

IN THE FAIR WORK COMMISSION

Matter No: AM2014/250

Title: s156 – 4 yearly review of modern awards –
Aboriginal Community Controlled Health
Services – Exposure Draft

SUBMISSIONS

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Introduction

1. The Health Services Union [HSU] makes these submissions in accordance with the directions issued by the Full Bench on 10 May 2016¹, in relation to the exposure draft of the Aboriginal Community Controlled Health Services Award [ACCHS Award].
2. In making these submissions the HSU notes the comments included at the commencement of the ACCHS Exposure Draft *'This exposure draft does not seek to amend any entitlements under the Aboriginal health services award but has been prepared to address some of the structural issues identified in modern award'*.
3. The exposure draft has incorporated variations to the order of content proposed as a consequence of the plain language pilot project for the Pharmacy Industry Award. The HSU reiterates its acceptance of the new reordering of the content of modern awards.
4. These submissions deal with the exposure draft as follows:
 - a. Proposed relocation of clauses
 - b. Changes to language or meaning
 - c. Responses to questions from the AMOD drafting team
 - d. Any additional matters not dealt with elsewhere

Relocation of clauses

Definitions

5. Clause 2 contains several definitions which the HSU submits might better be located within other clauses.
6. During this 4 yearly review process there have been several changes of opinion about where definitions should sit within an award structure, the latest arising out of the plain language pilot project. For completeness the HSU supports the latest proposal that definitions be located at clause 2 of the award structure. In relation to the location of individual definitions the HSU does not support placement of the definition in multiple locations.
7. The HSU submits that where the definition relates to a term used in several places in the award, then that definition should be under separate heading at clause 2 definitions. However if the definition is only used or relevant to a single clause or entitlement; for example the definition of a shift worker for the purposes of an additional week of annual leave; then that definition should be located with the relevant clause only.

¹ [2016FWC2924](#)



8. The definition of **Aboriginal community controlled health services** relates to the coverage of the award, and is repeated in clause 4 Coverage. The HSU believes that it should be removed from clause 2 Definitions and remain only in clause 4 Coverage.
9. The definitions for **Aboriginal knowledge and cultural skills** relate to the classification levels of Aboriginal health workers. This is the only place in the award or exposure draft where the term is used. The HSU submits the definitions should be moved to Schedule A – Classification Definitions.
10. The definition of **'bilingual'** has been added to the list of definitions. Again this relates to a single clause for the bilingual allowance at clause 17.2, which contains a repeat of the definition and the conditions applying to the allowance. The HSU submits it should continue to be contained only at clause 17.2 Wage related allowances.
11. There is a single other use of the word bilingual in the ED, at Schedule C – Summary of Monetary Allowances. None of the allowances are explained in the schedule and the HSU submits there is no necessity to have the allowance explained outside clause 17.2.

Clause 19.6 On call and recall

12. After some consideration and reference to other health awards, the HSU submits that as this is an allowance and that the clause should remain with other Allowances at clause 17.

Changes to language or meaning

Minimum hourly rates

13. Throughout the various phrases of the 4 yearly review process and in multiple exposure drafts for various awards, concerns relating to the terms *minimum* or *ordinary* rate of pay as varied have been raised.
14. The decision of the Commission in AM2014/01² concerning general and technical drafting issues made a determination at PN[44] concerning the use of the terms minimum hourly rate and ordinary hourly rate. The decision differentiates between the use of the term minimum and ordinary based on the issue of all purposes allowances and proposes a definition for ordinary hourly rate. There is no proposal defining minimum hourly rate.
15. The HSU submits the term *minimum hourly rate* can variously be interpreted to mean;
 - a. the minimum rate of pay contained in the award; or
 - b. the minimum rate applicable to an employee's classification; or
 - c. the minimum hourly rate applicable to the employee on the basis of their classification, grade and level.

² [2014FWCFB9412](#)



16. As examples: at 17.3(b)(v) the words *'at their ordinary rate of pay'* have been replaced with *'at the minimum hourly rate for the employee's classification'*. The two phrases are not equivalent. The classifications in the ACCHS Award contain levels. Any employee employed above level 1 of a classification receives more than the minimum rate for the employee's classification.
17. At clause 19.1(a) & (b) Overtime rates, in rewriting the clause to use percentages as opposed to using words, the phrase *'x% of the minimum hourly rate'* has been inserted into the clause. This does not reflect an employee's current entitlement to be *'paid at the rate of time and a half ...or double time'* which rates is dependent on the classification and level of the employee..
18. The HSU submits there are two possible solutions.
19. The simplest is to provide a definition for the term *'minimum hourly rate'*. The HSU submits the most appropriate wording is based on the proposed definition for *'ordinary hourly rate'* but includes reference to the employee's classification, grade and level.

