



Australian Federation of Employers and Industries (AFEI)

**Submission pursuant to Amended Directions of the Fair Work
Commission on 11 April 2017: AM2014/285**

10 May 2017

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1. The following submissions are made pursuant to Amended Directions of the Fair Work Commission made on 11 April 2017 in relation to the *Social, Community, Home Care and Disability Services Industry Award 2010 (Award)* which provided that interested parties were to file a short submission confirming substantive claims. Parties were directed to include in those submissions:
 - 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.
2. AFEI intends to pursue its claims in relation to:
 - a. employer capacity to direct an employee to take annual leave during a partial or whole close down or an employer's enterprise (see AFEI submissions of 12 November 2015); and
 - b. progression between pay points requiring the completion of full-time equivalent service (see AFEI submissions of 5 March 2015).

Annual leave

3. Currently there is no ability in the Award for an employer to require employees to take their annual leave during a closure or partial closure such as during the Christmas-New Year period.
4. The absence of a provision providing employers with the ability to direct an employee to take annual leave during a closure or partial closure is ill-suited to the operational requirements of employers covered by the Award.
5. The ability to direct employees to take annual leave during periods of close-down was a prevailing feature of NSW industrial law prior to the introduction of the Modern Awards. The NSW *Social and Community Services Award* NAPSA recognised close-downs in the industry.
6. AFEI intends to run a merit and evidentiary based case for this claim. We anticipate calling no more than 2-3 witnesses to provide evidence in support of this claim.

7. Attached is a draft determination with clause numbering based on the Exposure Draft.

Progression

8. Progression between pay points in the various levels in each stream of the Award is based on full-time equivalent service (or 1976 hours). A variation to the progression clause, however, will ensure coherency between this provision and the classification structure which at various points refers to progression between pay points requiring the completion of full-time equivalent service.
9. AFEI intends to run a merit based case for this claim. Attached is a draft determination with clause numbering based on the Exposure Draft.

DRAFT DETERMINATION

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**

[MA0000100]

Social, community, home care and disability

ROSS, PRESIDENT

SYDNEY, XX YYY 2017

4 yearly review of modern awards

A. Further to the Full Bench decision issued by the Fair Work Commission on XX XXX 2017¹, the above award is varied as follows:

1. By inserting a new Clause 21.9 as follows:

21.9 Annual close-down

An employer may require an employee to take annual leave as part of a close-down of all or part of its operations by giving at least four weeks' notice. An employee without sufficient accrued leave to maintain their ordinary rate of pay during the period may be required to take leave without pay for a maximum of four weeks.

2. By deleting sub-clause 12.4(a) and inserting the following:

12.4 Progression

(a) An employee will be eligible to progress between pay points within levels at the end of each 12 months continuous employment, or in the case of part-time or casual employees 1976 hours of service, if the employee has demonstrated competency and satisfactory performance during such period at each pay point within the level and:

(i) the employee has acquired and satisfactorily used new or enhanced skills within the ambit of the classification, if required by the employer; or

¹ [Insert decision reference]

(ii) where the employer has adopted a staff development and performance appraisal scheme and has determined that the employee has demonstrated satisfactory performance for the prior 12 months' employment.

- B. This determination will come into operation from XX YYY 2017. In accordance with s.165(3) of the *Fair Work Act 2009* (Cth) these items do not take effect until the start of the first full pay period that starts on or after XXX XXXX 2017.

PRESIDENT