

**IN THE FAIR WORK COMMISSION**

**Matter No: AM2014/250 and others**

**s.156 - 4 Yearly Review of Modern Awards – Award stage –Group 4 awards**

**SUBMISSION**

**UNITED VOICE**

**18 April 2018**

- 1 This submission is in response to the Decision<sup>1</sup> made on 21 March 2018 ('the March Decision') in relation to technical, drafting and substantive matters in Group 4 awards.
- 2 United Voice is an interested party for a number of Group 4 awards. In this submission, we address outstanding issues within the Group 4 awards.

***General Matter –Casual loading***

- 3 In several exposure drafts, the terminology regarding the casual loading has been altered in a manner that limits the circumstances in which a casual employee receives the casual loading. In the exposure drafts for the *Aboriginal Community Controlled Health Services Award 2010*, *Car Parking Award 2010* and the *Cemetery Industry Award 2010*, the terminology of 'ordinary hours' is used. Use of the term ordinary hours is apt to create confusion as ordinary hours are related to the limit within the *Fair Work Act 2009* (Cth) of 38 hours as the weekly amount of 'ordinary hours'.<sup>2</sup>
- 4 This is a substantive change to the awards concerned as a casual employee is entitled to the casual loading for all hours worked. The exposure draft for these awards note that a casual employee would only be entitled to the casual loading for ordinary hours of work and there is a tolerable interpretation that this is limited to 38 hours a week.
- 5 We note that there are separate proceedings in relation to casual overtime in the proceedings AM2017/51. This issue relates directly to technical and drafting changes within these three awards and should be addressed within these proceedings.
- 6 The current award provisions and proposed change in the exposure drafts are noted below.

---

<sup>1</sup> [2018] FWCFB 1548

<sup>2</sup> *Fair Work Act*, s 62

### ***Aboriginal Community Controlled Health Services Award 2010***

- 7 The current clause 10.4(b) reads: *“A casual employee will be paid per hour an amount calculated at the rate of 1/38th of the weekly rate appropriate to the employee’s classification, plus a casual loading of 25% instead of the paid leave entitlements of full-time and part-time employees.”*
- 8 In the 2016 exposure draft, dated 23 March 2018, clause 11.2 reads: *“Unless otherwise stated, for each ordinary hour worked a casual employee will be paid: (a) the minimum hourly rate for the employee’s classification; and (b) a casual loading of 25% instead of the paid leave entitlements of full-time and part-time employees.”*
- 9 United Voice proposes the following amendment to clause 11.2 of the exposure draft: *“Unless otherwise stated, for each hour worked a casual employee will be paid: (a) the minimum hourly rate for the employee’s classification; and (b) a casual loading of 25% instead of the paid leave entitlements of full-time and part-time employees.”*

### ***Car Parking Award 2010***

- 10 The current award at clause 10.5(c) reads: *“A casual employee must be paid an hourly rate of 1/38th of the weekly rate prescribed for the appropriate classification plus a loading of 25% for all hours worked.”*
- 11 The 2016 exposure draft, dated 26 March 2018, at clause 11.4 states: *“For each ordinary hour worked a casual employee must be paid: (a) the minimum hourly rate for the appropriate classification; and (b) a loading of 25% of the minimum hourly rate.”*
- 12 United Voice proposes the following amendment to clause 11.4 of the Exposure Draft: *“For each hour worked a casual employee must be paid: (a) the minimum hourly rate for the appropriate classification; and (b) a loading of 25% of the minimum hourly rate.”*

### ***Cemetery Industry Award 2010***

- 13 The current clause 10.3(b) states: *“A casual employee must be paid per hour at the rate of 1/38th of the weekly rate prescribed for the class of work performed, plus 25%. This loading is instead of entitlements to leave and other matters from which casuals are excluded by the terms of this award and the NES.”*
- 14 Clause 10.2 of the 2016 exposure draft, dated 23 March 2018, reads: *“A casual employee must be paid per ordinary hour worked: (a) the ordinary hourly rate appropriate to the employee’s classification; and (b) a loading of 25% of the ordinary hourly rate”.*
- 15 United Voice proposes the following amendment to clause 10.2 of the exposure draft: *“A casual employee must be paid per hour worked: (a) the ordinary hourly rate appropriate to the employee’s classification; and (b) a loading of 25% of the ordinary hourly rate”.*

