

# Modern Awards Review 2023-24 (AM2023/21)

## Submission cover sheet

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### Modern Award Review Stream:

Arts and Culture:

Job Security:

Work and Care:

Usability of  
awards:

**SUPPLEMENTARY  
SUBMISSION  
AM2023/21  
MODERN AWARDS REVIEW  
2023-24**

2 APRIL 2024

## BNSW AND ABI SUPPLEMENTARY SUBMISSION

### 1. INTRODUCTION

- 1.1 On 13 March 2024, a consultation session was listed in the “*making awards easier to use*” stream of the Modern Awards Review 2023-24 (**the Review**). The consultation session concerned the *Social, Community, Home Care and Disability Services Industry Award 2010* (**SCHADS Award**).
- 1.2 Throughout the consultation, reference was made to the Summary of Submissions prepared by the Commission (the **Summary Document**).<sup>1</sup>
- 1.3 This supplementary submission addresses issues raised by the Commission during that consultation. Specifically, in the context of a discussion about items 34 and 36 of the Summary Document.

### 2. ITEM 34

- 2.1 During a discussion about item 34, Hatcher J asked BNSW/ABI what was meant by the words “*awake overnight with a client*” in the Chamber of Commerce and Industry WA’s (**CCIWA**) proposal for clause 27.1(c).<sup>2</sup>
- 2.2 For ease of reference, CCIWA propose the following text be added to clause 27.1(c):

*“(c) Where an employee is required by the employer to have a meal with a client or clients as part of the normal work routine or client program, or an employee is required by the employer to be present and awake overnight with a client or clients, and there is time to take a meal break, they will be paid for the duration of the meal period at the ordinary rate of pay, and clause 27.1(a) does not apply. This paid meal period is to be counted as time worked.”<sup>3</sup>*
- 2.3 Whilst noting the proposal was originally advanced by CCIWA, in our view, the proposed text is designed to make clear that clause 27.1(c) applies to employees working overnight shifts. Such that the purpose of the new text is to highlight a specific scenario “[w]here an employee is required by the employer to have a meal with a client or clients as part of the normal work routine or client program”. Namely, where an employee is working an “*active overnight shift*” and unable to leave the premises to take their meal break.<sup>4</sup>

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<sup>1</sup> *Summary of Submissions - Social, Community, Home Care and Disability Services Industry Award 2010* (Fair Work Commission, 6 March 2024) (**Summary Document**).

<sup>2</sup> Transcript 13 March 2024, PN248. Noting that CCIWA did not attend the consultation session.

<sup>3</sup> SCHADS Award clause 27.1(c), annotated with CCIWA proposal in red and underlined (emphasis added).

<sup>4</sup> See CCIWA Submission dated 20 December 2023 at [22].

2.4 To capture that specific scenario, CCIWA adopted the words “*present and awake overnight with a client...*”. The proposal does not alter the current operation of the clause.

### 3. ITEM 36

3.1 During a discussion about item 36, Hatcher J addressed the period of “3 months” referred to in clause 28.2(f) in the *SCHADS Award*.

3.2 Clause 28.2(f) is extracted below:

*“(f) If time off for overtime that has been worked is not taken within **the period of 3 months** mentioned in paragraph (d), the employer must pay the employee for the overtime, in the next pay period following those 3 months, at the overtime rate applicable to the overtime when worked, based on the rates of pay applying at the time payment is made.”*<sup>5</sup>

3.3 His Honour asked the parties present about “*whether there’s any reason [the period in clause 28.2(f)] shouldn’t be six months in line with most other awards?*”<sup>6</sup>

3.4 In response to that question, we confirm our support for the period being increased to 6 months in clause 28.2(f).

**Filed on behalf of Business NSW and Australian Business Industrial by Australian Business Lawyers & Advisors:**

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<sup>5</sup> SCHADS Award cl 28.2(f) (emphasis added).

<sup>6</sup> Transcript 13 March 2024, PN267.