BACKGROUND DOCUMENT

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

4 yearly review of modern awards—Award stage—Group 4—*Aged Care Award 2010*—Substantive claims

(AM2018/13) MELBOURNE, 5 APRIL 2019

This is a background document only and does not purport to be a comprehensive discussion of the issues involved. It does not represent the view of the Commission on any issue.

1. Background

[1] A number of substantive claims have been made to vary the *Aged Care Award 2010* (the Award) part of the 4 yearly review of modern awards (the Review). In accordance with the Decision in [2018] FWCFB 1548,[1] a Full Bench has been constituted to deal with these substantive claims.

[2] A programming Mention before the President was held on 9 November 2018 and a Report and Directions were issued on 13 November 2018. The Report set out a list of substantive claims that were being pursued by United Voice and the Health Services Union (HSU) in relation to the Award (see Attachment A).

[3] The directions were amended on 18 January 2019. Parties seeking variations were directed to file evidence and submissions in support of their claims. Submissions in support of claims were filed by the following parties:

- United Voice;[2] and
- Health Services Union (HSU).[3]

[4] Neither party filed any witness evidence relating to their claims.

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[1] [2018] FWCFB 1548 at para [41].

[2] United Voice submission dated 18 January 2019.

[3] HSU submission dated 23 January 2019.

[5] The following parties filed submissions in reply:

- Aged and Community Services Australia and Leading Age Services Australia (Aged Care Employers);[4]
- Australian Federation of Employers and Industry (AFEI);[5] and
- Australian Business Industrial and the NSW Business Chamber (jointly ABI).[6]

2. The claims

United Voice claims

[6] In their submission (and amended draft determination) of 18 January 2019, United Voice confirmed that they would not be pressing their claim relating to sleepovers (in clause 22.9 of the award),[7] and maintain only 2 substantive claims, as follows:

- introducing a new clause 15.8 into the award relating to a phone allowance; and
- amending the Classification Definition at Schedule B.4–Aged Care Employee–Level 4 (Personal care worker)

[7] These two substantive claims are set out in detail below.

Phone allowance

[8] United Voice seek to insert a new clause 15.8 into the Award as follows:

> **15.8 Phone allowance**
>
> Where the employer requires an employee to use a mobile phone for the purpose of being on call, for the performance of work duties, to access their work roster or for other work purposes, 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.[8]

[9] In relation to the Aged Care Exposure Draft, this would be a new clause to be inserted at clause 18.3(f).

Amendment to classification definition of personal care worker level 4

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[4] Aged Care Employers submission dated 25 March 2019.

[5] AFEI submission dated 22 March 2019.

[6] Submission of ABI dated 20 March 2019.

[7] United Voice submission dated 18 January 2019 at para 2

[8] Ibid at para 7.

[10] United Voice seek to make the following amendment to the last dot point to Schedule B.4 (Level 4) of the Award:

> **B.4 Aged care employee—level 4**
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> An employee at this level:
>
> - is capable of prioritising work within established policies, guidelines and procedures;
> - is responsible for work performed with a medium level of accountability or discretion;
> - works under limited supervision, either individually or in a team;
> - possesses good communication, interpersonal and/or arithmetic skills; and
> - requires specific on-the-job training, may require formal qualifications and/or relevant skills training or experience.
> - ~~In the case of a Personal care worker, is required to hold a relevant Certificate III qualification.~~
> - In the case of a personal care worker, holds a relevant certificate III qualification or possesses equivalent knowledge and skills gained through on-the-job training.[9]

[11] The above schedule is replicated in the Aged Care Exposure Draft, however it appears at Schedule A.

HSU claims

[12] In their submission filed on 18 January 2019, the HSU indicate that they seek to pursue the following 3 substantive claims:

- introducing a new clause 15.8 into the award relating to a phone allowance;
- By deleting clause 23.2 and 29.2(c)(i) and (ii) and replacing it with wording to ensure that the casual loading, payable in lieu of the paid leave entitlements of ongoing employees, is paid in addition to weekend and public holiday rates;
- deleting or amending the Broken shift clause to include a minimum engagement period.

[13] The claims are outlined in further detail below.

[14] In Attachment A to the Report that was issued on 13 November 2018, it was confirmed that the HSU sought to pursue substantive claims relating to additional allowances (including a reimbursement of costs associated with a first aid certificate renewal) and an amendment to ensure that shift allowances are paid when employees are working afternoon or night duty. The submissions filed on 18 January 2019 only dealt with the 3 substantive claims outlined at [12] above. Accordingly, we presume that the additional claims included in the Report are not being pursued by the HSU.

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[9] United Voice submission dated 18 January 2019 at para 32.

(i) Phone allowance

[15] The HSU seek to insert a new clause 15.8 into the Award in the same terms as United Voice (see [8] above).[10]

(ii) Casual loading is paid in addition to weekend and public holiday rates

[16] The HSU seek to vary clause 23 of the Award as follows:

23. Saturday and Sunday work

23.1 Employees whose ordinary working hours include work on a Saturday and/or Sunday, will be paid for ordinary hours worked between midnight on Friday and midnight on Saturday at the rate of time and a half, and for ordinary hours worked between midnight on Saturday and midnight on Sunday at the rate of time and three quarters. These extra rates will be in substitution for and not cumulative upon the shift premiums prescribed in clause 26—Shiftwork.

~~23.2 Casual employees will be paid in accordance with clause 23.1. The rates prescribed in clause 23.1 will be in substitution for and not cumulative upon the casual loading prescribed in clause 10.4(b).~~

23.2 A causal 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.

23.3 The rates prescribed in clause 23.2 will be in substitution for and not cumulative upon the causal loading prescribed in clause 10.4(b).[11]

[17] The HSU seek to vary clause 29 of the Award as follows:

29.2 Payment for working on a public holiday

. . .

(c) Casual employees

~~(i) A casual employee will be paid only for those public holidays they work at the total rate of 250% for hours worked.~~

~~(ii) Payments under clause 29.2(c)(i) are instead of and replace any casual loading otherwise payable under this award.~~

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

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[10] HSU submission dated 23 January 2019 at para 6.

[11] HSU submission dated 23 January 2019 at page 6.

(ii) The rates prescribed in clause 29.2(c)(i) will be in substitution for and not cumulative upon the casual loading prescribed in clause 10.4(b) and weekend rates prescribed in 23.2.

(iii) Payments under this clause are instead of any addition rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.[12]

[18] The relevant changes in the Exposure Draft would be made to clauses 20 and 26 as follows:

20. Weekend penalties

20.1 An employee whose ordinary hours include work on a weekend will be paid for all ordinary hours worked on the weekend at the following rates:

(a) between midnight Friday and midnight Saturday—150% of the ordinary hourly rate; and

(b) between midnight Saturday and midnight Sunday—175% of the ordinary hourly rate.

20.2 The penalty rates in clause 20.1 are in substitution for and not cumulative upon the shift premiums prescribed in clause 21—Shiftwork.

