



DRAFT REPORT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards

(AM2014/250)

ABORIGINAL COMMUNITY CONTROLLED HEALTH SERVICES AWARD 2010 [MA000115]

COMMISSIONER CIRKOVIC

MELBOURNE, 19 APRIL 2017

4 yearly review of modern award – Aboriginal Community Controlled Health Services Award 2010.

[1] On ~~Wednesday 8 February~~ Tuesday 28 March 2017 a conference was held to discuss the Summary of Submissions – Technical and Drafting (the summary) in relation to the review of the *Aboriginal Community Controlled Health Services Award 2010*.

[2] The following items in the summary were discussed at the conference:

- ~~Item 1~~ Item 1: NATSIHWA propose the title be amended to ‘Aboriginal and Torres Strait Islander Health Services Award [Year]’ as part of its proposal that the coverage of the award be extended to Aboriginal and Torres Strait Islander health workers in community controlled health centres and private practice. NATSIHWA submit this is a substantive issue. United Voice reserves its position on the issue of coverage. AFEI reserves its position and seeks to make comments at a later date if required. Substantive issue to be discussed further at next conference. Moved to substantive issues (item S2A) and is dealt with in section [3] of this report.
- Item 2: Agreed, as per HSU proposal.
- Item 3: United Voice propose a different definition of ordinary hourly rate. AFEI note that they are unsure if this is required as they are unaware of any of the allowances being all purpose allowances and therefore a definition might not have any work to do. To be discussed further at next conference. United Voice is not pressing the proposal.
- Item 4: Agreed, as per HSU proposal.
- Item 5: Substantive issue to be discussed further at next conference. Action: AMOD to update summary to reflect amended draft determination of NATSIHWA of 1 December 2017. Moved to substantive issues (item S2B) and is dealt with in section [3] of this report.
- Item 6: Substantive issue to be discussed further at next conference. Moved to substantive issues (item s2C) and is dealt with in section [3] of this report.
- Item 7: United Voice seeks removal of the note under Aboriginal health worker. NATSIWHA support the removal of the note.; ~~however believe it is a substantive~~

- ~~issue. Substantive issue to be discussed further at next conference. Moved to substantive issues (item S2D) and is dealt with in section [3] of this report.~~
- Item 8: ~~Substantive issue to be discussed further at next conference. Moved to substantive issues (item S2E) and is dealt with in section [3] of this report.~~
 - Item 9: ~~Substantive issue to be discussed further at next conference. Moved to substantive issues (item S2F) and is dealt with in section [3] of this report.~~
 - Item 10: Agreed, as per HSU, no opposition to removal of the definition of ‘appropriate certificate’.
 - Item 11: HSU and United Voice oppose the removal of ‘whichever makes them more accessible’ from clause 3.3. AFEI oppose the reintroduction of ‘whichever makes them more accessible’ from clause 3.3. United Voice submit that the remoteness of workers under this particular award make a case for the retention of ‘whichever makes them more accessible’. NATSIHWA reserving position. AFEI to provide response submission in writing. ~~To be discussed further at next conference. In a written submission dated 27 March 2017 AFEI clarified its position on this issue, relying on a previous decision [2014] FWCFB 9412 at [29] to support its argument. United Voice advised it is withdrawing its claim on this matter in a submission dated 4 April 2017.~~
 - Item 12: ~~Substantive issue to be discussed further at next conference. Substantive issue, referred to Payment of Wages Common Issue AM2016/8.~~
 - Item 13: HSU submit the Exposure Draft (ED) amendment to clause 13.2 ‘ordinary hours of work’ changes the award entitlement and propose the wording be altered. NATSIHWA agree with HSU and also propose the words ‘can be worked in any one day without the payment of overtime’ be added to the end of the sentence. ~~Action: AMOD to update summary to include NATSIHWA’s submission. To be discussed further at next conference. AFEI to provide proposed alternative wording to parties.~~
 - Item 14: Agreed, as per HSU proposal.
 - Item 15: Agreed, as per HSU proposal.
 - Item 16: Agreed, as per HSU proposal.
 - Item 17: ~~Substantive issue, to be discussed further at next conference. Moved to substantive issues (item S9A) and is dealt with in section [3] of this report.~~
 - Item 18: ~~Substantive issue to be discussed further at next conference. Moved to substantive issues (item S11A) and is dealt with in section [3] of this report.~~
 - Item 19: ~~Substantive issue, to be discussed further at next conference. Moved to substantive issues (item S11B) and is dealt with in section [3] of this report.~~
 - Item 20: ~~To be discussed further at next conference. Resolved. AFEI is not pressing the claim. The HSU is happy for the wording to stay the same.~~
 - Item 21: Agreed, as per HSU proposal.
 - Item 22: Agreed, as per HSU proposal.
 - Item 23: Agreed, as per HSU proposal.
 - Item 24: ~~Substantive issue to be discussed further at next conference. Moved to substantive issues (item S11C) and is dealt with in section [3] of this report.~~
 - Item 25: Agreed, as per HSU proposal. ~~Action: AMOD to update summary to more accurately reflect HSU’s position.~~
 - Item 26: Resolved as per item 14.
 - Item 27: Agreed, as per HSU proposal.
 - Item 28: Agreed, as per HSU proposal.
 - Item 29: ~~Resolved, agreement by all parties that clause 19.6 remains as it is.~~
 - Item 30: Agreed, as per HSU proposal.
 - Item 31: ~~Substantive issue to be discussed further at next conference. Moved to substantive issues (item S17A) and is dealt with in section [3] of this report.~~
 - Item 32: To be amended once substantive issues are decided.

