

**From:** Jakov Miljak [mailto:Jakov.Miljak@afei.org.au]  
**Sent:** Monday, 27 March 2017 2:49 PM  
**To:** AMOD; Chambers - Cirkovic C  
**Cc:** Jennifer Zadel; Liza Isho; sina.mostafavi@ablawyers.com.au;  
jsteele@wentworthchambers.com.au; pforster@hwlebsworth.com.au  
**Subject:** Correspondence Re Clause 3.3 of Exposure Draft

Dear Associate,

**Re: AM2014/250 – 4 yearly review of modern award - Aboriginal Community Controlled Health Services Award 2010**

In her Draft Report dated 20 February, Commissioner Cirkovic provided AFEI with the opportunity to make a written submission in relation to Item 11 of the *Revised summary of submissions – technical and drafting*. This item concerns access to the National Employment Standards (clause 3.3 of the Exposure Draft for the *Aboriginal Community Controlled Health Services Award 2010*).

AFEI submits the wording as currently expressed at clause 3.3 of the Exposure Draft should be retained. AFEI opposes the position of the HSU and the United Voice to include the phrase “*whichever makes them more accessible*” at clause 3.3 of the Exposure Draft. In making this submission AFEI relies on the earlier 2014 Full Bench decision on general drafting and technical issues common to multiple exposure drafts ([2014] FWCFB 9412) at [29]):

*“Further we propose to delete the words ‘whichever makes them more accessible’ from the current formulation. It seems to us that these words give rise to an obligation which would be difficult to meet in practice and that the primary obligation under the clause is clear, that is: ‘The employer must ensure that copies of the award and the NES are available to all employees to whom they apply...’. We will also add the word ‘accessible’ before ‘electronic means’ in the current clause to make it clear that if the award and the NES are provided by electronic means then the means provided must be accessible to all employees. The amended clause will be as follows:*

‘The employer must ensure that copies of the award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.’

We hope this clarifies any concerns.

Kind regards,

**Jakov Miljak | Workplace Relations Adviser**  
**Australian Federation of Employers and Industries**