~~20.3 Casual employees will be paid in accordance with clause 20.1 and 20.2. The rates prescribed in clause 20.1 will be in substitution for and not cumulative upon the casual loading prescribed in clause 11.2.~~

20.3 A employee causal 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 causal loading prescribed in clause 11.2.

. . .

26. Public holidays

. . .

26.3 Casual employees

~~(a) A casual employee will be paid only for those public holidays they work at 250% of the ordinary hourly rate for hours worked.~~

[12] HSU submission dated 23 January 2019 at page 7.

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

(b) The rates prescribed in clause 26.3(a) will be in substitution for and not cumulative upon the casual loading prescribed in clause 11.2 and weekend rates prescribed in clause 20.3.

~~(c) Payments under clause 26.3(a) are instead of and replace any casual loading otherwise payable under this award.~~

~~(d)~~ (c) Payments under this clause are instead of any additional rate for shift or weekend work which would otherwise be payable had the shift not been a public holiday.

(iii) Amending the broken shifts clause to provide for a minimum engagement period

[19] The HSU seek to vary the Award clause 22.8 as follows:

22.8 Broken shifts

With respect to broken shifts:

(a) Broken shift for the purposes of this clause means a shift worked by a casual or permanent part-time employee that includes breaks (other than a meal break) totalling not more than four hours and where the span of hours is not more than 12 hours.

(b) A broken shift may be worked where there is mutual agreement between the employer and employee to work the broken shift.

c) Payment for a broken shift will be at ordinary pay with penalty rates and shift allowances in accordance with clauses 25—Overtime penalty rates and 26—Shiftwork, with shift allowances being determined by the commencing time of the broken shift.

(d) All work performed beyond the maximum span of 12 hours for a broken shift will be paid at double time.

(e) An employee must receive a minimum break of 10 hours between broken shifts rostered on successive days.

(f) Each portion of the shift must meet the minimum engagement requirements in 22.7(b).[13]

[20] The clause in the Exposure Draft is worded slightly differently. The proposed amendment as it relates to the exposure draft is outlined below:

14.6 Broken shifts

(a) For the purposes of this clause, broken shift means a shift worked by a casual or part-time employee that includes breaks (other than a meal break) totalling not more than four hours and where the span of hours is not more than 12 hours.

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[13] HSU submission dated 23 January 2019 at para 11.

(b) A broken shift may be worked where there is mutual agreement between the employer and employee.

(c) Payment for a broken shift will be at the ordinary hourly rate of pay plus any applicable penalty rates and shift allowances in accordance with clauses 21—Shiftwork and 22—Overtime.

(d) Shift allowances will be determined according to the starting time of the broken shift.

(e) All work performed beyond the maximum span of 12 hours for a broken shift will be paid at 200% of the ordinary hourly rate.

(f) An employee must receive a break of at least 10 hours between broken shifts rostered on successive days.

(g) Each portion of the shift must meet the minimum engagement requirements in 22.7(b).

[21] Submissions and submissions in reply are summarised below in relation to each claim.

3. Submissions relating to the Phone allowance claim (joint United Voice and HSU claim)

[22] United Voice submit that the Award currently contains no allowance or mechanism for an employee to receive any reimbursement of costs associated with work use of a phone in circumstances where they are directed to maintain a mobile phone for work purposes. The entire cost of work related mobile phone use is notionally 'shifted' onto the employee unless the employer has some policy which provides for work related phone use. Many other modern awards contain allowances related to tools of trade and mechanisms for the employee to be reimbursed by the employer when required to buy items to be used for work.[14]

[23] United Voice submit that the Award contains a number of classifications where the work takes place outside of an aged care facilities or office, and in some cases in the care recipient's home. All aged care worker classifications from levels 1 to 7 contemplate work taking place 'individually'. In the case of personal care workers and recreational/lifestyle activities officers, a significant, if not all, of the work will take place remotely from the employer's principal place of business or office.[15]

[24] United Voice seek the insertion of a new clause 15.8 into the Award as follows:

Phone allowance

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

(i) provide a mobile phone and cover the cost of any subsequent charges; or

[14] United Voice submission dated 18 January 2019 at para 5.

[15] Ibid at 6.

(ii) refund the cost of purchase and the subsequent charges on production of receipted accounts.

[25] United Voice submit that in a number of comparable modern awards there are telephone allowances albeit these allowances do not reflect the current ubiquity of mobile 'smart' phone use and their status now as work tools. United Voice submit that the structure of these allowances is out of step with technologies now commonly used and reflect what was the then state of affairs at the time of award modernisation namely wide spread landline phone usage.[16]

[26] The HSU submits that the Award should be varied to include a telephone allowance applicable when an employee is required to use a mobile phone for work.[17]

[27] The HSU support the submissions of United Voice and the proposed wording in relation to a telephone allowance.[18]

[28] The HSU submit that this amendment is necessary to meet the modern awards objective of providing a fair and relevant safety net of terms and conditions for employees who are required to use a mobile phone while on call, to access rosters, or to perform other work duties.[19]

[29] The HSU submit award-reliant employees should not have to purchase and maintain a mobile phone which is used for work purposes at their own cost and contend that s 134(1)(a) is relevant in this regard.[20]

[30] The HSU also submits mobile phones can assist in enabling efficient and productive performance of work (s. 134(1)(d)). It is contended that when an employer benefits from such increased efficiency and productivity by requiring employees to use mobile phones while on call, to use work related apps or portals, for checking rosters, or for other work related purposes then the employer should also bear this cost.[21]

[31] The HSU also submit that s 134(1)(g), is relevant, as mobile phone use is becoming increasingly ubiquitous and relied upon in the performance of work, it is appropriate that an award in the current modern award system include a provision for a mobile phone allowance.[22]

ABI

[32] ABI opposes the claim and submits that the HSU and United Voice (the Unions) have not adduced any evidence to support the factual premises underpinning the claim and that the

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[16] United Voice submission dated 18 January 2019 at para 10.

[17] HSU submission dated 223 January 2019 at para 5.

[18] Ibid at para 6.

[19] Ibid at para 7.

[20] Ibid at para 8.

[21] Ibid at para 9.

