



STATEMENT

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

(AM2014/250 and others)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 1 OCTOBER 2018

4 yearly review of modern awards – award stage – group 4 awards – substantive issues – full benches to be constituted

[1] Two decisions regarding Group 4 awards have been issued as part of the 4 yearly review of modern awards (the Review). These decisions were issued on 21 March 2018 (the *March 2018 decision*)¹ and 7 August 2018 (the *August 2018 decision*).² This Statement deals with the process for dealing with the substantive claims in the Group 4 awards.

[2] At the commencement of the review of the Group 4 awards, parties raised a number of substantive claims which were summarised in a document published by the Commission. During conferences conducted by members of the Group 4 technical and drafting Full Bench, some of these claims were withdrawn or resolved. In the *March 2018 decision* interested parties were asked to confirm which substantive claims they would seek to press. Attachment B to the *August 2018 decision* set out the substantive claims in 19 of the Group 4 awards in which parties had indicated they would be pursuing. A copy of the attachment is attached to this Statement.

[3] These substantive claims have been allocated to separately constituted Full Benches. The presiding member of each Full Bench will list a Mention and issue Directions in due course.

¹ [\[2018\] FWC FB 1548](#)

² [\[2018\] FWC FB 4175](#)

[4] Interested parties are asked to confirm in writing (to amod@fwc.gov.au) no later than **4.00 pm on Monday 15 October 2018** whether there are any variations or additions to substantive claims that are being pressed in the Group 4 awards (see Attachment A to this Statement).

PRESIDENT

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<PR700960>

Attachment A

Award Title	Party pressing substantive claim	Description of issues
<p><i>Aboriginal Community Controlled Health Services Award</i></p>	<p>NATSIWHA</p>	<p>NATSIWHA seeks to vary the award by:</p> <ul style="list-style-type: none"> • introducing the following allowances: Damaged clothing allowance; a Blood check allowance; a Telephone allowance; and a Nauseous work allowance; an Occasional interpreting allowance; a Heat allowance; an Isolation allowance; and a Medication administration allowance (allowances to which the parties do not agree). • expanding the Coverage clause to include Aboriginal and/or Torres Strait Islander health workers and practitioners. • amending the title of the Award (only if the above claim to change the coverage of the Award is successful). • introducing a 6 ‘Grade’ classification structure to incentivise education, training and development. • introducing a new grading wage structure in which persons engaged as “Advanced Health Worker – Practice” and “Health Practitioners” (previously these roles were classified in the Award as Grade 3) are reclassified as new Grade 5 with associated increases to remuneration. • expanding the Ceremonial leave clause to include “bereavement related ceremonies and obligations”. • including the following definitions in the Definitions and interpretation clause: (a) Aboriginal and/or Torres Strait Islander Health Worker; (b) Advanced Health Worker- Care; (c) Advanced Health Worker- Practice; (d) Coordinator Care; (e) Community Controlled Health Services Employees; (f) Generalist Health Worker; (g) Health Practitioner; (h) Health Worker

		<p>Trainee (i) Senior Health Care Workers- Care; (j) Senior Health Practitioner; and (k) Senior Health Worker. These definitions have no ‘work to do’ unless the Commission varies the Award to include NATSIHWA's proposed classification structure (as summarised in Item S2 of the Substantive Issues Summary Table).</p> <ul style="list-style-type: none"> • introducing clauses for “Progression”; “Recognition of previous service”; and “Evidence of qualifications”.
	HSU	<p>HSU seeks to vary the award by:</p> <ul style="list-style-type: none"> • 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. • introducing the following allowances: a Sole practitioner allowance; a Climatic and isolation allowance; and a Removal expenses allowance. • amending the on call and recall allowance clause by providing a 10 hour uninterrupted break after being recalled to work, instead of a six hour break and by providing an allowance for telephone or remote attendance where an employee is on call but not required to physically attend the work premises. • increasing the permissible period within which a roster change request may be made from 7 to 14 days. • introducing tea breaks.
<i>Aged Care Award</i>	UV	<p>UV seeks to vary the award by:</p> <ul style="list-style-type: none"> • introducing a Telephone allowance. • amending the Sleepovers clause 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