'minimum hourly rate means the minimum rate of pay for the employee's classification, grade and level'.
20. In the alternative the word *'employee's'* can be added throughout the award to the phrase *'minimum hourly rate'* to read *'the employee's minimum hourly rate'*. This alternative leaves the phrase without a definition and therefore is arguable a less comprehensive a solution.

Allowances and Wages tables

21. The HSU submits that the tables throughout the exposure draft would benefit from each figure being identified as a percentage or dollar figure with the use of the relevant signs for each individual figure, in addition to the use of the sign at the top of the column.
22. Using as an example the figures in the table at C.1; the allowance rates is 206.93 percent and the quantum applicable is 1760.56 per annum. There isn't any doubt which each represents when you carefully read the table, but the visual effect of 206.93% and \$1760.56 makes the figures vastly more comprehensible at a glance.
23. The HSU submits this is relevant for all the wage and allowances tables, even where the only figures within the tables are dollar amounts.

Definitions

24. The HSU note the removal of the definition **'appropriate certificate'** from the ED, but also notes that the term is not used elsewhere in the award and does not oppose its removal.

National Employment Standards and this award

25. At clause 3.3 of the exposure draft the final words *'whichever makes them more accessible'* currently contained in clause 5 have been removed. The HSU can see no logic to the removal and submits the phrase should be retained.



Allowances

Clause 17.3(a) Clothing and laundry allowances

26. While the intent of the redrafted clause at 17.3(a)(i) Clothing allowance at the first dot point is seemingly the same, the HSU believes that reversing the identification of reimbursement and provision of clothing by the employer results in a diminution of the entitlement for the provision of clothing.
27. As currently worded at 15.3(a) of the existing award the employer must reimburse the employee for the cost of purchasing a *'reasonable number of such special clothing.'* Then the clause states *'The provisions of this clause do not apply where the special clothing is provided by the employer.'*
28. In the HSU's submission the placement as it currently stands means that a reasonable number of such special clothing must also apply to the provision of the clothing by the employer. The redrafted clause potentially removes this obligation.
29. The HSU submits the wording should be:
'Where the employer requires an employee to wear any special clothing such as a uniform, overalls or suitable industrial clothing, safety boots or shoes, the employer must:
 - *Reimburse the employee the cost of purchasing a reasonable number of such special items of clothing; or*
 - *Provide the employee with the items of special clothing; or*
 - *By agreement with the employee, pay the employee the lesser of \$1.20 per day or part thereof on duty or \$5.92 per week.'*
30. At 17.3(a)(ii) Laundry allowance the first dot point should include at least the wording *'free of cost'* in the first dot point and add an *'or'* after the semi colon; so that the clause reads:
 - *'Provide reasonable laundering and maintenance of such clothing free of cost; or...'*

Clause 17.3(b) Travelling, transport and fares

31. At 17.3(b)(i) the words *'not less than'* have been removed. While the HSU understands the actual impact of the clause as it is currently written is that an employee will be paid the relevant amount, the actual entitlement is for *'not less than'* the rate and the words should be reinserted into the clause before the quantum.

Ordinary hours of work

32. In the HSU's submission the change of words in clause 13.2 alters the entitlement.
33. As it stands the clause says an employee can't work more than 10 ordinary hours in a day. This leads to overtime if they work in excess of 10 hours, even if the employee is rostered for a



longer shift. The word 'may' has less imperative than 'are to be'. The HSU submits if the wording requires change then it should be '*No more than 10 ordinary hours of work (exclusive of meal breaks) can be worked in any one day*'.

34. Clauses 13.3 and 13.4 refer to the span of hours during which an employee or shift worker is able to work their ordinary hours, as opposed to hours in excess of their contracted hours. It also applies, without mentioning it, to the concept of day worker versus shift worker. The removal of the heading removes any reference to the concept 'span of hours'.
35. At 19.1(a)(ii) the overtime clause refers to '*outside the span of hours*' at clause 13.3. Multiple references to '*span of hours*' are also made in Schedule B – Summary of Hourly Rates of Pay.
36. The HSU submits the heading '*Span of hours*' needs to be reinstated.

Clause 14 Rostering arrangements

37. The arrangements for rosters relate to the normal ongoing process of providing a roster to employees regularly and the processes which enable employers and employees to vary that roster once it has been posted.
38. But at **clause 28 Consultation about changes to rosters or hours of work** the entitlement relates to the processes for consultation concerning variations to the nature of a roster; such as incorporating or removing sleepover shifts; changing from an 8:8:8 configuration to a 8:8:10 roster pattern; or modifying methods of communication about roster changes under clause 14. Once the consultation processes at clause 28 are completed a roster must be developed which meets the requirements of clause 14.
39. The HSU submits the cross reference to clause 28 is both meaningless and misleading and should be removed.

Overtime and Penalty rates

Clause 19.1 Overtime rates

40. At 19.1(a)(ii) overtime is payable outside the '*span of hours in clause 13.3*'. The only reference to span of hours was the heading which has been removed and should be replaced.

