



REPORT

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards–Award stage–Group 4 awards–

Substantive Issues

(AM2018/26)

SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010

[MA000100]

JUSTICE ROSS, PRESIDENT

MELBOURNE, 30 OCTOBER 2018

4 yearly review of modern awards – award stage – group 4 awards – substantive issues – Social, Community, Home Care and Disability Services Industry Award 2010

[1] This report deals with the outcome of a Mention held on Monday 22 October 2018 to deal with the programming of a number of substantive claims to vary the *Social, Community, Home Care and Disability Services Industry Award 2010* (the SCHADS Award). A transcript of the Mention proceedings is available on the Commission’s website – [Mention](#).

[2] The following organisations were represented at the Mention:

- Australian Services Union
- United Voice
- Aged Care Employers
- ABI and NSWBC.
- Australian Industry Group
- AFEI
- Health Services Union
- Jobs Australia

[3] The parties provided further clarification as to the substantive claims they intend to pursue. A revised list of substantive claims is attached to this report (**Attachment A**). A number of the interested parties also support a Joint Report which arose out of the conciliation process in relation to the substantive claims. A copy of the Joint Report is attached to this report (**Attachment C**).

[4] The parties indicated that they are likely to file between 20 and 30 witness statements in support of their claims (and in reply to the claims of others) and the hearing is expected to take five days. Draft directions are attached (**Attachment B**). Parties seeking to vary the award are to file draft variation determinations by no later than **4.00pm Wednesday 7**

November 2018. A further Mention in respect of the substantive claims in this award will be held on **Friday 9 November 2018 at 11am** in Sydney. At the Mention the parties will be asked to confirm that the list of substantive claims at Attachment A is accurate. Parties will also be invited to comment on the draft directions and to confirm their position in relation to the Joint Report. Interested parties are encouraged to confer prior to the Mention.

[5] I note an earlier [revised summary of proposed substantive variations](#) indicated that a number of parties had foreshadowed pursuing substantive claims. These parties include Australian Federation of Employers and Industry (s1,¹ s18²); National Disability Service (s17³); Community Connections Solutions Australia (s9⁴). Unless these claims are confirmed by parties at the Mention on **Friday 9 November 2018** it will be assumed these matters are withdrawn.



PRESIDENT

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¹ S1 relates to a claim by AFEI to vary the annual leave clause to allow an employer to direct an employee to take annual leave during a partial or whole close down of employer enterprise.

² S18 relates to a claim by AFEI to amend clause 13.3 and Schedule B so it is clear progression between pay points in various levels in each stream of the award is based on full-time equivalent service.

³ S17 relates to a claim by NDS to change classification descriptors which they submit do not currently accurately reflect different work contexts in which disability support is provided.

⁴ S9 is a claim by CCSA to move coverage of the family day care scheme in this award to the *Children's Services Award 2010*.

United Voice seeks to vary the award by:

- amending the Clothing and equipment allowance clause to ensure that the employee will be given a sufficient number of uniforms so that they will not need to launder their work wear more than once a week.
- amending the Rosters clause to ensure that permanent staff are protected and that any additional hours required to be worked at short notice will be appropriately remunerated.
- amending the Telephone allowance clause to ensure that an employee who is required to use a mobile phone will be entitled to reimbursement for the cost of purchase and other charges.
- amending the Broken Shifts clause to ensure that the maximum number of broken shifts that can be worked is two.
- amending the Sleepover clause so that it is extended to cover employees who are working a 24 hour care shift or who are supervising clients on excursions.
- deleting the 24 Hour care clause, or alternatively amending the clause to ensure that employees will be entitled to overtime for all hours worked over 8 hours.
- amending the Excursions clause to ensure that employees are paid according to the provisions of the Award for the whole time they are working an excursion.
- amending the Meal breaks clause to correct the cross-reference.
- amending the Overtime clause to allow casual employees to be paid overtime after 8 hours of work on any one day and to ensure that part-time and full-time employees are paid overtime for work done in addition to their rostered hours.
- amending the Payment for working on a public holiday clause by inserting a subclause which prevents rosters being altered for the purpose of avoiding public holiday entitlements under this Award and the NES.

