

**Fair Work Commission**

**Four Yearly Review of Modern Awards**

***Social, Community, Home Care and Disability Services Industry Award***

**Matter No: AM2018/26**

**SUPPLEMENTARY SUBMISSIONS IN REPLY OF HEALTH SERVICES UNION**

**OVERVIEW**

1. These submissions in reply are made by the Health Services Union (**HSU**) in response to the claim, by Australian Business Lawyers and Advisors Pty Ltd (**ABL**) on behalf of Australian Business Industrial (**ABI**) the NSW Business Chamber (**NSWBC**), Aged & Community Services Australia (**ACSA**) and Leading Age Services Australia (**LASA**) (referred to herein as **the employers**) to insert a remote response work clause in the *Social, Community, Home Care and Disability Service Award (the Award)*.
2. That claim is contained in the submission of ABL dated 2 July 2019 and its draft determination of 2 April 2019.
3. The Commission will recall that in its submissions of 15 February 2019 in support of its Draft Determination dated 15 February 2019, the HSU contended that remote work should be compensated by a one hour minimum payment at the overtime rate.
4. In its Reply submission dated 16 September 2019, the HSU deferred its response to the employers' claim and the ABL submissions in keeping with the understanding of the parties following the conciliation of the issue in August and September 2019. In that submission the HSU reserved its rights to respond to the employer claim.

**REMOTE RESPONSE ALLOWANCE**

5. The employers' claim implicitly concedes that the issue of employees working from home is one which is appropriate to be addressed in the current review, and should, in

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accordance with the Modern Awards objective, be addressed by a variation to the Award. The HSU embraces that implicit concession. It contends that work performed remotely by employees after ordinary hours should be remunerated under the Award.

6. The difference between the parties does not appear to be one of principle, rather the principal differences between the parties are as to the scope of work to be covered by such a clause, and as to the approach to be taken in determining and regulating payment of the remuneration for such work.
7. The HSU notes that the employers' claim is the subject of submissions by the Australian Services Union (**ASU**) dated 23 September 2019. Those submissions contain a number of observations about the employer claim, with which observations the HSU broadly agrees, namely:
  - a) At [3(a)], the ASU contends that the definition of "remote response duties" does not describe work in the SCHCDS Industry. The HSU adopted similar language in its draft variation of 15 February 2019. However, that description was an *inclusive* one. The HSU did not intend for that description to be an exhaustive one which performed the function of excluding from an entitlement to remuneration any other type of work required of employees outside of normal hours remote from their workplace, such as administrative work. Rather, the HSU's intention was to make clear that the types of work described were included as remunerated work in circumstances where such work is frequently required of employees outside ordinary hours, and performed, without remuneration;
  - b) At 3(b), the ASU observes that the proposed variation would appear to entitle an employer to direct an employee to perform work outside of their ordinary hours contrary to the reasonable hours limitation in s.62 of the FW Act. The HSU shares that concern and contends that at the very least, the employers' proposed clause may be perceived to have that effect;
  - c) At 3(c) and (d), the ASU notes the impact the employers' proposed clause would have on the current regulation of "on-call" work. The ASU's proposed variation deals with that issue by having a greater minimum payment for such work when required of an employee who is not "on call". The HSU agrees that such a distinction would create an incentive for more efficient management of the performance of work out of hours, and sets a fair and reasonable minimum standard for the performance of such work. Where an employee is not on-call and

thereby on notice as to the prospect of additional work out of hours, the disruption and disutility associated with a recall to perform work is likely to be greater.

8. As set out in the HSU's draft determination dated 15 February 2019, remote response work should be compensated at the overtime rate.
9. The HSU adopts the ASU Submissions at 3(f), (g) and (h), which address the operation of the employer's proposed clause, and the ASU's responses to the ABL Submissions at [5]. It endorses the principled approach to this issues set out at [7] of the ASU's Submissions.

**Health Services Union**

2 October 2019