

IN THE FAIR WORK COMMISSION

Matter No: AM2014/285

Title: s156 – 4 yearly review of modern awards – Social, Community, Home Care and Disability Services Industry Award – Exposure Draft

SUBMISSIONS

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Introduction

1. The Health Services Union [HSU] makes these submissions in accordance with the directions issued by the Full Bench on 10 May 2016¹, in relation to the exposure draft of the Social, Community Home Care and Disability Services Industry Award [SCHCDS].
2. In making these submissions the HSU notes the comments included at the commencement of the SCHCDS exposure draft *'This exposure draft does not seek to amend any entitlements under the Social services award 2010 but has been prepared to address some of the structural issues identified in modern award'*.
3. The exposure draft has incorporated variations to the order of content proposed as a consequence of the plain language pilot project for the Pharmacy Industry Award. The HSU reiterates its acceptance of the new order of content for the modern awards.
4. These submissions deal with the exposure draft as follows:
 - a. Proposed relocation of clauses
 - b. Changes to language or meaning
 - c. Responses to questions from the AMOD drafting team
 - d. Any additional matters not dealt with elsewhere

Relocation of clauses

Definitions

5. Clause 2 contains several definitions which the HSU submits might better be located within other clauses.
6. During this 4 yearly review process there have been several changes of opinion about where definitions should sit within an award structure, the latest arising out of the plain language pilot project. For completeness the HSU supports the latest proposal that definitions be located at clause 2 of the award structure. In relation to the location of individual definitions the HSU does not support placement of the definition in multiple locations.
7. The HSU submits that where the definition relates to a term used or relevant in several places in the award, then that definition should be under separate heading at clause 2 definitions. However if the definition is only used or relevant to a single clause or entitlement; for example the definition of a shift worker for the purposes of an additional week of annual leave; then that definition should be located with the relevant clause only.
8. The definitions of crisis assistance and supported housing sector, family day care scheme sector, home care sector, and social and community services sector all only relate to the coverage of the

¹ [2016FWC2924](#)



award, and they are all repeated in clause 4 Coverage. The HSU believes that they should be removed from clause 2 Definitions and remain only in clause 4 Coverage.

9. In the view of the HSU the definition of sleepover should only be contained at clause 14.5.

Changes to language or meaning

Ordinary hourly rate

10. Throughout the various phrases of the 4 yearly review process and in multiple exposure drafts for various awards, concerns relating to the terms *minimum* or *ordinary* rate of pay as varied have been raised.
11. The decision of the Commission in AM2014/01² concerning general and technical drafting issues made a determination at PN[44] concerning the use of the terms minimum hourly rate and ordinary hourly rate. The decision differentiates between the use of the term minimum and ordinary based on the issue of all purposes allowances and proposes a definition for ordinary hourly rate. There is no proposal defining minimum hourly rate.
12. The HSU submits the term *minimum hourly rate* can variously be interpreted to mean;
 - a. the minimum rate of pay contained in the award; or
 - b. the minimum rate applicable to an employee's classification; or
 - c. the minimum hourly rate applicable to the employee on the basis of their classification, grade and level.
13. As examples: at 14.7 Excursions the words '*at the ordinary rate of pay*' have been replaced with '*at the minimum hourly rate of pay*'. The two phrases are not equivalent. There is no reference to the classification of the employee, nor to the pay points within the classification levels. Any employee employed above level 1 pay point 1 receives more than the minimum rate.
14. At clause 19.3(b)(i), in rewriting the clause to use percentages as opposed to using words, the phrase '*x% of the minimum hourly rate*' has been inserted into the clause. This does not reflect an employee's current entitlement to be '*paid at the rate of double time*' which rate is dependent on the classification and level of the employee.
15. The HSU suggests there are two possible solutions.
16. The simplest is to provide a definition for the term '*minimum hourly rate*'. The HSU submits the most appropriate wording is based on the proposed definition for '*ordinary hourly rate*' but includes reference to the employee's classification, grade and level.

'minimum hourly rate means the minimum rate of pay for the employee's classification, grade and level'.

