
Fair Work Commission: 4 yearly Review of modern awards

REPLY SUBMISSION

**4 YEARLY REVIEW OF MODERN AWARDS: (AM2018/26)
SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES
INDUSTRY AWARD 2010**

FILED ON BEHALF OF:

- **AUSTRALIAN BUSINESS INDUSTRIAL**
- **THE NSW BUSINESS CHAMBER LTD**
- **AGED & COMMUNITY SERVICES AUSTRALIA**
- **LEADING AGE SERVICES AUSTRALIA LTD**

3 JUNE 2019

1. INTRODUCTION

- 1.1 This submission is made on behalf of Australian Business Industrial (**ABI**), the New South Wales Business Chamber Ltd (**NSWBC**), Aged & Community Services Australia (**ACSA**) and Leading Age Services Australia Limited (**LASA**).
- 1.2 This submission is filed in accordance with the Directions of the Fair Work Commission (**Commission**) issued on 1 May 2019.
- 1.3 This submission addresses the following matters:
- (a) Item A: Modern Awards containing reference to translators and interpreters;
 - (b) Item B: Community language allowance scheme and accreditation process; and
 - (c) Item F: Part-time employment and casual employment Full Bench.
- 1.4 These items are addressed below under separate headings.
- 1.5 We thank the Commission for the opportunity to comment on these matters and provide this submission.

2. ITEM A: MODERN AWARDS CONTAINING REFERENCES TO TRANSLATORS AND INTERPRETERS

2.1 At paragraphs [16]-[23] of their submission filed on 17 May 2019 (the **ASU Submission**), the ASU make a number of assertions about the relevance of other awards that contain allowances for the use of language skills.

2.2 The ASU assert that the existence of those terms are relevant to their application in these proceedings, and invite the Commission to make four findings which they appear to suggest support their claim.¹ We make the following comments in relation to those four points:

2.3 **First**, we again disagree with the suggestion that ‘many awards in the community, local government, public services and private sectors provide for language skill related allowances.’ The material before the Commission² suggests that the incidence of instruments containing language allowances is limited to:

- (a) 6 modern awards;
- (b) 5 modern enterprise awards;
- (c) 1 State reference public sector award;
- (d) 23 enterprise agreements made under the FW Act, the vast majority of which apply to government departments or agencies;
- (e) 8 awards made under the State industrial relations system, which cover local government or State government employees; and
- (f) 3 enterprise agreements made under the various State industrial relations systems, which also cover local government or State government employees.

2.4 When considered in perspective, it is clear that language allowances are not a common feature of the Federal industrial relations system. This is particularly so for the private sector. When the public sector instruments are removed from the analysis, the rarity of such allowances operating in the private sector is stark.

2.5 **Second**, the ASU observe that there is no standard rate of remuneration for the use of language skills in the relevant modern awards. That fact is not in dispute; however, it is

¹ See ASU Submission at [20].

² See the agreed list of awards filed by the ASU and Ai Group on 17 May 2019 (the **Agreed List**) as well as the Background Paper.

difficult to understand what relevance that fact has to the ASU application. What is relevant, however, to the current proceedings is that the ASU have failed to articulate:

- (a) how the quantum sought by the ASU has been formulated;
- (b) why the quantum sought is an appropriate amount; or
- (c) how the quantum sought reflects an appropriate level of payment for the particular skill to which it is attached.

2.6 The rate of remuneration varies considerably for each of the six modern awards. For example, the *Health Professionals and Support Services Award 2010* provides that the maximum payable for the allowance is a total of 1.27% of the standard rate per week. That is a maximum compensation of \$11.59 per week for use of language skills, which is considerably lower than the 4.90% of the standard rate (\$47.04), or 7.35% of the standard rate (\$70.56) in the ASU's proposed clause.

2.7 **Third**, the ASU observe that there is no standard way of describing the use of language skills in modern awards. This observation is also not in dispute. However, again, this fact does not appear to have any real relevance to the ASU application, nor provide any support for the claim to be granted (either at all, or in the terms sought by the ASU).