[22] Ibid at para 10.

documentary material relied on by the Unions is general in nature and does not contain any specific consideration of mobile phone usage of employees in the Aged Care industry.[23]

[33] ABI also advance a number of issues concerning the drafting of the proposed claim. In particular, it is submitted that the proposed draft does not provide an exemption in circumstances where an employee already owns a mobile phone. ABI contends that there is nothing to prevent an employee who already owns a mobile from purchasing a new one in order to receive the reimbursement for it.[24]

[34] Secondly, ABI submit that reimbursement to an employee "on production of receipted accounts" may result in an employee seeking reimbursement for the cost of a mobile phone purchased years before the employee was required to use one for work purposes. It is submitted that this has the effect of the employer bearing the cost of a depreciated asset whilst subsiding the employee's personal use of the mobile.[25]

[35] ABI also submit the proposed wording does not impose any limitation on the costs required to be borne by the employer as the proposed clause contains no reference to refunding the 'reasonable' purchase costs or subsequent charges. It is submitted that the employer would have little control or oversight over the type of device or service arrangement an employee might purchase or enter into with costs varying substantially for both upfront and ongoing usage costs.[26]

[36] It is also submitted that the proposed clause fails to link the monetary entitlement to the type of device an employer requires an employee to use. ABI express concern that there is therefore nothing in place to prevent an employee from purchasing a more costly smart phone when only a basic device is necessary.[27]

[37] Finally, ABI submit that the most concerning aspect of the proposed clause is the requirement for the employer to reimburse all up-front and "subsequent charges". It submits an employee could be required by their employer to use their mobile phone once per week to check their work roster, and the employer would automatically be obliged to cover the associated costs. ABI state that there is nothing to prevent an employer being required to foot the bill in circumstances where an employee has obtained an expensive mobile phone plan but uses it predominantly for their personal use. It is also submitted the Unions have failed to identify the existence of tax deductibility of work related expenses for employees which ABI submits is the appropriate mechanism for mobile phone usage to be dealt with.[28]

[38] On the basis of the submissions set out above, ABI contends that the Unions claim would impose an unreasonable cost on employers and does nothing to achieve a "fair and relevant" minimum safety net. This is said to be particularly the case where an employee already owned a mobile phone prior to commencing work with the employer, and primarily

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[23] ABI submission dated 20 March 2019 at para 3.9-3.13.

[24] Ibid at para 3.15-3.16.

[25] Ibid at para 3.16.

[26] Ibid at para 3.17.

[27] Ibid at para 3.19.

[28] Ibid at para 3.20-3.21.

uses it for personal use. It is argued that for these reasons, the proposed term will result in the Award not meeting the modern awards objective and offends s.138 of the Act.[29]

AFEI:

[39] AFEI submit that the material put forward in support by United Voice –

- cites outdated article and reports and questions the reliability of this data; and
- fails to provide probative evidence demonstrating facts to support the presumption that aged care workers have a greater reliance on mobile phone technology.[30]

[40] AFEI also contends that the requirement for employers to provide a mobile phone or reimburse the cost of purchase where employees are required to use a phone 'to access their work rosters or for other work purposes' is problematic. Firstly AFEI submits there are alternative and more cost effective means for employees to obtain this information such as on a notice board or via email. Secondly, AFEI argue the Unions fail to define the meaning of 'other work purposes'. AFEI provides the example that 'work calls' could include a wide range of topics such as notifying an employer because they are sick, late for work, etc. It is argued this places an unfair obligation on employers that is neither fair nor relevant and is therefore inconsistent with the modern awards objective.[31]

Aged Care Employers:

[41] Aged Care Employers submit that, despite the description of the proposed provision as an allowance, it is not about the reimbursement of an expense incurred in the course of employment per s.139(g)(i) of the Act. Aged Care Employers also submits that the Unions' contention that a mobile phone is a 'tool of trade' in the residential Aged Care industry is unsupported by any evidence. It is submitted that no evidence has been provided of employees being required to use a mobile phone for the purposes of being on-call.[32]

[42] Similarly, Aged Care Employers contends that there is no evidence put forward by the Unions to confirm that employees are required to use a mobile phone to access their work roster nor that an employee incurs any additional expense in doing so.[33]

[43] Aged Care Employers submit that the provision may be contrasted with another common expense related allowance – the use of a personal motor vehicle. Aged Care Employers submitted that there is no provision in any modern award that an employer is required to pay the entire cost of purchasing and maintaining a motor vehicle, if the vehicle is used at any time in the performance of work. Aged Care Employers contends that there is a settled approach to motor vehicle allowances that estimate the cost to the employee per kilometre the vehicle is used, and the allowance compensates for the use of the vehicle for work purposes.[34]

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[29] Ibid at para 3.22-3.26.

[30] AFEI submission dated 22 March 2019 at para 1.15.

[31] Ibid at para 1.16.

[32] Aged Care Employers submission dated 25 March 2019 at paras 11-12.

[33] Ibid at paras 13-14.

[34] Ibid at paras 16-17.

[44] Aged Care Employers submit that even if the Unions had led evidence about the work requirement for a mobile phone, the Commission should not grant the claim in the terms sought as the proposed provision is inherently uncertain about:

- the type of phone;
- the cost of the particular phone plane including data, calls, etc.; and
- the frequency in which a phone might need to be replaced.[35]

[45] Aged Care Employers submits that these uncertainties would give rise to disputes about the provision's application and the Commission cannot be satisfied it achieves the modern awards objective.

Other awards with a telephone allowance

[46] The research section of the Commission has identified 15 modern awards that currently contain a telephone allowance.[36] An extract of each of the relevant clauses is at Attachment A.

4. Submissions relating to the amendment to classification definition of personal care worker level 4 (United Voice claim)

[47] United Voice seek to amend the current classification of aged care worker level 4 at dot point B.4 which currently reads:

> 'In the case of a Personal care worker, is required to hold a relevant Certificate III qualification.'

[48] To read:

> 'In the case of a personal care worker, **holds** a relevant certificate III qualification or possesses equivalent knowledge and skills gained through on-the-job training.'

[49] United Voice submit that the purpose of this claim is to ensure appropriately qualified personal care workers are classified in accordance with their qualifications rather than in accordance with managerial prerogative to make the qualification a requirement. United Voice submit that the Award provides for no clear recognition of a certificate III qualification as a threshold within its classification structure, and it gives the employer the discretion to decide whether a certificate III qualified personal care worker is classified as a level 4, providing the employee with no incentive to obtain a qualification deemed relevant within the classification structure.[37]

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[35] Aged Care Employers submission dated 25 March 2019 at paras 19-20.

[36] *Air Pilots Award 2010, Aircraft Cabin Crew Award 2010, Airservices Australia Enterprise Award 2016, Animal Care and Veterinary Services Award 2010, Contract Call Centres Award 2010, Health Professionals and Support Services Award 2010, Marine Towage Award 2010, Market and Social Research Award 2010, Medical Practitioners Award 2010, Nurses and Midwives (Victoria) State Reference Public Sector Award 2015, Ports, Harbours and Enclosed Water Vessels Award 2010, Real Estate Industry Award 2010, Social, Community, Home Care and Disability Services Industry Award 2010, Stevedoring Industry Award 2010, Telecommunications Services Award 2010; Victorian Local Government (Early Childhood Education Employees) Award 2016; Victorian Local Government Award 2015.*

[37] United Voice submission dated 18 January 2019 at para 33.

[50] United Voice submit that they do not seek for the variation to lower the classification of personal care workers who do not possess a certificate III qualification currently classified at level 4, but to ensure that the workers who do possess the qualification, and are applying skills obtained, are appropriately qualified.

