



DRAFT REPORT

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards

(AM2014/285)

SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010 [MA000100]

COMMISSIONER LEE

MELBOURNE, 22 FEBRUARY 2017

4 yearly review of modern awards – Social, Community, Home Care and Disability Services Industry 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 *Social, Community, Home Care and Disability Services Industry 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: The HSU propose definition of ‘sleepover’ clause and coverage should be separate. AFEI propose definition of ‘sleepover’ is better in clause 14.5 (sleepover clause). Agreed, sleepover definition will be in both sleepover clause and in clause 2. Issue is where best to put the definitions that are currently in the coverage clause. Consensus view is that all sector definitions will be removed from clause 4 and included in clause 2.
- Item 2-3: agreed, consistent with discussion in Item 1.
- Item 4: ~~Reference to minimum rate payable for classification, the word ‘their’ changed to ‘the’ results in confusion and the word ‘applicable’ is probably best. 2015 4 yearly review decision may have application. Action: AMOD team to undertake research. Query the interaction with Equal Remuneration Order (ERO) rates. Parties agreed best resolution was to include a definition of minimum hourly rate, consistent with the definition the AWU submitted on 6 July 2016. That definition is: ‘Minimum hourly rate means the minimum hourly rate applicable to an employees classification level and pay point as set out at the applicable clause 16.1, 16.2 or 16.3’. This will resolve the issue for Item 4.~~
- Item 5: agreed, as per AFEI proposal.
- Item 6: agreed, as per ASU proposal.
- Item 7: dealt with as part of Item 1.

- Item 8: the words ‘whichever makes them more accessible’ will be removed.
- Item 9: agreed, clause 5.2 should be re-numbered clause 7.2. Clause 7.2 incorrectly numbered as clause 5.2.
- Item 10: ASU appear to have changed position. Propose that the Exposure Draft (ED) will make reference to both majority and individual agreements as per AFEI proposal.
- Item 11-12: vary clause consistent with AFEI submission.
- Item 13: consensus view is the AWU’s position is not supported. ~~AWU to advise if they seek to press the issue.~~
- Item 14: resolved, no amendment to ED required.
- Item 15: agreed, those employees identified by the Commission are entitled to a 2 hour minimum engagement under Clause 11.3(c).
- Item 16: resolved, ASU no longer presses issue.
- Item 17: agreed, the word ‘their’ to go between ‘advise’ and ‘employees’.
- Item 18: all agreed the answer to the question raised by the Commission is yes.
- Item 19: all agreed with the AWU’s position.
- Item 20: ~~no difference between the parties as to how these provisions apply. Concern is moving location could create ambiguity re: span of hours verses sleepovers (assuming it is not possible to reverse the position). Action: AMOD team to consider words to clarify the discrete application of sleepovers, 24 hour care and excursions. The HSU see this as a substantial change and propose to remove span of hours completely as a resolution. Parties agreed that all clauses currently in the ED numbered clause 13 and 14, should be renumbered so that they are all part of clause 13. Parties agreed that if this is done it will resolve the concern in respect to Item 20.~~
- Item 21: dealt with as part of Item 20.
- Item 22: consensus view, the word ‘rostered’ should be deleted from clause 14.1(b).
- Item 23: agreed, current award wording to remain.
- Item 24: all agreed to retain current wording, except the AWU. ~~The AWU to advise if they still press for the amendment.~~
- Item 25: agreed, relieving staff will remain in clause 14.3(e).
- Item 26: agreed, delete the words ‘and 28’ from clause 14.3(f)(i)
- Item 27: all agreed with the HSU’s proposition (note the word ‘not’ after ‘does’ has been omitted from summary document).
- Item 28: The HSU raised concern about ‘care’ being construed too broadly. Agreed resolution, existing award clause 25.8 (a) to remain (i.e. 2nd and 3rd sentences thereof).
- Item 29: UV no longer presses issue. No amendment to ED required.
- Item 30: the parties disagree on the answer to the Commissions question. Nevertheless, agree no amendment to ED required.
- Item 31: expectation that this matter will be clarified in other four yearly review proceedings.
- Item 32: ~~query is ‘note’ required under clause 16.3, together with payment that applies under an ERO or a transitional pay equity order. Insert the words ‘(full time employee)’ to the minimum weekly rate heading, not completely agreed, parties to consider this in a further ED draft. Parties agreed that in clause 16.1 of the ED, immediately after the words ‘... this modern award’ at the end of NOTE 2, the following words would be inserted: ‘this may require an additional payment in~~

accordance with the terms of the relevant Equal Remuneration Order'. Further in clause 16.3, immediately after the words in the NOTE '... in items 30A (6) and (7)' the following would be inserted: 'This may require an additional payment in accordance with the terms of the transitional pay equity order'. Parties agreed that the Item 32 issue is resolved on this basis.

- Item 33: agreed, clause should read “the first aid allowance in clause 17.2 (a) will apply to eligible part time and casual employees on a pro rata basis”.
- Item 34: agreed with HSU position that the clause remains relevant.
- Item 35: general view is that the ED draft should remain unchanged. ~~and AFEI to advise if they wish to press their position.~~
- Item 36: agreed, delete the words ‘at least one hour’ and insert the words ‘more than one hour’ from clause 17.3(b)(i).
- Item 37-38: General view is no change to ED is required. ~~and AFEI to advise if they still wish to press the proposal to change.~~
- Item 39: agreed, the wording in the ED clause 17.3(c)(iii) be replaced with clause 20.5(c) from existing award.
- Item 40: agreed, no amendment to ED required.
- Item 41: agreed, answer to question is no ‘disability services’ should not be removed.
- Item 42: general view is that the ED should remain unchanged. ~~AWU to advise if they want to press their claim.~~
- Item 43 – 45: agreed, the wording in the ED clause 19.3 be replaced with clause 28.3 from existing award.
- Item 46: agreed, HSU proposal to be adopted.
- Item 47: resolved, no amendment to ED required.
- Item 48: agreed, the 10 or more weekends relates to a year of service, however, the HSU are reluctant to include the reference to a year of service as this may impact on right to progressive accrual. ~~Parties to consider further.~~ It was noted that in July 2016 the following words were inserted to the existing award at clause 31.2: ‘during the yearly period in respect of which their annual leave accrues’. Provided that these words are included in the exposure draft at clause 21.2 that resolves the question raised by the Commission about the lack of reference to the period. Commissioner Lee expressed the provisional view this should resolve the issue. HSU to advise by close of business Wednesday 1 March 2017 if they maintain a concern about the wording of clause 31.2.
- Item 49: all agree with ASU proposal.
- Item 50: agreed, no amendment to ED required.
- Item 51: all agree with AFEI proposal.

[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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