

BEFORE THE FAIR WORK COMMISSION

***Social, Community, Home Care and Disability Services Industry Award 2010  
(MA000100)***

Response to *Exposure Draft – Social, Community, Home Care and Disability  
Services Industry Award 2016*

**SUBMISSION BY  
AGED CARE EMPLOYERS**

30 June 2016

**Contacts:** Mr Geoff Liggins, Employee Relations Manager  
Aged and Community Services NSW-ACT  
PO Box 3124 RHODES NSW 2138  
Email: [geoffl@acs.asn.au](mailto:geoffl@acs.asn.au)  
Phone: 02 8754 0400

Mr Keiran Brown, Senior Advisor – Employment Relations  
Leading Age Services Australia NSW –ACT  
PO Box 7 STRAWBERRY HILLS NSW 2012  
Email: [keiran.brown@nswact.lasa.asn.au](mailto:keiran.brown@nswact.lasa.asn.au)  
Phone: 02 9212 6922

## Parties to this Submission

[1] Aged Care Employers<sup>1</sup>

### Overview

[2] Aged Care Employers make this submission in response to the Fair Work Commission's publication of the *Exposure Draft – Social, Community, Home Care and Disability Services Industry Award 2016 (the Exposure Draft)* in Stage 4 of the 4 Yearly Review of Modern Awards.

In accordance with the Commission's statement of 10 May 2016, submissions are limited to the technical and drafting changes proposed by the Commission. Aged Care Employers reserve the right to respond to any specific proposals to vary the *Social, Community, Home Care and Disability Services Industry Award 2010 (the Award)* at the appropriate time.

### General comments on drafting

[3] Clause 1 - Title and Commencement

Aged Care Employers note that Clause 1.3 of the Exposure Draft, which deals with Transitional arrangements, including take home pay orders, has been retained in the Exposure Draft

[4] Clause 2 - Definitions - Sleepover

Aged Care Employers believe the inclusion of the definition of a "Sleepover" in clause 2 of the Exposure Draft is unnecessary as it is already included at clause 14.5(a) - Sleepovers.

[5] Clause 4 - Coverage

Aged Care Employers believe the repetition of definitions for Industry Sectors in Clause 4 at 4.2, 4.3, 4.4 and 4.5 is unnecessary as the Sector definitions are already included in Clause 2 - Definitions.

[6] Clause 12 - Classifications

---

<sup>1</sup> Aged Care Employers: Aged and Community Services NSW & ACT, Leading Age Services Australia NSW- ACT, Aged and Community Services Australia, Leading Age Services Australia, Leading Age Services Australia VIC, Aged and Community Services Western Australia, Aged and Community Services SA & NT, Leading Age Services Australia – QLD, Leading Age Services Australia – SA, Leading Age Services Australia – TAS, Leading Age Services Australia – WA, Aged & Community Services Tasmania, Aged and Community Services Australia (Victoria), Aged and Community Services Australia (QLD)

Aged Care Employers believe the omission of the word ‘*their*’ from clause 12.2 of the Exposure Draft as compared to clause 13.2 of the original Award makes the meaning less clear.

Aged Care Employers proposes clause 12.2 of the Exposure Draft be amended to read:

*“Employers must advise their employees in writing of their classification upon commencement and of any subsequent changes to their classification.”*

[7] Clause 17 - Allowances – Meal Allowance

The change of wording from the Award at clause 20.3(a) “*more than one hour*” to clause 17.3(b)(i) of the Exposure Draft “*at least one hour*” changes the trigger for the entitlement. Under the Award an employee must work more than one hour, under the Exposure Draft the entitlement would be paid at one hour.

Aged Care Employers proposes clause 17.3(b)(i) of the Exposure Draft be amended to read:

*“Where an employee is required to work more than one hour ~~at least one hour~~ past the usual finishing time or, in the case of shiftworkers, where overtime work on any shift is more than one hour, the employee must be paid.”*

## **FWC Questions from Exposure Draft**

[8] Clause 11 – Casual Employment

Parties are asked to clarify whether the minimum engagement period for a Social and Community Services employee who is undertaking disability services work is covered by clause 11.3(c).