² [2014FWCFB9412](#)



17. In the alternative the word '*employee's*' can be added throughout the award to the phrase '*minimum hourly rate*' to read '*the employee's minimum hourly rate*'. This alternative leaves the phrase without a definition and therefore is arguable a less comprehensive a solution.
18. The second option has the benefit of already being used in the award in the table of overtime rates at clause 19.1(a)(i).

Allowances and Wages tables

19. The HSU submits that the tables throughout the exposure draft would benefit from each figure being identified as a percentage or dollar figure with the use of the relevant signs for each individual figure, in addition to the use of the sign at the top of the column.
20. Using as an example the figures in the table at F.1; the sleepover allowance rate is 4.90 percent and the quantum applicable is 42.97 per night. There isn't any doubt which each represents when you carefully read the table, but the visual effect of 4.90% and \$42.97 makes the figures vastly more comprehensible at a glance.
21. The HSU submits this is relevant for all the wage and allowances tables, even where the only figures within the tables are dollar amounts.

Definitions

22. At clause 2 the definition of **social and community services sector** contained in definitions has had the second paragraph removed. If the definition is to remain in clause 2 then the full definition, which is replicated at clause 4.3, should be maintained.

National Employment Standards and this award

23. At clause 3.3 of the exposure draft the final words '*whichever makes them more accessible*' currently contained in clause 5 have been removed. The HSU can see no logic to the removal and submits the phrase should be retained.

Allowances

Clause 17.3(c) Travelling, transport and fares

24. At 17.3(c)(iii) the words '*Provide the employee will not be entitled to reimbursement for...which exceed the mode of transport ...*' have been replaced with '*An employee is not entitled to reimbursement for expense... if the expenses exceed the mode of transport ...*'.
25. The HSU submits the entitlement currently is that an employee is not entitled to reimbursement above [which exceeds] the standard agreed with the employer, but would be entitled to reimbursement up to that level. The HSU believes the new wording might imply that an employee would receive no reimbursement because '*an employee is not entitled...if the expenses incurred exceed...that was agreed with the employer.*'



Rostering arrangements

Clause 14.2 Rest breaks between rostered work

26. At clause 14.2(b) the wording has been changed from '*...a shift contiguous with...*' to '*a shift incorporating...*'. A sleepover period is distinct from any time the employee may be rostered to work before and/or after the sleepover period. Consequently, a shift cannot 'incorporate' the start or end of a sleepover. The HSU submits the current wording should be retained.

Clause 14.3 Rosters

27. The arrangements for rosters at clause 14.3(f) relate to the normal ongoing process of providing a roster to employees regularly and the processes which enable employers and employees to vary that roster once it has been posted.
28. But at **clause 28 Consultation about changes to rosters or hours of work** the entitlement relates to the processes for consultation concerning variations to the nature of a roster; such as incorporating or removing sleepover shifts; changing from an 8:8:8 configuration to a 8:8:10 roster pattern; or modifying methods of communication about roster changes under clause 14.3(f). Once the consultation processes at clause 28 are completed a roster must be developed which meets the requirements of clause 14.3.
29. There are no provisions under clause 28 which relate to 'a change of roster' once the roster has been posted. Any new style of roster discussed and implemented in accordance with clause 28 would have to be posted '*at least two weeks before the first working day of the roster period...*' and any variations would then be in accordance with clause 14.3(f).
30. The HSU submits the cross reference to clause 28 is both meaningless and misleading and should be removed.

Overtime

Clause 19.3 Rest period after overtime

31. At clause 28.3 of the current award the terminology used is '*termination of their ordinary work*' and '*commencement of their ordinary work*'. This is not the same things as the '*end of work*' or the '*start of work*'. Ordinary work implies the shift is rostered and expected, not additional work, generally at short notice.
32. The term '*ordinary work*' should be used.
33. At 19.3(a) the words '*off duty*' have also been replaced with '*a break of...*' in reference to 10 consecutive hours off duty. The HSU submits the original words should be used so the end of clause 19.3(a) would read:

'...that they do not have at least 10 consecutive hours off duty, the employer must:'



