

BEFORE THE FAIR WORK COMMISSION

**AGED CARE AWARD 2010  
(MA000018)**

*Response to Exposure Draft – Aged Care Award 2016*

**SUBMISSION BY  
AGED CARE EMPLOYERS**

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## 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 – Aged Care 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 *Aged Care Award 2010 (the Award)* at the appropriate time.

## General comments on drafting

[3] Clause 1.3 – 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

Aged Care Employers note the inclusion of a new definition in the Exposure Draft; '*all purposes*'.

Aged Care Employers note that the only '*all purpose*' allowance in the Exposure Draft is the Leading Hand Allowance and suggests omitting this definition from the definition clause of the of the Exposure Draft and retaining the '*all purposes*' explanation within the Leading Hand Allowance subclause.

[5] Clause 2 - Definitions

Aged Care Employers note the inclusion of a new definition; '*Casual Ordinary Hourly Rate*'.

Aged Care Employers note that this definition is not found anywhere else in the Exposure Draft outside of the definitions section and thus should be

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<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)

removed from the Exposure Draft, as it creates ambiguity with shiftwork and overtime arrangements.

[6] Clause 2 - Definitions

Aged Care Employers note the inclusion of a definition “*Ordinary Hourly Rate*’.

Aged Care Employers submit that this definition is not clear and can lead to ambiguity.

There are no other allowances specified to be included in an employee’s ordinary hourly rate within the Exposure Draft and the only allowance payable for all purposes in the Exposure Draft is the Leading Hand Allowance.

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

*Ordinary hourly rate means the hourly rate for the employee’s classification specified in clause 17, plus the Leading Hand Allowance specified in clause 18.2(a), if applicable.*

[7] Clause 15.5 - A sleepover must be rostered:

Aged Care Employers note that ‘*and*’ has been omitted from clause 15.5(a) and submits that it is the intention of this clause to allow shifts to be rostered immediately after a sleepover and/or immediately prior to an employee’s shift.

Aged Care Employers submit that the clause should be amended to be read as follows:

*15.5 A sleepover must be rostered:*

- (a) to commence immediately at the conclusion of the employee’s shift and continuous with that shift; and/or*
- (b) immediately prior to the employee’s shift and continuous with that shift.*

The insertion of ‘*and*’ retains the wording of the clause in the Award.

[8] Clause 18.2 – Wage related allowances

Aged Care Employers submit that the only all purpose allowance in the Award is the Leading Hand Allowance and believe it most appropriate to describe an all purpose allowance within the Leading Hand Allowance clause.

Aged Care Employers submit that clause 18.2 should be amended to read as follows:

## 18.2 Wage related allowances

### (a) Leading hand allowance

- (i) *A leading hand is an employee whose classification does not include the supervisory responsibility and who is placed in charge of two or more employees of a substantially similar classification.*
- (ii) *A leading hand will be paid a weekly allowance, based on the number of employees supervised, according to the following scale:*

<b>Leading hand in charge of:</b>	<b>\$ per week</b>
<i>2–5 other employees</i>	<i>22.25</i>
<i>6–10 other employees</i>	<i>31.75</i>
<i>11–15 other employees</i>	<i>40.08</i>
<i>16 or more other employees</i>	<i>49.00</i>

- (iii) *This allowance is paid for all purposes of this award, including when calculating any penalties or loadings or payment while the employee is on annual leave.*
- (iv) *An employee who works less than 38 hours per week will be entitled to the allowance on a pro rata basis.*

### [9] Clause 21.2 - Shiftwork rates

Aged Care Employers assert that the proposed changes to this clause are an unnecessary change and may promote confusion.

Aged Care Employers submit that clause 21.2 of the Exposure Draft be replaced with clause 26.1 of the Award in its entirety.

The reasons for this are that it is essential that the requirement for an employee who works less than 38 hours per week appear before the shift work rates, to ensure it is not overlooked and employees other than full time employees are paid correctly.

Secondly, the time frames in each of the four shift arrangements leave gaps which promote confusion. For example, between 12.59 pm and 1.00 pm, 3.59 pm to 4.00 pm, 3.59 am to 4.00 am and 5.59 am to 6.00 am. The Award correctly describes and covers the identified gaps in time.

### [10] Clause 23.2 – Additional leave for certain shiftworkers

Aged Care Employers note that 'and' has been omitted from clause 23.2(a)(i).

The intention of this clause is that an employee may be entitled to the additional week of leave if they satisfy either or both of the conditions contained in 23.2(a).

Aged Care Employers submit that clause 23.2(a) should be amended to read as follows:

**23.2 Additional leave for certain shiftworkers**

(a) *For the purposes of the NES a shiftworker is defined as an employee who:*

(i) *is regularly rostered to work their ordinary hours outside the ordinary hours of work as a day worker as defined in clause 13.2; and/or*

(ii) *an employee who works for more than four ordinary hours on 10 or more weekends.*

[11] Clause 23.2(b)

In relation to Clause 23.2(b) of the Exposure Draft, Aged Care Employers note that ‘and’ has been omitted. Aged Care Employers submit that the original wording as contained in the Award should be retained.

*“For the purpose of the clause 23.2(a), a weekend means work in ordinary time on a Saturday and/or a Sunday in any one calendar week.”*

The intention of this clause has always been that a weekend means an employee working ordinary time on a Saturday or a Sunday or both days.

**FWC specific Questions from Exposure Draft**

[12] Clause 11.1 refers to a ‘fixed term employee’. Should the award include a definition of fixed term employment?

Aged Care Employers submit that this definition is self-explanatory and there is no need to define this employment arrangement.

[13] Parties are asked to comment on whether clause 23.2(a)(ii) should clarify over what period this is counted (e.g. 10 or more weekends over the course of a year).

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:

(iii) *who works for more than four ordinary hours on 10 or more weekends in each year of service with their employer”*

- [14] Parties are asked to identify “*any training program which applies to the same occupation and achieves essentially the same training outcome as an existing apprenticeship in an award as at 25 June 1997*” that they consider should not be covered by this Schedule.

Aged Care Employers are unaware of any such training programs.