The HSU seeks to vary the award by:

- providing that all full-time, part-time and casual employees are entitled to a minimum engagement of three hours for all sectors under the award;
- ensuring that the casual loading is paid in addition to other shift allowances, weekend and public holiday rates;
- amending the classification criteria in Schedule B – Social and Community Services Employees, and Schedule E – Home Care Employees, to remove ambiguity and correct inconsistencies in classification criteria;
- amending the telephone allowance to reflect the requirement to have a mobile phone for work-related purposes;
- amending the uniform allowance to ensure uniform is provided for or allowance is paid;
- providing a new entitlement for the replacement of damaged clothing;
- providing an allowance for first aid certificate renewal;
- varying the broken shifts clause to ensure minimum shift lengths apply to each part of the broken shift, and to ensure broken shifts can only be worked by agreement;
- deleting the 24 hour care clause;
- varying the overtime clause to ensure it applies to all employees when they work beyond their rostered hours;

- varying the public holiday clause to ensure that rosters cannot be altered for the purpose of avoiding public holiday entitlements.

Jobs Australia seeks to vary the award by:

- clarifying that the 24 hour care provision may apply to disability support work when carried out in a private home; and
- amending the classification definitions to clarify the classification of disability support work at SACS levels 2 and 3.

The ASU seeks to vary the award by:

- deleting clause 4.2 (relating to coverage) and inserting a new clause 4.2 clarifying that the award does not cover employers and employees covered by the *Aged Care Award 2010*; *Amusement, Events and Recreation Award 2010*; *Fitness Industry Award 2010*; *Nurses Award 2010*.
- inserting a clause relating to payment of an allowance and/or penalty rate to employees who work broken shifts.
- Inserting a new allowance for employees who use community language skills during the course of their employment.

ATTACHMENT B



DRAFT DIRECTIONS

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards–Award stage–Group 4 awards–

Substantive Issues

(AM2018/26)

JUSTICE ROSS, PRESIDENT

SYDNEY, 9 NOVEMBER 2018

*4 yearly review of modern awards – award stage – group 4 awards – substantive issues –
Social, Community, Home Care and Disability Services Industry Award 2010*

It is directed that:

1. Interested parties are to file in the Commission evidence and submissions in support of their claims on or before **4.00 pm on Friday 18 January 2019**.
2. Interested parties are to file in the Commission evidence and submissions in reply on or before **4.00pm on Friday 15 March 2019**.
3. All submissions must be sent to amod@fwc.gov.au
4. The matter will be heard on Friday 12 April 2019. It will be further listed for hearing on 15 – 18 April 2019 if required. Hearings will be held in Sydney.

PRESIDENT

IN THE FAIR WORK COMMISSION

Matter No: AM2014/285

Section 156 - Four Yearly Review of Modern Awards – Social, Community, Home Care and Disability Services Industry Award 2010

**JOINT REPORT OF THE INTERESTED PARTIES TO THE
SOCIAL, COMMUNITY, HOME CARE AND DISABILITY
SERVICES INDUSTRY AWARD 2010**

1. This report is made pursuant to the direction of Justice Ross on 7 February 2017 as amended by consent on 22 March 2017 and further on 11 April 2017.
2. This report regards the progress of conciliation in the *Social, Community, Home Care and Disability Services Industry Award 2010* ('the SCHDS Award'). This report is filed on behalf of the interested parties to the SCHDS Award: Aged and Community Services Australia, Australian Business Industrial & the NSW Business Chamber, Australian Federation of Employers and Industries, Australian Services Union, the Health Services Union, Leading Age Services Australia, Jobs Australia and United Voice.
3. The parties discussed many of the substantial issues in this Award at length and have come to agreement on a number of issues.
4. A draft consent determination is set out at **Annexure A**.
5. A summary of the claims that are withdrawn pursuant to the agreement between the parties attached at **Annexure B**.
6. The parties continue to press a number of other claims. These are dealt with in the submissions of the respective parties.