- Item 33: Substantive issue to be discussed further at next conference. Moved to substantive issues (item S18A) and is dealt with in section [3] of this report.

[3] Substantive issues discussed at the conference on Tuesday 28 March 2017:

- Item 1: NATSIHWA initially proposed the title be amended to ‘Aboriginal and Torres Strait Islander Health Services Award [Year]’ as part of its proposal that the coverage of the award be extended to Aboriginal and Torres Strait Islander health workers in community controlled health centres and private practice. NATSIHWA submit this is a substantive issue. All parties agree there is a problem with definitions. NATSIHWA proposed that wherever the word ‘Aboriginal’ appears throughout the award, ‘and/or Torres Strait Islander’ should be added. AFEI does not have a position on this issue. ABI & the New South Wales Business Chamber (ABI & NSWBC) submits the definition of ‘Aboriginal’ be changed to include ‘a Torres Strait Islander person’ but advised it is not pressing an objection to NATSIHWA’s proposal. United Voice is not pressing an objection to NATSIHWA’s proposal.
- Item 2: NATSIHWA is pressing its proposed changes in its draft determination. To be discussed at the next conference.
- Item 2A: NATSIHWA noted the name of the award is currently under consultation. It is too early to determine this issue because other issues may impact it. No contrary views were expressed by other parties.
- Item 2B: NATSIHWA’s proposed changes to the definitions section are supported by the HSU and United Voice. AFEI reserves its rights to make further comments.
- Item 2C: This item is a subset of item 1. No objections to NATSIHWA’s proposal.
- Item 2D: No opposition to United Voice’s proposal.
- Item 2E: Resolved as per item 2B.
- Item 2F: United Voice withdraws any opposition to NATSIHWA’s proposal. AFEI and ABI & NSWBC reserve their positions.
- Item 3: United Voice and the HSU do not object to NATSIHWA’s proposal. AFEI and ABI & NSWBC reserve their positions. Action: AFEI and ABI & NSWBC to consider their positions and if needed, provide submissions to amod@fwc.gov.au for other parties to comment accordingly before the next conference.
- Item 4: Referred to Part time and Casuals Full Bench AM2014/196 and AM2014/197.
- Item 5: The HSU is pressing its claim only relating to the weekend and public holiday rates, not the shift allowances. United Voice submits casual loading is differentiated from penalty rates and this has been decided in prior 4-yearly review decisions. AFEI submits that is not the way the award operates at the moment. United Voice has provided a submission outlining its position and supporting authorities. To be discussed at the next conference.
- Item 5A: Similar issue to item 2B, dealing with definitions. To be dealt with in the same manner as item 2B.
- Item 6: NATSIHWA has proposed a new grading wage structure. United Voice and the HSU support the proposal. AFEI and ABI & NSWBC to provide a submission on their positions. Matter to be discussed at the next conference.
- Item 7: NATSIHWA has proposed variations to allowances. United Voice and the HSU support the proposal. AFEI and ABI & NSWBC reserve their positions. Action: AFEI and ABI & NSWBC to provide comments within 2 weeks.
- Items 8 and 9: To be determined with item 7.
- Item 9A: HSU is no longer pressing its claim.
- Item 10: To be determined with items 7, 8 and 9.

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- Item 11: AFEI does not support any change. HSU provided submissions since the conference outlining its proposals. Submits clause 15.4(c) should be varied to provide for a ten hour break instead of six and proposes insertion of an allowance for telephone or remote attendance. To be discussed at the next conference.
- Item 11A: NATSIHWA proposes provisions for progression to be time based and recognition or previous service. United Voice supports the proposal.
- Item 11B: NATSIHWA and United Voice submit progression should be time based. United Voice supports the proposal. AFEI and ABI & NSWBC to provide their positions within 14 days.
- Item 11C: Agreed, per UV proposal
- Item 12: Referred to the Payment of Wages Full Bench AM2016/8
- Item 13: Claim withdrawn
- Item 14: HSU is pressing its claim. United Voice supports the proposal and NATSIWHA does not oppose. AFEI opposes. Action: AFEI to provide submission as to its objection within 14 days.
- Item 15: HSU is pressing its claim for four hour minimum engagement for broken shifts but not for the sleepover provisions. United Voice supports the claim. Action: NATSIWHA, AFEI and ABI & NSWBC to provide their positions within 14 days.
- Item 16: HSU pressing its claim. United Voice and NATSIWHA support the claim. Action: AFEI and ABI & NSWBC to provide their positions within 14 days.
- Item 17: Claim withdrawn
- Items 17A and 18: NATSIHWA submits these items are the same and presses its claims. HSU and United Voice support the claims. AFEI and ABI & NSWBC reserve their positions.
- Items 18A, 19 and 20: To be dealt with in the same manner as item 2B as they relate to classifications and definitions.
- Item 24: Resolved as per item 11A.

~~[3][4]~~ This matter is listed for further conference at ~~10:00am Tuesday 28 March 2017~~ **2:00pm Friday 28 April** in Sydney. This conference will be held to discuss both technical and drafting issues as well as substantive issues. Any comments on the accuracy of the draft record are to be filed by no later than ~~5:00pm on Tuesday 28 February 2017~~. Parties that wish to file further submissions are to do so no later than ~~4:00pm on XX April 2017~~ **5pm Tuesday 14 March 2017**.

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COMMISSIONER

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