



# DRAFT REPORT

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## 4 yearly review of modern awards

(AM2014/263)

### CHILDREN'S SERVICES AWARD 2010 [MA000120]

COMMISSIONER CIRKOVIC

MELBOURNE 19 APRIL 2017

*4 yearly review of modern award – Children's Services Award 2010-*

[1] On ~~Tuesday 7 February 2017~~ Monday 27 March 2017 a conference was held to discuss the Summary of Submissions – Technical and Drafting (the summary) in relation to the review of the *Children's Services Award 2010*.

[2] The following items in the summary were discussed at the conference:

- Item 1: Agreed, as per BusSA proposal.
- Item 2: ~~AIG submit that the definition of ordinary hourly rate that has been inserted into the Exposure Draft (ED) does not reflect an earlier determination of the Commission. AIG propose that a different definition replace that has been inserted into the ED. Action: AMOD to update summary of submissions technical and drafting to reflect further submission of AIG of 16 January 2017. To be discussed further at next conference. As per its submission of 24 March 2017, AIG agree with United Voice's submission of 13 March 2017 that the definition set out at paragraph 5 of that submission should replace the definition of ordinary hourly rate in the Exposure Draft (ED).~~ Agreed, as per United Voice's proposal.
- Item 3 & Item 4: ~~United Voice and AIG will continue to discuss a form of words that accommodate both their concerns. To be discussed further at next conference. As per its submission of 24 March 2017, AIG agree with United Voice's submission of 13 March 2017 that the definition set out at paragraph 6 of that submission should replace the definition of minimum hourly rate in the Exposure Draft (ED).~~ Agreed, as per United Voice's proposal.
- ~~Item 5: Resolved, by updated ED of 6 January 2017.~~
- ~~Item 6: Submission no longer pressed by United Voice as it has been dealt with in a decision of the Commission.~~
- ~~Item 7: Substantive matter, no longer a technical and drafting issue. Action: AMOD to update summary of submissions technical and drafting to remove reference to CCSA in item 7.~~
- ~~Item 8: Resolved, by updated ED of 6 January 2017.~~
- Item 9: ~~AIG submit that clause 11.1 appears to have the effect of requiring the application of the casual loading on the ordinary hourly rate (which is defined as~~

including any all purpose allowances). AIG submit that this is a substantive change as it increases the entitlement. United Voice opposes AIG's submission. United Voice submits that the only all purpose allowance in the award is the qualifications allowance. United Voice submits that the qualification allowance, being an all purpose allowance, is included in the calculation of the ordinary hourly rate and is included in the calculation of casual loading. AIG to relate their submissions to this particular award and United Voice to respond to AIG's submission in writing. To be discussed further at next conference.

Subject to further discussions between parties.

- ~~Item 10: BusSA submits that the reference to transitional instrument and Div 2B State awards in clause 13.9(g) is no longer necessary as clause 1.4 protects employees from reduction in pay. AFEI agrees with BusSA's submission. United Voice opposes BusSA submission. United Voice submits the provision is not a transitional provision and that it identifies a group of employees by referring to one. To be discussed further at next conference.~~  
BusSA and AFEI no longer press their submissions. Item withdrawn.
- ~~Item 10A: G8E seeks to insert clause from *Educational Services (Teachers) Award 2010* at 16.2. United Voice submits that this is a substantive issue and needs to be referred back to the Full Bench to be dealt with as such. G8E supports the approach suggested by United Voice. Substantive issue to be referred back to the Full Bench.~~
- ~~Item 11: BusSA no longer pressing their proposal, supports the retention of the wording of the current award. United Voice supports the retention of the wording of the current award. Agreed to retain the wording of the current award.~~
- ~~Item 12: DECD SA not in attendance. No other parties have a position in relation to this item. DECD SA to circulate proposed wording to other parties for consideration.~~
- ~~Item 13: Typographical error resolved, by updated ED of 6 January 2017.~~
- ~~Item 14: BusSA withdraws their proposal.~~
- ~~Item 15: DECD SA not in attendance. No other parties have a position in relation to this item.~~
- ~~Item 16: DECD SA not in attendance. No other parties have a position in relation to this item. DECD SA to supply submission for other parties to consider.~~
  - ~~Item 17: AIG had understood this item to be resolved. AIG submits that the amendment made to the ED is not consistent with their proposal and that it does not resolve the issue they have raised. AIG propose that the reference to the 'ordinary hourly rate' contained in the tables in Schedule B be replaced with 'minimum hourly rate'. United Voice not opposed to AIG's proposal. United Voice proposes the addition of a note that sets out if someone is paid the qualifications allowance there would be a different calculation that needs to be performed that would result in a higher rate than is set out in the table. United Voice submits that this item needs to wait until the resolution of the definition of 'ordinary hourly rate' and their discussion with AIG over the calculation of casual rate. Action: AMOD to update summary of submissions — technical and drafting to reflect further submission of AIG of 16 January 2017. United Voice to provide their proposal in writing. To be discussed further at next conference. This includes all item 17 matters. AMOD has outlined the Award Stage Full Benches have issued a number of Decisions in the Review concerning the use of the term minimum hourly rate and ordinary hourly rate.<sup>1</sup> The current wording in the exposure draft is consistent with those Full Bench decisions. The concerns of Ai Group and United Voice have been noted.~~
- ~~Item 18: ABI & NSWBC submits the word 'increased' should be replaced with 'adjusted' in Schedule C.2.1(a) as the current wording presumes that relevant figures will always increase. AFEI does not oppose ABI & NSWBC's amendment. BusSA~~

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<sup>1</sup> See [2014] FWCFB 9412, [2015] FWCFB 4658, [2015] FWCFB 6656 and [2015] FWCFB 7236

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agrees with ABI & NSWBC's proposal. United Voice is reserving their position and seeking further instructions. To be discussed further at next conference. Item withdrawn by ABI&NSWBC in correspondence on 27 March 2017. At conference clarified parties to supply submissions to item.

[3] This matter is listed for further conference at **10:00am Monday ~~27 March~~ 1 May 2017** in Sydney. Any comments on the accuracy of the draft record are to be filed by no later than **5:00pm on Monday 27 February 2017**. Parties that wish to file further submissions are to do so no later than **5pm Monday 13 March 2017**.

COMMISSIONER

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