[51] United Voice does not identify this claim as concerning work value, because it does not seek to vary minimum rates within the award, and classify it as a clarification of the Award's classification structure. United Voice contends that in the context of the 4 yearly review, a work value claim is characterised by the Act as a claim that 'varies modern award minimum wages' and that the statutory scheme of the Act clearly differentiates between variations to minimum rates and variations which deal with variations that remove ambiguities or correct errors.[38]

[52] United Voice refer to the Statement of 25 September 2009[39] which deals with award modernisation, and state that the variation to the Award will properly reflect the intended relativities between home care and aged care work. United Voice contend that the current wording enables the employer to devalue the work of an employee employed under the Award as opposed to the similar work covered by the *Social, Community, Home Care and Disability Services Industry Award 2010*.

[53] United Voice rely on the 'National Aged Care Workforce Consensus 2016'[40] and contend that there are skills shortages in the aged care sector and that these shortages are likely to worsen due to demographic changes and increase in demand. It refers to the Productivity Commission's report of 2011, 'Caring for Older Australians'[41] and states that unless wages increased substantially in the aged care sector, skills shortages would be 'prevalent and damaging'. United Voice submits that the amendment it seeks will assist in creating skills related career paths and will deal with skill shortages and retention in the aged care sector.[42]

ABI:

[54] ABI oppose United Voice's claim to vary the classification definition of a personal care worker (level 4) in the Award. ABI submit that the proposed variation alters the relevant threshold from circumstances where an employee is 'required' to hold a relevant Certificate III qualification, to circumstances where they hold a relevant qualification irrespective of whether the work they perform requires that level of qualification.[43]

[55] ABI submits that the proposed amendment would result in employees being classified at a level 4 where they have a particular level of knowledge and skills, where such knowledge

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[38] United Voice submission dated 18 January 2019 at para 34.

[39] [2009] AIRCFB 865.

[40] Isherwood, Mavromaras, Moskos and Wei, Attraction, Retention and Utilisation of the Aged Care Workforce, working paper prepare for the Aged Care Workforce Strategy Taskforce, 19 April 2018, University of Adelaide, page 25.

[41] Productivity Commission, Caring for Older Australians, Overview Report, No.53, 28 June 2011, Commonwealth of Australia, at page XLI.

[42] United Voice submission dated 18 January 2019 at para 53.

[43] ABI submission dated 20 March 2019 at para 6.2.

and skills are not required to perform the duties. ABI contends that classifying an employee based on their qualification, without any reference to the duties they are required to perform, is problematic. ABI argue that it would lead to employees performing identical duties being entitled to different minimum wages merely because one employee possesses a qualification which the other does not possess, in circumstances where the work does not require the person to use or possess the qualification. ABI submits that the amendment would lead to wage outcomes inconsistent with the principle of equal remuneration for work of equal or comparable value.[44]

AFEI:

[56] AFEI contend that the change sought by United Voice is a substantive change and requires the advancement of a merit argument supported by probative evidence. AFEI claim that the Commission can only make determinations varying modern awards where it is satisfied that such a variation is satisfied by work value reasons. AFEI submit that United Voice has not provided probative evidence justifying work value reasons and also that the materials filed do not address each change sought.[45]

[57] AFEI submit that United Voice has failed to provide an explanation as to how the 'knowledge and skills that are equivalent to a certificate III qualification' is to be assessed and by whom, in order to ensure a consistent approach is applied to all employees. AFEI further submit that the proposed variation is inconsistent with the intention behind the classification of employees employed under the Award, as the level 4 employees are employed in positions that typically require trade qualifications.[46]

[58] AFEI oppose the variation as the change would reduce the incentive for employees to obtain a qualification deemed relevant for the role within the existing classification structure. Further, AFEI contend that the change would cause confusion and inconsistency in the classification of personal care workers. AFEI also submit that requiring employers to pay employees with and without the qualification at the same rate of pay would increase costs to employers and be inconsistent with s.134(f) of the *Fair Work Act 2009* (the Act).

Aged Care Employers:

[59] Aged Care Employers contend that United Voice has not established a merit case sufficient to warrant any variation of the Award. It contends that United Voice has not led any evidence of employees graded below a level 4 in circumstances where they hold a certificate III qualification and utilise their qualification in their work as a personal care worker.[47]

[60] Aged Care Employers submit that United Voice's claim fails to have genuine regard to the Australian Qualifications Framework, will increase employment costs, has no regard to the requirement that the work value be assessed by reference to the level of skill or responsibility involved in doing the work, and would result in employees being paid

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[44] Ibid at paras 6.6 – 6.11.

[45] AFEI submission dated 22 March 2019 at para 1.26.

[46] Ibid at para 1.20.

[47] Aged Care Employers submission dated 25 March 2019 at paras 30-31.

differently despite performing the same work, simply because one employee possesses a qualification that is not required.[48]

[61] Aged Care Employers contend that there are practical issues associated with United Voice's claim. These include deciding who determines whether a person's knowledge and skills are equivalent to a certificate III and on what basis, and in a claim for non-compliance with the Award, how a court is to decide a person's knowledge and skills at any particular time, and whether that is equivalent to a certificate III. The Aged Care Employers contend that the Australian Qualifications Framework determine these things, as they are the training provider that issue the certificate.[49]

[62] Aged Care Employers submit that United Voice has not led any evidence of personal care workers at level 3 who are said to have the equivalent skills and knowledge but are unable to obtain such certification.[50]

5. Submissions relating to amending the broken shifts clause to provide for a minimum engagement period (HSU claim)

[63] The HSU submits that the Award should be varied by inserting the following sub-clause (f) at clause 22.8 (sub-clause (g) at clause 14.6 in the Exposure Draft):

> (f) Each portion of the shift must meet the minimum engagement requirements in 22.7(b).

[64] The effect of this amendment would be to ensure that casual or part-time employees working a broken shift in accordance with clause 22.8(a) must receive a minimum payment of two hours for each portion of the broken shift, in accordance with clause 22.7.[51]

[65] The HSU's view is that this amendment represents a clarification rather than a substantive change to the Award.[52]

[66] The HSU contends that the minimum engagement provisions are meaningless if they can be disregarded when broken shifts apply. It submits that an employee who comes into work for part of a broken shift makes the same sacrifices as an employee who comes into work for a non-broken shift, such as time spent travelling to and from work.[53]

[67] Accordingly, the HSU submits that the amendment is necessary for the Award to meet the modern awards objective to provide a fair and relevant safety net of terms and conditions. It contends that the modern awards objective consideration at s 134(1)(g) of the Act is particularly relevant, as it underscores the need for the modern award system to be simple, stable and easy to understand.[54]

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[48] Ibid at para 25

[49] Ibid at para 27.

[50] Ibid at para 30.

[51] HSU submission dated 23 January 2019 at para 12.

[52] Ibid at para 13.

