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

(AM2018/13, AM2018/18 and AM2018/26)

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 – Aged Care Award 2010 – Children's Services Award 2010 – Social, Community, Home Care and Disability Services Industry Award 2010

[1] This Statement deals with the substantive claims to vary the *Aged Care Award 2010* (the Aged Care Award), the *Children's Services Award 2010* (the Children's Services Award) and the *Social, Community, Home Care and Disability Services Industry Award 2010* (the SCHADS Award).

[2] The Aged Care Award, the Children's Services Award and the SCHADS Award will be listed for programming Mentions. The purpose of these Mentions will be to confirm that the substantive claims identified are being pressed and to settle directions for the filing of material and hearing of the substantive claims. Parties will be asked to indicate the extent of the evidentiary case they propose to bring in support of their claims. Parties will also be asked to indicate whether the matter can be determined on written materials filed, without the need for a hearing. Parties are encouraged to engage in discussions between themselves prior to the Mention to settle proposed directions that will be discussed at the Mention.

[3] The substantive claims identified in each award are detailed below.

Aged Care Award 2010

[4] Attachment B to the *August 2018 decision* set out a number of substantive claims that are being pressed by United Voice and the Health Services Union (HSU) in the Aged Care Award. These substantive claims are outlined below.

[5] United Voice confirmed in its submission dated 18 April 2018 that it is pursuing 3 substantive claims as follows[1]:

i. introducing a Telephone allowance;

[1] United Voice submission, 18 April 2018, at para 20

ii. 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 time worked during a sleepover at the prescribed overtime rate with a minimum payment of one hour; and

iii. amending the Classification Definition (Personal care worker) to replace "is required to hold a relevant Certificate III" with "holds a relevant Certificate III".

[6] The HSU confirmed in its submission dated 19 April 2018 that it intended to pursue four claims in the Aged Care Award[2]:

i. 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;

ii. ensuring shift allowances are paid when employees are working afternoon or night duty regardless of the day of the week;

iii. 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; and

iv. 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.

[7] A programming mention will be held for the Aged Care Award in Sydney on **Monday 22 October 2018** at **9.30 am.** The matter number will be AM2018/13.

Children's Services Award 2010

[8] Attachment B to the *August 2018 decision* set out a number of substantive claims that are being pressed by five parties in the Children's Services Award. The substantive claims are outlined below.

[9] United Voice confirmed in their submission of 18 April 2018[3] that they seek to vary the Award by:

i. introducing a training allowance;

ii. inserting a note under the clothing and equipment allowance clause regarding on site laundry facilities;

iii. inserting the words "hat, sun protection (including sunscreen lotions)" into the clothing and equipment allowance clause;

[2] HSU submission, 19 April 2018, at para 7

[3] United Voice submission, 18 April 2018, at paras 25-26

iv. deleting the higher duties clause or alternatively, amending it to remove the words "(including in-service training)";

v. reducing the maximum amount of leave without pay for a Christmas close down from 4 to 2 weeks;

vi. 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; and

vii. amending the non-contact time clause by extending non-contact time to 8 hours per week.

[10] The Australian Federation of Employers and Industries (AFEI) confirmed in their submission of 19 April 2018[4] that they seek to vary the Award by:

i. 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; and

ii. amending the casual employment clause by removing the restriction on employing casuals for temporary and relief purposes (Business SA confirmed confirmed in their submission of 19 April 2018[5] that they seek a similar variation).

[11] The Australian Childcare Alliance and Australian Business Industrial and the New South Wales Business Chamber confirmed in their submission of 20 April 2018[6] that they seek to vary the award by amending the ordinary hours of work and the 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.

[12] An Individual confirmed in their submission of 19 April 2018[7] that they seek to vary the award by:

i. including an Educational leadership allowance for employees with educational leadership responsibilities in early childhood education and care settings; and

ii. including a Responsible Person allowance.

[13] A programming mention for the Children's Services Award will be held in Sydney on **Monday 22 October 2018** at **10.00 am.** The matter number will be AM2018/18.

Social, Community, Home Care and Disability Services Industry Award 2010

[14] Attachment B to the *August 2018 decision* set out a number of substantive claims that are being pressed by United Voice and the Health Services Union in the SCHADS Award.

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[4] AFEI submission, 19 April 2018

[5] Business SA submission, 19 April 2018, at para 3

[6] ABI submission, 20 April 2018, at para 8

[7] An individual submission, 19 April 2018, at pages 5–8

[15] United Voice confirmed in their submission of 18 April 2018[8] that they will seek to vary the award by:

i. 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;

ii. 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;

iii. amending the Telephone allowance clause to ensure that an employee who is required to use a mobile phone will be entitled to reimbursement for the cost of purchase and other charges;

iv. amending the Broken Shifts clause to ensure that the maximum number of broken shifts that can be worked is two;

v. 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;

vi. 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;

vii. 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;

viii. amending the Meal breaks clause to correct the cross-reference;

ix. 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;

x. 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;

[16] The HSU indicated in their submission of 19 April 2018 that they have 'a number of outstanding substantive claims they intend to pursue (see link to substantive variations summary below).'[9] The HSU will be asked to indicate at the Mention which outstanding substantive claims they intend to pursue.

[17] There appears to be a number of other outstanding substantive items that were not the subject of submissions in response to the *March 2018 decision*. Interested parties will be asked to indicate at the Mention whether they propose to press any other substantive items other than those listed in Attachment B to the *August 2018 decision*. We refer interested parties to the outstanding substantive items listed in the revised summary of proposed

[8] United Voice submission, 18 April 2018, at para 43

[9] HSU submission, 19 April 2018, at para 7

substantive variations published on the Commission's website on 22 November 2017. If any interested parties with substantive items listed in this document do not attend the Mention it will be assumed these substantive claims have been withdrawn.

[18] A programming mention will be held in Sydney on **Monday 22 October 2018** at **10.30 am.** The matter number will be AM2018/26.

[19] An updated summary of substantive variations will be published following the Mention.

PRESIDENT

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