		<p>time worked during a sleepover at the prescribed overtime rate with a minimum payment of one hour.</p> <ul style="list-style-type: none"> amending the Classification Definition (Personal care worker) to replace “is required to hold a relevant Certificate III” with “holds a relevant Certificate III”.
	HSU	<p>HSU seeks to vary the award by:</p> <ul style="list-style-type: none"> 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; a Damaged clothing allowance; and an allowance for employees who are the subject of a unilateral employer-imposed roster change. 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.
<i>Air Pilots Award</i>	AFAP	<p>AFAP seeks to vary the award by:</p> <ul style="list-style-type: none"> introducing a rate of pay for Captains and First officers of an Embraer 135/145 aircraft. amending Schedule C either by inserting a clause which cross-references Schedule B or expanding the list of aircraft types in Schedule C to ensure pilots of regional airlines operating an aircraft type not listed in C.1.1 will be paid the minimum salary and additions to minimum salary provided for in Schedule B.

<p><i>Airline Operations-Ground Staff Award</i></p>	<p>TWU and AMWU</p>	<p>TWU and AMWU seek to vary the award by:</p> <ul style="list-style-type: none"> • removing the word ‘continuous’ from clause 23.1(a) of the exposure draft
<p><i>Architects Award</i></p>	<p>ACAA</p>	<p>ACAA seek to vary the award by:</p> <ul style="list-style-type: none"> • amending the Overtime clause to clarify that time off instead of payment will be granted on an “hour for hour” basis. • introducing a definition for an employee who has “a Completed Bachelor Degree with a pathway to a Master of Architecture” and associated minimum wage rates. • amending the Equipment and special clothing allowance clause by replacing the list of equipment and clothing with the words “relevant technical equipment or special clothing” . • amending the Superannuation fund clause. • amending the Termination of employment clause by specifying notice procedure requirements. • amending the Dispute resolution clause by inserting the word “workplace” before the words “health and safety legislation”.
	<p>APESMA</p>	<p>APESMA seeks to vary the award by:</p> <ul style="list-style-type: none"> • amending the Overtime clause (see ACAA’s claim listed above). • introducing an additional level in the Graduate of Architecture classification, being “Graduate of Architecture (Part 1)” classification and associated minimum wage rates. • amending the Progression from Graduate of Architecture to Registered Architect clause to remove reference to prescribed competencies which, in some instances, no longer exist.

<p><i>Broadcasting and Recorded Entertainment Award</i></p>		<p>A separate full bench will consider the following issues:</p> <ul style="list-style-type: none"> • Calculation of overtime. • Loaded minimum hourly rate.
<p><i>Children’s Services Award</i></p>	<p>UV</p>	<p>UV seeks to vary the Award by:</p> <ul style="list-style-type: none"> • introducing a Training allowance. • inserting a Note under the Clothing and equipment allowance clause regarding on site laundry facilities. • inserting the words “hat, sun protection (including sunscreen lotions)” into the Clothing and equipment allowance clause. • deleting the Higher duties clause or alternatively, amending it to remove the words “(including in-service training)”. • reducing the maximum amount of leave without pay for a Christmas close down from 4 to 2 weeks. • introducing the following allowances: a weekly allowance for an employee appointed as an educational leader; an hourly allowance for a responsible person physically present at a child care centre; a programming and administrative tasks allowance for children service employees that are required to perform additional programming and administrative duties in addition to their rostered hours. • amending the Non-contact time clause by extending non-contact time to 8 hours per week
	<p>AFEI</p>	<p>AFEI seeks to vary the Award by:</p>

		<ul style="list-style-type: none"> • amending the part-time employment clause to allow an employer to change an employees’ starting and/or finishing times (whether ongoing or ad hoc) where an agreement cannot be reached. • amending the casual employment clause by removing the restriction on employing casuals for temporary and relief purposes.
	Business SA	<p>Business SA seeks to vary this award by:</p> <ul style="list-style-type: none"> • removing the restriction on employing casuals for temporary and relief purposes. (see AFEI’s claim listed above)
	ACA, ABI and NSWBC	<p>Australian Childcare Alliance, ABI and NSWBC seek to vary the award by:</p> <ul style="list-style-type: none"> • amending the Ordinary hours of work and rostering clause to provide employers with greater flexibility to change rosters other than with 7 days’ notice and to allow ordinary hours to be worked before 6.00 am or after 6.30 pm.
	an interested individual	<p>An Individual seeks to vary the award by:</p> <ul style="list-style-type: none"> • including an Educational leadership allowance for employees with educational leadership responsibilities in early childhood education and care settings. • including a Responsible Person allowance.
<i>Dry Cleaning and Laundry Industry Award</i>	UV	<p>UV seeks to vary the award by:</p> <ul style="list-style-type: none"> • amending the Protective clothing allowance by removing the words “in good condition, fair wear and tear excepted”.

