

Fair Work Commission
Level 10, Terrace Tower, 80 William Street
East Sydney NSW2011
By email: amod@fwc.gov.au

28 July 2016

Re: AM2014/285 AWU reply submissions on drafting and technical issues raised in the Exposure Draft for the *Social, Community, Home Care and Disability Services Industry Award 2016*

BACKGROUND

1. On 10 May 2016 the President, Justice Ross published a Statement and Directions regarding a plain language pilot and Group 4 awards.¹
2. The Directions require the filing of submissions in reply to drafting and technical issues raised in Group 4A, B and C exposure drafts by 21 July 2016.
3. The following parties filed submissions on drafting and technical issues found in the exposure draft for the *Aged Care Award 2016* ('the Exposure Draft') as published on 13 May 2016:
 - Australian Workers' Union (**AWU**)
 - Health Services Union (**HSU**)
 - United Voice (**UV**)
 - Australian Services Union (**ASU**)
 - Business SA (**BSA**)
 - Australian Industry Group (**AIG**)
 - Jobs Australia (**JA**)
 - Australian Federation of Employers and Industries (**AFEI**)
 - Australian Business Industrial and the NSW Business Chamber (**ABI**)
4. The AWU's submissions in reply appear below.

REPLY SUBMISSIONS

Health Services Union

5. The AWU agree with the Exposure Draft submissions of the HSU, and comment on the following clauses:

¹ [2016] FWC 2924.

6. Clause 14.3(e) [paragraph 41]: The HSU have suggested 'relieving staff' at this clause be removed. We note that we had erroneously suggested the entire clause be removed. See AWU 06 July 2016 Submission at paragraph [18]. This is not our position – the removal of the term is all that is necessary.
7. Clause 14.4 and 14.5 [paragraphs 42-44]: We refer to our July 06 2016 Submission at paragraph [19]. The AWU's preliminary response to the Commission's question appears to be in conflict with the HSU. The question may need to be clarified.
8. Clause 19.1 [paragraphs 47-48]: The AWU supported the reasoning put by the Commission in the question posed, but appreciate the reasoning put by the HSU. We would not be opposed to the term 'disability services' remaining for the reasons set out by the HSU.
9. Clause 21.2 [paragraphs 49-51]: The HSU does not consider it necessary to include a period within which to count the ten or more weekends for the purposes of allocating additional leave for shiftworkers. The AWU does not have a strong preference, but does see the merit of including a time period of 12 months as the Commission has suggested by way of example.

United Voice

The AWU agree with the Exposure Draft submissions of UV, and comment on the following clauses:

10. Clause 2 [paragraphs 47-52]: We agree with the reasoning and solution provided at these paragraphs – see AWU 06 Submission 2016 at paragraphs [4-5]. However UV refer to the definition provided at paragraph 5 of their Submission, which refers to 'classification, grade and level' rather than 'classification, level and pay point' – the applicable terms.
11. Clause 14.4 [paragraph 60-61]: UV provides similar analysis to the HSU. See above at paragraph 7.

Australian Services Union (ASU)

12. The AWU agree with the Exposure Draft submissions of the ASU.

Business SA

13. Clause 2 – definitions [paragraph 6.1.1]: The AWU agrees that terms should not be repeatedly defined throughout the Award. We also support the identified definitions to appear at clause 4, as these definitions relate to coverage, and are not referred to again in the Award. We do not think the cross reference at clause 2 is necessary however. These definitions should be removed from clause 2.

Australian Industry Group

14. Clause 14.6(c) [paragraph 255]: The AWU does not consider that anything is lost in the redrafting of this clause. We fail to see how the expression in the Exposure Draft changes the way in which 24-hour care is provided.

Australian Federation of Employers and Industries

15. Clause 11.1 [paragraph 6]: We disagree that the words 'and is not a part-time or full-time employee' should be removed, as these words complete the definition.
16. Clauses 13, 14.4, 14.5, 14.6, and 14.7 [paragraph 8]: AFEI propose these subclauses at 14, are better grouped as related to 'ordinary hours' at clause 13, rather than 'rostering' at clause 14. We disagree.
17. Clause 17.3(a) [paragraph 14]: While we are not opposed to the intentions of AFEI in regards to this clause, the AWU does not consider the proposed wording is necessary.

END



Roushan Walsh
NATIONAL LEGAL OFFICER