**Aged and Community Services
Australian Business Industrial & the NSW Business Chamber Ltd
Australian Federation of Employers and Industries
Australian Services Union'
Business SA
Health Services Union
Leading Age Services Australia
Jobs Australia
United Voice.**

8 May 2017

DRAFT CONSENT DETERMINATION

Fair Work Act 2009

s.156–4 yearly review of modern awards

4 yearly review of modern awards

[AM2014/285]

Social, Community, Home Care and Disability Services Industry Award 2010

[MA0000100]

Social, community, home care and disability

ROSS, PRESIDENT

SYDNEY, XX YYY 2017

4 yearly review of modern awards

A. Further to the Full Bench decision issued by the Fair Work Commission on XX XXX 2017¹, the above award is varied as follows:

1. By deleting clause 13.1 and inserting new Clause 13.1 as follows:
13.1 (a) The ordinary hours of work will be 38 hours per week or an average of 38 hours per week over the employee's roster period, up to a maximum of four weeks.
(b) The ordinary hours that can be worked per shift is a maximum of 8.
(c) By agreement, the ordinary hours may be worked up to 10 hours per shift.
2. By deleting the words 'or period of work' in clause 14.2.
3. By deleting clause 14.3 (f) (ii) and inserting new Clause 14.3 (f) (ii) as follows:
14.3(f)(ii) A roster may be altered at any time:
 - (A) by agreement between the employer and an employee, provided there is an electronic or paper record of the agreement, or
 - (B) to enable the service of the organisation to be carried on where another employee is absent from duty on account of illness, or in an emergency; or
 - (C) where the only change to the roster of a part-time employee is the mutually agreed addition of extra hours to be worked in such a way that the part-time employee still has four rostered days off in that fortnight or eight rostered days off in a 28 day roster cycle.

¹ [Insert decision reference]

Annexure A – Draft Consent Determinations

4. By deleting clause 14.3 (g) and inserting new clause 14.3 (g):

14.3 (g) Client cancellation

- (i) Where a client cancels or changes the scheduled home care or disability service, a full-time or part-time employee may be directed to perform other work at the same time without loss of pay.
- (ii) Where the employer cannot provide other work at that time they may direct the employee to work make-up time within the following 3 months.
- (iii) The employer may not direct the employee to work make-up time if they had not been notified of the cancellation before the employee arrived to perform that work.
- (iv) The employer may only withhold payment for the cancelled period if:
 - (A) they provide the employee with notice of this change by 5.00 pm the day before, and
 - (B) the employee informs them in writing at the time of the notice that they will not work make-up time within the following 3 month period.
- (v) Where 14.3(g)(ii) applies the employee will receive payment for the cancelled service as if they had worked it (including any applicable penalties or loadings).
- (vi) Where an employee has already been paid pursuant to clause 14.3(g)(v) above, they will not receive further payment for working any make-up time unless clause 14.3(g)(vii) applies.
- (vii) Where the applicable rate of pay for working the make-up time is higher than the rate of pay the employee received for the cancelled service under 14.3(g)(v) the employee will be paid the difference between the two rates of pay.
- (viii) Make-up time may include work with other clients or in other areas of the employer's business.
- (ix) The employer may only direct an employee to work make-up time at a time and place that is reasonable.
- (x) An employee must not unreasonably refuse to work make-up time.

5. By deleting the clause 14.5 and inserting new clause 14.5 as follows:

14.5 Sleepovers

- (a) A sleepover means when an employer requires an employee to sleep overnight at premises where the client for whom the employee is responsible is located (including respite care) and is not a 24 hour care shift pursuant to clause 14.6 or an excursion pursuant to clause 14.7. It is expected that an employee performing sleepover work will ordinarily be able to have a reasonable night's sleep.

Annexure A – Draft Consent Determinations

- (b) The provisions of 14.3 apply for a sleepover. An employee may refuse a sleepover in the circumstances contemplated in 14.3 (f) (i) but only with reasonable cause.
 - (c) The span for a sleepover will be a continuous period of eight hours.
 - (d) Employees will be provided with:
 - (i) a separate room with a bed; and
 - (ii) other suitable sleeping requirements such as a light and clean linen, use of appropriate facilities (including staff facilities where these exist), security appropriate to the type of service, and
 - (iii) free board and lodging for each night when the employee sleeps over.
 - (e) The employee will be entitled to a sleepover allowance of **\$44.00** for each night on which they sleep over.
 - (f) In the event of the employee on sleepover being required to perform work during the sleepover period, the employee will be paid for the time worked at the prescribed overtime rate with a minimum payment as for one hour worked. Where such work exceeds one hour, payment will be made at the prescribed overtime rate for the duration of the work.
 - (g) An employer may roster an employee to perform work immediately before and/or immediately after the sleepover period, but must roster the employee or pay the employee for at least four hours' work for at least one of these period of work. The payment prescribed by 14.5 (e) will be in addition to the minimum payment prescribed by this subclause.
 - (h) In the event that a dispute arises as to the suitability of:
 - (i) particular premises,
 - (ii) a particular client or clients,
 - (iii) a particular employee or employees, or
 - (iv) any other matter of this clausefor sleepover work, the dispute shall be discussed by the employer and employee or employees affected in accordance with clause 29 – Dispute resolution.
6. By inserting new clause 14.8 as follows:
- 14.8 Travel time**
- (a) Where an employee is rostered to work at different locations, the time taken to travel the most direct route between locations will be treated as time worked. This excludes travel to the first place of work and travel from the last place of work.
 - (b) Variations in travel time will be treated as an agreed change to the roster in accordance with clause 14.3(f)(ii)(A).
7. By deleting clause 17.2(d) and inserting new clause 17.2(d) as follows:

Annexure A – Draft Consent Determinations

17.2 (d) On call allowance

- (i) An employee required by the employer to be on call (i.e. available for recall to duty at the employer's or client's premises and/or for remote response duties) will be paid an allowance of:
 - (A) \$17.96 for any 24 hour period or part thereof during the period from the time of finishing ordinary duty on Monday to the time of finishing ordinary duty on Friday; or
 - (B) \$35.56 in respect of any other 24 hour period or part thereof, or any public holiday or part thereof.

8. By inserting new clause 17.2 (e) as follows:

17.2 (e) Remote response

- (i) In this award, unless the contrary intention appears, remote response duties include:
 - (a) responding to phone calls, messages or emails;
 - (b) providing advice ('phone fixes');
 - (c) arranging call out/rosters of other employees; and
 - (d) remotely monitoring and/or addressing issues by remote telephone and/or computer access.
- (ii) If an employee is required to perform remote response duties between 6.00am and 10.00pm in any day, the employee will be paid at the prescribed overtime rate for the time worked, rounded up to the nearest 15 minutes.
- (iii) If an employee is required to perform remote response duties between 10.00pm and 6.00am in any day the employee will be paid at the prescribed overtime rate for the time worked, with a minimum payment as for one hour. Where such work exceeds one hour, payment will be made at the prescribed overtime rate for the duration of the work.
- (iv) An employee remotely responding will be required to maintain and provide to the employer a time sheet of the length of time taken in dealing with each matter remotely for each day commencing from the first remote response.

9. By inserting new clause 19.3(c) as follows:

- 19.3 (c)** Clause 19.3 will not apply to an employee performing remote response work where that work commences within 3 hours of the start of their shift.

10. By deleting clause 19.4 and inserting new clause 19.4 as follows:

19.4 Recall to work overtime at the employer's or client's premises

An employee recalled to work overtime after leaving their place of work to attend at a premises where work is performed will be paid for a minimum of two hours' work at the appropriate rate for each time recalled. If the work required is completed in less

Annexure A – Draft Consent Determinations

than two hours the employee will be released from duty. This clause does not apply to an employee performing remote response duties in accordance with clause 17.2 (e) of this Award.

- B. This determination will come into operation from XX YYY 2017. In accordance with s.165(3) of the *Fair Work Act 2009* (Cth) these items do not take effect until the start of the first full pay period that starts on or after XXX XXXX 2017.

