



## IN THE FAIR WORK COMMISSION

Matter No: AM2014/251

Title: Four Yearly Review of Modern Awards 2014  
Aged Care Award

## SUBMISSIONS

31 July 2017

|                     |   |         |  |
|---------------------|---|---------|--|
| Filed on behalf of: | Health Services Union                             |         |  |
| Filed by:           | Leigh Svendsen Senior National Industrial Officer | Mobile: | 0418 538 989   |
| Address:            | PO 98 Carlton South, VIC 3053                     | Email:  | <a href="mailto:leighs@hsu.net.au">leighs@hsu.net.au</a> |

1. HSU makes these brief submissions in accordance with paragraph 4 of the directions issued by President Ross of 9 June 2017<sup>1</sup>.

## Types of employment and classifications

### Casual employees – Clause 20.3 and 26.3 (Exposure Draft)

2. The HSU intends to pursue its claim to ensure that casual loading, payable in lieu of the paid leave entitlements of ongoing employees, is paid in addition to both weekend and public holiday rates of pay.
3. The HSU notes this matter has not been dealt with by the Part-time and Casuals Full Bench in matters AM2014/196 and AM2014/197, despite the notation contained in the summary of substantive matters published on 6 January 2017<sup>2</sup>.
4. The HSU envisages this will primarily be a merits based argument and will only bring a limited number of witnesses where it believes it will add to the understanding of the claim and its relevance to casual employees.

## Minimum wages and allowances

### Allowances

5. HSU will seek variations in or additions to allowances as follows:
  - i. Inclusion of a phone allowance to reflect the requirement to have a mobile phone for work related purposes or on call
  - ii. Inclusion of on call/ recall allowances
  - iii. Payment of costs associated with first aid certificate renewal for employees required to hold a current certificate to undertake their work
  - iv. A variation to uniform and laundry allowances to ensure that both are payable, including where the employer does not require a specific uniform to be worn
  - v. Inclusion of a damaged clothing allowance.
6. The HSU will focus on merit, and provide evidence intended to demonstrate the necessity of the allowances to ensure employees are compensated for work performed or reimbursed for the out of pocket expenses paid to enable them to earn their living.

---

<sup>1</sup> [Directions 9 June 2017](#)

<sup>2</sup> [Summary of Proposed Substantive Variations](#)

## Leave

### Ceremonial Leave

7. HSU is seeking the expansion of the ceremonial leave clause to include Torres Strait Islanders ceremonial leave responsibilities.
8. This matter has been agreed between the parties but is not to date reflected in the Exposure Draft. HSU seeks to ensure that the ceremonial leave provisions reflect the accepted standards.

Leigh Svendsen  
**Senior National Industrial Officer**

# SCHEDULE A

## DRAFT DETERMINATION

### FAIR WORK COMMISSION

<<FileNo>> <<PrintNo>>

*Fair Work Act 2009*

Part 2-3, Div 4 – 4 Yearly reviews of modern awards

### **Aged Care Award 2010**

(ODN AM2014/190) [MA000018]

Health and Welfare

ROSS, PRESIDENT

SYDNEY, <<MONTH, YEAR>>

Review of modern awards to be conducted.

[A] Further to the Decision and Reasons for the Decision << Decision No>> in <<File No>>, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the Aged Care Award 2010 be varied as follows.

**[Note because consideration of the exposure draft of this award is advanced, these draft determinations address the numbering of the current exposure draft as at 19 May 2017, republished on 10 July 2017.]**

[B] By inserting a new sub clause 18.2(a) as follows:

#### **18.2(a) On call allowance**

- (i) An on call allowance is paid to an employee who is required by the employer to be on call at their private residence, or at any other mutually agreed place. The employee is entitled to receive the following additional amounts:

| Between rostered shifts or ordinary hours on: | \$ per 24 hour period or part thereof |
|---|---------------------------------------|
| Monday to Friday inclusive                    | \$20.72                               |
| Saturday                                      | \$31.21                               |
| Sunday, public holiday or non-rostered day    | \$36.41                               |

- (ii) For the purpose of clause 18.2(a)(i) the whole of the on call period is

calculated according to the day on which the major portion of the on call period falls.

[C] By deleting the first paragraph in sub-clause 18.3(a)(iii) and replacing it as follows:

**(iii) Uniform allowance**

Where an employer does not provide or require employees to wear uniforms under clause 18.3(a)(i), the employer will pay the employee the lesser of:

[D] By inserting in 18.3(a)(iv) the words 'or clothing worn by the employee' after the word uniform in the first sentence so the sentence reads:

**(iv) Laundry allowance**

Where the uniform or clothing worn by the employee is not laundered by or at the expense of the employer, under clause 18.3(a)(i), the employee will be paid the lesser of:

[E] By renumbering the following sub clauses: 18.3(b) as 18.3(c); 18.3(c) as 18.3(d), and; 18.3(d) as 18.3(e).

[F] By inserting a new sub clause 18.3(b)

**18.3(b) Damaged clothing allowance**

Where an employee, in the course of their employment, suffers any damaged to or soiling of clothing or other personal effects, the employer will be liable for the replacement, repair or cleaning of such clothing or personal effects provided, where practicable, immediate notification is given to the employer of such damage or soiling as soon as possible.

This clause will not apply where the damage or soiling is caused by the negligence of the employee.

[G] By inserting a new sub-clause 18.3(f)

**(e) Phone allowance**

Where the employer requires an employee to use a mobile phone for the purpose of being on call or to access their work roster, the employer will either:

- (i) provide a mobile phone and cover the cost of any subsequent charges; or
- (ii) refund the cost of purchase and the subsequent charges on production of receipted accounts.

[H] By inserting a new sub-clause 18.3(g)

**(f) First Aid refresher**

- (i) Where an employee is required to maintain first aid certification, the employer will pay full cost of the employee updating their first aid certification by:
- Reimbursing the employee registration and attendance expenses; or
  - Paying the registration and attendance costs;
- (ii) Attendance at First Aid refresher courses will be work time and paid as such.

[I] By deleting clause 20.3 and replacing it with the following:

20.3 A casual employee who works on a weekend will be paid the following rates:

- (a) between midnight Friday and midnight Saturday—175% of the ordinary hourly rate; and
- (b) between midnight Saturday and midnight Sunday—200% of the ordinary hourly rate.

20.4 The rates prescribed in clause 20.3 will be in substitution for and not cumulative upon the casual loading prescribed in clause 11.2.

[J] By replacing the rate at clause 26.3(a) with the following:

26.3(a) A casual employee will be paid only for those public holidays they work at 275% of the ordinary hourly rate for hours worked.

[K] By deleting clauses 26.3(b) and 26.3(c) and inserting a new 26.3(b) as follows:

26.3(b) The rates prescribed in clause 26.3(a) will be in substitution for and cumulative upon the casual loading prescribed in clause 11.2 and weekend rates prescribed in clause 20.3.

[L] By deleting clause 28 and replacing it with the following:

**28 Ceremonial leave**

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.

[M] The determination shall operate on and from <<date>>

PRESIDENT