

**WACOSS Submission to the AIRC in
Response to the Exposure Draft of the
Social, Community, Home Care and
Disability Services Industry Award 2010**



wacoss

Western Australian
Council of Social Service Inc

*Ways to make
a difference*

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BACKGROUND

The Western Australian Council of Social Service (WACOSS) is the peak body of the community service sector across Western Australia. Since 1956, WACOSS has been developing and strengthening the non-government community services sector's capacity to assist disadvantaged and vulnerable Western Australians. With over 280 members, WACOSS has strong relationships with the social services sector and seeks to represent their interests, and those of the individuals and families they assist.

EXECUTIVE SUMMARY

This submission is intended to supplement the submission provided by the joint National, State and Territory Councils of Social Service, dated 28 July 2009.

That submission contained the following recommendations:

- **Recommendation 1**
That the community services sector's economic, social and political contribution to the community is recognised throughout every stage of the award modernisation process.
- **Recommendation 2**
That the Australian Industrial Relations Commission recognise the historical undervaluing of community service sector employees and their work, and takes steps to rectify this through the modern awards.
- **Recommendation 3**
That the Australian Industrial Relations Commission accept that an implementation deadline of 1 January 2010 is unrealistic and unfair for community sector organisations, many of which lack the infrastructure and funding to reorient their employment model and operations with such speed.
- **Recommendation 4**
That the Australian Industrial Relations Commission take steps to ensure the community sector faces no financial or organisational disadvantages resulting from the implementation of the modern awards, for a period of six months from the official commencement date of 1 January 2010.
- **Recommendation 5**
That the Australian Industrial Relations Commission hold the concept of "equal remuneration for equal work" to be of paramount importance when setting the modern awards.

WACOSS continues to endorse the above recommendations.

This submission builds upon these recommendations by identifying specific clauses in the exposure draft of the Social, Community, Home Care and Disability Services Industry Award 2010 ('the modern award') which may leave employers or employees in WA worse off as a result of their operation. The issues identified in this submission arise from a comparison of the draft modern award with the Social and Community Services (Western Australia) Award 2002 ('the SACS award').

ISSUES

WACOSS has identified several clauses which may result in employers in the social and community services sector being subject to greater costs under the modern award than under the SACS award. These include:

- Increasing the casual loading from 20% to 25%;
- Increasing the minimum engagement of casual employees from 2 hours to 3 hours;
- Increasing the number of increments within some classification levels;
- Imposing a standard motor vehicle allowance of 74 cents per kilometre, rather than an allowance that varies by vehicle size and area of operation;
- Imposing double time after 2 hours of overtime, rather than 3 hours as per the SACS award.

WACOSS supports improving social service employees' workplace conditions, and has campaigned to draw Government and community attention to the low and inequitable pay in the sector. However, we note that these additional entitlements will result in increased costs for employers in the social and community services sector. Given that many employers in the sector derive a significant proportion of their income from government funding, and that funding tends to be inadequate and inflexible, organisations may struggle to bear these additional costs.

WACOSS has also identified a number of other issues with the draft modern award, and proposed amendments where appropriate. These issues include:

1. Narrow definition of the social and community services sector (clause 3.1)

The draft modern award defines the social and community services sector as involving “the provision of social and community services including social work, recreation work, welfare work, youth work or community development work”. WACOSS recognises that the language of this definition is suitably broad to include most of what is commonly recognised as the social and community services sector.

However, it is not clear whether organisations in the sector (as commonly understood) which specialise in advocacy or policy work would be captured by this definition. There are several organisations of this nature named to the SACS award, such as the Alcohol Advisory Council of WA, the Citizens Advice Bureau of WA, Inc, Council on the Ageing (WA), Inc, and many others.

WACOSS proposes that the definition of the social and community services sector in clause 3.1 be amended to read:

“social and community services sector means the provision of social and community services including social work, recreation work, welfare work, youth work or community development work, including organisations which primarily engage in policy, advocacy or representation on behalf of organisations carrying out such work”.

2. Ambiguity regarding casual employees' entitlement to long service leave (clause 10.4(b))

The draft modern award asserts that a casual loading is to be paid "instead of the paid leave entitlements accrued by full-time employees". With respect to annual leave and personal leave, this is the norm and reflects the existing SACS award. However, it is possible that this clause may be read to imply that casual employees will not be entitled to long service leave.

