatively, the award should be varied to accommodate receiving phone calls.	Page 3 Item 2	Consent proposed
52	JA	JA subs	28.4	Recall to work overtime Propose clause be varied to distinguish between recall to workplace, and recall in order to respond to phone call, with a reduced minimum overtime payment where there is no need to travel to and from a workplace	Para 14	Consent proposed
53	ABI&NSW BC	ABI&NSW BC subs	28.4	Overtime-recall Variation to clause to clarify when overtime rates are payable when employee recalled to work	Para 8	Consent proposed

ANNEXURE B: EMPLOYER CLAIMS THAT MAY REMAIN IN DISPUTE

Item	Party	Document	Clause (current award)	Summary of Issue	Their Reference	Notes
1	AFEI	AFEI subs	31	Annual leave Seeks to vary clause to allow an employer to direct an employee to take annual leave during a partial or whole close down of employer enterprise.	Page 1	
18	AFEI	AFEI subs	13.3 and Schedule B	Progression Amend clause so that it is clear that progression between pay points in the various levels in each stream of the award is based on full-time equivalent service (or 1976 hours).	Page 3 item 1	
26	ABI& NSW BC	ABI&NSW BC subs	25.3	Rostered days off Variation to clause to replace the words “two full days” with the words “48 hours” to resolve any potential ambiguity surrounding the requisite period of the break between duty.	Para 3	
27	ABI& NSW BC	ABI&NSW BC subs	25.4	Rest breaks between rostered work Variation to clause to reduce the minimum breaks between shifts.	Para 4	
33	ABI& NSW BC	ABI&NSW BC subs	25.5 and 25.6	Rosters and Broken Shifts Variation to clauses to relax some of the obligations concerning the display of rosters and changes to rosters to reflect the increasingly changeable nature of work in the industry.	Para 5	
35	ABI& NSW BC	ABI&NSW BC subs	25.6	Broken Shifts Variation to clause to increase the spread of hours over which a broken shift may be worked and extending the operation of broken shifts to all employees (not just social and community services employees when undertaking disability services work and home care work).	Para 6	
38	JA	JA subs	25.7	Sleepover Insertion of facilitative provisions for shorter breaks between shifts worked in association with sleepover, and for 12 hour shifts to be worked by mutual agreement.	Para 12	
39	ABI& NSW BC	ABI&NSW BC subs	25.7	Sleepover-breaks Variation to clause to allow sleepovers to count as a break between shifts in certain circumstances and subject to certain conditions.	Para 7	
41	AFEI	AFEI subs	25.7	Sleepover-flexibility Amend clause so that employers have greater flexibility to roster work on either side of a sleepover period. This variation would include addressing the penalty rates applicable for work adjacent to a sleepover.	Page 3 item 3	
42	JA	JA subs	25.8	24 Hour Care Seek that the 24 hour care provisions be extended to cover disability support workers required to provide individual support for clients in their private residence.	Para 13	
55	ABI& NSW BC	ABI&NSW BC subs	29	Shiftwork Variation to clause to amend shift definitions, clarify interaction between overtime rates and penalty rates, and clarify appropriate penalty rates that apply to work performed before or after sleepovers.	Para 9	
58	JA	JA subs	Schedule B	SACS Classifications	Para 15	

Item	Party	Document	Clause (current award)	Summary of Issue	Their Referen ce	Notes
				Propose that the classification definitions be updated to reflect the nature of disability work.		

ANNEXURE C: UNION CLAIMS THAT MAY BE AGREED

Item	Party	Document	Clause (current award)	Summary of Issue	Their Reference	Notes
Travelling time						
2	UV	UV subs	20	Seeks to vary clause to ensure the payment of travel time for home care workers.	Page 1	Consent proposed
16	HSU	HSU subs	13	Allowances Seek variations allowances: a. New travel allowance applicable for travel between clients [usually place of residence] and in course of duties;	Para 6-9	Consent proposed
Telephone/remote communication/recall to work overtime						
22	HSU	HSU subs	20.9	On call and recall Seek the following variations: a. Provision for an on-call penalty payment when an employee is called when not being paid an on-call allowance; b. Provisions for telephone attendance/work for an employee who is on call but not required to physically attend work; c. Minimum recall to work equal to minimum engagement / shift length; d. Recall to work for an employee not receiving an on-call allowance at overtime rates for the minimum shift length/ engagement.	Para 24	Consent proposed
Rosters and client cancellation						
3	UV	UV subs	25.5	1. Ensure permanent staff protected and any additional hours required to be worked at short notice are appropriately remunerated; 2. Inclusion of words for client cancellation “provided that the employer received no payment for the cancelled or changed service”; 3. To delete the right to direct an employee to work make up hours in circumstances where cancellation occurs.	Page 1	Consent proposed – <i>Except for Dot Point 1.</i>
29	HSU	HSU subs	25.5	Seek to vary to client cancellation provisions to provide for 48-hour minimum cancellation period or payment in lieu, and the redirection provisions to meet both rostering and agreed hours in relation to alternate hours.	Para 13	Consent proposed
30	UV	UV subs	25.5	Seek to amend clause.	Pages 2-3	Consent proposed
Sleepovers						
38	HSU	HSU subs	25.7	Sleepover-rate Seek to vary the applicable sleepover rate, when a shift, due to multiple disturbances, becomes „an active“ shift, and provide that rostered or known disturbances change the nature of the shift from a sleepover to an active night duty shift.	Para 17-18	Position open - to consult
38	ASU	ASU subs	25.7	Increase in the remuneration payable to employees who work sleepovers and improvements to the conditions which sleepovers are carried out.	Para 7	Position open - to consult

