



# STATEMENT

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

s.157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

## **4 yearly review of modern awards—*Social, Community, Home Care and Disability Services Industry Award 2010*** (AM2018/26)

Social, community, home care and disability services

ACTING PRESIDENT HATCHER

SYDNEY, 4 JANUARY 2023

*4 yearly review of modern awards – group 4 awards – consideration of travel time claims – Social, Community, Home Care and Disability Services Industry Award 2010.*

[1] In the 4 yearly review of the *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADS Award), interested peak bodies sought a number of substantive changes to the award. These claims were dealt with in two tranches and finalised in a series of decisions issued by the Full Bench in 2021<sup>1</sup> and 2022.<sup>2</sup> The only outstanding matter for further consideration is in relation to the parties' various travel time claims.

[2] The parties have made three claims in relation to travel time:

- the Australian Municipal, Administrative, Clerical and Services Union and United Workers' Union sought a variation to provide a payment to employees required to work at different locations for reasonable travel time from one location to the next;
- the Health Services Union sought variations to provide a payment for travel undertaken in the course of a break during a broken shift and to introduce a travel allowance for disability support workers and home care workers in respect of all travel; and
- Australian Business Industrial and the New South Wales Business Chamber, Aged and Community Services Australia and Leading Age Services Australia (ABI) advanced an alternate variation dealing with the issue of unpaid travel time in the form of an allowance.<sup>3</sup>

---

<sup>1</sup> [2021] FWCFCB 2383; [2021] FWCFCB 5244; [2021] FWCFCB 5641

<sup>2</sup> [2022] FWC 198

<sup>3</sup> [2021] FWCFCB 2383 at [559]-[564] and [574]

[3] The Australian Federation of Employers and Industries, National Disability Services and the Australian Industry Group opposed the Unions' travel time claims,<sup>4</sup> while the Unions opposed ABI's proposed variation.<sup>5</sup>

[4] The Full Bench considered that the issues of minimum engagement, travel time and broken shifts were interrelated,<sup>6</sup> and treated them as so in its decisions dealing with minimum engagement and broken shifts.<sup>7</sup>

[5] In relation to the travel time issue, the Full Bench also noted that:

“As a general proposition we accept that employees should be compensated for the time spent travelling between engagements. But framing an award entitlement to address this issue raises several issues, including the circumstances in which any payment is to be made and the calculation of that payment. We are also conscious of the s.134 considerations, in particular:

- the needs of the low paid
- the impact on employment costs and the regulatory burden, and
- the need to ensure that any provision is simple and easy to understand.”<sup>8</sup>

[6] At a conference on 27 May 2021, the former President noted that following the Full Bench's decision to vary the minimum payments and broken shifts terms, circumstances had changed in relation to the travel time claims. The former President observed that:

“Once the changes are made around minimum engagement and broken shifts and they've operated for a period, that parties have liberty to have the matter called back on and can pursue a particular outcome in relation to travel time.”<sup>9</sup>

[7] In its decision of 25 August 2021, the Full Bench noted that:

“It seems to us that it is likely that employers will seek to change rosters and patterns of work in response to our decisions in respect of minimum payment periods and broken shifts. These changes may well reduce the incidence of unpaid travel time.”<sup>10</sup>

[8] The Full Bench concluded that further consideration of the various travel time claims would be deferred until the variations in respect of minimum payment and broken shifts have been in operation for 12 months.<sup>11</sup>

---

<sup>4</sup> Ibid at [569]-[571] and [583]

<sup>5</sup> Ibid at [582]

<sup>6</sup> Ibid at [473]

<sup>7</sup> Ibid at [367]-[373], [473]-[491] and [585]-[589]; [2021] FWCFB 5244 at [225]; [2021] FWCFB 5641 at [244] and [297]

<sup>8</sup> [2021] FWCFB 2383 at [588]

<sup>9</sup> Transcript, 27 May 2021 at PN 130

<sup>10</sup> [2021] FWCFB 5244 at [229]

<sup>11</sup> Ibid at [230]

[9] As the minimum payments and broken shift variations commenced operation on 1 July 2022, the date for further consideration of the travel time claims would be not before 1 July 2023.

[10] On 17 October 2022, the Full Bench overseeing the finalisation of the 4 yearly review issued a Statement concluding the review save for a small number of outstanding matters expected to be finalised by the end of 2022.<sup>12</sup> Accordingly, I do not consider it necessary to review the travel time claim in the 4 yearly review of the SCHADS Award.

[11] As set out in that Statement, it is open to anyone with requisite standing under s 158 of the *Fair Work Act 2009* to make an application to vary a modern award. Should parties wish to further agitate the existing travel time claims, they may do so via a new application to vary the SCHADS Award.



ACTING PRESIDENT

Printed by authority of the Commonwealth Government Printer

<MA000100 PR749386>

---

<sup>12</sup> [2022] FWC FB 189