[53] Ibid at para 14.

[54] Ibid at para 15.

[68] The HSU submit that this consideration is relevant as the proposed amendment ensures that the broken shift provision is consistent with the minimum engagement provision under the Award, thereby ensuring that the Award is clear, simple and easy to understand.[55]

[69] Further the HSU contend that the considerations at ss.134(1)(a) and (da)(ii) of the Act (related to the modern awards objective) are also relevant. They further contend that the amendment would prevent unscrupulous employers from exploiting part-time and casual workers by scheduling very short broken shifts, meaning employees could earn little pay for short, broken shifts worked over a long span of hours.[56]

Aged Care Employers:

[70] Aged Care Employers submit that under clause 22.8(b) a broken shift may only be worked by mutual agreement between the employer and the employer.[57]

[71] Aged Care Employers oppose the claim by the HSU that an employee should be prevented from proposing or agreeing to a broken shift unless each part of the shift is at least two hours.

[72] Aged Care Employers state that one of the presently unknown issues is the impact of consumer directed care and the new quality standards upon any business imperatives to seek employees' agreement to work broken shifts.[58]

[73] Aged Care Employers submit that the HSU have lead no evidence in support of their claim and in particular, there is no evidence of abuse of broken shifts, simply speculation.[59]

[74] Aged Care Employers submit that in the absence of any submissions which address the relevant legislative provisions and probative evidence properly directed to demonstrating the facts supporting the proposed variation, the HSU's proposed variations to broken shifts must be dismissed by the Commission.[60]

AFEI:

[75] AFEI oppose the HSU's claim and submit that the effect of the HSU's proposed variation is to ensure that casual and part-time employees working a broken shift must receive a minimum payment of two hours for each portion of the broken shift.[61]

[76] AFEI reject the HSU's submission that their proposed variation represents a clarification of the provision. AFEI further submit that it is an incorrect interpretation as employees attending broken shifts are already compensated pursuant to the following clauses of the Award:

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[55] Ibid at para 16.

[56] Ibid at para 17.

[57] Aged Care Employers submission dated 25 March 2019 at para 33.

[58] Aged Care Employers submission dated 25 March 2019 at para 35.

[59] Ibid at para 36.

[60] Ibid at para 37.

[61] AFEI submission dated 22 March 2019 at para 1.37.

Clause 22.8(c):

Payment for a broken shift will be at ordinary pay with penalty rates and shift allowances in accordance with clauses 25 – Overtime penalty rates and 26 – Shift work, with shift allowances being determined by the commencing time of the broken shift.

Clause 22.8(d):
All work performed beyond the maximum span of 12 hours for a broken shift will be paid at double time.[62]

[77] AFEI submit that adopting the HSU interpretation would result in part-time and casual employees receiving payment for at least two hours per broken shift engagement, when in reality attendance can take under an hour of the employee's time. The proposed variation can result in employees being paid in excess of the time required for the employee to perform the work.[63]

[78] AFEI submit that the proposed variation would create a new entitlement which currently does not exist, the effect of which would increase the regulatory burden on employers with the potential to increase wage costs for employers. AFEI further submit that it is inconsistent with the following modern awards objective considerations:

- the need to promote flexible modern work practices and the efficient and productive performance of work; and
- the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden.[64]

[79] AFEI submit that the proposal should be rejected as the HSU have failed to put forward a sufficient case to modify existing arrangements, advance a merit argument, and adduce probative evidence in support of their claim.[65]

ABI:

[80] ABI submit that the first argument advanced by the HSU is prefaced on the assertion that an employee makes a proportionately greater sacrifice when working a broken shift compared to an employee working a non-broken shift and that:

'(a) the quantum of "sacrifice" when working each portion of a broken shift is equal to the quantum of sacrifice when working a non-broken shift; and

(b) there is effectively a 'straight-line' relationship between the number of portions of work in a broken shift and the amount of "sacrifice" made by an employee.' [66]

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[62] Ibid at para1.39.

[63] Ibid at para 1.40.

[64] AFEI submission dated 22 March 2019 at para 1.41

[65] Ibid at para 1.42

[81] ABI submit that this assertion has been made without any evidence having been adduced as to whether there is any disutility associated with working broken shifts, and if so, the quantum of that disutility. [67] ABI submit that the HSU argument is based on the assertion that employees working broken shifts face twice the sacrifice as employees working non-broken shifts. For example, ABI state that it is suggested by the HSU that employees incur twice the travel time and costs when working broken shifts.[68]

[82] ABI reject this assertion and submit that it is unsupported by any probative evidence. ABI assert that the reality is that there are likely to be efficiencies in an employee working a broken shift and therefore working a greater number of hours' work on a given day. ABI submit that in this sense broken shifts mitigate the disutility of working short shifts by giving employees a greater number of hours' work on a given day.[69]

[83] ABI reject the HSU's argument that their claim will make the Award simpler and easier to understand. ABI submit that if the Commission thinks clarification is required, it should insert wording into clause 22.8 to make it clear that the minimum payment provisions in clause 22.7 apply to broken shifts generally and not each portion of a broken shift.[70]

[84] ABI submit that this construction of the Award is reinforced by the decision of a six-member Full Bench of the AIRC in *Aged Care Award 2010* [2010] FWAFB 2026, a decision in which the Full Bench considered a claim by the Liquor, Hospitality and Miscellaneous Union (the LHMU). The LHMU sought to include minimum engagement provisions from the pre-reform WA Aged Care Award (the *Private Hospital and Residential Aged Care (Nursing Homes) Award 2002*) in the Aged Care Award on a transitional basis. The pre-reform award provided a minimum engagement of three hours for all employees and expressly included a minimum engagement of two hours for each part of a broken shift. The Full Bench rejected this claim.[71]

[85] ABI submit that the fact that the AIRC considered and rejected a claim that sought to include in the Award a minimum engagement for each portion of a broken shift reinforces the notion that the Award minimum engagements do not apply to each portion of a broken shift. [72]

[86] ABI opposes the HSU's argument that there are 'unscrupulous' practices or 'exploitation' of employees due to the current broken shift provisions. ABI claim there is no evidence before the Commission to support these allegations and therefore they should be rejected.[73]

[87] ABI submit that broken shifts are a necessary feature of the industry, more so given recent changes to client care models. ABI state that in many cases employees working broken

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[66] ABI submission in reply dated 30 March 2019 at para 4.7.

[67] Ibid at para 4.9.

[68] Ibid at paras 4.9 - 4.10.

[69] Ibid at para 4.12.

[70] Ibid at para 4.14.

[71] Ibid at paras 4.15 – 4.16.

[72] Ibid at para 4.17.

