



REPORT AND DIRECTIONS

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards–Award stage–Group 4 awards–

Substantive Issues

(AM2018/26)

SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010

[MA000100]

JUSTICE ROSS, PRESIDENT

MELBOURNE, 13 NOVEMBER 2018

4 yearly review of modern awards – award stage – group 4 awards – substantive issues – Social, Community, Home Care and Disability Services Industry Award 2010

[1] This report deals with the outcome of a Mention held on Friday 9 November 2018 to deal with the programming of a number of substantive claims to vary the *Social, Community, Home Care and Disability Services Industry Award 2010* (the SCHADS Award). A transcript of the Mention proceedings is available on the Commission’s website – [Mention](#).

[2] The following organisations were represented at the Mention:

- Health Services Union
- United Voice
- Australian Services Union
- Australian Industry Group
- ABI and NSWBC
- AFEI
- Jobs Australia
- Aged Care Employers (Aged & Community Services Australia and Leading Age Services)

[3] Prior to the Mention, parties were directed to file draft determinations outlining changes they were seeking to the award. Draft determinations were filed by:

- Health Services Union
- United Voice
- Australian Services Union
- Jobs Australia

[4] The parties provided further clarification as to the substantive claims they intend to pursue. A revised list of substantive claims is attached to this report (**Attachment A**).

[5] The ASU, United Voice, and the HSU seek that the Commission reach a view regarding the consent position outlined in a [Joint Report](#) which arose out of the conciliation process in relation to the substantive claims. Ai Group expressed concerns in regard to the Joint Report. Ai Group are directed to file a submission by no later than **4.00 pm on Friday 23 November 2018** indicating which aspects of the Joint Report it opposes and on what basis. A further Mention will then be convened on Wednesday **5 December 2018** at **9.30 am** in Sydney.

[6] At the Mention, parties were invited to comment on the draft directions. No comment from any interested party was made. Final Directions are attached (**Attachment B**).

[7] It was indicated that an earlier [revised summary of proposed substantive variations](#) set out substantive claims being pursued by the Australian Federation of Employers and Industry (s1¹, s18²); National Disability Service (s17³); Community Connections Solutions Australia (s9⁴). In a [Report](#) issued on 30 October 2018, it was noted that unless these claims are confirmed by parties at the Mention it will be assumed these matters are withdrawn. No party confirmed the claims were being pressed and on that basis the Commission will proceed on the basis that they have been withdrawn.

PRESIDENT

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¹ S1 relates to a claim by AFEI to vary the annual leave clause to allow an employer to direct an employee to take annual leave during a partial or whole close down of employer enterprise.

² S18 relates to a claim by AFEI to amend clause 13.3 and Schedule B so it is clear progression between pay points in various levels in each stream of the award is based on full-time equivalent service

³ S17 relates to a claim by NDS to change classification descriptors which they submit do not currently accurately reflect different work contexts in which disability support is provided

⁴ S9 is a claim by CCSA to move coverage of the family day care scheme in this award to the *Children's Services Award 2010*

United Voice seeks to vary the award by:

- amending the Clothing and equipment allowance clause to ensure that the employee will be given a sufficient number of uniforms so that they will not need to launder their work wear more than once a week.
- amending the Rosters clause to ensure that permanent staff are protected and that any additional hours required to be worked at short notice will be appropriately remunerated.
- amending the Telephone allowance clause to ensure that an employee who is required to use a mobile phone will be entitled to reimbursement for the cost of purchase and other charges.
- amending the Broken Shifts clause to ensure that the maximum number of broken shifts that can be worked is two; and employees who are working broken shifts get paid the relevant shift allowance, depending on the start and finish time.
- amending the Sleepover clause so that it is extended to cover employees who are working a 24 hour care shift or who are supervising clients on excursions.
- deleting the 24 Hour care clause, or alternatively amending the clause to ensure that employees will be entitled to overtime for all hours worked over 8 hours.
- amending the Excursions clause to ensure that employees are paid according to the provisions of the Award for the whole time they are working an excursion.
- amending the Meal breaks clause to correct the cross-reference.
- amending the Overtime clause to allow casual and part-time employees to be paid overtime after 8 hours of work on any one day and to ensure that part-time and full-time employees are paid overtime for work done in addition to their rostered hours.
- amending the Payment for working on a public holiday clause by inserting a subclause which prevents rosters being altered for the purpose of avoiding public holiday entitlements under this Award and the NES.

The HSU seeks to vary the award by:

- providing that all full-time, part-time and casual employees are entitled to a minimum engagement of three hours for all sectors under the award;
- ensuring that the casual loading is paid in addition to other shift allowances, weekend and public holiday rates;
- amending the classification criteria in Schedule B – Social and Community Services Employees, and Schedule E – Home Care Employees, to remove ambiguity and correct inconsistencies in classification criteria;⁵
- amending the telephone allowance to reflect the requirement to have a mobile phone for work-related purposes;
- amending the uniform allowance to ensure uniform is provided for or allowance is paid;
- providing a new entitlement for the replacement of damaged clothing;
- providing an allowance for first aid certificate renewal;
- varying the broken shifts clause to ensure minimum shift lengths apply to each part of the broken shift, and to ensure broken shifts can only be worked by agreement;
- deleting the 24 hour care clause;

⁵ This variation does not appear to be dealt with in draft determination filed 9 November 2018.

- varying the overtime clause to ensure it applies to all employees when they work beyond their rostered hours;
- varying the public holiday clause to ensure that rosters cannot be altered for the purpose of avoiding public holiday entitlements.

Jobs Australia seeks to vary the award by:

- clarifying that the 24 hour care provision may apply to disability support work when carried out in a private home; and
- amending the classification definitions to clarify the classification of disability support work at SACS levels 2 and 3.⁶

The ASU seeks to vary the award by:

- deleting clause 4.2 (relating to coverage) and inserting a new clause 4.2 clarifying that the award does not cover employers and employees covered by the *Aged Care Award 2010*; *Amusement, Events and Recreation Award 2010*; *Fitness Industry Award 2010*; *Nurses Award 2010*.
- inserting a clause relating to payment of an allowance and/or penalty rate to employees who work broken shifts.
- Inserting a new allowance for employees who use community language skills during the course of their employment.

⁶ This variation does not appear to be dealt with in draft determination filed 7 November 2018.

ATTACHMENT B



DIRECTIONS

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JUSTICE ROSS, PRESIDENT

MELBOURNE, 13 NOVEMBER 2018

*4 yearly review of modern awards – award stage – group 4 awards – substantive issues –
Social, Community, Home Care and Disability Services Industry Award 2010*

It is directed that:

1. Interested parties are to file in the Commission evidence and submissions in support of their claims on or before **4.00 pm on Friday 18 January 2019**.
2. Interested parties are to file in the Commission evidence and submissions in reply on or before **4.00pm on Friday 15 March 2019**.
3. All submissions must be sent to amod@fwc.gov.au
4. The matter will be heard on **Friday 12 April 2019**. It will be further listed for hearing on **15 – 18 April 2019** if required. Hearings will be held in Sydney.

PRESIDENT