



**A•S•U**  
Australian Services Union

## **ASU Submission**

### **4 Yearly Review of Modern award**

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

AM2014/285

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1. The Fair Work Commission (the Commission) published a Statement and Directions on 10 May 2016, amending dates for Group 4 matters. The parties were directed to file written submissions in response to drafting and technical issues in 4A exposure drafts by 30 June 2016.
2. The ASU files this submission in accordance with the above mentioned directions in respect of the Exposure Draft for the *Social, Community, Home Care and Disability Services Industry Award 2010*, published 13 May 2016.
3. This reply submission makes a number of submissions in respect of sleepovers. The ASU is seeking to vary the Modern Award to improve the terms and conditions for employees who perform sleepovers. The ASU understands these claims will be dealt with in the substantive hearings in matter AM2014/285 and the ASU submits that any amendments contemplated in the Exposure Draft to clauses affecting sleepovers should only occur, if required, after the substantive sleepover issues are determined.

## **Clause 2. Definitions**

4. A number of definitions in the Modern Award have been removed from the Exposure Draft in relation to transitional provisions resulting from the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth). Definitions removed include those for *award-based transitional instrument*; *Division 2B State award*; *Division 2B State employment agreement*; *enterprise award-based instrument* and *transitional minimum wage instrument*.
5. The ASU notes the comments made in the 2015/2016 Annual Wage Review [2016] FWCFB 3500 regarding the Social, Community and Disability Services Industry Equal Remuneration Order (2012 ERO) where the Annual Wage Panel proposed that a review be undertaken of transitional instruments. In the light of this review the ASU submits that the Definitions should remain in the proposed Modern Award subject to the outcome of the review.
6. A definition for “sleepover” is inserted into the Award. The ASU has made a claim at item 7 of its Submission of 2 March 2015 in regard to sleepovers. The ASU believes that the inclusion of a definition of “sleepover” must be dealt with in the context of the ASU claim for an increase in remuneration for employees performing a sleepover.
7. The ASU notes that the definition of sleepover is replicated in both Exposure Draft clause 2 and Exposure Draft clause 14.5(a). The ASU does not agree with this approach and submits that the preferable approach is to include a note in clause 14.5 referencing clause 2. The ASU believes definitions should be consolidated wherever possible.

## **Clause 5. Effect of variations made by the Fair Work Commission**

8. The ASU does not oppose the insertion of this clause.

## **Clause 11. Casual employment**

9. Clause 10.4(c) of the Modern Award has been redrafted at 11.3 in the Exposure Draft, as follows:

For each engagement, a casual employee must be paid for the following minimum number of hours at the appropriate rate:

- (a) social and community services employees except when undertaking disability services work — 3 hours;
- (b) home care employees — 1 hour; or
- (c) all other employees — 2 hours.

10. The Exposure Draft includes an amendment to the sentence structure, substitution of the word 'will' for the word 'must' and subclauses of 10.4(c) are now expressed as subclauses of 11.3; from (a) to (c).
11. The ASU submits that 'all other employees' referenced at 11.3(c) appears to include social and community services employees undertaking disability services work. However given these employees are part of the social and community services stream, the ASU submits that the exemption at clause 9(a) in relation to disability services employees should be deleted. This would ensure that the same minimum engagement period applies to all social and community services employees.

## **Clause 12.4 Progression**

12. Clause 13.3(a) of the Modern Award is expressed, as follows:

At the end of each 12 months' continuous employment, an employee will be eligible for progression from one pay point to the next within a level if the employee has demonstrated competency and satisfactory performance over a minimum period of 12 months at each level within the level and:...

13. The terms have been retained at clause 12.4(a) in the Exposure Draft; however, the Commission asks the parties to clarify the reference for 'each level within the level'. The Commission also proposes that the term be clarified by changing the words to 'each pay point within the level'.
14. The ASU submits that the proposed words would not effect a substantive change to the terms and does not oppose the commission's proposed change.

## **14. Rostering arrangements**

15. At clause 14.1(b) the Exposure Draft inserts the word "rostered". The effect is that the entitlement in Modern Award clause 25.3 is reduced. This appears to be a typographical error however the ASU opposes this change.

16. In the event that the intention was to amend the Exposure Draft with the word “rostered” the ASU opposes the amendment. Part time employees will be particularly affected. If an employee has four days off because they do three days of 8 hour shifts (24 hours week), then current clause 25.3 provides that, where possible, all four days off should be consecutive. Additionally, it gives the basis for employees to schedule leave immediately prior to or after a rostered day off because they would also be “days off”.

