



IN THE FAIR WORK COMMISSION

Matter No: AM2014/285

Title: Section 156 – Fair Work Act 2009 4 Yearly
Review of Modern Awards

Social, Community, Home Care and Disability
Services Industry Award

OUTLINE OF VARIATIONS SOUGHT

8 May 2017

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Contents

Contents.....	2
Introduction	3
Matters outstanding	3
Types of employment and classifications.....	3
Engagement – clause 8.2	3
Hours of work and rostering	4
Broken shifts – 14.4.....	4
24 hour care – 14.6	4
Telephone allowance – 17.3(d).....	4
Damaged clothing	4
Penalty Rates – 20.1(c)(i)	5
Classifications – Schedule A and D	5
Proceedings.....	5
Agreed Matters	5
Discontinued matters.....	6
APPENDIX A.....	8

Introduction

1. The HSU provides the following submissions for the Social, Community, Home Care and Disability Services Award 2010 [the award] in accordance with the directions issued by Justice Ross 7 February 2017¹.
2. These brief submissions provide an outline of substantive matters which the HSU still intends to pursue, identifies the matters it intends to withdraw and outlines the matters the HSU believes are agreed or substantially agreed between the parties generally.
3. For clarity this submission uses the clause numbering and wording contained in the Exposure Draft of the award published on 6 January 2017.²
4. The draft determinations attached at Appendix A relate to the matters pursued by the HSU; and the draft determinations at Appendix B relate to matters which the HSU understands are agreed or largely agreed between the parties. The drafts determinations reflect the clause numbering and wording contained in the Exposure Draft version of the award published on the 6 January 2017.

Matters outstanding

Types of employment and classifications

Engagement – clause 8.2

5. The HSU seeks to vary minimum engagement to 4 hours. The HSU notes that this matter has been referred to the Part-time and Casuals Full Bench in AM2014/196 and AM2014/197 and is awaiting decision.
6. If the decision of the bench does not deal with the issue of minimum engagement for the award then HSU intends to argue that the minimum engagement provisions for casual employees should apply to all types of employment – full time, part time and casual employees; and be set as a standard at 3 hours engagement for all sectors under the award.
7. The award would be varied by the addition of a sub-clause at 8.2(c) and the deletion of the existing provision at for casual employees at 11.3.

8.2 The minimum engagement for employees under this award will be 3 hours.

8. The HSU will review any decision and advise of its intentions if, or when, additional submissions or evidence needs to be considered in relation to this matter.

¹ [Directions](#)

² [Exposure Draft SCHCDS Award](#)

Hours of work and rostering

Broken shifts – 14.4

9. The provisions for broken shifts contain no minimum shift length or penalty for an employee suffering the dislocation of attending more than once to complete their hours of work.
10. HSU seeks to provide the following:
 - a. Minimum shift lengths applicable to each part of a broken shift for all employees; and
 - b. And to ensure broken shifts can only be worked by agreement.
11. The HSU intends to run a merits based claim, and does not intend at this stage to call any witness evidence.

24 hour care – 14.6

12. The HSU seeks deletion of the practice of employees being on site at a client's home and available to work across a 24 hour period of time.
13. The HSU, in addition to a mainly merits based claim may call a couple of witnesses to provide insight into working a 24-hour shift in a person's residence.

Telephone allowance – 17.3(d)

14. The current provision provides for an employee to be reimbursed for the installation and rental costs of a fixed line phone where the employee is required to be available on-call. This provision has not changed to take account of mobile phones, or the general requirements for employees to use their phones for work related purposes.
15. The HSU seeks a variation to the current telephone allowance to reflect the requirement to have a mobile phone, in many instances a smart phone, for work related purposes.
16. The HSU will probably call a small number of witnesses to testify to the requirement to have and maintain a mobile phone for rostering, shift changes and additional work.

Damaged clothing

17. The current uniform provisions apply where the employer requires the employee to wear a uniform. Use of uniforms in the sector is currently decreasing as part of the process of providing care within a normalised or more home-like context.
18. HSU seeks a new allowance for the replacement of clothing damaged during or in the course of work where a uniform is not required or supplied by the employer.
19. The HSU intends to run a principally merit based case at this stage.

