



IN THE FAIR WORK COMMISSION

AM2016/31

s 156 - Four yearly review of modern awards

Nurses Award

SUBMISSIONS IN REPLY

19/03/2018

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Introduction

1. The Health Services Union (HSU) makes these submissions in accordance with the Directions issued by Vice President Catanzariti, on 28 November 2017.
2. The HSU relies upon its previous submissions of 12 February 2018, oral submissions at Hearing on 27 November 2017 and our submissions below.
3. The HSU has also read the reply submissions of 19 March 2018 of the ANMF in this matter and supports those submissions.
4. The ACE has proposed to vary the rostering provisions in clause 8.2, and insert a new clause 11.3(b) and 15.3(d) to create a new 'remote communications allowance'. The HSU is opposed to both proposals.

Rostered provisions

5. The HSU contends the variation to clause 8.2 is not necessary to meet the modern awards objective, as per s 134 of the *Fair Work Act*, which requires that the award provide 'a fair and relevant minimum safety net of terms and conditions'.
6. It is our view that the current rostering provisions in the Nurses Award provides for an appropriate safety net, as it already enables an employer to provide less than seven days' notice of a change of roster in circumstances of illness or emergency. Clause 8.2(f) of the Award provides that:

The employer may alter a roster at any time to enable the functions of the hospital or facility to be carried out where another employee is absent from work due to illness or in an emergency. Where any such alteration requires an employee working on a day which would otherwise have been the employee's day off, an alternative day off will be taken at an agreed time.

7. In its submissions of 15 July 2015, ACE state that this provision, which allows for an employer to unilaterally change an employee's roster in cases of illness or emergency is too narrow, stating that:

Clearly, there are many other matters beyond just illness or emergency that an employer might require a roster to be altered. For example, an employee's car may have broken down, an employee may have abandoned duty, and an employee may have taken leave at short notice for a family matter.¹

8. It is our view that this construction of clause 8.2(f) is misconceived. The examples provided of an employee's car breaking down, or an employee abandoning duty, or taking leave at short notice because of a family matter, all meet the definition of 'emergency' in our view.
9. This is in accordance with the definition of 'emergency' in the Macquarie Dictionary, which defines emergency as 'an unforeseen occurrence; a sudden and urgent

¹ Aged Care Employers, Submission in *Four Yearly Review, Health Professional and Support Services Award AM2016/31*, 15 July 2015, [3].

occasion for action'.² In our view, the examples provided by ACE and their witnesses fit this definition.

10. Moreover, we submit that the evidence provided by ACE, in the form of witness statements by Mr John Favalaro, Karen Foster, Kalena Jefferson and Mark Douglas, are of little or no relevance to the ACE submissions. As the witnesses acknowledge in their statements,³ all of the witness evidence are from employers covered by enterprise agreements, to whom the rostering clause does not apply. Their evidence of why the clause is needed is therefore purely hypothetical, and should be given little weight.
11. We are concerned that including this amendment may lead to situations where employers request a roster change in situations which do not meet the definition of emergency provided above, and where employees feel pressured to 'agree'. As pointed out by the ANMF in their submissions of 22 May 2017, a 2009 AIRC Full Bench decision, discussing the making of the Nurses Award, HPSS Award and a number of other health awards, discussed such a consideration in relation to the pressure that part-time employees may experience when requested by a supervisor to change their roster. The seven member Australian Industrial Relations Full Bench stated:

*We have some reservations about the nature of the consent in circumstances where a supervisor directly requests a change in hours on a day where the part-timer had otherwise planned to cease work at a particular time. Existing provisions require that any amendment to the roster be in writing and we have retained this provision. We also have no doubt that many part-time employees would welcome the opportunity to earn additional income. However, there may also be part-timers who would be concerned to ensure that their employment is not jeopardised by declining a direct request from a supervisor to work additional non-rostered hours at ordinary rates. From the submissions of the employers this is a major cost saving and used widely.*⁴

Remote Communication Allowance

12. The HSU opposes ACE's claim for a remote communication allowance. As stated in our submissions of 12 February 2018, we support instead the ANMF's claim in relation to remote recall.
13. We agree that that employees should be compensated for time spent on call. However, ACE's claim does not provide the compensation necessary for a fair and relevant minimum safety net.

² *Macquarie Dictionary Online*, (definition of 'emergency'), March 2018, <<https://www-macquariedictionary-com-au>>

³ Exhibit AC1, Statement of John Favalaro, [3], [6]; Exhibit AC2, Statement of Karen Foster, [3],[6]; Exhibit AC3, Statement of Kalena Jefferson [3],[6]; Exhibit AC4, Statement of Mark Douglas, [3],[6].

⁴ *Re Award Modernisation* (2009) 181 IR 19, [148].

14. On call work affects the ability of employees to make use of their weekends or days off for leisure activities, caring responsibilities, and negatively impacts sleep. On call work should therefore be compensated appropriately.
15. The ACE's proposal, we submit, devalues the nature of remote and on call work. Advice given or other work performed via phone or email is still work, and should not be characterised as work of lesser value to work performed at a hospital.
16. Moreover, an employee required to wait on call should receive the same allowance, whether they may need to physically attend work or to provide advice or assistance remotely, as the level of disutility in both instances is the same. We submit that it is not fair or relevant for the ACE's proposed remote communication allowance to be 50% less than the current on call allowance under the award.