

Fair Work Commission
Modern Award Review
AM2014/250

**Outline of submissions on drafting and technical issues
concerning the Aboriginal Community Controlled
Health Services Award 2016 Exposure Draft**



Prepared by HWL Ebsworth Lawyers on behalf of



NATSIHWA
National Aboriginal and Torres Strait
Islander Health Worker Association

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Ref SMP:JCLB:313668

A. INTRODUCTION

1. We confirm that we act for the National Aboriginal and Torres Strait Islander Health Worker Association (**NATSIHWA**), who is an interested party in the modern award review of the *Aboriginal Community Controlled Health Services Award 2010 (ACCHS Award)*.
2. This outline of submissions is made in response to the Honourable Justice IJK Ross' Statement and Directions dated 10 May 2016. These submissions relate specifically to the drafting and technical issues arising from the *Aboriginal Community Controlled Health Services Award 2016 Exposure Draft (Exposure Draft)* which was published by the Fair Work Commission on 17 May 2016.
3. These submissions are to be read in conjunction with NATSIHWA's submissions in AM2014/250 filed on 6 March 2015 (**6 March 2015 Submissions**). The 6 March 2015 Submissions outline the substantive changes NATSIHWA seek.

B. DEFINITIONS - ABORIGINAL HEALTH WORKER AND ABORIGINAL PERSON

4. The definition of 'Aboriginal Health Worker' in clause 2 of the ACCHS Award states:

*"**Aboriginal health worker** includes a person who is registered with a national, State or Territory registration body, where registration is required in the State or Territory where the person is employed*

NOTE: Registration as an Aboriginal health worker is required in one or more States or Territories. Where registration is required, an employee employed in the relevant State or Territory will not be employed as an Aboriginal health worker unless they are registered with the relevant State or Territory registration body. It is intended that a national registration system will be implemented and variations to the definition of Aboriginal health worker will be sought once that registration system is established."

5. The Exposure Draft at page 3 asks parties to confirm whether the underlined sentence (above) is still relevant.
6. The underlined statement is not relevant to the 'Aboriginal Health Worker' definition. Whilst registration is mandatory for Aboriginal and Torres Strait Islander Health Practitioners it is not mandatory for Aboriginal and Torres Strait Islander Health Workers generally.
7. The definition of 'Aboriginal Health Worker' should be amended to reflect the actual characteristics of these workers and to remove references to the registration requirement.
8. Further, the defined term 'Aboriginal Health Worker' should be amended to clarify that it captures persons who identify as Torres Strait Islanders in addition to those who identify as

Aboriginal. This is an alternative to the proposal at page 4 of the Exposure Draft to amend the definition of 'Aboriginal person' (see below).

9. Accordingly, it is proposed that:

- (a) the defined term be amended to 'Aboriginal and Torres Strait Islander Health Worker' (**ATSIHW**); and
- (b) an ATSIHW be defined as someone who:
 - (i) identifies as an Aboriginal and/or Torres Strait Islander and is recognised by their community as such;
 - (ii) is the holder of the minimum Certificate III qualification (or higher) in Aboriginal and Torres Strait Islander primary health care or, has equivalent skills and experience in providing Aboriginal and Torres Strait Islander health services;
 - (iii) is engaged in the delivery of Aboriginal and Torres Strait Islander primary health care; and
 - (iv) has a culturally safe and holistic approach to health care.

10. In addition, it is proposed to include two additional definitions as follows:

10.1 a definition for an 'Aboriginal and Torres Strait Islander Health Practitioner' (**ATSIHP**) should be included which defines ATSIHPs as employees who also satisfy the following requirements:

- (a) identifies as an Aboriginal and/or Torres Strait Islander and is recognised by their community as such;
- (b) is registered with the Australian Health Practitioner Regulation Agency;
- (c) is engaged in the delivery of Aboriginal and Torres Strait Islander primary health care; and
- (d) holds a minimum Certificate IV qualification in Aboriginal and Torres Strait Islander primary health care practice.