### ***Aboriginal Community Controlled Health Services Award 2010***

- 16 United Voice has no outstanding claims concerning this award. We can verify the March Decision's characterisation of the state of the review of this award as accurate.
- 17 United Voice intends to participate in the further review of this award and supports the remaining substantive claims of the National Aboriginal and Torres Strait Islander Health Workers Association ('NATSIHWA') and the Health Services Union ('HSU').
- 18 The main substantive claims are the NATSIHWA coverage claim which is item S3 in the most recent summary of proposed substantive variations, a claim by the HSU concerning the casual loading (S5), the NATSIHWA claim concerning minimum wages (S6) and various claims for allowances (S7, S8, S9, s10 and S11), HSU rostering claims (S14 and S15) and a claim to amend the ceremonial leave provisions of the award (s17A).
- 19 These claims will necessitate some evidence and are unlikely to be resolved without the hearing of evidence. This is particularly the case in relation to the claim concerning minimum wages. United Voice would expect to, where possible, file evidence in support of these claims and will participate in any arbitration that takes place.

### ***Aged Care Award 2010***

- 20 United Voice has an interest in several outstanding matters and intends to pursue claims in respect of the telephone allowance (S5), the sleepover clause (S16) and classifications definition (S21). We note that the Commission will be referring the outstanding substantive matters to a separate Full Bench to consider and determine.

### ***Car Parking Award 2010***

- 21 United Voice makes no further submissions on this award, aside from the issue regarding the casual loading in paragraphs [10] to [12] of this submission.

### ***Cemetery Industry Award 2010***

- 22 United Voice makes no further submissions on this award, aside from the issue regarding the casual loading in paragraphs [13] to [15] of this submission.

### ***Children's Services Award 2010***

- 23 United Voice withdraws *Item 7 – Coverage* from the summary of technical and drafting variations, and the corresponding *Item S6 – Coverage* in the summary of substantive variations.
- 24 United Voice supports the decision of the Commission in respect of *Item 9 – Calculation of casual loading*.
- 25 United Voice wishes to pursue the following substantive claims:

- S14 -Training allowance/clause
  - S19 -Addition of a Note regarding on site laundry facilities
  - S20 -Variation to Clothing and Equipment Allowance
  - S23 -Variation to Higher Duties clause
  - S30 -Variation to Annual leave close down clause
- 26 Further, United Voice seeks to reinstate and pursue three claims that had previously been withdrawn in the course of the review. The claims are:
- S1 -Allowances –Educational leader and responsible person
  - S16 -Allowances –Programming and administrative tasks
  - S29 -Ordinary hours of work and rostering –non contact time
- 27 Reinstating the claims should not cause any prejudice to other parties, as the matters have yet to be referred to a separately constituted Full Bench for determination. Further, item S1 is similar in substance to two outstanding claims proposed by an individual, *S3 -Classifications* and *S4 –Allowances*.

***Dry Cleaning and Laundry Industry Award 2010***

- 28 In regards to *Item 21 –Time off instead of payment for work on a Saturday, Sunday or public holiday*, United Voice generally supports the provisional view expressed by the Commission in paragraph [350] of the March Decision. It is appropriate that if an employee has not taken the time off by the termination of employment that the employee is paid at the rate applicable for when the time was worked.
- 29 However, we note that clause 23.4 of the Dry Cleaning and Laundry Industry Award 2016 Exposure Draft (and current clause 22.5(d) of the *Dry Cleaning and Laundry Award 2010*) refer not to overtime, but to time worked at penalty rates on Saturdays, Sundays and public holidays.
- 30 As such, we propose that the new clause 23.4(e) is added in the following terms: *“If, on the termination of the employee’s employment, time off for time worked on a Saturday, Sunday or public holiday worked by the employee to which clause 23.4 applies has not been taken, the employer must pay the employee for the time at the penalty rates applicable to the time when worked.”*
- 31 United Voice seeks to pursue the following substantive matters:
- S1 -Variation to Protective Clothing Allowance
  - S2 -Variation to Uniform Allowance
  - S3 -Variation to Higher Duties clause
  - S4 -Variation to Overtime clause
  - S6 -Variation to Shiftworker definition

### ***Educational Services (Teachers) Award 2010***

32 United Voice seeks to reinstate and pursue a claim that had previously been withdrawn in the course of the review. The claim is:

- S1 -Allowances –Educational leader and responsible person

33 Reinstating the claim should not cause any prejudice to other parties. Whilst a separate Full Bench (AM2015/6) was convened to determine a number of specific substantive matters, there are numerous other substantive matters that have yet to be determined. Further, item S1 is similar in substance to two outstanding claims proposed by an individual, S2 - *Classifications* and S3 –*Allowances*.

