



# DRAFT REPORT

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## 4 yearly review of modern awards

(AM2014/251)

### AGED CARE AWARD 2010

[MA000018]

COMMISSIONER LEE

MELBOURNE, 22 FEBRUARY 2017

*4 yearly review of modern awards – Aged Care Award 2010.*

[1] On 16 December 2016 and 6 February 2017 conferences were held to discuss the Summary of Submissions – Technical and Drafting (the summary) in relation to the review of the *Aged Care Award 2010*.

[2] The following items in the summary were discussed at the conferences. The tracked changes reflect the position of the parties following the conference on 6 February 2017:

- Item 1: agreed, subject to consistency.
- Item 2: agreed, remove definitions from clause 4 and insert in clause 2.
- Item 3: agreed, delete clause 18.2 (a) from Exposure Draft (ED) and leave the definition in clause 2. Consequent renumbering of clause 28.
- Item 4: agreed, definition of ‘casual ordinary hourly rate’ will be deleted.
- Item 5: agreed, insert definition of ‘minimum hourly rate’ which will read ‘minimum hourly rate means the hourly rate for the employee’s classification specified in clause 17’.
- Item 6: agreed, no amendment to ‘ordinary hourly rate’ definition in ED.
- Item 7: HSU position withdrawn, no amendment to ED required.
- Item 8: agreement with AIG position that clause 16.2 and clause 22.3 will be included in the facilitative provision.
- Item 9: general agreement that there is no need to amend the ED. ~~AWU to advise if they seek to press claim.~~
- Item 10: agreed, the words “as such” are to be inserted after the words “engaged” in clause 11.1.
- Item 11: agreed, not necessary to define ‘fixed term employee’. No amendment to ED required.
- Item 12: agreed, no amendment to ED required. ~~AWU to advise if they seek to press claim.~~
- Item 13: agreed, AWU proposal not supported. ~~AWU to advise if they seek to press claim.~~

- Item 14: agreed, clause 11.3 to be amended by deleting all words after the word ‘entitlements’.
- Item 15: agreed to HSU proposal, however, including AIG wording in clause 12.2 (b).
- Item 16: general view, there is a lack of clarity as to the need for the change proposed by AWU. ~~AWU to advise if they seek to press claim.~~
- Item 17: HSU does not press claim, no amendment to ED required.
- Item 18: UV does not press claim, no amendment to ED required.
- Item 19: agreed, delete the words ‘subject to clause 30’ from clause 14.4(c).
- Item 20: agreed, as per AIG proposal.
- Item 21: ~~HSU do not agree with AIG’s interpretation on this matter. Agreed to reconsider after Group 3 Full Bench determinations to consider if they provide guidance on this issue. There is to be no change to the wording in the draft.~~
- Item 22: agreed, as per HSU proposal.
- Item 23: agreed, ~~at clause 15.5 ‘a sleepover must be rostered’ is to be replaced with ‘where a sleepover is rostered’.~~ the wording in clause 15.5 in the ED is amended to read as follows: ‘15.5 Where a sleepover is rostered, it must commence:
  - (a) immediately at the conclusion of the employee’s shift and continuous with that shift; and/or
  - (b) immediately prior to the employee’s shift and continuous with that shift.’
- Item 24-25: agreed, as per AIG proposal to correct typographical errors. Agreed, amend ‘received’ to ‘receive’, amend ‘of duty’ to ‘off duty’ and add the words ‘completion of such work’ in substitution for the words ‘sleepover’ in clause 15.7(a)(i).
- Item 26: agreed, as per AIG proposal.
- Item 27: agreed, replace words ‘between 30 and 60 minutes’ with ‘not less than 30 minutes and not more than 60 minutes’.
- Item 28: agreed, as per HSU proposal and to include the addition of ‘(full time employee)’ after ‘minimum weekly rate’ at clause 17.1.
- Item 29: agreed, insert the words ‘where clause 17.4(c) applies’ at the start of clause 17.4(d).
- Item 30: agreed, delete words ‘block release’ from heading at clause 17.5 (f). No amendment to clause 17 (i) and (ii). Clause 17.5 (f) (iii) to become clause 17.5 (g).
- Item 31: agreed, as per HSU proposal.
- Item 32: agreed, as per HSU proposal.
- Item 33: agreed, replace clause 17.7 (a)-(b) with clause 27 from existing award.
- Item 34: agreed, as per item 3.
- Item 35: AIG et al. are concerned the word ‘denote’ will have the effect of expanding the entitlement to leading hand allowance, where the classification does not expressly refer to supervisory responsibilities. Parties agree that this is not the intention; however, more work is required to resolve concern. Agreed to replace the word ‘include’ with ‘indicate’ in the ED clause 18.2(b)(i).
- Item 36: AIG proposal withdrawn.
- Item 37: AIG proposal withdrawn, AIG now have the view that re-drafting is not a substantial change within the context of this particular award.
- Item 38: agreed, add the words ‘for work performed in any week’ at the end of clause 18.2(c) (ii).
- Item 39: agreed, as per UV proposal.
- Item 40: agreed, as per AIG proposal.
- Item 41: AIG proposal withdrawn, basis as per Item 37
- Item 42: AIG ‘part shift’ to ‘part thereof’ proposal withdrawn. AIG and employers to consider a possible variation to clause 18.3(a) to resolve their concern in relation to the