		<ul style="list-style-type: none"> • replacing the Uniform allowance with a Laundry allowance of a defined amount. • amending the Higher duties clause so that an employee is paid the higher minimum wage for the entire shift after performing higher duties for 2 hours. • amending the Overtime clause so that the first two hours worked in excess of an employee’s ordinary hours will be paid at time and a half and double time thereafter. • proposing a single definition of ‘shift worker’ to be used in all situations (currently the Award provides two definitions).
<p><i>Educational Services (Teachers) Award</i></p>	<p>UV, ACA and ABI & NSWBC and an interested individual</p>	<p>UV seeks to introduce the following allowances:</p> <ul style="list-style-type: none"> • a weekly allowance for employee appointed as educational leader and • an hourly allowance for responsible person physically present at a child care centre. <p>An individual seeks to vary the Award by:</p> <ul style="list-style-type: none"> • extending the Leadership allowance to teachers with educational leadership responsibilities in early childhood education and care settings. • including a Responsible person allowance. <p>ACA and ABI & NSWBC seek to vary the Award by:</p> <ul style="list-style-type: none"> • providing employers with greater flexibility to change rosters; • allowing ordinary hours in the children's services and early childhood industry to be worked after 6.30pm.
<p><i>Electrical, Electronic and</i></p>	<p>MEA</p>	<p>The MEA seek to vary the award by:</p>

<p><i>Communications Contracting Award</i></p>		<ul style="list-style-type: none"> • amending various aspects of the Hours of work clause. • a proposed new shiftwork clause. • various matters in Schedule B. • by redrafting the Employment of minors clause to provide clarity about the circumstances in which a junior employee may be engaged, whilst safeguarding the position of apprenticeships. • providing clarification as to whether the Rest break clause applies to both day workers and shift workers.
<p><i>Food, Beverage and Tobacco Manufacturing Award</i></p>	<p>UV and AMWU</p>	<p>UV seeks to vary the Award by:</p> <ul style="list-style-type: none"> • expanding the Coverage clause to cover security officers and cleaners. • amending the Facilitative provisions clause as it is too broad and are unnecessary in the context of the award flexibility provisions. • amending the Hot places allowance clause to increase the rate paid for work performed in hot places; to increase the duration of the break for employees working in temperatures in excess of 54 degree Celsius for 2 hours or more; to ensuring that the temperature is determined by agreement between supervisor and employee claiming the extra rate. • amending the Shiftworker definition so that a shiftworker is defined as a 7 day shiftworker who is regularly rostered to work on weekends and public holidays. • amending Meal breaks clause to clarify when the penalty must be paid. • amending the Overtime clause so that an employee’s first 2 hours worked in excess of their

		<p>ordinary hours will be paid at time and a half and double time thereafter.</p> <p>AMWU seeks to vary the Award by:</p> <ul style="list-style-type: none"> • amending Schedule B so as to establish a method for progressing from level 1 to level 2 and from level 2 to level 3 of the classification structure that is based on relative competency rather than assessed by indicative tasks, and is not contingent upon undertaking structured training. • including a specified process for classifying employees and dealing with reclassification disputes.
<i>Funeral Industry Award 2010</i>	UV and AWU	<p>AWU seeks to vary the award by:</p> <ul style="list-style-type: none"> • amending the overtime and penalty rates clause by inserting a minimum payment for time worked on public holidays. <p>UV seeks to clarify:</p> <ul style="list-style-type: none"> • that the Uniform allowance clause applies to all employees, not only full-time employees. • the interaction between the clauses relating to recalls and removals and the clauses providing minimum periods of engagement for part-time and casual employees.
<i>Journalists Published Media Award</i>	MEAA	<p>MEAA seeks to vary the Award by:</p> <ul style="list-style-type: none"> • amending the definition of “Editorial employees” by including “editors, multimedia editors or producers, social media editors or producers and art directors” and removing the words “for online publications”. • amending the Coverage clause to prevent certain editorial employees from being excluded from the Award’s coverage and from accessing entitlements and safeguards in Part 5 of the Award (due to occupying exempt positions) by increasing the threshold for occupying exempt