PRESIDENT

Annexure B – Claims that are withdrawn

Employer claims that are withdrawn

Item	Party	Document	Clause (current award)	Summary of Issue	Their Reference	Notes
<i>Ordinary hours and flexi-time</i>						
25	JA	JA subs	25.1	Hours of Work Propose that there should be explicit provision for other mutually agreed forms of Flexible working arrangements such as flexitime and make up time, and that the time frame for averaging weekly hours of work be extended beyond the 4 weeks.	Para 10	Consent proposed
25	ABI &NS WBC	ABI&NS WBC subs	25.1	Variation to clause to increase the maximum ordinary hours of work per shift.	Para 2	Consent proposed
<i>Rosters and client cancellation</i>						
29	JA	JA subs	25.5	Rosters and Client cancellation Vary client cancellation provisions to apply to disability support work carried out in private residences and also for individualised activities taking place away from home.	Para 11	Consent proposed
31	ACE	ACE subs	25.5	Rosters Vary clause to allow for a roster to be changed at any time where the employer and employee/s affected agree and/or in circumstances where there is an unexpected absence of an employee.	Para 3	Consent proposed
<i>Telephone/remote communication/recall to work overtime</i>						
5	ACE	ACE subs	xx	Telephone Advice Payment Insert a new clause which provides a payment to an employee who makes their services available and participates in an approved roster to provide telephone advice outside their normal rostered ordinary hours of work.	Para 3	Consent proposed
23	AFEI	AFEI subs	20.9	Recall and Overtime Vary clause to clarify what amounts to a recall to duty to perform over-time so that employees (whether on-call or not) who answer telephone or respond to a text are not deemed to have been recalled. Alternatively, the award should be varied to accommodate receiving phone calls.	Page 3 Item 2	Consent proposed
52	JA	JA subs	28.4	Recall to work overtime Propose clause be varied to distinguish between recall to workplace, and recall in order to respond to phone call, with a reduced minimum overtime payment where there is no need to travel to and from a workplace	Para 14	Consent proposed
53	ABI &NS	ABI&NS WBC subs	28.4	Overtime-recall Variation to clause to clarify when overtime rates are payable when employee recalled to work	Para 8	Consent proposed

Annexure B – Claims that are withdrawn

Item	Party	Document	Clause (current award)	Summary of Issue	Their Reference	Notes
	WBC					
<i>Sleepovers</i>						
38	JA	JA subs	25.7	Sleepover Insertion of facilitative provisions for shorter breaks between shifts worked in association with sleepover, and for 12 hour shifts to be worked by mutual agreement.		
39	ABI & NS WBC	ABI&NS WBC subs	25.7	Sleepover-breaks Variation to clause to allow sleepovers to count as a break between shifts in certain circumstances and subject to certain conditions.		
41	AFEI	AFEI subs	25.7	Sleepover-flexibility Amend clause so that employers have greater flexibility to roster work on either side of a sleepover period. This variation would include addressing the penalty rates applicable for work adjacent to a sleepover.		

Union claims that are withdrawn

Item	Party	Document	Clause (current award)	Summary of Issue	Their Reference	Notes
<i>Travelling time</i>						
2	UV	UV subs	20	Seeks to vary clause to ensure the payment of travel time for home care workers.	Page 1	Consent proposed
16	HSU	HSU subs	13	Allowances Seek variations allowances: a. New travel allowance applicable for travel between clients [usually place of residence] and in course of duties;	Para 6-9	Consent proposed
<i>Telephone/remote communication/recall to work overtime</i>						
22	HSU	HSU subs	20.9	On call and recall Seek the following variations: a. Provision for an on-call penalty payment when an employee is called when not being paid an on-call allowance; b. Provisions for telephone attendance/work for an employee who is on call but not required to	Para 24	Consent proposed

Annexure B – Claims that are withdrawn

Item	Party	Document	Clause (current award)	Summary of Issue	Their Reference	Notes
				physically attend work; c. Minimum recall to work equal to minimum engagement / shift length; d. Recall to work for an employee not receiving an on-call allowance at overtime rates for the minimum shift length/ engagement.		
<i>Rosters and client cancellation</i>						
3	UV	<u>UV subs</u>	25.5	1. Ensure permanent staff protected and any additional hours required to be worked at short notice are appropriately remunerated; 2. Inclusion of words for client cancellation “provided that the employer received no payment for the cancelled or changed service ”; 3. To delete the right to direct an employee to work make up hours in circumstances where cancellation occurs.	Page 1	Consent proposed – <i>Except for Dot Point 1.</i>
29	HSU	<u>HSU subs</u>	25.5	Seek to vary to client cancellation provisions to provide for 48-hour minimum cancellation period or payment in lieu, and the redirection provisions to meet both rostering and agreed hours in relation to alternate hours.	Para 13	Consent proposed
30	UV	<u>UV subs</u>	25.5	Seek to amend clause.	Pages 2-3	Consent proposed
<i>Sleepovers</i>						
38	HSU	<u>HSU subs</u>	25.7	Sleepover-rate Seek to vary the applicable sleepover rate, when a shift, due to multiple disturbances, becomes ‘an active’ shift, and provide that rostered or known disturbances change the nature of the shift from a sleepover to an active night duty shift.	Para 17-18	Consent proposed
38	ASU	<u>ASU subs</u>	25.7	Increase in the remuneration payable to employees who work sleepovers and improvements to the conditions which sleepovers are carried out.	Para 7	Consent proposed