10.2 a definition for an 'Aboriginal and Torres Strait Islander Health Assistant' (**ATSIHA**) should be included which defines ATSIHAs as employees who also satisfy the following requirements:

- (a) identifies as an Aboriginal and/or Torres Strait Islander and is recognised by their community as such;
- (b) is engaged in the delivery of Aboriginal and Torres Strait Islander primary health care; and

- (c) has no direct experience in the provision of Aboriginal and Torres Strait Islander health services.
11. The proposed definition of the work performed by an ATSIHA is intended to reflect the work performed by a Grade 1, Aboriginal Health Worker (see clause B.1.1 of Schedule B - Classification).
 12. The Exposure Draft at page 4 asks parties to comment on whether the definition of 'Aboriginal person' should state 'Aboriginal will be taken to include Torres Strait Islander'.
 13. We refer to the alternative proposal as outlined in paragraphs 8 and 9 above. Further, we note that, with the exception of Clause 2 itself, the term 'Aboriginal person' does not appear elsewhere in the ACCHS Award (or the Exposure Draft). Consequently it is not necessary to include a definition for this term.
 14. Consistent with the above proposals, the title of the Exposure Draft should be amended to recognise the ACCHS Award's application to persons who identify as Torres Strait Islanders and accordingly, should be re-named the *Aboriginal and Torres Strait Islander Community Controlled Health Services Award 2016*.

C. MEAL BREAKS

15. The Exposure Draft at page 10 asks parties to comment on how the timing of the unpaid meal break is determined so as to then be capable of variation.
16. Clause 15 of the Exposure Draft states:

"15. Unpaid meal breaks

15.1 An employee who works more than five hours will be entitled to an unpaid meal break of between 30 and 60 minutes.

15.2 The time of taking the meal break may be varied by agreement between the employer and employee."
17. Clause 15 is sufficiently clear and does not require amendment.
18. Where an employee is rostered to work 5 hours or less, no entitlement to an unpaid meal break is triggered pursuant to clause 15.1.
19. Where an employee is rostered to work more than 5 hours, clause 15.2 presumes the 30 to 60 minute break is to be taken at a particular set time. The timing of the break may be determined, for example, by a roster or by regular practice. The timing of taking that break may be subsequently varied by agreement between the employer and the employee.

D. MINIMUM WAGES CLASSIFICATIONS

20. The Exposure Draft at page 10 asks parties advise how employees progress between levels within a grade.

21. Clause 13.3 in the *Social, Community, Home Care & Disability Services Award 2010* states:

"13.3 Progression

(a) *At the end of each 12 months' continuous employment, an employee will be eligible for progression from one pay point to the next within a level if the employee has demonstrated competency and satisfactory performance over a minimum period of 12 months at each level within the level and:*

(i) *the employee has acquired and satisfactorily used new or enhanced skills within the ambit of the classification, if required by the employer; or*

(ii) *where an employer has adopted a staff development and performance appraisal scheme and has determined that the employee has demonstrated satisfactory performance for the prior 12 months' employment.*

(b) *Movement to a higher classification will occur by way of promotion or re-classification."*

22. The ACCHS Award should include a progression clause that replicates the above clause 13.3 in the *Social, Community, Home Care & Disability Services Award 2010*.

23. In addition, the ACCHS Award should include provisions that replicate clause 13.2 'Recognition of previous service' in the *Educational Services (Teachers) Award 2010* to clarify that service in the industry is recognised irrespective of an ATSIHW's or ATSIHP's movement between employers.

E. BILINGUAL QUALIFICATION ALLOWANCE - CLAUSE 17.2 (A)

24. Currently, clause 17.2(a)(iv) of the ACCHS Award requires there to be confirmation in writing from an interpreting or translation service agreed by the employer and the employee.

25. The Exposure Draft at page 16 asks parties to comment on whether proof of bilingual accreditation should be specified as having to come from NAATI or a similar body.

26. NATSIHWA does not support making amendments to this effect.

27. Such clarification is unnecessary and, if implemented, risks having the effect of preventing ATSIHWs, ATSIHPs and ATSIHAs from being entitled to this benefit due to the process becoming too onerous.

F. CEREMONIAL LEAVE - CLAUSE 26

28. Clause 26 currently states:

"An employee who is legitimately required by indigenous tradition to be absent from work for Aboriginal or Torres Strait Islander ceremonial purposes will be entitled to up to 10 working days unpaid leave in any one year, with the approval of the employer."

29. This provision should be clarified to state:

"An employee who is legitimately required by indigenous tradition to be absent from work for Aboriginal or Torres Strait Islander ceremonial purposes, including for bereavement related ceremonies and obligations, will be entitled to up to 10 working days unpaid leave in any one year, with the approval of the employer."

30. This amendment will avoid situations whereby leave for bereavement related ceremonies and obligations are not regarded as triggering employees' entitlements to take ceremonial leave. This change is consistent with the requirement that awards be simple and easy to understand (section 134(1)(g) of the FW Act).

Should you have any enquiries in relation to the above, please do not hesitate to contact Justin Le Blond on (02) 9334 8703, Persephone Stuckey-Clarke (02) 9334 8746 or Laura Gavan (02) 9334 8677.

Yours sincerely



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