Under clause 28.1 of the SACS award, "all employees shall be entitled to paid long service leave in accordance with the legislation applying in Western Australia". This is also the case for employees covered by the National Employment Standards (NES), as long service leave is a non-excluded matter as per s.27(2)(g) of the *Fair Work Act 2009*. The legislation applying in Western Australia, the *Long Service Leave Act 1958*, does not exclude casual employees from the entitlement to long service leave. Indeed, s.4(2)(c) of the *Long Service Leave Act 1958* specifies a mode of calculating casual employees' ordinary hours for the purpose paying long service leave.

It is unclear if it is the Commission's intention to exclude casual employees from the entitlement to long service leave. If that is the case, WACOSS does not support the Commission's approach. If that is not the case, WACOSS proposes that clause 10.4 (b) of the modern award be amended to read:

"A casual employee will be paid per hour calculated at the rate of 1/38th of the weekly rate appropriate to the employee's classification. In addition, a loading of 25% of that rate will be paid instead of the paid leave entitlements (excluding long service leave) accrued by full-time employees."

3. Exclusion from redundancy pay for employees of small employers (clause 12.1; s.121 (1)(b) of the Fair Work Act)

Clause 12.1 of the draft modern award states that "redundancy pay is provided for in the NES". The NES, particularly s.121 (1)(b) of the *Fair Work Act 2009*, exempts small business employers from the requirement to pay redundancy to employees made redundant. Small business employers are defined in s.23 of the *Fair Work Act 2009* as employers who employ fewer than 15 employees.

Excluding employees of small business employers from redundancy employers in this way represents a significant reduction in employees' entitlements relative to the SACS award. Employees of small employers who are covered by the SACS award are entitled to severance pay on redundancy, albeit at a reduced rate relative to employers of non-small business employers. WACOSS believes this represents an appropriate balance between the interests of small business employers and their employees.

WACOSS recognises that the Commission is not able to modify the exclusion in s.121 of the Act. However, the Commission may extent the transitional provisions in clause 12.5 of the modern award to employees covered by an existing federal award such as the SACS award.

WACOSS proposes that clause 12.5 (a) be amended to read:

“Subject to clause 12.5(b), an employee whose employment is terminated by an employer is entitled to redundancy pay in accordance with the terms of a notional agreement preserving a State award or an award made under the Workplace Relations Act 1996 (Cth)”

WACOSS also proposes that clause 12.5(b) be amended to read:

“The employee’s entitlement to redundancy pay under the notional agreement preserving a State award or the award made under the Workplace Relations Act 1996 (Cth) is limited to the amount of redundancy pay which exceeds the employee’s entitlement to redundancy pay, if any, under the NES.

4. Criteria for incremental progression are unduly broad and subject to excessive managerial prerogative (clause 13.3 (a) (ii)).

The SACS award and the draft modern award each attempt to provide for a system of incremental progression within classification levels that recognises experience and acquired skills. However, clause 13.3 (a) (ii) of the modern award may provide scope for employers to require employees to acquire skills that are unreasonable for their classification level.

Clause 14.2.3 addresses a similar situation in language that provides greater balance between an employer’s reasonable right to expect that an employee will acquire skills and experience, and an employee’s right to not be required to acquire skills that are unreasonable for her or his classification. The SACS award clause reads: “the employee has, on assessment, acquired and is required by the employer to utilise new and/or enhanced skills within the ambit of the classification definition for his/her position”.

WACOSS feels that an approach of this nature introduces sufficient protection for employees against unreasonable requirements regarding the acquisition of skills, while preserving flexibility and the ability of employers to develop their workforce.

WACOSS proposes that clause 13.3 (a) (ii) of the modern award to read:

“the employee has acquired and satisfactorily used new or enhanced skills within the ambit of the classification definition for his/her position if required by the employer”.

5. Voluntary employee contributions clause may exclude ‘salary sacrifice’ arrangements (clause 22.3 (a))

Salary sacrificing is commonly used in the social and community services sector. Salary sacrificing is an arrangement whereby an employee arranges to have a portion of his or her pre-tax income used for an expense or voluntary superannuation contribution. By doing so, employees may reduce their taxable income and thereby reduce their income tax liability. Some employers favour such arrangements as they allow community service organisations to provide additional benefits for their employees without bearing additional costs for the organisation.

WACOSS urges the Commission to ensure that nothing in the modern award reduces employees’ and employers’ ability to enter into salary sacrificing arrangements.

WACOSS is concerned that clause 22.3 (a) may affect such arrangements by specifying that voluntary superannuation contributions are to be deducted from an employee's post taxation wages.

WACOSS proposes that the phrase "post-taxation" be deleted from clause 22.3 (a), so that it reads:

"Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the ~~post-tax~~ wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 22.2."