

Applications to Vary the Social, Community, Home Care and Disability Services Industry Award (the SCHADSI Award) and Aged Care Award

Supplementary Submission of the Unions

1. These submissions are made in response to the invitation from the Full Bench when the matter was listed for final argument in Sydney on 30 November 2016.

Extent of NDIS coverage of industry

2. During the course of the hearing, the presiding member asked a question to the effect of whether all disability services would ultimately be funded by the NDIS. Counsel for the Unions submitted that that would not necessarily be the case. Further to that response, the Unions also draw the following to the Commission's attention:
 - a. Persons with disability caused by traffic accidents or suffered in the course of their work will continue to be covered by the insurance schemes applicable in those fields;
 - b. Some clients with disability will continue to obtain services using funds provided by their own health insurance;
 - c. People with non-permanent injuries and/or injuries which otherwise do not meet the NDIS criteria may still seek and obtain disability services on such terms as they are available.

Cancellation Clause

3. During the course of argument, the presiding member asked whether the unions preferred a cancellation clause of the type which appears at clause 25.5(f) of the *SCHADSI Award*, and which applies in respect of home care services, or the proposal advanced by the employers.
4. The Unions' opposition to the employer's proposed order has already been canvassed in their written and oral submissions.
5. As to the cancellation clause, the Unions submit that the Commission would not contemplate making an order to introduce such a provision in respect of other categories of workers. In the

Stage 4 Awards Four-yearly Review (AM 2014/285), the cancellation provision in clause 25.5(f) is the subject of:

- a. variation applications by United Voice and the Health Services Union;
 - b. a foreshadowed application by Australian Business Lawyers,
 - c. an application by Jobs Australia to extend the cancellation provisions to disability workers;
6. The Unions contend that the clause as it currently stands does not meet the Modern Award Objective. It is appropriate for that clause to be considered in the course of that proceeding, so that the Unions have an opportunity to adduce evidence as to the application of the clause. There has been no such opportunity in the present matter.
7. The existence of those proceedings provides further reason to dismiss the current application. At the heart of the employers' evidence in this matter is a claim as to the capacity of clients to cancel individual appointments, and thereby inconvenience employers. That issue may be addressed in the proceedings considering the issue of cancellation clauses.

Alternative Forms of Orders

8. During the course of argument, Counsel for ABI appeared to invite the Commission to consider other amendments to the *SCHADS/ Award* to deal with what it contended was the substantive case it had made out.
9. In the event the Commission considers the employers have made out a case to warrant amendment to the part-time provisions, the Unions would wish to have an opportunity to address any alternative formulation in the Commission's contemplation.

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