



5 July 2016

Our Ref: 20160104

Your Ref: AM2014/196, AM2014/197

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Associate to Vice President Hatcher
Fair Work Commission
Level 10, Terrace Tower
80 William Street
East Sydney NSW 2011

Dear Associate

**FOUR YEARLY REVIEW OF MODERN AWARDS: CASUAL AND PART-TIME EMPLOYMENT
(AM2014/196, AM2014/197)**

We act for Australian Business Industrial and the NSW Business Chamber Ltd in the above proceedings.

We refer to our client's application to vary clause 10.3 of the *Social, Community, Home Care and Disability Services Industry Award 2010 (Award)*, listed for hearing on 14-15 July 2016.

By way of background, we note that our clients first raised its intention to pursue a variation to clause 10.3 of the Award on 2 March 2014. Our clients then subsequently filed a Draft Determination in respect of its proposed variation on 17 July 2015, in accordance with Directions of the Commission dated 29 June 2015.

In the considerable time that has passed since the filing of the Draft Determination in July 2015, our clients have engaged in various discussions with stakeholders and interested parties in respect of the proposed variation, including in respect of the formulation or drafting of the precise variation to be sought.

On the back of those discussions, our clients have refined the particular variation they wish to seek to clause 10.3 of the Award. Accordingly, our clients respectfully request leave of the Commission to file and rely on the **enclosed** Amended Draft Determination.

We make the following comments in relation to the Amended Draft Determination:

- Firstly, the substance of our clients' case remains the same: our clients are seeking a variation to the current clause 10.3(c) to address the practical issues with that provision. The Amended Draft Determination does not alter the scope of the case; it merely alters the relief sought.
- Secondly, the Amended Draft Determination represents a more confined variation as compared to the Draft Determination filed by our clients in July 2015. As a result, we anticipate that the

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FOUR YEARLY REVIEW OF MODERN AWARDS: CASUAL AND PART-TIME EMPLOYMENT (AM2014/196,
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filing of the Amended Draft Determination will result in a narrowing of the issues in dispute and ultimately result in a more efficient and expeditious hearing, at least in respect to the claim advanced by our clients (noting there is another similar claim which is advanced by St Ives Group).

- Thirdly, we do not anticipate that the Amended Draft Determination will have any adverse impact on the nature of the evidence sought to be adduced in the proceedings, nor do we anticipate that it will have any effect on the hearing dates next week. Given that the overall nature of our clients' case has not changed, we anticipate that the evidence and submissions filed by the parties to date will remain relevant to the proceedings.
- Fourthly, to the extent that the Amended Draft Determination raises new issues about what variation should be granted (if any), our clients are of course open to other parties being given an opportunity to respond to those issues in their closing written submissions or through some other appropriate course.

We note that our clients circulated the Amended Draft Determination to the other interested parties on 4 July 2016 and sought the consent of those parties to file the Amended Draft Determination. Regrettably, the United Voice, the HSU, the ASU and the ACTU have objected to the filing of the Amended Draft Determination.

Please do not hesitate to contact Kyle Scott on 02 9458 7607 should you wish to discuss.

Yours sincerely



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Encl

AMENDED DRAFT DETERMINATION

Fair Work Act 2009
s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Casual employment and Part-time employment (AM2014/196, AM2014/197)

Social, Community, Home Care and Disability Services Industry

VICE PRESIDENT HATCHER
SENIOR DEPUTY PRESIDENT HARRISON
SENIOR DEPUTY PRESIDENT HAMBERGER
COMMISSIONER ROE
COMMISSIONER BULL

SYDNEY, XX YYY 20XX

Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2014/196 and AM2014/197, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Social, Community, Home Care and Disability Services Industry Award 2010* be varied as follows:

[1] By deleting clause 10.3 and inserting in lieu thereof:

10.3 Part-time employment

- (a) A part-time employee is one who is engaged to work less than 38 hours per week or an average of less than 38 hours per week and who has reasonably predictable hours of work.
- (b) The terms of this award will apply to part-time employees on a pro rata basis on the basis that the ordinary weekly hours of work for full-time employees are 38.
- (c) Subject to clause 10.3(d), before commencing employment, the employer and the employee will agree in writing on the regular pattern of work including the number of hours to be worked each week, the days of the week the employee will work and the starting and finishing times each day. Any agreed variation to the regular pattern of work will be recorded in writing.
- (d) Despite anything else in this clause 10.3, an employer and an employee may agree not to fix the employee's hours of work if the employee is engaged to

provide supports to clients in circumstances where the client has discretion to vary when the support is provided. In these circumstances:

- (i) before commencing employment the employer and the employee will agree in writing on:
 - (A) the number of hours to be worked each week (or the average number of hours); and
 - (B) the days and/or times of the week that the employee is not available to work (if any);
- (ii) the employee's hours will be set by the employer in accordance with clause 25.5, save that the employee will not be required to work on those days or at those times referred to in clause 10.3(d)(i)(B).
- (iii) Any agreed variation to the employee's availability or to the number of hours to be worked must be recorded in writing.

[2] The determination shall operate on and from [].

BY THE COMMISSION

AMENDED DRAFT DETERMINATION

Fair Work Act 2009
s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Casual employment and Part-time employment (AM2014/196, AM2014/197)

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10.3 Part-time employment

- (a) A part-time employee is one who is engaged to work less than 38 hours per week ~~(or an average of less than 38 hours per week) in accordance with this clause and who has reasonably predictable hours of work.~~
- (b) The terms of this award will apply to part-time employees on a pro rata basis on the basis that the ordinary weekly hours of work for full-time employees are 38.
- (c) Subject to clause 10.3(d), before commencing employment, the employer and the employee will agree in writing on the regular pattern of work including the number of hours to be worked each week, the days of the week the employee will work and the starting and finishing times each day. Any agreed variation to the regular pattern of work will be recorded in writing.

~~(ed) Despite anything else in this clause 10.3, an employer and an employee may agree not to fix the employee's hours of work if the employee is engaged to provide supports to clients in circumstances where the client has discretion to vary when the support is provided. In these circumstances:~~

~~(i) Before commencing the employment, ~~an~~ the employer and the employee will agree in writing on:~~

~~(Ai) must agree in writing with the employee on the minimum number of hours to be worked each week (or the average number of hours); and~~

~~(iiB) may agree in writing with the employee on the days and/or times of the week that the employee is not available to work (if any); will work and/or the starting and finishing times each day.~~

~~(ii) the employee's hours will be set by the employer in accordance with clause 25.5, save that the employee will not be required to work on those days or at those times referred to in clause 10.3(d)(i)(B).~~

~~(diii) Any agreed variation to ~~(e)(i)~~the employee's availability or to the number of hours to be worked must be recorded in writing.~~

~~(e) To avoid any doubt, where an employer and employee have only agreed on the minimum number of hours to be worked each week (in accordance with clause 10.3(e)(i)), they may agree to work additional hours from time to time and such agreement is not required to be recorded in writing.~~

[2] The determination shall operate on and from [].

BY THE COMMISSION