Penalty Rates

Clause 20 Saturday and Sunday work

34. The language change in clauses 20.1(a) & (b) changes the entitlement. The current words clearly identify that employees are paid for the hours worked between midnight and midnight on the specified days at the specified rates.
35. The new wording provides that if an employee works ordinary hours on a Saturday, for example, then they will be paid at 150% of the minimum rate; as there are no limits on the hours that are paid at 150%, then presumably all the hours that employee works will be paid at 150% because that's what is paid to *'employees whose ordinary working hours include work on a Saturday'*. And an employee who works ordinary hours on a Sunday, gets paid at 200%, for all their hours.
36. The use of the days [Saturday and Sunday] as opposed to the midnight to midnight terminology is not opposed. The HSU submits that the wording needs to varied to:

'Employees will be paid 150% of their minimum hourly rate for all ordinary hours worked on a Saturday' and 'Employees will be paid 200% of their minimum hourly rate for all ordinary hours worked on a Sunday'.

Schedule F Adjustment of expense-related allowances

37. At F.2.1 the table has changed the applicable consumer price index figure for deductions for board and lodging from *'Weighted average eight capital cities – CPI'* to *'All groups'*.

Questions from the drafting team

11.3 Minimum engagement for disability workers

38. The minimum engagement for a social and community services employee undertaking disability work is two hours.

12.4 Progression

39. The HSU submits that the phrase at 12.4(a) *'at each level with the level'* should read *'at each pay point with the level'*.

Communication of rosters

40. Clause 14.3 (d) the HSU submits mail and facsimile should remain as methods of communicating roster changes. To delete the references to mail and facsimile would be a substantive change.

Relieving staff

41. Clause 14.3 (e) the HSU believes the reference to *'relieving staff'* should be deleted. There are no provisions, classification or allowance in this award for a permanent employee without a



roster as exists in other modern awards; it is likely an artefact of the wording contained in the clause from the pre modernised award which was not noticed at the time.

Broken shifts

42. The parties are asked whether time spent performing a sleepover meets the definition of a broken shift under clause 14.4. The HSU submits that it does when work is performed contiguously with the beginning and the end of a sleepover period.
43. Broken shifts are permitted under the current clause 25.6 of the award. The clause grants employers the flexibility of rostering employees on broken shifts, even without agreement which is a feature of other awards. Employees are protected from unduly long periods of work by the requirement that all work outside of the 12 hour span of work will be payable at an overtime rate of 200 %.
44. A sleepover period is not a period of rest. Employees suffer the disability of being away from their home and must be ready to work at any time during the shift. The application of the rules concerning broken shifts to the period of work before and after a sleepover limits unsafe working hours. We note that no allowance is payable for a broken shift under the SCHDS Award, so the issue of double payment arising of payment of both the sleepover allowance and broken shift allowance cannot occur.

Heat allowance

45. The parties are asked if the provision is still necessary given the requirement to have been commenced work before 1991, 25 years ago. Leaving aside that some employees have been working for the same employer for more than 25 years, only clause 17.2(c)(iii) is restricted to employees who commenced work before the specified date. 17.2(c)(i) & (ii) apply to all employees.
46. The clause remains relevant.

Overtime rates

47. The HSU does not believe the reference to 'disability services' in clause 19.1(a) should be removed.
48. The sector is defined separately in the definitions and coverage clauses of the award; there are multiple references to disability services work or workers throughout the award; and while the parties won't necessarily agree on the solution, all agree that the classification provisions of the award as they relate to disability employees need to be improved.

Additional leave for shiftworkers

49. The HSU notes the provision for '*10 or more weekends*' in some form or another is the main provision initiating the entitlement to an additional week of annual leave in the majority of health based awards.



50. Annual leave is 4 weeks annually. Whilst the entitlement now accrues progressively, the outcome has not varied. Neither has any provision for shiftworkers to the additional week of leave annually.
51. The union does not see any need to provide additional clarification.

Matters not covered elsewhere

Clause 4.6

52. The HSU notes that while this clause accurately reflects the current award, the clause is itself incorrect and will need to be the subject of submissions during the award stage.
53. Specifically the clause states that the award *'does not cover employers [and employees] covered by any of the following awards* and lists the aged care, health professionals and nurses awards, all of which have employers covered by the SCHCDS award and at least one of these awards, in many instances all of them.



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