Aged Care Employers believe that clause 11.3(c) sets the minimum engagement period for all casual employees not otherwise covered by clause 11.3(a) or clause 11.3(b). A casual social and community services employee who is undertaking disability services work is specifically excluded from clause 11.3(a), and not included in clause 11.3(b). They are therefore covered by clause 11.3(c)

[9] Clause 12.4 – Progression

Parties are asked to clarify what ‘*each level within the level*’ refers to. Should clause 12.4(a) refer to ‘*each pay point within the level*’?

Aged Care Employers agree that *'each level within the level'* should refer to *'each pay point within the level'*.

[10] Clause 14.3(d)

Parties are asked to comment on whether *'mail'* and *'facsimile'* should remain as methods of communicating roster changes.

Aged Care Employers believe mail and facsimile should be retained. We also believe the list should clarify that the options are indicative and not exhaustive.

Aged Care Employers propose the clause should read:

*"Rostering arrangements and changes to rosters may be communicated in a range of ways including by telephone, direct contact, mail, email ~~or~~ and facsimile."*

[11] Clause 14.3(e)

Should the term *'relieving staff'* be defined? *"The employer is not required to display any roster of the ordinary hours of work of casual or relieving staff."*

Aged Care Employers do not believe it is necessary to define *'relieving staff'* in this context. We are not aware of any confusion or disputation concerning this issue.

[12] Clause 14.4 – Broken Shifts

Parties are asked whether time spent performing a sleepover in accordance with clause 14.5 would meet the definition of a shift for the purposes of payment for a broken shift.

Aged Care Employers do not believe that time spent performing a sleepover in accordance with clause 14.5 meets the definition of a shift for the purposes of payment for a broken shift. Clause 14.5(g) requires an employer to *"roster an employee to perform work (a shift) immediately before and/or immediately after the sleepover"*. This period of work or payment before or after the sleepover is *"the shift"* and not any work performed during a sleepover which may be nothing. Any work performed during a sleepover is paid for at overtime and not subject to shift penalties.

[13] Clause 14.7(b) – Monday to Friday excursions

Is an employee only entitled to the allowance in clause 14.5(e) or also to the other provisions in clause 14.5?

Aged Care Employers contend that a sleepover is not an excursion.

The Employee is only entitled to the Sleepover Allowance in clause 14.5(e) as stated and not the other provisions in clause 14.5 - Sleepover. This is explicitly stated in clause 14.5(a) of the Exposure Draft and clause 25.7(a) of the Award.

*14.5 – Sleepovers*

*(a) **Sleepover** means when an employer requires an employee to sleep overnight at premises where the client for whom the employee is responsible is located (including respite care) and is not a 24 hour shift pursuant to clause 14.6 or an excursion pursuant to 14.7.*

*25.7 – Sleepovers*

*(a) **Sleepover** means when an employer requires an employee to sleep overnight at premises where the client for whom the employee is responsible is located (including respite care) and is not a 24 hour shift pursuant to clause 25.8 or an excursion pursuant to 25.9.*

[14] Clause 17.2(c) – Heat allowance

Parties are asked whether clause 17.2(c) is obsolete given the requirement to have commenced work for the workplace prior to 8 August 1991?

Aged Care Employers are unable to provide any information regarding this question.

[15] Clause 21.2 – Additional Leave for certain shiftworkers

Parties are asked to comment on whether the definition of shiftworker in clause 21.2 should specify a period of time over which the 10 or more weekends are to occur (e.g. '10 or more weekends over a period of 12 months').

Aged Care Employers believe that the 10 or more weekends must occur in each year of service with their employer.

To eliminate any ambiguity, ACE proposes the clause to read:

*For the purpose of the NES, a shiftworker is an employee who works for more than four ordinary hours on 10 or more weekends in each year of service with their employer and is entitled to an additional week's annual leave on the same terms and conditions.*