



# REPORT TO THE FULL BENCH

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 Yearly Review of Modern Awards: Various Awards**

(AM2014/206 and Ors)

COMMISSIONER ROE

MELBOURNE, 9 OCTOBER 2015

*Four yearly Review of Modern Awards: Various Awards - Report to the Full Bench.*

### **CONFERENCES HELD ON 8 OCTOBER 2015 IN RESPECT TO THE MEDICAL PRACTITIONERS AWARD 2010, THE ANIMAL CARE AND VETERINARY SERVICES AWARD 2010 AND NURSES AWARD 2010.**

#### **MEDICAL PRACTITIONERS AWARD**

- [1] HSU, ASMOF, AFEI and AI Group were represented at the conference.
- [2] ITEM 5 – Ceremonial leave- HSU proposal for a new clause.
- [3] Substantive. No agreement has been reached in respect to this matter. AFEI and AI Group argue that this is substantive change. There will need to be an opportunity for further evidence and submissions. The matter will need to be allocated to a Full Bench for hearing.
- [4] ITEM 10 Hours of work arrangement – Following discussion at the conference ASMOF will reconsider its position and will advise within seven days if they intend to pursue this matter further. If they do then it is unlikely that the matter can be determined on the basis of the material provided to date.
- [5] ITEM 12/15/16 Agreed. AI Group proposal for a note that the casual hourly rate includes the 25% loading in three places. All parties now agree with the proposal.
- [6] ITEM 13 Agreed. This is a drafting issue and the parties agreed following discussion at the conference that clause 10.2 of the exposure draft should be replaced with clause 11.1(b) of the exposure draft of the Health Professionals and Support Services Award (not including the heading from that draft).
- [7] ITEM 17 Agreed. This is a drafting issue concerning recall provision and its impact on senior doctors. Following discussion at the conference it was agreed that the heading for Clause 14.5 should be amended to “Recall – other than senior doctors”.

## Summary

[8] There are some amendments to be made to the exposure draft as a result of the hearing of 7 October 2015. Amendments are also required as a consequence of Items 12, 15, 16, 13 and 17 above. The only two outstanding matters are Items 5 and Item 10. The status of Item 10 will be clarified by ASMOF.

## **ANIMAL CARE AND VETERINARY SERVICES AWARD 2010**

[9] AWU, UV, AFEI, AVA and AI Group were represented at the conference.

[10] ITEM 1 Agreed. This is resolved by ensuring consistency with Full Bench decision.

[11] ITEM 2 Withdrawn. AVA advised following the discussion at the conference that they are no longer pursuing the matter at this time.

[12] ITEM 3 Agreed. Following discussion it was agreed that the second and third sentences of clause 8.3(a) of the exposure draft should be replaced with the second and third sentences of Clause 22.3(a) of the current Award.

[13] ITEM 4 Agreed. The error in the exposure draft should be corrected. Clause 8.3 (c ) of the exposure draft should be replaced by Clause 22.3 (c ) of the current Award.

[14] ITEM 5/ ITEM 9. Agreed subject to drafting. AVA is to provide a draft for comment within seven days. A note will be added to Clause 11.2(a)(i) to the effect that on call is duty for the purposes of Clause 8.3(c ). AFEI and AI Group note that this is not a situation generally applicable in Awards and only applies to the particular situation of this industry.

[15] ITEM 7 Agreed. Drafting issue. Delete “their salary and” from the exposure draft clause.

[16] ITEM 8 Agreed. Drafting issue. Delete the words “when an employee is rostered to work Saturday” from clause 11.1(c )(ii) of the exposure draft.

[17] ITEM 10 Agreed. There is no need for a variation to the exposure draft. It is sufficiently clear that on call is additional to normal pay for active duty.

[18] ITEM 10A Agreed.

[19] ITEM 12A Substantive issue. AVA, UV, AWU agree that 6.4(b) in respect to paid study leave applies to part time employees on a pro rata basis and that the clause should make this clear. AFEI and AI Group argue that the paid study leave does not apply to part timers and that to change the Award would be a substantive change in entitlements. This matter will need to be the subject of further submission and evidence and referred to a Full Bench.

[20] ITEMS 13/14/15 Item 13 is not relevant any more. Item 14 and 15 is not yet resolved. AVA are seeking two changes to the Award. Firstly, they are seeking a definition of shift work and secondly, they are seeking that the definition of shifts align with the spread of hours for day work. The second of these matters is clearly a substantive change to the Award which is opposed by the unions. If AVA decides to proceed with that matter it will be a substantive matter requiring reference to a Full Bench. The first matter, shift work definition, may or may not be substantive depending upon the words proposed. The wording currently proposed by AVA did not find favour. AVA, UV and AWU are to meet to see if they can agree on a draft within the next seven days. AVA will also advise if they are pursuing the changed definition

of shifts. Any draft will be considered by the other parties and they will advise their position within seven days of receipt.

[21] ITEM 16 Agreed. Clause 15.3(a) of the exposure draft should include the words “ordinary hours on”.

[22] ITEM 17 Agreed. There should be a cross reference in Clause 15.2 to clause 16.1(a)(ii).

