

## IN THE FAIR WORK COMMISSION

Matter No: AM2014/250, AM2014/251, AM2014/263, AM2104/266, AM2014/285, and AM2014/286.

Title S 156 - Four Yearly Review of Modern Awards – Groups 4A, 4B and 4C – Exposure Drafts

# **SUBMISSIONS IN REPLY ON TECHNICAL AND DRAFTING ISSUES INN GROUP 4A, 4B AND 4C EXPOSURE DRAFTS**

25 July 2016

## Introduction

1. These submissions are made in reply to submissions on technical and drafting issues in the following Group 4A, 4B and 4C awards (**'the Awards'**):
  - a. *Aboriginal Community Controlled Health Services Award 2010 ('ACCHS Award')*,
  - b. *Aged Care Award 2010*,
  - c. *Children's Services Award 2010*,
  - d. *Educational Services (Teachers) Award 2010 ('Teachers Award')*, and
  - e. *Social, Community, Home Care and Disability Services Industry Award 2010 ('SCHDS Award')*.
2. All pin-point references refer to the Exposure Draft of the Award unless otherwise stated.
3. United Voice relies on its submissions of 30 June 2016.

## ***Aboriginal Community Controlled Health Services Award 2010***

### *Clause 2 - Definitions*

4. We note the comments made by NATSIHWA regarding the definition of 'Aboriginal Health Worker' and a proposed definitions for 'Aboriginal and Torres Strait Islander Health Practitioner' and 'Aboriginal and Torres Strait Islander Health Assistant'. We agree that the definition of aboriginal health worker should be amended to reflect the terminology of the national regulation of the industry.
5. We reiterate paragraphs 4 through 7 of our submissions of 30 June 2016.
6. We also agree with NATSIHWA's submission that the terminology of the ACCHS Award should be amended to be inclusive of Torres Strait Islanders. We agree that name of the ACCHS Award should be varied as well.
7. We support the use of the acronym ATSI, meaning 'Aboriginal and Torres Strait Islander'.

8. We further note ABI has proposed that the definition of 'Aboriginal Health Worker' should be deleted. We further note the definition of 'Aboriginal' proposed by ABI. We are opposed to this definition.

*Clause 13 – Minimum Wages*

9. We note that NATSIHWA has submitted that Clause 13.3 – Progression should be amended to replicate clause 13.3 of the *SCHDS Award* and clause 13.2 of the *Teachers Award 2010*. This is properly a substantive claim. United Voice reserves its right to address this matter at the appropriate stage of the review.

*Clause 26 – Ceremonial Leave*

10. We note that NATSIHWA has proposed that the terms of the ceremonial leave clause be amended to clarify that 'Aboriginal and Torres Strait Islander ceremonial purposes' includes bereavement related ceremonies and obligations. These words clarify the entitlement without changing it. This matter can be dealt with at the technical and drafting stage.

***Aged Care Award 2010 ('Aged Care Award')***

*Clause 2 – Definitions*

11. We agree with the submission of ACE that the definition of ordinary hourly rate is ambiguous and likely to lead to confusion.

*Clause 11 – Casual employment*

12. United Voice agrees with AIG submission that the words 'as such' should be retained in the definition of casual employment at clause 11.1.

*Clause 15 – Sleepover*

13. United Voice notes AIG's submission that the words 'must' should be deleted from clause 15.5 and replaced with 'may'. We are opposed to AIG's proposal because it would be a substantive change to the entitlement.
14. We note that clause 22.9 (h) reads:

*(h) A sleepover may be rostered to commence immediately at the conclusion of the employee's shift and continuous with that shift; and/or immediately prior to the employee's shift and continuous with that shift, and not otherwise. [emphasis added]*

15. Clause 22.9 (h) of the current award provides for two situations in which a sleepover may be rostered and excludes all other alternatives. We note that AIG does not propose that the words 'and not otherwise' be inserted into the exposure draft.

