

IN THE FAIR WORK COMMISSION

Matter No.: AM2018/26

S156 – Four yearly review of modern awards – Social, Community, Home Care and Disability Services Industry Award.

SUBMISSION OF THE AUSTRALIAN SERVICES UNION REGARDING COMMUNITY LANGUAGE ALLOWANCE CLAIM

1. This submission is made in response to the directions issued by the Fair Work Commission on 18 December 2019. It regards the ASU's amended claim for a community language allowance. A draft determination is attached to this submission at **Attachment A**.
2. The ASU relies on the following evidence and submissions in relation to this claim:
 - a. Oral submissions, 16 April 2019,
 - b. Submission of the ASU dated 18 February 2019,
 - c. Submission of the ASU dated 17 May 2019,
 - d. Joint submissions of the ASU and AI Group dated 17 May 2019,
 - e. Reply Submission of the ASU dated 4 June 2019,
 - f. Witness Statement and oral evidence of Dr Ruchita,
 - g. Witness Statement and oral evidence of Ms Nadia Saleh,
 - h. Witness Statement and oral evidence of Mr Lou Bacchiella,
 - i. Witness Statement and oral evidence of Ms Natalie Lang.
3. The ASU has already filed extensive submissions in support of its claim, which do not need to be repeated. Below, we make some additional comments about the amended draft variation.
4. The ASU claim is now as follows:

20.10 Community Language and Signing Work

(a) An employee who, in the course of their normal duties, uses a language other than English to provide services to speakers of a language other than English, or use sign language to provide services to those with hearing difficulties, shall be paid an allowance of 4.90% of the standard rate per week.

(b) The allowance in [20.10\(a\)](#) will apply to eligible part time and casual employees on a pro rata basis on the basis that the ordinary weekly hours of work for full-time employees are 38.

5. The amended draft determination does not change the substance of the ASU's claim. The purpose of the claimed allowance is to provide additional remuneration to employees who use languages other than English (including sign language) because this work is not contemplated in the classifications of the SCHDS Award.

Lodged by: Australian Services Union

Telephone: (02) 9265 8231

Address for Service: 116 Queensberry Street,

Fax: (02) 9283 9270

Carlton South, 3054, VIC

Email: mrobson@asu.asn.au

6. At the conference before Deputy President Clancy on 17 December 2019, the employer parties noted a number of their objections to the ASU's original draft determination. The ASU has made the following changes to narrow the scope of issues in dispute between the parties.
 - a. The amended variation clarifies to whom the allowance would apply. The allowance would apply to an employee *'who, in the course of their normal duties, uses a language other than English to provide services to speakers of a language other than English'* or provide services in sign language to those with hearing difficulties.
 - b. The amended variation eliminates the distinction between occasional and regular use of community language skills.
 - c. The allowance is set at 4.90 per cent of the standard rate, equivalent to the allowance for occasional use in the original draft determination.
 - d. The allowance applies pro-rata to part-time and casual employees on the basis that ordinary weekly hours of a full-time employee are 38.
 - e. The obligation in the original draft determination for an employer to provide accreditation has been deleted.
7. We note the submissions of various employer parties asserting that only accredited interpreters should be entitled to the payment of this allowance. The ASU rejects that submission. As noted in our Reply Submission of 4 June 2019 and our oral submissions of 16 April 2019, many skilled and experienced employees in the SACS sector lack formal qualifications. This is because many people find work in the sector *after* having been client or a beneficiary of an organization. This is reflected in the classification structure for SACS employees. Even at the highest classifications levels (Levels 7 and 8) there is no requirement for employees to hold any formal qualifications. The Commission would find that employers require the use of community language skills, and that most employees who use those skills do not have accreditation. It is likely that if formal accreditation was made a prerequisite for being paid the allowance, employers would simply continue using the community language skills of their unaccredited employees without being required to pay the allowance. It would be unfair to impose such a requirement.

AUSTRALIAN SERVICES UNION

7 FEBRUARY 2020

ATTACHMENT A

DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – (AM2014/47)

SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010

[MA000100]

Social, Community, Home Care and Disability Services Industry

COMMISSION MEMBER

PLACE, DATE

A. Further to the Decision issued by the Fair Work Commission on the above award is varied as follows:

1. By inserting a new clause 20.10:

20.10 Community Language and Signing Work

- (a) An employee who, in the course of their normal duties, uses a language other than English to provide services to speakers of a language other than English, or use sign language to provide services to those with hearing difficulties, shall be paid an allowance of 4.90% of the standard rate per week.
- (b) The allowance in [20.10\(a\)](#) will apply to eligible part time and casual employees on a pro rata basis on the basis that the ordinary weekly hours of work for full-time employees are 38.

B. The determination shall operate on and from [
BY THE COMMISSION] .