[23] ITEM 19 Agreed that this is not an issue which requires change to the exposure draft.

[24] ITEM 20A Substantive matter. AFEI and AI Group consider this is a substantive change. This matter will need to be considered by a Full Bench.

[25] ITEM 21 Agreed. It is implicit that the frequency of payment is as per clause 12 of the Award exposure draft. No change is required in respect to this matter.

[26] ITEM 21A Substantive matter. The AVA and APESMA proposal is a significant change. This matter will need to be considered by a Full Bench.

[27] ITEM 22 Agreed. Clause 16.4 of the exposure draft should be deleted.

[28] ITEM 23 Agreed. The wording of the current modern award should be used instead of the exposure draft wording.

[29] ITEM 24 It is acknowledged that the exposure draft reflects the current modern award. AFEI and AI Group to advise within fourteen days if they wish to pursue opposition to the exposure draft.

[30] ITEM 25 Unions to respond within seven days as to whether or not they support the proposal re clause 20.3.

[31] ITEM 27A Agreed. This is no longer an issue and the exposure draft is supported.

[32] ITEM 31 Agreed in principle. The unions will advise within 7 days if there are any remaining issues.

[33] ITEM 36 Agreed.

[34] ITEMS 37, 38, 39 Agreed that these items are resolved by the exposure draft or by the points above.

#### Summary

[35] There are some matters from the Full Bench hearing of 8 October 2015 which will result in amendments to the exposure draft. The items which were referred to the conference have all been resolved (some will require amendments to the exposure draft as set out above) except for the following.

[36] ITEM 5/9 is agreed subject to drafting. AVA to provide draft.

[37] ITEMS 14, 15, 24, 25, 31 are subject to further advice.

[38] ITEMS 12A, 20A, 21A, are substantive and will need to be considered by a Full Bench.

### **NURSES AWARD 2010**

[39] HSU, AIGroup, UV, PIEA, ANMF, AFEI, ACE, ABI and LAS were in attendance at the conference.

[40] ITEMS 2, 16, 19, 51, 53, 65, 68 AND 69 Agreed. These matters are resolved by the addition of the words “ applicable to their classification and pay point” where the words “minimum hourly rate” are used in the clauses referred to in these items.

[41] ITEMS 5, 48 and 58 Agreed. These matters are resolved by the following:

- In clause 14.2(a) and (b) of the exposure draft the % should be the additional % only, not 100% plus the existing percentage.
- Delete Clause 14.2(f) from the exposure draft

[42] ITEMS 12/13 Agreed. These matters are resolved by the insertion in the last column of Clause 5.2 against Clause 10.7(a) the words “An individual or a majority of employees”.

[43] ITEM 26 clause 8.2(e ) Substantive. The proposal to add the words “unless otherwise agreed” in respect to the seven days’ notice for roster changes is a substantive change which is opposed by the unions. This matter will need to be referred to a Full Bench.

### ITEMS 27/28/29 – MEAL BREAK CHANGES

[44] Item 28 AFEI is to advise within seven days if they wish to proceed or not. Other parties are not pursuing the matter. If AFEI advise they wish to proceed then this is a substantive matter which will require reference to a Full Bench.

[45] Items 27 and 29 Substantive. Parties are pursuing these matters. These matters will require reference to a Full Bench.

[46] ITEM 30 Agreed. Move clause 9.3 to become a new Clause 8.4.

[47] ITEM 54 Agreed. Amend 15.3(b) and (c) by using the current award clause 28.3 (however the minimum hourly rate term should be used consistent with full bench decision).

[48] ITEM 62 Agreed. No action required to the exposure draft. The clause is sufficiently clear and there is no application for change by the parties.

[49] ITEM 63 This item requires further consideration. The issue is should the term “ordinary pay” in the context of annual leave and annual leave loading be replaced with “minimum pay”. This may be an issue with implications in other Awards. The issue is being raised by parties to ensure consistency. The parties are to give this matter further consideration and provide any views within 14 days.

[50] ITEM 74 Withdrawn. Wording appropriate in the exposure draft. Ordinary is a reference to ordinary time not pay.

[51] ITEM 72 Parties will further consider. ANMF is seeking to remove the first reference to “or Enrolled Nurse” in A.1 of Attachment 1. ANMF will provide link to regulation. The

employer parties will consider their position and advise within seven days of receipt of ANMF link. If the matter is not then agreed then it is a substantive matter which will require reference to a Full Bench.

**[52]** Note RN and EN should be Registered Nurse and Enrolled Nurse when they first appear in the classification definitions.

Summary

**[53]** There are some matters from the Full Bench hearing of 8 October 2015 which will result in amendments to the exposure draft. There are a number of items which were identified as substantive at that hearing. The items which were referred to the conference have all been resolved (some will require amendments to the exposure draft as set out above) except for the following.

**[54]** ITEMS 28, 63, 72 are subject to further advice.

**[55]** ITEMS 26, 27, 29 are substantive and will need to be considered by a Full Bench.

Printed by authority of the Commonwealth Government Printer