16. The AIG variation would allow an employer to roster an employee on a sleepover without also rostering them to work before or after the shift. United Voice is opposed to this outcome.
17. The word 'must' in the exposure draft achieves the same end as 'and not otherwise' in the current award. The exposure draft clause expresses the entitlement more clearly than the current award.
18. However, we agree that the deletion of 'and/' from the exposure draft clause has the effect that an employer must choose to roster an employee to work either before or after the sleepover but not at both times.
19. We agree that 'and/or' be used at clause 15.5 (a).

#### *Clause 18 - Allowances*

20. *Clause 18.2 (c) (ii) – Nauseous work allowance:* We note AIG's submissions regarding the replacement of the phrase 'part thereof' with 'part shift'. We note AIG's submissions concerning the pro-rata payment of the allowance for work of less than 1 hours duration, but see no reason why the words 'part hour' change the entitlement. 'Part hour' is a more easily understood form of words and should be preferred to 'part thereof'.
21. *Clause 18.3 (a) (iii) – Uniform Allowance:* We note AIG's submissions regarding the removal of the words 'part thereof' in the exposure draft. We note AIG's submissions concerning the pro-rata payment of the allowance for a part of a shift. We dispute this interpretation and see no reason why the words 'part hour' change the entitlement. 'Part shift' is a more easily understood form of words and should be preferred to 'part thereof'.

#### *Clause 20 – Weekend Penalties*

22. We note AIG's comments regarding clause 20.3. United Voice is unsure that there is any need to include a reference to 20.2 at clause 20.3.

#### *Clause 22 - Overtime*

23. *Clause 22.5 (a) – Recall to work overtime:* United Voice notes AIG's submission that the form of words found in the exposure draft potentially changes the entitlement. We do not believe that the exposure draft clause creates an entitlement to a minimum payment for every time the employee is recalled outside the circumstances described in clause 22.5 (a).

***Children’s Services Award 2010***

*Clause 11 – Casual employment*

24. We note AIG’s opposition to the calculation of the casual loading on the ordinary hourly rate. We dispute that this is a substantive change from the current *Children’s Services Award*.

*Clause 17 - Allowances*

25. Clause 17.3 (d): We note the submission of Business SA that the reference to award based transitional instruments and Division 2B state awards in clause 13.9 (g) should be deleted in the exposure draft. United Voice opposes the deletion of this reference. The reference to award based transitional instruments and Division 2B state awards identifies the group of employees who are entitled to the benefit of this clause. Removing the reference would make the application of this clause less clear.

***Educational Services (Teachers) Award 2010 [MA000077]***

*Clause 11 – Part-time employment*

26. United Voice notes ABI’s proposal to reformat clauses 11.4 (a) and (b) into a formula. United Voice is not opposed to this variation.

*Schedule A – Hours of Work and Related Matters – Teachers employed in early childhood services operating for at least 48 weeks per year*

27. *Schedule A.2 – Rostered Days Off*: We note ABI’s comments regarding this Schedule A.2.12. Schedule A applies to teachers employed in early childhood services do not operate on a term system. These services provide education and care all year round with the exception of an annual shutdown period. This clause accounts for the type of service which would normally operate 48 weeks of each year, but does not for some reason, and so the number of rostered days off will be reduced proportionately.

***Social, Community, Home Care and Disability Services Industry Award 2010 [MA000100]***

*Clause 2 - Definitions*

28. United Voice agrees with the submissions of various parties that where terms are defined elsewhere in the SCHDS Award, they should not be defined again in Clause 2.

29. United Voice supports the ASU and HSU submissions.

*Clause 9 – Full-time employment*

30. United Voice notes the proposal by AFEI to amend this clause to refer to '38 ordinary hours per week or an average of 38 ordinary hours per week'. We disagree. The definition at clause 9 is common to almost all modern awards. No clarification is necessary.

*Clause 10 – Part-time employment*

31. United Voice notes the proposal by AFEI to amend this clause to refer to '38 ordinary hours per week or an average of 38 ordinary hours per week'. We disagree. The definition of part-time employment at clause 10 is common to almost all modern awards. Again, no clarification is necessary.