ANNEXURE D: UNIONS CLAIMS THAT MAY REMAIN IN DISPUTE

Item	Party	Document	Clause (current award)	Summary of Issue	Their Reference	Notes
6	ASU	ASU subs	-	Community language skills Allowance for employees who use community language skills during the course of their employment.	Para 9	
7	ASU	ASU subs	4.2(d)	Delete reference to Health Professionals and Support Services Award 2010.	Para 4	
15	ASU	ASU subs	12.5-12.7	Redundancy Supplementation of NES redundancy entitlements, including for employees who were eligible to receive redundancy entitlements pursuant to these clauses.	Para 5	
16	HSU	HSU subs	13	Classifications Seeks to vary:-classification criteria contained in SACS Stream and Home Care Stream to include Disability specific criteria and remove current ambiguity created by general level indicators and disability work, skills, knowledge and qualification levels. -Home Care stream to include differentiation between general home based assistance, low to high care needs, and specialised care provided to clients in own home. -award to include standardised nomenclature and current terminology.	Para 6-9	
19	HSU	HSU subs	20	Allowances Seek variations allowances: b. Varied phone allowances to reflect requirement to have mobile phone for work related purposes; c. Payment of costs associated with first aid certificate renewal for employees required to hold current certificate to undertake work; d. Variation to uniform allowance to ensure uniform is provided or allowance is paid; e. New entitlement for replacement of damaged clothing.	Para 23	
20	UV	UV subs	20.2	Clothing and equipment allowance Clarify the number of uniforms an employee is entitled to. See submission for wording.	Page 2	
21	UV	UV subs	20.6	Telephone Allowance Seek variation to include mobile phones in this provision. Words „or a mobile phone“ should be added after word „telephone“ in first sentence. The words „or to access work related information“ should be added after „on call“.	Pages 2-3	
28	HSU	HSU subs	25, 28	Ordinary hours of work and rostering Vary clauses covering the intersection between hours of work, span of hours, rostering, payment of penalty rates and the definitions for day worker and shift worker to ensure: a. Shift allowances are payable for work performed during specified hours; b. Weekend rates are payable to any employee working on the weekend; c. The terms day worker and shiftworker do not apply differentially to overtime, shift rates or weekend rates of pay.	Para 10	
32	HSU	HSU subs	25.5(d)	Roster change Seek to vary clause to impose penalty on employer for employer-imposed changes and seek to include a minimum shift length of 4 hours for all rostered shifts including provisions for sleepovers and broken shifts.	Para 11-12	
35	HSU	HSU subs	25.6	Broken Shifts Delete provision or in the alternative a new entitlement to an allowance payable to an employee for broken shifts, and payment of overtime where broken shift finish time is greater than daily maximum shift length of 10 hours. Seeks to ensure minimum shift length applies to each part of broken shift without differentiation between employees.	Para 14-16	
36	ASU	ASU subs	25.6	Broken Shifts caricature	Para 6	

