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Ms Miriam Henry
Associate to The Hon. Justice IJK Ross
Fair Work Commission

Friday, 7 April 2017

By E-MAIL: chambers.ross.j@fwc.gov.au

Dear Associate,

RE: 4 yearly review of modern awards – Plain language re-drafting

The Australian Services Union refers to the Fair Work Commission Statement dated 27 March 2017 ([2017] FWCFB 1638). At item 21 of the Statement the Fair Work Commission identifies awards to be included in the second tranche of awards to be re-drafted in plain language, including the *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHCDSI Award).

Item 21 of the Statement then says that "*Interested persons are invited to comment on the selection of the second tranche of modern awards for re-drafting in plain language.*" The Australian Services Union now takes the opportunity to make comment on the selection of the SCHCDSI Award for plain language drafting.

Currently the SCHCDSI Award is under going the process of the four yearly review of modern awards. There are currently fifty nine proposed variations from unions and employer associations, some of these proposed variations dealing with the same issues. The four yearly review has been assisted through extensive conciliation conferences convened by Deputy President Booth. The parties have made progress on six proposed variations to the SCHCDSI Award though arbitration may also be required before a finalised SCHCDSI Award is achieved.

The ASU's position is that the document that results from the four year review should be allowed to operate for a period before it is subjected to plain language drafting to allow the parties to see the finalised SCHCDSI Award in operation before any re-writing occurs.

The Commission Statement at item 6 notes that:

As stated in the 20 January Decision, the aim of plain language drafting is to make awards as simple and as easy to understand as possible without unintentionally changing the legal effect of the award. 5 Where plain language re-drafting of award terms highlights ambiguity it may be desirable that the ambiguity be resolved, even if it results in a change to the legal effect of the award.

As a result of the four year review the SCHCDSI Award will contain amended clauses and the ASU submits that these clauses should be given a chance to operate so their legal effect can be examined before a further re-write of the clauses is undertaken. The ASU believes the plain language review of the SCHCDSI Award should be deferred pending the outcome of the four year review.

Additionally whilst the current Modern Award is the legal document setting terms and conditions the prospect of amendments to the Modern Award is not conducive to a secure employment environment for employers and employees where the Modern Award has been under review for at least two years.

If you have any queries regarding this matter please contact Justin Cooney on 03 – 9342 1446, 0407 657 626 or jcooney@asu.asn.au.

Yours faithfully,

A handwritten signature in blue ink that reads "David Smith".

David Smith
National Secretary