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**Sent:** Tuesday, 24 April 2018 11:46 AM

**To:** AMOD

**Subject:** AM2014/285 - Social, Community, Home Care and Disability Services Industry Award 2010

Dear AMOD Team,

Please find attached technical and drafting submissions in the SCHDS Award. We note that the submissions were to be filed on 19 April 2018. We seek the leave of the Full Bench to file these submissions late due to the illness of an advocate.

Regards,

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**A•S•U**  
Australian Services Union

## **ASU Submission**

**Matter No: AM2014/285**

**Section 156 – Four Yearly Review of Modern Awards  
– Social, Community, Home Care and Disability  
Services Industry Award 2010**

**IN THE FAIR WORK COMMISSION**

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<b>Date:</b>	19 April 2018

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## Submission of the Australian Services Union

1. This submission is made pursuant to the directions issued by the Full Bench of the Fair Work Commission on 21 March 2018.<sup>1</sup> It regards technical and drafting matters for the exposure draft of the *Social, Community, Home Care and Disability Services Industry Award 2010* ('the Award').
2. References to the Award are to the exposure draft released on 18 March 2018 unless otherwise stated.

### Item 4 – Minimum hourly rate

3. The Full Bench has declined to include a definition of the phrase 'minimum hourly rate' in the Award. The Full Bench has also asked the parties whether references to the 'ordinary rate' and the 'appropriate rate' should be replaced with either 'minimum rate' or 'minimum hourly rate'.
4. The minimum hourly and weekly rates of pay for each classification and pay point is described in the tables at cls 15.1, 15.2 and 15.3 of the Award.
5. The terms 'ordinary rate' and 'appropriate rate' in the Award tend to be used to describe rates of pay that are greater than the minimum rates of pay specified by cl 15 or a variable rate of pay that may be the minimum rate of pay but may also be another rate of pay.
6. The references to the 'appropriate rate' and 'ordinary rate' in the Award are set out in the table below:

Award Clause	Text	Meaning of 'appropriate rate'
11.3	'For each engagement, a casual employee must be paid for the following minimum hours at the <b>appropriate rate</b> .'	The minimum rate and the applicable loadings and penalties for the hours worked and the employee's type of employment.
18.1(b)(iii)	'Time worked up to the hours prescribed in clause 18.1(b)(ii) will, subject to clause 18.1(b)(i), not be regarded as overtime and will be paid for at the <b>ordinary rate of pay (including the casual loading in the case of casual employees)</b> .'	The minimum rate of pay and the applicable for loadings and penalties for the hours worked and the employee's type of employment.
18.4 – Recall to work overtime	'An employee recalled to work overtime after leaving the employer's or client's premises will be paid the <b>appropriate rate</b> for each time recalled...'	The overtime rate applicable to the hours worked.
20.3 – Annual leave loading	'In addition to their ordinary pay, an employee, other than a shiftworker, will be paid an annual leave loading of 17.5% of their <b>ordinary rate of pay</b> '	The minimum rate of pay.

<sup>1</sup> S 156 - Four yearly review of modern awards [2018] FWCFB 1548, [766].

7. We agree that the reference to the 'ordinary rate' in cl 20.3(a) should be replaced with a reference to the minimum rate of pay.
8. In the cases of cls 11.3, 18.1(b) (iii) and 18.4, replacing the reference to the 'appropriate rate' or 'ordinary rate' with a reference to the 'minimum rate of pay' would significantly reduce the employee's entitlements. We object to the proposed variation of each clause.
9. The Decision of the Full Bench in December 2014<sup>2</sup> (*December 2014 Decision*) is not relevant to the use of the words 'appropriate rate of pay' because it does not deal with the rate of pay used as the basis for calculating entitlements in the Award. 'Appropriate rate of pay' should be retained in the clause.
10. The continued use of 'ordinary rate of pay' in the Award is inconsistent with the *December 2014 Decision*. Another form of words must be used when referring to hourly rates which include loadings and penalties.

### Item 32 – Minimum wages

11. The Full Bench has stated that it is unable to confirm to which employment streams the Transitional Pay Equity Order is relevant and has stated its intention to refer the matter to a Full Bench. The ASU believes that this is unnecessary. The Transitional Pay Equity Order only applies to employees in Schedule B and C of the Award.
12. The Transitional Pay Equity Order is taken to have been made by Fair Work Australia under Part 8, Schedule 3 of the *Fair Work (Transitional and Consequential Amendments) Act 2009* ('*Transitional Act*').
13. Regulation 3.03B of the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* ('*Transitional Regulations*') prescribes the class of employers to be covered by the Transitional Pay Equity.
14. The *Queensland Community Services and Crisis Assistance Award 2008* (QLD) ('*QCSCA Award*')<sup>3</sup> was prescribed by reg 3.03C as the pay equity source order for the purposes of paragraph 43(4)(d) of Schedule 3 to the *Transitional Act*.
15. The *QCSCA Award* covered employees and employers in social and community services and crisis support accommodation provided the Employer was not a constitutional corporation and was not respondent to either the federal *Social and Community Services (Queensland) Award 2001* (*SACS Award*) or the *Crisis Accommodation Supported Housing (Queensland) Award 1999*.
16. The classifications in the *QCSCA Award* are equivalent to the classifications found in Schedules B and C of the Award.
17. Thus, the Transitional Pay Equity Order applies to employees who are covered by the classifications listed in Schedule B and C of the Award provided the Employer is not a constitutional corporation and was not respondent to either the federal pre-modern *Social*

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<sup>2</sup> S 156 – *Four yearly review of modern awards* [2014] FWCFB 9412.

<sup>3</sup> *Queensland Services, Industrial Union of Employees and Queensland Chamber of Commerce and Industry Ltd, Industrial Organisation of Employees and Others* [2009] QIRC (6 May 2009) (Commissioner Fisher).

*and Community Services (Queensland) Award 2001 (SACS Award) or the Crisis Accommodation Supported Housing (Queensland) Award 1999.*

18. However, it is unnecessary to determine the exact coverage of the Transitional Pay Equity Order for the purposes of the Four Yearly Review of Modern Awards.