		<p>positions.</p> <ul style="list-style-type: none"> • amending the Coverage clause to allow both editorial employees engaged by an online publication that does not have an associated print publication and editorial employees in specialist publications to access the entitlements and safeguards in Part 5 of the Award. • amending the Shiftwork and weekend penalties clause to permit equitable access to shiftwork penalties payable to editorial employees not employed by metropolitan, suburban, magazine, wire service, regional daily or country non-daily publishers • amending the Annual leave clause to provide access to additional leave for all publications, irrespective of platform or masthead type, where an employee is required to work on public holidays on an ongoing basis. • amending the Annual leave loading clause to provide greater clarity by including the followings words at the end of the clause “– for all periods of annual leave”. • amending the cross-reference in the Employees receiving additional annual leave clause.
<i>Pest Control Award</i>	AWU	<p>AWU seeks to vary the Award by:</p> <ul style="list-style-type: none"> • amending the Payment and loading clause by substituting the reference from “industry” allowance to “leading hand allowance”.
<i>Plumbing and Fire Sprinklers Award</i>		<p>The following issues will be considered by a separately constituted Full Bench:</p> <ul style="list-style-type: none"> • industry disability allowance and space, height and dirt money allowance—fire sprinkler fitter employees clause. In particular, clarification is required as to whether apprentices are entitled to the allowance and how the allowance is to be calculated. • restructuring the Shift work clause

		<ul style="list-style-type: none"> including a ‘shift work’ clause which brings together relevant shift work provisions under the Award Schedule B – all purpose rate (if the variation to clause 20.3(f) of the ED is made, there will need to be an amendment to Schedule B)
<i>Professional Employees Award</i>	APESMA	<p>APESMA seeks to vary the Award by:</p> <ul style="list-style-type: none"> amending the Professional development clause to provide for reimbursement of the costs of obtaining Professional Registration for Professional Engineers. amending the Definitions and interpretation clause, Coverage clause, Minimum wage clause and the Classification Structure and Definitions Schedule to provide occupational coverage for Engineering Technologists. Ordinary hours of work clause, in particular whether the Award should specify a maximum number of weeks over which ordinary hours can be averaged.
<i>Social, Community, Home Care and Disability Services Industry Award</i>	UV and HSU	<p>UV and the HSU seek to vary the award by</p> <ul style="list-style-type: none"> replacing references to terms such as ‘appropriate rate’ and ‘ordinary rate of pay’ within the Award with ‘minimum hourly rate’. amending the Clothing and equipment allowance clause to ensure that the employee will be given a sufficient number of uniforms so that they will not need to launder their work wear more than once a week. amending the Rosters clause to ensure that permanent staff are protected and that any additional hours required to be worked at short notice will be appropriately remunerated. amending the Telephone allowance clause to ensure that an employee who is required to use a

		<p>mobile phone will be entitled to reimbursement for the cost of purchase and other charges.</p> <ul style="list-style-type: none"> • amending the Broken Shifts clause to ensure that the maximum number of broken shifts that can be worked is two. • amending the Sleepover clause so that it is extended to cover employees who are working a 24 hour care shift or who are supervising clients on excursions. • deleting the 24 Hour care clause, or alternatively amending the clause to ensure that employees will be entitled to overtime for all hours worked over 8 hours. • amending the Excursions clause to ensure that employees are paid according to the provisions of the Award for the whole time they are working an excursion. • amending the Meal breaks clause to correct the cross-reference. • amending the Overtime clause to allow casual employees to be paid overtime after 8 hours of work on any one day and to ensure that part-time and full-time employees are paid overtime for work done in addition to their rostered hours. • amending the Payment for working on a public holiday clause by inserting a subclause which prevents rosters being altered for the purpose of avoiding public holiday entitlements under this Award and the NES.
<p><i>Supported Employment Services Award</i></p>		<p>The issue relating to:</p> <ul style="list-style-type: none"> • employees with a disability <p>will be referred to the Full Bench being presided over by VP Hatcher.</p>

<i>Water Industry Award</i>	UV	UV seeks to vary the award by : <ul style="list-style-type: none">• amending the Coverage Clause to clarify that an employer “in the water industry” does not mean the employer operates exclusively in the water industry but also covers employers who are contracted to perform work in the water industry.• removing sub clauses 19.5(a)(iv)-(iv) in the Normal Starting Point clause and inserting a new subclause titled “Multiple starting points”.• amending the Higher duties clause to provide that all hours worked at higher duties are paid at the higher minimum wage, and that that rate be paid for the entire shift where higher duties are performed for two hours or more.
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