Item	Party	Document	Clause (current award)	Summary of Issue	Their Reference	Notes
				Payment of an allowance and/or penalty rate to employees who work broken shifts.		
37	UV	UV subs	25.6	Total of Broken Shifts Seek to vary clause 25.6(a) to provide for a maximum number of broken shifts which can be worked per day is 2.- propose to amend 25.6(b) so that a shift worker is paid the shift allowance with regard to each part of a broken shift.	Page 3	
40	UV	UV subs	25.7	Sleepover Seek deletion of words „and is not a 24 hour care shift pursuant to clause 25.8 or an excursion pursuant to clause 25.9“ in clause 25.7(a).	Page 3	
43	HSU	HSU subs	25.8	Seek to delete 24 hour care.	Para 19	
44	UV	UV subs	25.8	24 Hour Care Clause is no longer required, or if the alternate, submits that it should be amended. -Would seek an amendment to ensure that employees will be entitled to overtime for all hours worked over 8 hours. -seek to delete the word „normally“ from sub-clause (b).	Page 4	
45	HSU	HSU subs	25.9	Excursions Seeks new entitlement to additional annual leave for employees engaged in excursions.	Para 20-21	
46	ASU	ASU subs	25.9	Excursions-rate Increase in the remuneration payable to employees who work excursions and improvements to the conditions under which excursions are carried out.	Para 7	
47	UV	UV subs	25.9	Excursions-ordinary hours See submission for proposed wording.	Para 4-5	
48	HSU	HSU subs	26	Saturday and Sunday work Seek to ensure that shift allowances are paid when employees are working afternoon or night duty regardless of the day of the week and seek to ensure that casual loading is payable in addition to other penalties for all shifts excluding overtime.	Para 25-26	
49	UV	UV subs	27.1(e)	Meal Breaks Clause incorrectly references 27.1(a); it should reference 27.1(b).	Page 5	
50	HSU	HSU subs	28	Overtime Vary clause to ensure it applies to all employees when they work beyond their rostered hours, in excess of the daily maximum of 10 hours or on an averaged weekly hours basis	Para 28	
51	UV	UV subs	28.1(b)	Overtime –casuals Proposed deletion of clause.	Page 5	
54	HSU	HSU subs	29	Shiftwork Variation to clause to amend shift definitions, clarify interaction between overtime rates and penalty rates, and clarify appropriate penalty rates that apply to work performed before or after sleepovers.	Para 9	

ANNEXURE E: MATTERS REFERRED TO SEPERATE BENCHES

Item	Party	Document	Clause (current award)	Summary of Issue	Their Reference	Notes
Coverage						
9	CCSA	CCSA subs	4	Coverage Move coverage of the family day care scheme in this Award to the Children's Services Award 2010.	Page 9	
-	Oxfam, etc		-	Applications to vary coverage of the award to include fundraising/charity industry		
59	ASU	ASU subs	Schedule B	Crisis and Accommodation Employees-Classifications Vary clause to ensure that employees are correctly classified and properly remunerated in respect of the work they perform.	Para 8	
Casual and part-timer matters						
10	HSU	HSU subs	10	Engagement Seek to vary minimum engagement to 4 hours for all employees, regardless of classification, work performed or workplace.	Para 3-4	
13	HSU	HSU subs	10.4	Casual employees-loading Seek to ensure the casual loading, payable in lieu of the paid leave entitlements of ongoing employees, are paid in addition to other shift allowances, weekend and public holiday rates.	Para 5	
14	UV	UV subs	10.4(b)	Casual-Leave Amend clause to include reference to Long Service Leave.	Page 2	
Casual and part-timer matters (flexible part-timer)						
11	JA	JA subs	10.3	Part-time employment Vary the clause to clarify the extent to which part-time workers can work reasonably flexibly, for example by averaging hours or flexitime, consistent with the intent of the clause to provide reasonable predictability for part-time employees	Para 9	Consent unlikely
11	ABI&N SWBC	ABI&NSW BC subs	10.4	Deletion or variation of clause to provide appropriate and necessary flexibility for part-time employees.	Para 1	Consent unlikely
12	JA	JA subs	10.4	Casual employment Seek to amend minimum engagement of casual disability support workers engaged in providing in home care under NDIS from 2 hours to 1 hour, to align with existing provisions for Home Care workers.	Para 8	Consent unlikely
Payment of wages						
24	HSU	HSU subs	24	Payment of Wages Seeks a new clause providing for the application of a penalty if payment of wages does not occur on the specified payday	Para 22	Not pressed
Annual leave						
56	ASU	ASU subs	31.3	Annual leave loading Clarify clause to ensure annual leave loading is paid upon termination. See submission for proposed wording.	Para 10	Deferred



DRAFT DIRECTIONS

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards

(AM2014/285)

SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010

[MA0001000]

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XXX, XX FEBRUARY 2017

Further to the Statement issued on 29 November 2016, [PR588004](#), the Fair Work Commission directs:

- [1] The substantive claims in relation to the Social, Community, Home Care and Disability Services Industry Award 2010 be listed for a further conference before Deputy President Booth on [DATE].
- [2] In advance of the conference before Deputy President Booth, each interested party is to circulate to each of the other parties a short Position Paper summarising the status of their position in relation to the substantive claims, including:
 - (a) matters which they are likely to agree to;
 - (b) matters which they intend to pursue; and
 - (c) matters which they are no longer pressing.

The Position Paper should be circulated at least 24 hours before the conference referred to in Direction 1.

- [3] By close of business 21 days following the conference referred to in Direction 1, the parties are 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:
 - (a) the nature of the change sought;
 - (b) a draft variation determination;
 - (c) the type of case to be run (merits or evidentiary based); and
 - (d) if the case is evidence-based, how many witnesses will be called?
- [4] 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.

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