application of laundry allowance. Agreed, clause 18.3(a)(iv) is amended to read as follows: “Where the uniform is not laundered by or at the expense of the employer, under clause 18.3(a)(i) the employee will be paid the lesser of: ...”

- Item 43: agreed, as per HSU proposal.
- Item 44: HSU proposal agreed to subject to agreement with AIG proposal to substitute ED provision with clause 15.7(c) from the existing award.
- Item 45: agreed, insert words ‘and 20.2’ after words ‘with clause 20.1’ in clause 20.3.
- Item 46: agreed, delete all of clause 21.2(a) – (b) from ED and substitute clause 26.1 in its entirety from existing award.
- Item 47: parties to await Group 3 Full Bench determinations to consider if they provide guidance on this issue.
- Item 48: agreed, as per HSU proposal
- Item 49: agreed, insert the words ‘all time worked by a’ at the start of clause 22.2 (a) and 22.2(b). Delete the words ‘more than’ and insert ‘in excess of’ in clause 22.2(a) and (22.2(b)). Clauses 22.2 (a) and 22.2(b) are to be amended by deleting the word ‘who works more than’ and inserting ‘in excess of’.
- Item 50-52: not resolved, parties to consider further. Agreed to replace clause 22.4(a) and (b) in the ED with clause 25.1(c)(i) and (ii) of the current award. However, clause 25.1(c)(ii) in the current award is amended by deleting the words ‘at the rate of double time’ and inserting the words ‘200% of the ordinary hourly rate’.
- Item 53: HSU and UV do not object to the word ‘so’ being reinserted after the word ‘recalled’ in the last line at clause 22.5(a). Clause 22.5(a) is amended by inserting the word ‘so’ before the word ‘recalled’ in the last line.
- Item 54: ~~not resolved, parties to consider further.~~ agreed, clause 22.6 of the ED is amended as follows: 22.6(a) delete the word ‘meal’ after ‘20 minute’ and insert after ‘break’ the words ‘to have a meal...’. 22.6(b) the word ‘meal’ is deleted and the words ‘to have a meal’ are inserted. 22.6(d) is deleted and replaced essentially with the wording from the current award clause 25.1 (e)(ii) to read ‘The meals referred to in clause 22.6(a) and (b) will be provided to the employee free of charge. Where the facility is unable to provide such meals, a meal allowance as described in clause 18.3(b) will be paid to the employee concerned’.
- Item 55: agreed, as per HSU proposal.
- Item 56: ~~not resolved, parties to consider further.~~ agreed, amend clause 23.2(a)(ii) of the ED by inserting the words ‘during the yearly period in respect of which their annual leave accrues’ after the words ‘...10 or more weekends’.
- Item 57: HSU proposal withdrawn.
- Item 58 AIG proposal withdrawn.
- Item 59: ~~not resolved, parties to consider further.~~ Schedule B of the ED contains a number of tables: B.2.1; B.2.2; B.2.3; B.3.1 and B.3.2. Each of these tables contain a subheading which reads: ‘% of ordinary hourly rate’. Agreed, each subheading be amended by replacing the word ‘ordinary’ with the word ‘minimum’ to read ‘% of minimum hourly rate’.
- Item 60: agreed, as part of Item 6.
- Item 61: agreed.
- Item 62: resolved, agreed to replace shift work clause with existing award clause, titles will now match.
- Item 63: agreed.
- Item 64: resolved, basis as per Item 62.
- Item 65: agreed.
- Item 66: agreed.
- Item 67: agreed, as per AIG submissions.

- Item 68: AIG proposal withdrawn.
- Item 69: response to question raised by the Commission.

[3] Any comments on the accuracy of the marked up draft record are to be filed by no later than **5:00pm Wednesday 1 March 2017**.

COMMISSIONER

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