2.8 **Fourth**, we disagree with the ASU's assertion that 'many' awards contain allowances for language skills without requiring accreditation. To the contrary, it appears that the majority of awards do require some form of accreditation as a precondition of payment of the allowance. For example, of the 13 awards listed in the Background Paper, only five do not require accreditation in order for the allowances to be payable. And those five awards contain allowances which are considerably lower than the quantum sought by the ASU. Specifically, of those five awards, only four are easily comparable (as one is based on hourly interview rates), however they provide for weekly amounts in the range of \$10.80 - \$16.62 per week. Those amounts are considerably lower on a weekly basis than the quantum of allowances contained in the awards which require accreditation.

3. ITEM B: COMMUNITY LANGUAGE ALLOWANCE SCHEME AND ACCREDITATION PROCESS

- 3.1 We refer to paragraphs [25]-[29] of the ASU Submission.
- 3.2 The ASU appear to suggest at paragraph [26] that, because of the existence of a small number of awards in certain States that contain a language allowance, those States “appear” to have schemes similar to the NSW Community Language Allowance Scheme.
- 3.3 We respectfully question the logic of that submission. While industrial instruments made under various State jurisdictions might contain language allowances, it is not clear that those States have similar schemes to that of NSW.
- 3.4 Rather, it appears that only Victoria has a similar scheme. The *Victorian Public Service Language Allowance Guidelines 2014-15*³ outlines which Victorian public sector employees will be entitled to receive a language allowance pursuant to the *Victorian Public Service Enterprise Agreement 2016* and the *Nurses (Department of Education and Training) Agreement 2016*.
- 3.5 In response to paragraph [29] of the ASU Submission, we consider that the ASU overstates the findings that can be made from the evidence adduced during the proceedings. In our submission, the evidence cannot be said to have demonstrated that ‘the SACS sector has relied on the community language skills of its employees without requiring accreditation for a significant period of time’. Rather, the evidence suggests that a few niche multicultural-focussed businesses have done so.
- 3.6 Separately, the ASU submission at paragraph [29] that ‘any requirement for accreditation would add an undue administrative burden on the employer’ is confusing, given that their proposed variation requires employers to obtain and cover the costs of accreditation for relevant employees.

³<https://www.multicultural.vic.gov.au/images/stories/pdf/victorian%20public%20service%20language%20allowance%20guidelines%202014-15.pdf>

**4. ITEM F: COMMENTS IN RESPECT OF THE CASUAL/PART-TIME EMPLOYMENT PROCEEDINGS
FULL BENCH DECISION**

4.1 We refer to the submissions of the union parties (the ASU, United Voice and the HSU) in relation to this issue.

4.2 Each of the union parties have understandably raised issue with the passages of paragraphs [639] and [640] that refer to the contentions advanced by ABI in the proceedings. Those parts of the relevant paragraphs are clearly not findings of the Commission, and ultimately the Full Bench was not persuaded to grant the claim advanced by ABI in those proceedings.

4.3 The union parties have properly drawn the Commission's attention to the relevant parts of the Full Bench decision in which the Bench reached its conclusions and declined ABI's claim.

4.4 However, in the context of the current proceedings, it is relevant to note that one of the reasons behind the Full Bench's conclusion in 2017 was that it considered that it was too early in the implementation of the NDIS to make clear findings as to how the NDIS would operate and what impact it would have on the sector. By way of example, the Full Bench observed that:

(a) while there was some evidence that new employees were increasingly being employed on a casual basis, the Full Bench considered that it was "far too early in the implementation of the NDIS to conclude that this is a permanent trend",⁴ and

(b) "The evidence makes it clear that there remains considerable uncertainty as to how the NDIS will operate and what will be the pattern of service demand from participants once the NDIS is fully implemented".⁵ [emphasis added]

4.5 Further, the Full Bench held at [643]:

The ABI's application is therefore rejected. However we emphasise that the conclusions we have reached about it are made at a time when the NDIS is still a long way from full implementation and are therefore necessarily speculative to a degree. The issues raised by the ABI's application may require further review if, after the NDIS has been fully implemented, a different picture emerges. [emphasis added]

4.6 Given that it is now 2019 and the NDIS rollout is much closer to full completion and implementation, we consider that these proceedings provide an appropriate opportunity to revisit the issues that were considered in 2016.

⁴ At [636].

⁵ Ibid.

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