[73] Ibid at para 4.18.

shifts will receive a greater number of hours' work than they would receive if they did not work a broken shift. This means that certain employees would receive fewer hours of work if working hours were not able to be performed non-consecutively under the Award and their take home pay would be reduced, or they would need to work more days in order to maintain their take home pay.[74]

[88] ABI submit that broken shifts provide a mechanism for employers to provide a greater number of hours to employees in circumstances where they are unable to provide a consecutive block of work. ABI also assert that employers cannot unilaterally impose a broken shift on an employee as they can only be utilised where an employee agrees to work a broken shift. [75] Additionally, ABI submit that the current clause 22.8 provides a number of safeguards in relation to the use of broken shifts:

> '(a) Firstly, broken shifts can only be worked by casual and permanent part-time employees;
>
> (b) Secondly, a broken shift can only be worked where the employee agrees to work the broken shift;
>
> (c) Thirdly, the breaks within a broken shift cannot total more than four hours;
>
> (d) Fourthly, the span of hours of a broken shift cannot exceed 12 hours;
>
> (e) Fifthly, part-time employees have the certainty of their pattern of work having been agreed in advance (in writing), including the number of hours to be worked each week, the days of the week to be worked, and the starting and finishing times of each day; and
>
> (f) Sixthly, the existing minimum engagement provisions ensure that employees receive a minimum payment of two hours' pay when working a broken shift.'[76]

[89] ABI submit that the HSU claim represents a substantive departure from the current Award position and it would materially alter the existing minimum payment obligations where employees undertake broken shifts.[77] ABI submit the HSU claim should be dismissed.[78]

6. Submissions relating to the casual loading being paid in addition to weekend and public holiday rates claim (HSU claim)

[90] The HSU submit that the casual loading should be paid in addition to any overtime, weekend and public holiday penalty. It is the view of the HSU that such an approach is consistent with the function of casual loading, which is to compensate casual employees for the paid leave entitlements available to permanent employees. Further, the HSU submit that it is consistent with the 'default approach' discussed by the Full Bench in the *Penalty Rates Decision*.[79]

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[74] Ibid at para 4.19.

[75] Ibid at para 4.20.

[76] Ibid at para 4.21.

[77] Ibid at para 4.22.

[78] Ibid at para 4.23.

[79] HSU submission dated 23 January 2019 at para 18; [2017] FWCFB 1001 at [338].

[91] The HSU submit that the *Penalty Rates Decision* reinforced the distinction between penalty rates and casual loading and provide the following quote from the decision:

> 'As we have mentioned, the [Productivity Commission] Final Report makes reference to the interaction of penalty rates and casual loadings and concludes that:
>
> > 'For neutrality of treatment, the casual loading should be added to the penalty rate of a permanent employee when calculating the premium rate of pay over the basic wage rate for weekend work.'
>
> There is considerable force in the Productivity Commission's conclusion.
>
> Casual loadings and weekend penalty rates are separate and distinct forms of compensation for different disabilities. Penalty rates compensate for the disability (or disutility) associated with the time at which work is performed.'[80]

[92] The HSU submit that in the *Penalty Rates Decision* (in relation to the *Hospitality Industry (General) Award 2010)*, the Full Bench in held that the casual loading should be added to the Sunday penalty rate. The HSU points to [895]–[897] of the *Penalty Rates Decision*, where the Full Bench held:

> 'The distinct purpose of the casual loading is made clear from clause 13.1 of the Hospitality Award: 'The casual loading is paid as compensation for annual leave, personal/carer's leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment.
>
> Importantly, the casual loading is not intended to compensate employees for the disutility of working on Sundays.
>
> In our view, the casual loading should be added to the Sunday penalty rate when calculating the Sunday rate for casual employees. We propose to adopt the Productivity Commission's 'default' method. Accordingly, the Sunday rate for casual employees in the Hospitality Award will be 25 + 150 = 175 per cent.'[81]

[93] The HSU cites clause 10.4(b) of the Award which provides that:

> 'A casual employee will be paid per hour calculated at the rate of 1/38th of the weekly rate appropriate to the employee's classification. In addition, a loading of 25% of that rate will be paid instead of the paid leave entitlements accrued by full-time employees.'[82]

[94] This clause has been amended in the Exposure Draft to read (at clause 11.3):

> 'The casual loading is paid instead of the paid leave entitlements'.[83]

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[80] [2017] FWCFB 1001 at [889] – [891]; Ibid at para 19.

[81] HSU submission dated 23 January 2019 at para 20.

[82] Ibid at para 21.

[83] Aged Care Award Exposure Draft republished 15 March 2019.

[95] The HSU submit it is clear from the terms of clause 10.4(b) of the Award (and clause 11.3 of the exposure draft) that the casual loading is paid in substitution for the leave entitlements otherwise available to permanent employees, but not in substitution for penalty rates.[84]

[96] The HSU submits that, as the casual loading and penalty rates serve different functions, there is no basis for casual employees to forgo the casual loading for weekend and public holiday rates.[85]

Aged Care Employers:

[97] The Aged Care Employers acknowledge the HSU's reference to the 'default approach' identified in the *Penalty Rates Decision*[86] and in response, submit that the HSU fail to refer to an important qualification contained in the Productivity Commission Report and quote the Penalty Rates Full Bench at [1719]:

> '[t]he wage regulator should make the presumption that casual penalty rates should fully take account of the casual loading, but should not adopt that principle without closely considering its impact on such workers.'[87]

[98] The Aged Care Employers further contend that the 'default approach' is a conclusion that does not set out how that result should be achieved and note the considerations were summarised by the Full Bench in the *Penalty Rates Decision* at [45] – [46]:

> '[45] An assessment of 'the need to provide additional remuneration' to employees working in the circumstances identified requires a consideration of a range of matters, including:
>
> (i) the impact of working at such times or on such days on the employees concerned (i.e. the extent of the disutility);
>
> (ii) the terms of the relevant modern award, in particular whether it already compensates employees for working at such times or on such days (e.g. through 'loaded' minimum rates or the payment of an industry allowance which is intended to compensate employees for the requirement to work at such times or on such days); and
>
> (iii) the extent to which working at such times or on such days is a feature of the industry regulated by the particular modern award.
>
> [46] Assessing the extent of the disutility of working at such times or on such days (issue (i) above) includes an assessment of the impact of such work on employee health and work-life balance, taking into account the preferences of the employees for working at those times.'[88]

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[84] HSU submission dated 23 January 2019 at para 23.

[85] Ibid at para 24.

[86] Aged Care Employers submission in reply dated 25 March 2019 at para 38.

[87] Ibid at para 39; [2017] FWCFB 1001.

[88] Aged Care Employers submission in reply dated 25 March 2019 at para 40; [2017] FWCFB 1001.