### ***Hospitality Industry (General) Award 2010 and Restaurant Industry Award 2010***

34 United Voice has been engaged in the plain language re-drafting of these awards.

### ***Food, Beverage and Tobacco Manufacturing Award 2010***

35 United Voice seeks to pursue the following substantive claims:

- S1 –Variation to Coverage
- S2 –Variation to Facilitative provisions
- S3 –Variation to Allowances –Hot plates
- S8 –Variation to Shiftworker definition
- S9 – Variation to Meal breaks
- S10 –Variation to Overtime clause

### ***Funeral Industry Award 2010***

36 With regards to *Item 12 -Overtime for shiftworkers*, United Voice notes the provisional view expressed by the Commission in paragraph [453] of the March Decision. We note that it is stated in paragraph [453] that the exposure draft would be amended to reflect the provisional view. However, clause 18.6 of the exposure draft does not appear to have been varied as yet to reflect the provisional view.

37 In relation to *Item S8 –Penalty Rates for work on a Saturday or Sunday*, United Voice supports the provisional view expressed by the Commission in paragraph [490]. The addition of a clause 20.1(d) as proposed in paragraph [490] will ensure that part time and casual employees have certainty regarding their minimum engagement periods.

38 In regards to *Item 16A –Removals and shiftwork*, we agree with the provisional view of the Commission expressed in paragraph [499] that clause 19.4 of the exposure draft does not exclude the operation of clause 18.6. Similarly, in the current award, clause 24.4 Removals does not exclude the operation of clause 22.6 Overtime for shiftworkers.

39 United Voice wishes to pursue *Item 10 of technical and drafting/Item S7 of substantive matters –Uniform allowance.*

***Registered and Licensed Clubs Award 2010***

40 The Commission has deferred consideration of this award until the proceedings for AM2017/39 have resolved the coverage matter.

***Social, Community, Home Care and Disability Services Industry Award 2010***

41 In regards to *Item 4 –Minimum hourly rate*, United Voice has an objection to the provisional view expressed in paragraph [667], in respect of clauses 11.3, 14.1(c), 18.1(b)(iii) and 18.4 of Social, Community, Home Care and Disability Services Industry Award 2016 Exposure Draft.

42 The terms ‘*appropriate rate*’ and ‘*ordinary rate*’ in the context of the clauses 11.3, 14.1(c), 18.1(b)(iii) and 18.4 is broader than the minimum hourly rate and would include any relevant penalty rates and overtime. Replacing the terms ‘*appropriate rate*’ or ‘*ordinary rate*’ with ‘*minimum hourly rate*’ in the relevant clauses could lead to confusion about the correct rate of payment, to the detriment of employees.

43 United Voice will be pursuing the following outstanding substantive matters:

- S2A -Variation to Clothing and equipment allowance (Uniforms)
- S3A -Variation to Rosters clause
- S21 –Variation to Telephone allowance
- S37 –Variation to Broken shifts clause
- S40 –Variation to Sleepover clause
- S44A –Deletion or variation to 24 Hour care clause
- S47 –Variation to Excursions clause
- S49 –Variation to Meal breaks clause
- S51 –Variation to Overtime clause
- S57 –Variation to Public Holiday clause

44 We withdraw *Item S20 –Variation to Clothing and equipment allowance*. Item S20 is significantly similar to Item S2A and we will pursue the substance of this claim under Item S2A.

***Supported Employment Services Award 2010***

45 We note the statement<sup>3</sup> released by the Commission concerning this award on 16 April 2018. We will respond in accordance with the statement when a report back conference is convened by the Commission.

***Water Industry Award 2010***

46 United Voice intends to pursue the following substantive claims:

- S2 –Variation to Coverage Clause
- S3 –Variation to Normal Starting Point Allowance
- S4 –Variation to Higher Duties clause

**United Voice  
18 April 2018**

---

<sup>3</sup> 4 yearly review of modern awards – Supported Employment Services Award 2010 [2018] FWCFB 2196