



REPORT AND DIRECTIONS

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards–Award stage–Group 4 awards– Substantive Issues (AM2018/13)

AGED CARE AWARD 2010 [MA000018]

JUSTICE ROSS, PRESIDENT

MELBOURNE, 13 NOVEMBER 2018

*4 yearly review of modern awards – award stage – group 4 awards – substantive issues –
Aged Care Award 2010*

[1] This Report deals with the substantive claims to vary the *Aged Care Award 2010* (the Aged Care Award).

[2] The Aged Care Award was listed for a programming Mention (along with the Children’s Services Award and the SCHADS Award) on 9 November 2018. A transcript of the Mention is available on the Commission’s website - [Mention](#).

[3] The following organisations were represented at the Mention:

- Health Services Union
- United Voice
- ABI and NSWBC
- AFEI
- Aged Care Employers
- Aged and Community Services Australia
- Leading Aged Services Australia
- Australian Nursing and Midwifery Federation

[4] A [Report](#) was issued on 30 October 2018 inviting parties to file draft variation determinations and to confirm whether the list of substantive claims at Attachment A to the Report is accurate.

[5] Draft determinations were filed by:

- United Voice
- Health Services Union

[6] At the Mention the parties provided further clarification as to the substantive claims they intend to pursue. A revised list of substantive claims is attached to this Report (**Attachment A**). ABI confirmed that they would be opposing all of the claims.

[7] At the Mention, parties were invited to comment on the draft directions. No comment was made from any interested party. Final Directions are attached (**Attachment B**).

Agreed variations issue

[8] An issue raised during the Mention concerned the consent position reached between the parties following conferences held by Commissioner Lee in 2017. While the agreed variations have been endorsed by a later decision¹ of the Commission (the Decision), the Aged Care Award and exposure draft have yet to be updated.

[9] In [correspondence](#) dated 9 November 2018, United Voice confirmed the parties to the agreement as follows:

- United Voice
- HSU
- Australian Nursing and Midwifery Federation
- Aged and Community Services Australia
- Leading Aged Services Australia
- ABI and NSWBC

[10] In their correspondence, United Voice noted that items S1, S6, S7, S16 (in part) and S19 of the [Summary of Substantive Variations](#) published on 8 December 2017 were identified as resolved by agreement as per the [Draft Report](#) issued by Commissioner Lee on 11 September 2017. The parties draft determinations are attached to the Draft Report as Appendixes. The parties' consent position was later confirmed in a [Final Report](#) issued by Commissioner Lee on 8 December 2017.

[11] The Aged Care Award and the exposure draft will be updated in accordance with the Decision issued on 21 March 2018. Draft variation determinations will be published shortly for comment.

PRESIDENT

¹ [\[2018\] FWCFB 1548](#), at [35]

ATTACHMENT A – List of substantive claims in the *Aged Care Award 2010*

United Voice seeks to vary the award by:

- introducing a Telephone allowance;
- amending the Sleepovers clause to allow an employee to refuse a sleepover in certain circumstances and if there is reasonable cause; and to allow for a continuous sleepover span of eight hours; and amending the Payment for time worked subclause to allow any employee to be paid for all time worked during a sleepover at the prescribed overtime rate with a minimum payment of one hour; and
- amending the Classification Definition (Personal care worker) to replace “is required to hold a relevant Certificate III” with “holds a relevant Certificate III”.

The Health Services Union seeks to vary the award by:

- ensuring that the casual loading, payable in lieu of the paid leave entitlements of ongoing employees, is paid in addition to weekend and public holiday rates;
- ensuring shift allowances are paid when employees are working afternoon or night duty regardless of the day of the week;
- introducing the following allowances: a Telephone allowance; On call/recall allowances; a Reimbursement of costs associated with first aid certificate renewal allowance; and a Damaged clothing allowance;
- deleting or amending the Broken shift clause to include a minimum engagement period; a new broken shift allowance; and payment of overtime where the broken shift finish time is greater than the daily maximum shift length of 10 hours; and



DIRECTIONS

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Substantive Issues

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Aged Care Award 2010*

It is directed that:

1. Interested parties are to file in the Commission evidence and submissions in support of their claims on or before **4.00 pm on Friday 18 January 2019**.
2. Interested parties are to file in the Commission evidence and submissions in reply on or before **4.00pm on Friday 15 March 2019**.
3. All submissions must be sent to AMOD@fwc.gov.au
4. The matter will be heard on **10 and 11 April 2019**, in Sydney.

PRESIDENT