



Fair Work Commission

## **s. 156 4 yearly review of modern awards**

Response to Exposure Draft Submissions

(AM2014/285) Social, Community, Home Care and Disability  
Services Industry Award 2010

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1. The Australian Services Union (ASU) relies upon its 30 June 2016 submissions in matter AM2014/285 - *Social, Community, Home Care and Disability Services Industry Award 2010* (the SCHCDSI Award).
2. This submission is made in reply to the technical and drafting issues raised by the parties in response to the Exposure Draft published 13 May 2016.

## **Clause 2. Definitions**

3. A number of the parties have made submissions in response to the definitions at Clause 2. of the Exposure Draft.
4. The ASU maintains that duplication of definitions should be avoided. Inserting all relevant definitions in one clause is a simplified, structured and logical approach to drafting that sufficiently meets the objectives for review of the structure of the Awards. Furthermore, an approach to construction of the award that locates definitions in Clause 2. is preferable wherever possible.
5. The ASU is not opposed to an alternative solution for removing duplication to ensure that definitions appear once in the award and facilitate interpretation of the entitlement prescribed by the relevant clauses. On that basis, the ASU supports inserting a reference to the relevant definition in Clause 2. where it makes sense to do so. The Commission may be mindful to consider including definitions in clauses other than Clause 2. where the definition applies only to the operation of that particular clause.
6. In respect of inserting a definition for 'Sleepovers', Aged Care Employers (ACE), Business SA and Jobs Australia (JA) have each put a position that favours retaining the definition in Clause 14.5(a) of the Exposure Draft. The ASU opposes the approach for the reasons given above and relies on paragraph 6 of our 30 June submission and the submission above at paragraph 5.

## **Clause 11. Casual employment**

7. At paragraphs 8 and 5 of their respective 30 June and 1 July submissions, ACE and JA have claimed that the minimum engagement for social and community services (SACS) employees undertaking disability services work is 2 hours and consequently, clause 11.3(c) applies. The application of clause 11.3(c) to SACS

employees would present a substantive change to entitlements. The ASU submit that the ACE and JA submissions should be rejected because all SACS employees should be entitled to the same minimum engagement period irrespective of undertaking any sub-set of work.

8. The ASU also rejects the AFEI claim at paragraph 6 of their 8 July submission. The words 'and is not a part-time or full-time employee' in clause 11.1 are necessary and have been transposed from Clause 10.4(a) of the current award ensuring that the intent of the current provisions is maintained.

## **Clause 12. Classifications**

9. The ACE at paragraph 6 in their 30 June submission seeks to retain the existing words of clause 13.2 at 12.2 of the Exposure Draft. The ASU submits that the revised language proposed by the Commission does not represent a substantive change and provides a more clear interpretation of when the entitlement to advice of an adjustment to an employee's classification is triggered.

## **Clause 13. Ordinary hours**

10. The AWU have made a number of submissions at paragraphs 7 to 12 of their 6 July submission on whether a system of ordinary hours for each classification of employee (listed at Clause 8. of the Exposure Draft) is established in the SCHCDSI Award so that it is consistent with s.147 of the *Fair Work Act 2009* (FW Act). The AWU also say there is an inconsistency for part-time and casual employees between Clause 13. and the application of overtime provisions at Clause 19.1(b).
11. If the Commission agrees with the AWU, the ASU does not oppose seeking a remedy to the drafting issues in these proceedings. However, the change to Clause 11.1 contemplated by the AWU at paragraph 13 of their 6 July submission, at it is currently worded would represent a substantive amendment to the ordinary hours of engagement of a Casual employee.
12. The AFEI have submitted that the span of hours at clause 13.2 should be adjusted to exclude 24 hour care, 'Excursions' and 'Sleepovers'. The ASU opposes any substantive change to the provisions in the technical and drafting stage of the review and relies on paragraph 18 of this submission.

### **Clause 14.3 Rosters**

13. The ASU supports and adopts the submissions of the parties that seek to delete the reference to 'relieving staff' at Clause 14.3(e).

### **Clause 14.4 Broken Shifts and 14.5 Sleepovers**

14. The ASU relies on our previous submissions and re-agitates our submission for the Commission to contemplate further drafting issues to clauses that may be affected by a determination of the terms and conditions for employees who perform 'Sleepovers'.

### **Clause 14.7 Excursions**

15. At paragraph 7.4 of their 1 July 2016 joint submission, Australian Business Industrial (ABI) and the NSW Business Chamber (NSW BC) contend that Clause 14.7 operates to the exclusion of the 'Sleepover' provisions and only the 'Sleepover' allowance compensates employees performing Excursion responsibilities. JA also contend that any other interpretation would be unworkable.

16. The ASU refutes the above mentioned claims that the provisions of the 'Sleepover' clause would be unworkable if applied to 'Excursions'. The submissions are assertions and require further investigation of current practice.

### **Clause 16. Minimum wages**

17. In respect of the Business SA submission at paragraphs 6.1.4 to 6.1.6 of their June 2016 submission, the ASU opposes amending the preamble and minimum wages for Family Day Care and Home Care. The submissions represent substantive changes to entitlements and should be rejected because they are not technical and drafting issues.

### **Clause 17.3(c) Travelling and transport fares**

18. The ASU supports and adopts the submission of the HSU at paragraphs 24 and 25 of their 30 June submission.

### **Clause 21.1 Annual leave**

19. In respect of entitlements for some shiftworkers to additional leave under the NES, the ASU opposes the submissions of ACE, ABI & NSW BC and JA; where they contend that the entitlement to a fifth week of annual leave should be awarded at the completion of a year of service. The ASU submits that the effect would be to reduce the entitlement for shiftworkers currently accruing annual leave.

### **Australian Federation of Employers & Industries (AFEI) and Provisions relevant to the Equal Remuneration Order**

20. At paragraph 3 of their submission, the AFEI have identified a probable typographical error in publishing Clause 7.2 as 5.2. However, the adjacent submission that clause 13.7(b) should be amended to apply to a majority of employees is incorrect and, effect a substantive change to the provision and is opposed by the ASU.

Australian Services Union  
21 July 2016