[99] The Aged Care Employers submit that in the absence of probative evidence, the Commission cannot be satisfied the Award needs to be varied to meet the modern awards objective.[89]

[100] The Aged Care Employers submit the claim should be dismissed.[90]

ABI:

[101] ABI submit the HSU's claim involves a proposed increase to the weekend and public holiday penalty rates for casuals, rather than a claim for the payment of a casual loading in addition to the existing weekend and public holiday penalties.[91] ABI submit that the proposed variation has been drafted in such a way so as to increase the applicable weekend or public holiday penalty rates, while expressly stating that the penalty rates are in substitution of the casual loading.[92]

[102] ABI submit there is a threshold question as to whether s.156(3) applies to the HSU's claim.[93]

[103] Section 135 of the Act provides:

> '(1) Modern award minimum wages cannot be varied under this Part except as follows:
>
> (a) modern award minimum wages can be varied if the FWC is satisfied that the variation is justified by work value reasons (see subsections 156(3) and 157(2)).'[94]

[104] ABI then point to s.156(3) of the Act:

> 'In a 4 yearly review of modern awards, the FWC may make a determination varying modern award minimum wages **only if the FWC is satisfied that the variation of modern award minimum wages is justified by work value reasons**.'[95] [emphasis added]

[105] ABI also point to s.284(3) of the Act which provides the definition for 'modern award minimum wages', and is expressed as follows:

> '(3) Modern award minimum wages are the rates of minimum wages in modern awards, including:
>
> (a) wage rates for junior employees, employees to whom training arrangements apply and employees with a disability; and
>
> (b) **casual loadings**; and

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[89] Aged Care Employers submission in reply dated 25 March 2019 at para 45.

[90] Ibid at para 48.

[91] ABI submission in reply dated 30 March 2019 at para 5.4.

[92] Ibid at para 5.5.

[93] Ibid at para 5.7.

[94] *Fair Work Act 2009* (Cth), s. 135(1)(a)

[95] Ibid, s. 135(1)(a); ABI submission in reply dated 30 March 2019 at para 5.9.

(c) piece rates.'[96] [emphasis added]

[106] ABI submits that, given that the intent of the HSU's claim is to ensure that a casual loading is paid on weekends and public holidays, it is arguable that the claim represents a proposal to vary "modern award minimum wages". If that is the case, ABI submits the claim can only succeed if it is justified by work value reasons.[97]

[107] ABI submits the HSU ignore the relevant historical background to clause 23.2 of the Award and in particular note the claim was previously the subject of an application to vary the Award by the Liquor, Hospitality and Miscellaneous Union (now United Voice), which was considered by a six-member Full Bench in 2010.

[108] ABI note that ultimately, the Full Bench granted the LHMU's claim and varied the Award so that the clause provides:

> 'Casual employees will be paid in accordance with clause 23.1. The rates prescribed in clause 23.1 will be in substitution for and not cumulative upon the casual loading prescribed in clause 10.4(b).[98]

[109] ABI note that, in reaching that conclusion, the Bench observed that:

> 'Having regard to the regulation in this area, in particular the incidence of some form of penalty payment to casuals for weekend work, we think the LHMU has made out a strong case for change. Nevertheless the position under the relevant award-based transitional instruments is by no means uniform. In particular we note that in many of those instruments the casual loading is lower than the loading in the modern award. **In the circumstances we consider that it would be fair to adopt the LHMU's alternative position, and make provision for casual employees to receive the relevant weekend penalty rates in substitution for the casual loading**.'[99] [emphasis added]

[110] ABI submit that the above reasoning of the Full Bench demonstrates how a six-member Full Bench of the AIRC considered the appropriate entitlements for casual employees when working on weekends and public holidays in the context of the variation application that was made by the LHMU on 28 October 2009.[100] The Full Bench granted the union's claim and in so doing observed that it would result in a "fair" outcome for casual employees working on weekends and public holidays.[101] In the absence of a compelling case, the Commission should not depart from the previous Full Bench decision.[102]

[111] ABI submits the HSU has not advanced any cogent reason for the Commission departing from the previous Full Bench decision ([2010] FWAFB 2026).[103]

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[96] *Fair Work Act 2009* (Cth), s. 284(3); ABI submission in reply dated 30 March 2019 at para 5.10.

[97] ABI submission in reply dated 30 March 2019 at para 5.11.

[98] Ibid at para 5.25.

[99] Ibid at para 5.26.

[100] Ibid at para 5.27.

[101] Ibid at para 5.28.

[102] Ibid at para 5.29.

[103] Ibid at para 5.31.

[112] ABI submit the HSU claim should be dismissed.[104]

AFEI:

[113] AFEI submit that the Commission should have regard to the historical context applicable to each modern award. AFEI submit that when the Award came into operation in 1 January 2010, it provided for neither weekend nor overtime penalty rates for casual employees.[105] AFEI also refer to the previous six member Full Bench[106] that determined to replace clause 23.2 with the following current clause:

> 'Casual employees will be paid in accordance with clause 23.1. The rates prescribed in clause 23.1 will be in substitution for and not cumulative upon the casual loading prescribed in clause 10.4(b).'[107]

[114] AFEI oppose the HSU's claim and submits that the HSU has failed to provide cogent reasons, which are required when seeking to depart from previous Full Bench decisions. Further, AFEI contend that if the HSU's claim was accepted, it would increase costs and restrict employer flexibility in making recruitment decisions that best suit the needs of the organisation. It contends that this will have adverse consequences on small to medium enterprises and would be inconsistent with s.134(f) and s.3 of the Act.[108]

7. Agreed variations issue and the Exposure Draft

[115] An issue was raised during the Mention on 9 November 2018 concerning a consent position that was reached between the parties following conferences held by Commissioner Lee in 2017. While the agreed variations have been endorsed by a later decision of the Commission the Aged Care Award Exposure Draft had not yet been updated.

[116] The Exposure Draft has now been updated with these changes and was republished on 15 March 2019. Parties have been invited to comment on the changes to the Exposure Draft by **4.00 pm on 12 April 2019.**

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[104] Ibid at para 5.31.

[105] AFEI submission in reply dated 22 March 2019 at 1.31.

[106] [2010] FWAFB 2026 at [59], PR995161.

[107] AFEI submission in reply dated 22 March 2019 at 1.32.

[108] Ibid at 1.34.

Attachment A List of Awards re Mobile/Telephone Allowance provision

1. *Air Pilots Award 2010 [MA000046]*

19.6
(a) Where an employer requires a pilot to have a telephone at their residence the employer will pay any cost of installation or transfer plus rental (in the case of aerial application operations, only half the rental) and the cost of all business calls. This provision will operate only in respect of one installation per pilot at any one base. The provision of a mobile telephone will satisfy this requirement.

(b) Where the employer does not require a pilot to have a telephone the employer will pay the cost of all business calls made on a pilot's personal telephone plus in the case of full-time or part-time pilots, 50% of rental costs.

2. *Aircraft Cabin Crew Award 2010 [MA000047]*

C.1.10 Telephone allowance

Where an employer requires a regional cabin crew member to have a telephone or paging service, the employer must reimburse the employee the cost of installation or transfer for one telephone or pager at any one base. The employer must also reimburse the employee 50% of the rental charge of that telephone or pager.

