

BEFORE THE FAIR WORK COMMISSION

**NURSES AWARD
(MA000034)**

Response to *Exposure Draft – Nurses Award 2014*

**SUBMISSION BY
AGED CARE EMPLOYERS**

28 January 2015

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Parties to this Submission

[1] Aged Care Employers.¹

Overview

[2] Aged Care Employers make this submission in response to the Fair Work Commission's (**Commission**) publication of the *Exposure Draft – Nurses Award 2014 (the Exposure Draft)* in Stage 2 of the 4 Yearly Review of Modern Awards.

In accordance with the Commission's statement of 8 December 2014, submissions are limited to the technical and drafting changes proposed by the Commission. Aged Care Employers reserve the right to respond to any specific proposals to vary the *Nurses Award 2010 (the Award)* at the appropriate time.

Specific questions

[3] **Clause 6.4(b)(iii) - Casual employment exclusions**

Parties are asked to provide a list of provisions that do not apply to casual employees.

As noted in FWCFB 9412 of 23 December 2014 at paragraph [69]

[69] This proposal generated significant controversy among interested parties to many of the Group 1 modern awards. We have decided that the above sub-clause and note will be removed from all the exposure drafts....

Aged Care Employers understand that this decision noted in para [69] above will apply to exposure drafts issued for all 4 award review stages and not just those in Group 1. Therefore, this question is irrelevant.

[4] **Clause 11.2 - Allowances**

Parties are asked to confirm whether Registered Nurses Levels 4 and 5 are entitled to any of the allowances.

Aged Care Employers submit that Registered Nurses Levels 4 and 5 are excluded from receiving all allowances contained in clause 11. In relation to

¹ Aged Care Employers: Aged and Community Services NSW & ACT, Leading Age Services Australia NSW- ACT, Aged and Community Services Australia, Leading Age Services Australia, Leading Age Services Australia VIC, Aged and Community Services Western Australia, Aged and Community Services SA & NT, Leading Age Services Australia – QLD, Leading Age Services Australia – SA, Leading Age Services Australia – TAS, Leading Age Services Australia – WA, Aged & Community Services Tasmania, Aged and Community Services Australia (Victoria), Aged and Community Services Australia (QLD)

the items set out under clauses 11.3 and 11.4, such allowances relate to items that vary in their application to a managerial employee/s, and if they are applicable, are ordinarily negotiated between the employer and employee as outside award or over-award arrangements (including salary packaging arrangements). Further, the rate of pay for Registered Nurses Levels 4 and 5 already compensates the employee for these items.

[5] **Clauses 17.5(b)(i)-(ii) - Annual leave loading**

In relation to employees who are not shiftworkers, annual leave loading of 17.5% is based upon 4 weeks or 152 hours (pro-rata for part-time employees) (clause 17.5(b)(i)). It is noted that such employees are entitled to 5 weeks annual leave as a safety net (see clause 17.2(a)).

In relation to employees who are shiftworkers (as defined by clause 17.2(b)), the position is not clear. Aged Care Employers submit that it is not the intention of the clause to provide any additional annual leave loading to shiftworkers (ie beyond that payable to non-shiftworkers). The issue raised by this question is significant and may require consideration of the history of the making of the modern award by the former Australian Industrial Relations Commission, as well as a review of majorative provisions concerning annual leave loading in former NAPSA's and Federal Awards. It is therefore appropriate that this issue be dealt with as part of any wider consultations concerning the Award in the 4 yearly review.

General comments on drafting

[6] **Clause 6.4(d) - Casual employment**

The additional amounts an employee is entitled to receive for working shift work Monday to Friday and working Saturday and Sunday is variously described within the exposure draft as a loading, a penalty and an allowance. For consistency of language, Aged Care Employers propose that one description (penalty) be used throughout the Award.

Aged Care Employers also propose that clause 6.4(d) be varied to specifically reference Saturday and Sunday as the method of calculating a casual employees entitlement for working ordinary hours, being the same as the method for calculating a casual employees entitlement to shift work. Aged Care Employers propose the following amendment:

“6.4(d) A casual employee will be paid shift penalties and Saturday and Sunday penalties ~~allowances~~ calculated on the minimum rate of pay excluding the casual loading with the casual loading component then added to the penalty rate of pay.”

[7] **Clause 8.1(a) and clause 8.1(b) - Ordinary hours and rostering**

Aged Care Employers question the need to distinguish between day worker and shiftworker in clause 8.1(a) and clause 8.1(b). The distinction appears to have no impact on entitlements throughout the Award.

The only appropriate reference which needs to be made for a shiftworker is for the calculation of the additional week of annual leave for a shiftworker at clause 17.2(b) of the Award.