Penalty Rates – 20.1(c)(i)

20. The HSU seeks to ensure the casual loading, payable in lieu of the paid leave entitlements of ongoing employees, are paid in addition to weekend and public holiday rates.
21. The HSU notes this matter is listed in the summary of substantive matters³ dated 6 January 2017 as referred to the Casuals Full Bench under AM2014/197, but there has been no indication to date that the bench is handling this matter.
22. The HSU claim is that the casual loading should be applied in addition, not compounding, to the weekend and public holiday rates. The loaded rates for casual employees on Saturday would be 175%, on Sunday 225%; the application also seeks to clarify that the applicable public holiday rate is 275% for casual employees.
23. The HSU case will be merits based, at this stage the HSU does not intend to call witnesses.

Classifications – Schedule A and D

24. HSU has sought to vary the classification criteria contained in the SACS Stream and the Home Care Stream. In the SACS stream the intention is to include improved disability specific criteria and in both streams to remove the current ambiguity created by the general level indicators particularly as they relate to disability work, skills, knowledge and qualification levels.
25. This remains a matter upon which the HSU would like to consult with interested employer parties. At this stage HSU is not proposing any concrete variations but intends to commence discussions with interested employer parties. Should the parties reach agreement these would be put to the bench for consideration.

Proceedings

26. Generally the HSU envisages that its claims in these proceedings will be essentially conducted on a merit based approach, with the addition of a small number of witnesses in support of claims for a varied phone allowance and the removal of the 24-hour care provisions.
27. Draft Determinations reflecting these claims are attached at Appendix A.

Agreed Matters

28. There are a number of matters on which the HSU believes parties have reached essential agreement. These are outlined below. The HSU envisages these matters would be dealt with through written submissions, except where the Bench sought further explanation from the parties generally.

³ [Summary Substantive Matters](#)

29. Joint submissions, including draft determinations, have been lodged by United Voice on behalf of all parties, including the HSU. These reflect agreement in the following matters:
- a. Changes to **Ordinary hours of work** in clause 13.1
 - b. Change to the **Roster** provisions in clause 14
 - i **Rest breaks** between rostered work clause 14.2; and
 - ii **Change in roster** clause 14.3(f); and
 - iii **Client cancellation** clause 14.3(g); and
 - iv **Sleepovers** clause 14.5;
 - c. A new provision for **Travel time** clause 14.8
 - d. Changes to the **On-call Allowance** clause 17.2(d) and a new provision for **Remote response** allowance clause 17.2(e)
 - e. Changes to **Rest period after overtime** in clause 19.3;
 - f. Changes to **Recall to work overtime at the employer's or client's premises** at clause 19.4.
30. The above matters are provided in draft determinations from the parties jointly.

Discontinued matters

31. The HSU confirms previous advice that it does not intend to press variations in the matters outlined below. The item numbers reference those in the FWC summary of substantive matters published 6 January 2017⁴.
32. Roster change – clause 14.3(f)
- a. Variations to the change of roster provisions are part of the agreed matters, any additional claims by the HSU are discontinued. These are identified at S32.
33. Client cancellations – clause 14.3(g)
- a. This matter is part of the agreed settlement and any additional claims identified by the HSU are discontinued. This matter is referenced at S29 of the summary.
34. Excursions – clause 14.7
- a. This matter is identified in the summary as item S45.

⁴ [ibid](#)

35. Saturday and Sunday & Shiftwork – clauses 20.1 & 20.2
 - a. This matter is identified in the summary as item S28 & S54
36. Allowances – clause 17
 - a. Payment of costs associated with first aid certificate renewal for employees required to hold a current certificate to undertake the work; This matter is identified in item S19
37. On call allowance – clause 17.2(d)
 - a. These matters are identified at S22. To the extent that they are not covered by the agreed matters, the HSU claims for additional on-call provisions are discontinued.
38. Payment of wages – new penalty
 - a. This matter was withdrawn earlier before the Full Bench dealing with these matters, but remains identified at S24 of the summary.
39. Sleepover – new rates clause 14.5
 - a. Changes to the sleepover clause are part of the agreed matters and the claim for an increased allowance by the HSU is withdrawn at this time. This matter is identified at S38.

APPENDIX A

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FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

Part 2-3, Div 4 – 4 Yearly reviews of modern awards

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

(ODN AM2014/285) MA000100

Health and Welfare

<<PLACE, MONTH, YEAR>>

Review of modern awards to be conducted.