### **Clause 14.3      Rosters**

17. Clause 25.5(b) of the Modern Award is expressed, as follows:

Rostering arrangements and changes to rosters may be communicated by telephone, direct contact, mail, email or facsimile.

18. The terms have been retained at clause 14.3(d) in the Exposure Draft.

19. To confirm whether the terms can dispense with the method of ‘mail’ or ‘facsimile’, the ASU submits that the methods should be maintained as options for communicating a roster changes with staff.

### **Clause 14.4      Broken shifts**

20. The terms of clause 25.6 of the modern awards have been redrafted at clause 14.4 of the Exposure Draft, with some amendments to sentence structure.

### **Clause 14.4      Broken shifts (Sleepovers)**

21. The parties are asked whether time spent performing a sleepover in accordance with clause 14.5 of the Exposure Draft, would meet the definition of a shift for the purposes of payment for a broken shift.

22. The ASU submits that time spent performing a sleepover in accordance with clause 14.5 of the Exposure Draft, does not meet the definition of a shift for the purposes of payment for a broken shift.

### **Clause 14.7      Excursions**

23. The terms of clause 25.9(a)(iii) of the Modern Award have been retained at clause 14.7(b)(iii) of the Exposure Draft.

24. The parties are asked whether an employee is entitled to the sleepover allowance per clause 14.5(e) of the Exposure Draft or also the other provisions in

clause 14.5. The ASU submits that all of the provisions in clause 14.5 apply to sleepovers.

## **16. Minimum wages**

25. Clauses 16.1, 16.2 and 16.3 of the Exposure Draft hourly wage rate column is expressed as the minimum hourly rate. This is consistent with other Exposure Drafts in the Four Yearly Review of Modern Awards.

## **Clause 17.2(c) Heat Allowance**

26. The terms of clause 20.7 of the Modern Award have been redrafted at clause 17.2(c) of the Exposure Draft so that the entitlement to the specified rest periods is expressed as 'a paid 20 minutes rest break'.

27. The ASU does not oppose the change to the terms; however, submits that clause 17.2(c) be retained and no further amendment be made.

## **Clause 19.1 Overtime rates**

28. The terms of clause 28.1(a) of the Modern Award have been substantially redrafted such that the presentation of overtime and penalty rates has been tabulated in clause 19.1(a)(i) of the Exposure Draft.

29. The parties are asked whether the reference to 'Disability Services' be deleted because the employees in question are part of the social and community services stream.

30. The ASU submits that the reference to Disability Services should be deleted from clause 19(a) as disability employees are part of the social and community services stream and therefore should receive the same entitlements as social and community services employees.

## **Clause 21.1 Annual leave**

31. The Exposure Draft includes a note referencing sections 16 and 90 of the Fair Work Act. The ASU supports this inclusion.

## **Clause 21.2 Additional leave for certain shiftworkers**

32. The terms of clause 31.2 of the Modern Award have been redrafted so that the 'Quantum of leave' clause has been renamed 'Additional leave for certain shiftworkers' at clause 21.2 of the Exposure Draft.

33. The parties are asked to comment on whether the clause should define a shiftworker in terms that specify a period of time over which the 10 or more weekends are to occur.
34. The ASU submits the 10 weekends should be counted over a 12 months period.
35. Firstly, the conditions that define a broken shift require that the employer will roster the employee to work a shift within a span of 12 hours, with one or more breaks that are not meal breaks. In other words, the employee is not paid for a rostered period of time within the span of 12 hours such that the employee is either working or not working and is compensated for the periods work only.
36. In contrast to the conditions of a broken shift, the requirements of the sleepover shift mean that the employee is never not working. The employee could be described to be concurrently working or available to work at all times during the shift (except when taking a meal break) and is compensated for the periods of working, as well as by the entitlement to a sleepover allowance paid for each shift.
37. The ASU submits a note with a reference to s.87(1) that states a shiftworker receives 5 weeks' leave should be included to indicate the purpose of this clause.
38. The ASU submits that changing the title to "Definition of Shiftworker for the NES". The current titles are opaque to their purpose. The title we propose is clear, self-explanatory and states the purpose.

**Australian Services Union**

**30 June 2016**