[8] **Clauses 8.1(e) and 8.3(a) – Accrued Days Off**

Accrued Day Off (ADO) arrangements are only available to full time employees. Aged Care Employers propose the following changes to clauses 8.1(e) and 8.3(a) to clarify this:

“8.1(e) An accrued day off (ADO) system of work may be implemented where ~~an~~ a full-time employee works no more than 19 days in a four week period of 152 hours”.

“8.3(a) Where a full-time employee is entitled to an ADO, in accordance with the arrangement of ordinary hours of work as set out in clause 8, the ADO will be taken within 12 months of the date on which the first full ADO accrued”.

[9] **Clause 11 - Allowances**

Aged Care Employers consider that it would reduce ambiguity for both employees and employers to have the allowances and the reference to the standard rate set out in one clause of the Award, rather than at clause 11, and at Schedule C, as currently proposed.

[10] **Clause 11.4(a)(i) - Clothing and equipment**

The following clause has had the wording “by the employer” removed from the clause. Aged Care Employers consider there to be no reason to make this deletion and propose the following clause:

“11.4(a)(i) Employees required by the employer to wear uniforms will be supplied with an adequate number of uniforms appropriate to the occupation free of cost. Uniforms are to remain the property of the employer and be laundered and maintained by the employer free of cost to the employee”.

[11] **Clause 11.4(b) - Meal allowances**

The Aged Care Employers believe the distinction between shiftworker and non shiftworker is unnecessary and simply complicates the entitlement (which

is triggered simply by working more than 1 hour of overtime). Aged Care Employers request that the clause be amended as follows:

“11.4(b) Meal allowances

(i) When required to work overtime after the usual finishing hour of work beyond one hour ~~or, in the case of shiftworkers, when the overtime work on any shift exceeds one hour,~~ an employee will be:”

[12] **Clause 14.2(a) and clause 14.2(b) - Shiftwork**

Aged Care Employers submit to replace the word “loading” with “penalty”. This is in line with our comments above.

[13] **Clause 15.1(c) - Overtime**

Clause 15.1(c) does not make any mention as to the payment of overtime for casual employees. Aged Care Employers propose that this issue could be resolved by deleting clause 15.1(c) and replacing it with words to the effect of:

“15.1

(c) Overtime rates under this clause will be in substitution for and not cumulative upon the shift and weekend premiums prescribed in clause 14 – Shiftwork, clause 16 – Saturday and Sunday penalties and the casual loading at clause 6.4(b) – Casual loading.”

[14] **Clause 15.3(b) - Rest period after overtime**

Aged Care Employers propose that clause 15.3(b) be amended as follows:

“15.3

(b) *An employee working overtime, other than a casual employee, is entitled to 10 consecutive hours off duty between the termination of work on one day and the commencement of work on the next day, without loss of pay for rostered ordinary hours during the absence”.*

The reasons for the amendment are to clarify that loss of pay is limited to rostered ordinary hours occurring during an overtime rest period.

[15] **Clause 15.5 – Recall to work when on call**

Aged Care Employers propose to amend the title of this clause to read as follows:

“15.5 Recall to work overtime when on call”

Such amendment will confirm that the provisions of clause 15.5 only apply for overtime purposes.

[16] **Clause 15.6 - Recall to work when not on call**

Aged Care Employers propose to amend the title of clause 15.6 to read as follows:

“15.6 Recall to work overtime when not on call”

Such amendment will confirm that the provisions of clause 15.6 only apply for overtime purposes.

[18] **Clause 16 - Saturday and Sunday Work**

The Exposure draft has replaced the reference to “loadings” as per the Award, to “penalty rates”.

Aged Care Employers propose that clause 16 be amended to ensure that there is consistent language used throughout the Award, as follows:

“16. Saturday and Sunday work

16.1 Where an employee is rostered to work ordinary hours between midnight Friday and midnight Saturday, the employee will be paid a penalty of 150% of their minimum hourly rate for the hours worked during this period.

16.2 Where an employee is rostered to work ordinary hours between midnight Saturday and midnight Sunday, the employee will be paid a penalty of 175% of their minimum hourly rate for the hours worked during this period”.

Aged Care Employers also submit that an additional notation should be included after clause 16.2 to address how casual employees are to be paid for work performed on a weekend, as follows:

“For the calculation of penalty rates for Casual employees, refer to Clause 6.4(d).”

The is consistent with the approach adopted in *Award Modernisation* (2009) 181 IR 19 (at 54, [150]: “the correct approach is to separate the calculations and then add the results together”).

Aged Care Employers

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