



HWU INITIAL LOG OF CLAIMS – BERRY STREET

NOVEMBER 2018

These claims are subject to the overriding condition that the Health Services Union Victoria No. 1 Branch (trading as the Health Workers Union) makes no claim for any matter that does not pertain to the employment relationship or is not otherwise permitted pursuant to section 172 or section 194 of the *Fair Work Act* (Cth) 2009 (“the Act”).

The HWU claims that in the event that employees are covered by expired Australian Workplace Agreements (“AWAs”) or Individual Transitional Employment Agreements (“ITEAs”), if any, the employees be covered by the new agreement and that the AWAs or ITEAs be conditionally terminated.

1. Maintenance of entitlements

- 1.1 The new agreement must include (or continue to include) any beneficial parts of:
 - 1.1.1 all applicable conditions of the pre-reform Award(s) as in place at 31 December 2009;
 - 1.1.2 the Modern Award;
 - 1.1.3 the National Employment Standards (“NES”);
 - 1.1.4 the current Enterprise Agreement;
 - 1.1.5 this log of claims.

As part of this approach, to ensure that there is no diminution of entitlements, we seek a savings provision.

2. Agreement length

- 2.1 Subject to terms negotiated, the HWU is seeking a four year agreement.

3. Disputes resolution

- 3.1 The new agreement to revise the dispute resolution procedure to include:
 - 3.1.1 A two-stage dispute resolution procedure to simplify the process (noting the current procedure requires no less than 5 internal stages);
 - 3.1.2 Disputes regarding flexible working arrangements, and extensions to parental leave under the NES on reasonable business grounds;
 - 3.1.3 A mechanism for dealing with collective disputes; and
 - 3.1.4 Release from duty for relevant parties to participate in dispute processes.

A form of draft words on the above provisions are provided in Appendix A.

4. Security of employment and work/like balance

- 4.1 A commitment by the parties to maintain adequate staffing levels and reasonable workloads.
- 4.2 Abridged reference to flexible working arrangement process, as outlined in Appendix B.
- 4.3 Permanent changes in rosters will require agreement between the parties.

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State Secretary: Diana Asmar

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Part-time and casual employees

- 4.1 Part-time engagement provisions in accordance with the Modern Award, specifying the hours, days, starting and finishing times to be worked.
- 4.2 Minimum engagement for part-time employees will be 4 hours on each occasion.
- 4.3 Review of part-time hours in accordance with Appendix C.
- 4.4 Casual conversion clause in accordance with Appendix D.
- 4.5 Introduction of job sharing arrangements by agreement.

Transition to retirement

- 4.6 The new agreement to include a transition to retirement clause, to permit changes in working arrangements within 5 years of intended retirement, while preserving long service leave accruals, as outlined in Appendix E.

Further protections

- 4.7 Two consecutive rostered days off duty each week.
- 4.8 A minimum of 10 hours break between shifts.
- 4.9 Identify ordinary hours and span of hours in the Agreement.
- 4.10 Clarify the definition of shiftworker:
 - 4.10.1 Those who work 4 or more hours on 10 or more weekends in a 12 month period;
 - 4.10.2 Those who are rostered on-call for 10 or more shifts in a 12 month period;
- 4.11 Remove cl 18.6, as it contravenes the prohibition on withholding employee wages in contravention of the Act.

5. **Leave and associated matters**

Annual leave

- 5.1 Correction of inconsistency with the NES in cl 12.8. Annual leave accrues progressively. Employees do not need to seek consent from Berry Street.
- 5.2 Correction of inconsistency with the NES in cl 12.9. Employees cannot be directed to take excess annual leave, without ensuring they retain a minimum of 4 weeks annual leave.
- 5.3 Redefine excess annual leave in accordance with the Modern Award to mean 8 weeks' paid annual leave, or 10 weeks' paid annual leave for a shiftworker.
- 5.4 Revise the excess leave provisions in accordance with the Modern Award. Including the provision that where an employee has excessive leave accruals, an employee may request and take that leave as outlined in Appendix F.
- 5.5 Cashing out provision for annual leave to mandate that employees take at least one weeks' leave at the time of the cashing out, or submit a leave plan to take at least one weeks' leave at the time of the cashing out (or within three months thereof), unless there is genuine hardship.

Personal leave

- 5.6 Express provision permitting the use of personal leave for medical appointments, as outlined in Appendix G.
- 5.7 Correction of inconsistency with the NES in cl 14(d). Personal leave accrues progressively on an hourly basis, not fortnightly.