3. *Airservices Australia Enterprise Award 2016 [MA000141]*

12.17 Telephone reimbursement

(a) Where an employee is required to provide out of hours advice to Airservices or is nominated as a contact point for out of hours advice and is not provided with a telephone by Airservices, the employee is entitled to reimbursement of telephone expenses up to 240 local calls per annum and other work-related calls as substantiated by the employee.

4. *Animal Care and Veterinary Services Award 2010 [MA000118]*

16.1 Veterinary surgeons

The following provisions apply only to veterinary surgeons:

(a) Communication systems

(i) Where an employer requires an associate to use a communication system, the employer must reimburse the associate for the cost of purchasing such equipment, unless the employer elects to provide the system. The employer must meet the system's running costs for practice usage or provide an allowance to cover such costs.

(ii) Where an associate is required to perform on call duty, a communication system will be provided in accordance with clause 16.1(a)(i) so that the associate is able to remain available without being restricted to one location, provided such location is:

- within effective communication zones at all times; and
- within reasonable access to the practice location.

5. *Contract Call Centres Award 2010 [MA000023]*

20.3 Telephone allowance

(a) Where an employee does not have a telephone, modem or broadband connection and, at the written request of the employer, the employee is required to have such equipment, the employer must reimburse the cost of purchase, installation and rental.

(b) Where an employee makes telephone calls in connection with the business on their private telephone at the direction of the employer, the employer must reimburse the cost of such calls. Provided that the employer may request details of all such calls claimed by the employee.

6. *Health Professionals and Support Services Award 2010 [MA000027]*

18.11 Telephone allowance

Where the employer requires an employee to install and/or maintain a telephone for the purpose of being on call, the employer will refund the installation costs and the subsequent rental charges on production of receipted accounts.

7. *Marine Towage Award 2010 [MA000050]*

14.2 Reimbursement and expense related allowances

(c) Telephone allowance

(i) An employee who is required by their employer to telephone for orders will be entitled to be reimbursed an amount of $166.03 per annum.

(ii) The employer will reimburse full installation costs of a new service and pay transfer costs on one occasion during an employee's period of service.

8. *Market and Social Research Award 2010 [MA000030]*

17.1 Reimbursement and expense related allowances

(c) Telephone allowance

If an employer requires in writing that an employee have a private telephone as part of the employee's work duties, the employer will reimburse:

(i) the cost of rental and all telephone calls made as part of the employee's work duties; and

(ii) the cost of the installation if the employer has required in writing that the employee install a private telephone for use in connection with the employer's business.

9. *Medical Practitioners Award 2010 [MA000031]*

16.5 Telephone allowance

Where the employer requires an employee to install and/or maintain a telephone for the purpose of being on call, the employer will refund the installation costs and the subsequent rental charges on production of receipted account(s).

10. *Nurses and Midwives (Victoria) State Reference Public Sector Award 2015 [MA000125]*

14.5 Telephone allowance

Where an employer requires an employee to install and/or maintain a telephone for the purposes of being on call, the employer shall refund the installation costs and subsequent three-monthly rental charges on production of receipted accounts.

11. *Ports, Harbours and Enclosed Water Vessels Award 2010 [MA000052]*

14.18 Waiting orders

An employee who is required by their employer to telephone for orders will:

(a) if an employee has a telephone installed at their home, be paid the annual rental of such telephone plus 16.51% of the standard rate per year for calls necessarily incurred by the employee for ringing for such orders. If the employee is required by their employer to have a phone installed, the installation fee will be paid by the employer; or

(b) an off-duty employee required to ring for orders other than on a phone provided totally or in part by the employer, will receive an allowance of 0.42% of the standard rate for each call.

12. *Real Estate Industry Award 2010 [MA000106]*

18.6 Mobile telephone allowance

(a) Where the employer requires the employee to use the employee's own mobile phone in the course of employment and:

> (i) the mobile telephone is provided under a mobile phone plan from a telecommunications provider, the employer and employee must agree in writing on the amount of reasonable reimbursement payable by the employer to the employee for the use of the employee's mobile phone in the course of employment provided that such reimbursement must not be less than 50% of the cost of the employee's monthly mobile phone plan, up to a maximum monthly phone plan of $100; or
>
> (ii) the mobile phone is a pre-paid mobile phone, the employer and employee must agree in writing on the amount of reasonable reimbursement payable by the employer to the employee for the use of the employee's pre-paid mobile phone.

(b) Without limiting an agreed method of payment for reimbursement, an employee's salary in excess of the minimum weekly wage may be inclusive of reimbursement providing the reimbursement component of the salary is identified in the agreement.

(c) The mobile phone allowance under cause 18.6(a) is payable during the entire period of employment, except when the employee is on any period of leave either paid or unpaid.

(d) If requested, the employee must provide the employer with a copy of the mobile phone plan associated with the mobile telephone to be used by the employee in the course of employment.

(e) If the employee enters into a new mobile phone plan or arrangement with a telecommunications provider entitling the employee to a different allowance under this sub-clause, the new allowance will become payable from the first full pay period after the date the employee provides the employer with a true copy of the new mobile phone plan.

13. *Social, Community, Home Care and Disability Services Industry Award 2010 [MA000100]*

20.6 Telephone allowance

Where the employer requires an employee to install and/or maintain a telephone for the purpose of being on call, the employer will refund the installation costs and the subsequent rental charges on production of receipted accounts.

14. *Stevedoring Industry Award 2010 [MA000053]*

14.5 Telephone allowance

Where an employer requires an employee to telephone for allocation or cancellation or to be available for contact by telephone, the employer will pay each employee 1.36% of standard rate per week as a telephone allowance.

15. *Telecommunications Services Award 2010 [MA000041]*

17.1 All streams

The allowances in this clause do not apply for all purposes of the award unless specifically stated.

(c) Telephone allowance

(i) Where an employee does not have a telephone, modem or broadband connection and, at the written request of the employer, the employee is required to have such equipment, the employer must reimburse the cost of purchase, installation and rental.

(ii) Where an employee makes telephone calls in connection with the business on their private telephone at the direction of the employer, the employer must reimburse the cost of such calls. Provided that the employer may request details of all such calls claimed by the employee.

16. *Victorian Local Government (Early Childhood Education Employees) Award 2016 [MA000150]*

15.2 Reimbursement of expenses

(a) All reasonable expenses incurred by an employee at the direction and prior approval of the employer, including out of pocket expenses, course fees and materials, telephones, accommodation, travelling expenses and the cost of special protective clothing, incurred in connection with the employee's duties will be paid or reimbursed by the employer.

17. *Victorian Local Government 2015 [MA000132]*

15.6 Reimbursement of expenses

(a) All reasonable expenses incurred by the employee at the direction of the employer, including out-of-pocket expenses, course fees and materials, telephones, accommodation, travelling expenses and the cost of special protective clothing, incurred in connection with the employee's duties will be paid by the employer and, where practicable will be included in the next pay period.