Clause 19.4 Rest period after overtime

41. At 19.4(a) when changing the language from '*termination*' and '*commencement*' to '*end*' and '*start*' the exposure draft has removed the pronoun '*their*' with reference to ordinary hours.
42. There are other references to the term *ordinary hours* within the award, in this instance it technically refer to the 'rostered' hours of an employee on a given day. Whereas *ordinary hours* in clause 13.3, for example, refers to an employee's hours of employment. The HSU submits the removal of the word '*their*' could change the meaning of the clause and it must be reinstated.



Clause 19.6 On call and recall

43. At 19.6(a)(ii) the phrase *'or part thereof'* has been duplicated. The HSU submits the second iteration of the phrase should be removed.

Questions from the drafting team

Definitions

Aboriginal person

44. The definition of **Aboriginal person** is not used in the award. The drafting team propose that the definition be varied to exclude the word 'person'. The HSU accepts that from a drafting view point this may be logical, however submits it may be preferable to amend the nomenclature used in the award as a whole and vary all references within the award.
45. The HSU submits that nothing in the understanding or meaning of the award would be changed if the nomenclature changed to Aboriginal and Torres Strait Islander **[ATSI]** as a general premise for the award. Therefore the definition should be changed as follows:

'ATSI means Aboriginal and Torres Strait Islander'

Aboriginal health worker

46. The current clause **Aboriginal health worker** reproduced in the exposure draft is no longer legally correct. Since the commencement of the ACCHS Award the national regulation and accreditation scheme has extended its coverage to include Aboriginal and Torres Strait Islander Health Practice as a single national board under the auspices of the Australian Health Practitioner Regulation Agency.
47. The HSU notes that the national regulation of Aboriginal and Torres Strait Islander Health Practitioners imposes terminology for ATSI health workers which should be reflected within the award.
48. The HSU therefore proposes that the definition of Aboriginal health worker should be varied as follows:

'ATSI community health worker means a person who provides better access, liaison, health promotion and preventative health services to the Aboriginal community.'

49. The HSU also believes that an additional definition should be created for registered practitioners and proposes:

'ATSI health practitioner is a person who is registered with Australian Health Practitioner Regulation Agency as a registered practitioner in accordance with the requirements of the Aboriginal and Torres Strait Islander Health Practice Board.'

50. The terminology is inclusive and appropriate, it reflects the titles used in the industry and the registration authority as well as the registered title of a ATSI Health Practitioner.



51. However the HSU notes that while these matters are raised by the drafting, but are not entirely matters of drafting in relation to the exposure draft. The definitions for ATIS community health worker and ATSI health practitioner intersect with the classification definitions and while the HSU is not making submissions at this time, it wishes to note that the union will want to address these matters as a substantive issue.

Timing of meal breaks

52. The HSU agree there are no provisions within the award which provide the relevant rostering requirements that allow for determination of the timing of the meal break, that would enable the variation referred to in clause 15.2.
53. Other health sector awards contain provisions which, linked with rosters, require meal breaks to be rostered; or provide within the meal break clause, limitations between which the break can be scheduled; both of these versions contain provisions for variation by agreement.
54. The HSU notes a change to this provision would be substantive, but needs to be addressed during the award stage.

Progress through levels

55. The HSU agree there are no stated provisions for progression through levels within a grade.

Bilingual accreditation

56. The HSU submits that confirmation of accreditation should be left as it stands to be agreed between the employer and the employee.

Matters not covered elsewhere

Clause 12 Classifications

57. The HSU has no issues with the meaning or intent of the exposure draft clause 12, but submits that it clause 12.2 might be simpler to comprehend if it were drafted along the following lines:

12.2 Employers must provide written advice to employees of:

- (a) The employee's classification on commencement, and
- (b) Any changes to the employee's classification during their employment.

Clause 14 Rostering arrangements

58. The HSU suggests that clause 14.1(a) could be split in to two subclauses to improve comprehension as follows:

a. *necessary because of*

i) *the absence of other employees; or*



- ii) *a shortage of staff*
- b. *with the consent of the employee.*

Clause 17.3(c) Meal Allowance

59. The HSU does not believe there is an alteration to the entitlement under the proposed Meal Allowance clause, but suggests the following wording might be slightly easier to comprehend.


'An employee required to work more than one hour after the usual finishing time or, in the case of a shiftworker, when the overtime work on any shift exceeds one hour, the employer must:

- *supply an adequate meal, where the employer has adequate cooking and dining facilities; or*
- *pay a meal allowance of...'*

Clause 24 Public holidays

60. The exposure draft follows the order of the public holiday clause in that it details the substitution provisions at clause 24.2 and payment entitlements at 24.3. The HSU suggests that the order of these two clauses could be reversed.

61. At clause 24.3(a)(i) & (ii) the word payment commences the sentence. The HSU believes in both cases the word is superfluous and should be removed.



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