- A. Further to the Full Bench decision issued by the Fair Work Commission on DD MM 2017⁵, the above award is varied
1. By inserting a new clause 8.2
8.2 The minimum engagement for employees under this award will be 3 hours
 2. By deleting the current clause 11.3 and inserting a new clause 11.3
11.3 In addition to the casual loading under clause 11.2, a casual employee must be paid:
 - (a) Penalty rates provided in clause 20.1 – Saturday and Sunday work; and
 - (b) Public holiday rates provided in clause 24.2 – Payment for working on a public holiday.
 3. By deleting the current clause 14.4 and replacing it with the following:
14.4 Broken Shifts
 - (a) Clause 14.4 only applies to:
 - (i) social and community services employees when undertaking disability services work; and

⁵ [Insert decision reference]

- (ii) home care employees.
 - (b) For the purposes of this clause, broken shift means a shift worked by a casual or part-time employee that includes breaks (other than a meal break) totalling not more than four hours and where the span of hours is not more than 12 hours.
 - (c) A broken shift may be worked where there is mutual agreement between the employer and employee.
 - (d) Payment of a broken shift will be at ordinary pay with an additional loading of 15% for all hours worked.
 - (e) In addition to the rates at 14.4(d) penalty rates and shift allowances in accordance with clause 20.2 – Shiftwork and clause 19 – Overtime apply.
 - (f) Shift allowances will be determined by the finishing time of the broken shift.
 - (g) All work performed beyond the maximum span of 12 hours for a broken shift will be paid at 200% of the minimum hourly rate.
 - (h) An employee must receive a minimum break of 10 hours between broken shifts rostered on successive days.
4. By deleting clause 14.6 24 hour care and renumbering clause 14.7 as clause 14.6
 5. By deleting the words ‘a 24 hour care shift pursuant to clause 14.6 or’ in clause 2 Definitions contained in the definition of sleepover.
 6. By deleting the words ‘a 24 hour care shift pursuant to clause 14.6 or’ in clause 14.5 Sleepovers.
 7. By inserting a new provision at clause 17.3(b) and renumbering the current 17.3(b)-(e) accordingly

17.3(b) Damaged clothing allowance

- (i) *Where an employee, in the course of their employment suffers any damage to or soiling of clothing or other personal effects (excluding female hosiery), the employer will be liable for the replacement, repair or cleaning of such clothing or personal effects provided immediate notification is given of such damage or soiling.*
 - (ii) *This clause will not apply where the damage or soiling is caused by the negligence of the employee.*
8. By deleting the current clause 17.3(d) and replacing it with
 - (d) Telephone allowance

Where the employer requires an employee to use a mobile phone for any work related purpose, the employer will either:

 - (i) provide a mobile phone fit for purpose and cover the cost of any subsequent charges; or
 - (ii) refund the cost of purchase and subsequent usage charges on production of receipts
 9. By deleting clause 20.1(c) and inserting a new 20.1(c) and (d) it with

Saturday and Sunday work

...

- (c) *Casual employees will receive their casual loading in addition to the Saturday and Sunday rates at clause 20.1(a) and (b)*
- (d) *The rates at clause 20.1(a)-(c) are:*
 - (i) *in substitution for and not cumulative upon the shift premiums prescribed in clause 20.2 —Shiftwork; and*
 - (ii) *not applicable to overtime worked on a Saturday or a Sunday.*

10. By deleting the table at clause 20.2(c) and replacing it with a new table

(c) Shift allowances and penalty rates

The following rates must be paid to employees engaged on shiftwork:

Shift	% of employee's minimum hourly rate	
	<i>Full time & part time employees</i>	<i>Casual employees</i>
<i>Afternoon shift—any shift which finishes after 8.00 pm and at or before midnight, Monday to Friday</i>	<u>112.5%</u>	112.5%
<i>Night shift—any shift which finishes after midnight or starts before 6.00 am, Monday to Friday</i>	<u>115%</u>	115%
<i>Public holiday—all hours worked on the public holiday</i>	<u>250%</u>	275%

11. By inserting a new clause 24.2(c):

- (c) *A casual employee will paid the casual loading under clause 11.2 in addition to the public holiday penalty rate at clause 24.2(a)*

B. This determination will come into operation from DD MM 2017. In accordance with s.165(3) of the *Fair Work Act 2009* (Cth) these items do not take effect until the start of the first full pay period that starts on or after DD MM 2017.