Parental leave

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- 5.8 Both forms of paid parental leave to attract superannuation contributions.
- 5.9 Correction of inconsistency with the NES in cl 16.5(b). If there is no appropriate safe job available, but the employee is able to continue working and provides medical evidence to the effect, the employee is entitled to paid no safe job leave for the risk period.
- 5.10 Correction of inconsistency with the NES in cl 16.5(a). If a pregnant employee is transferred to a safe job, the Act requires that there is no change to the employee's terms and conditions of employment.
- 5.11 Personal leave to be permitted to cover pre-adoption and pregnancy-related appointments/classes that cannot be otherwise arranged outside of work hours.
- 5.12 Time release for employees to breast feed or express breast milk (up to 13 months after the birth of the child). Adequate breast feeding facilities to be provided by the Employer, including for the storage of expressed breast milk.

Public holidays

- 5.13 The new agreement to provide for substitute public holidays for religious observance as outlined in Appendix H.
- 5.14 Clarifying substitution arrangements for public holidays falling on weekends, so as to not disadvantage employees working on rotating rosters. Also, ensuring equity in the rostered off benefits associated with public holidays, including terms provided for in Appendix I.
- 5.15 Clarification regarding the rostered off benefit for part-time employees, provided for in Appendix I.

6. **On-call, Overtime and Allowances**

- 6.1 With regards to on-call arrangements:
 - 6.1.1 The payment of an on-call allowance of \$24, when required to be on call, per twelve hours or part thereof between Monday to Friday;
 - 6.1.2 The payment of an on-call allowance of \$40, when required to be on call, per twelve hours or part thereof on Saturday, Sunday or a public holiday;
 - 6.1.3 When recalled to work, the employee will be paid a minimum of two hours at the appropriate overtime rates, for each such recall worked;
 - 6.1.4 If an employee is rostered on-call, for more than 10 shifts in a 12 month period, they will be entitled to an additional week of leave.
- 6.2 Increase the payment of meal allowance to \$15.
- 6.3 Clarification of broken shift provisions, including ability to agree to work outside a designated span.
- 6.4 Telephone allowance of \$30 per month or part thereof when required to maintain a telephone for work purposes.
- 6.5 A process for rectifying underpayments, as per Appendix J.
- 6.6 Online learning or e-learning to be paid as time worked, in accordance with the clause outlined in Appendix K.

Sleepover

- 6.7 Review of the sleepover provisions at cl 20.3 (*which currently falls well below the Modern Award*), providing that:
 - 6.7.1 In the event employees are required to perform work during the sleepover period, they will be paid for the time worked at the prescribed overtime rate, with a minimum payment for one hour worked;

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- 6.7.2 Where such work exceeds one hour, they will be paid overtime for the duration of the work;
- 6.7.3 When rostered to perform work either side of the sleepover period, the period of work must be at least 4 hours;
- 6.7.4 Sleepover allowance to be increased to \$70.

Overtime

- 6.8 Remove clause 18.7.2, and no longer plan to work residential care staff for 84 hours a fortnight.
 - 6.9 Time off in lieu of payment for overtime, by agreement, at the overtime rate.
 - 6.10 Preference for additional hours to part-time employees, ahead of casual and agency staff.
 - 6.11 Standardise overtime provisions for residential care staff at 18.7.2(e), and provide that overtime accrues:
 - 6.11.1 Time and a half for the first 3 hours, and double time thereafter Monday to Saturday;
 - 6.11.2 Double time on a Sunday; and
 - 6.11.3 Double time and a half for overtime worked on a public holiday.
7. **Union facilitation**
- 7.1 Expand upon the existing union facilitation provisions, including the following:
 - 7.1.1 Unpaid 30 minute union meetings;
 - 7.1.2 Payroll deductions for union dues;
 - 7.1.3 Unpaid leave for employees holding HWU official positions (Branch Committee of Management and National Council);
 - 7.1.4 Time release for delegates to represent employees under the agreement (for example, attending consultation meetings, disciplinary meetings etc.);
 - 7.1.5 Access to new employees at inductions/orientations to provide information;
 - 7.1.6 Berry Street to provide for Union noticeboards;
 - 7.1.7 The HWU will specifically be named as a representative party for the purposes of consultation in the event of major changes in the workplace.
8. **Further claims**
- 8.1 The HWU reserves the right to make further claims.
9. **Drafting**
- 9.1 The HWU will provide drafting amendments/proposals at an early stage.

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