*Clause 11 – Casual Employment*

32. United Voice notes the ASU proposal to delete the exemption at clause 11.3 (a) of disability services employees from the minimum engagement for SACS employees. We are not opposed to the proposal, but note that this is a substantive claim and should not be dealt with alongside the technical and drafting matters. We reserve the right to address this issue in greater detail at the appropriate point of the review.

*Clause 13 – Ordinary hours of work*

33. United Voice notes the proposal by AFEI amend this clause to clarify that the span of hours at clause 13.2 does not apply to 24 hour care, excursions or sleepovers. The clause does not need clarification.

*Clause 14 – Rostering arrangements*

34. We note AFEI proposal that clauses 14.4, 14.5, 14.6 and 14.7 should be included at clause 13 – Ordinary hours of work. United Voice opposes this suggestion. The clauses referred to by ABI deal with particular forms of rostering, they are more logically grouped in clause 14.

35. *Clause 14.4 – Broken Shifts:* We note the position of various parties that time spent performing a sleepover does not meet the definition of a broken shift. United Voice relies on our submissions of 30 July 2016.

36. *Clause 14.6 – 24 Hour Care:* United Voice notes the comments relating to 14.6 (c) made by AIG. We disagree that these words change the entitlement.

37. *Clause 14.7 – Excursions:* We agree with ABI, ACE, AIG, Business SA and Jobs Australia that the allowance at clause 14.5 (e) is payable to an employee supervising clients in excursion activities involving overnight stays from home, but that the other provisions of clause 14.5 do not apply in that situation.

*Clause 16 – Minimum Wages*

38. United Voice is not opposed to the change in wording proposed to this clause by Business SA at paragraphs 6.1.4 to 6.1.6 of their submissions of 30 June 2016. We agree that the clause should reflect the employer’s obligation to pay their employee the minimum wage appropriate for their classification. Additionally, the clause should refer to the employee’s pay point within the classification to account for the broad-banded classification structure. We propose the following:

“An employer must pay *an employee* the following minimum *wage* for ordinary hours worked by *that employee for their classification* ***and pay point.***”

*Clause 17 - Allowances*

39. *Clause 17.2 (b) – First Aid Allowance – casual and part time employees:* We note and agree with Business SA’s comments on this clause.
40. *Clause 17.2 (e) (ii) – Board and Lodging:* We agree with Business SA’s submission that the term ‘ruling cafeteria rates’ is unclear and a definition should be agreed between the parties and inserted into the Award.
41. *Clause 17.3 (a) – Clothing and equipment:* We note the AFEI proposal to amend the clause to clarify that the ‘the clause needs to be read as a whole’ to be properly understood. We see no need to qualify each sub-clause of clause 17.3 (a) with a reference to the other sub-clauses of clause 17.3 (a). This would only make the clause difficult to read.
42. *Clause 17.3 (b) – Meal allowance:* We note the comment of ACE regarding clause 17.3 (b) (i). We do not agree that the different wording has changed the entitlement.
43. We further note the amendment to clause 17.3 (b) proposed by AFEI. The proposed amendment would make the clause more difficult to read without clarifying anything.

*Clause 19 – Overtime*

44. *Clause 19.3 – Rest period after overtime:* We note the comments made by AFEI in relation to this clause. We agree that the exposure draft clause is less clear than the current award clause.

45. We rely on paragraphs 64 and 65 of our submissions of 30 June 2016.

*Clause 20 – Penalty Rates*

46. *Clause 20.1 – Saturday and Sunday Work:* We note the proposed amendment to this clause made by Business SA at paragraph 6.1.9 of their submissions of 30 June 2016. United Voice is not opposed to the addition of the word ‘for those hours worked’ to clause 20.1.

*Clause 21 - Annual Leave*

47. *Clause 21.2 – Annual leave – Additional leave for certain shiftworkers:* We note the variation proposed by ACE. United Voice opposes this variation because it would restrict the entitlement in a way that is not consistent with the current award entitlement. We rely on our submissions of 30 June 2016.

*Schedule F – Summary of Monetary Allowances*

48. We note the opposition to the substitution of the words ‘All Groups’ for ‘Weighted average eight capital cities’ from various parties. United Voice supports the use of ‘All Groups’.

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