

**4 YEARLY REVIEW OF MODERN AWARDS – SOCIAL,
COMMUNITY, HOME CARE AND DISABILITY SERVICES
INDUSTRY AWARD 2010**

SUBMISSION OF HEALTH SERVICES UNION

INTRODUCTION

1. This submission in the Four Yearly Review of the *Social, Community, Home Care and Disability Services Industry Award 2010* ('**SCHDS Award**') is made in accordance with the Directions issued by the Commission in the Statement¹ dated 9 August 2021 (**Statement**) and the additional Directions made by the Commission in its Decision² of 25 August 2021 (**Decision**).
2. This brief submission addresses the following matter:
 - (a) the transitional arrangement proposed by the Commission in the Decision;
 - (b) technical and drafting issues arising from the Draft Determination issued by the Commission with the Decision; and
 - (c) submissions made by other parties on 25 August 2021 in response to the Statement.

TRANSITIONAL ARRANGEMENTS

3. The HSU has read the submissions of the ASU in relation to the transitional arrangements proposed by the Bench in the Decision. We support the arguments of the ASU and the changes proposed to the draft clause in all respects bar one.
4. The employers and employer parties have been on notice since the May 4 Decision³ (**first Decision**) that two hourly minimum payments would apply. The provisional view on Operative Date expressed in the first Decision was that the changes should commence on 1 October 2021.
5. The employer parties and some individual employers have expressed their views, accepted by the Commission, that such a short implementation time for the commencement of significant changes in the industry was unreasonable and sought an extension till at least July 2022.

¹ [Statement - \[2021\] FWCFB 4863](#)

² [Decision - \[2021\] FWCFB 5244](#)

³ [Decision - \[2021\] FWCFB 2383](#)

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6. The concerns raised by the parties related to the time it would take to negotiate changes with both employees and clients.
7. It is abundantly clear from those submissions that parties are aware of the minimum payment period of two hours for any shift or period of shift during a broken shift.
8. The HSU submits there is no reason why responsible employers should or would not be taking this into account when negotiating employment arrangements with new staff at this time. At the very least all new employees should be advised that the minimum payment and therefore roster periods will change to two hours in the near future.
9. The HSU therefore submits that Provisional View 1 should be adopted except that the transitional arrangements should commence on 1 October 2021, the date of the provisional operative date. To be specific the transitional arrangements should only apply to employment arrangements made before 1 October 2021.
10. This in no way hampers the ability of employers to negotiate new agreements with their employees, in fact the opposite, it provides additional time. It doesn't negatively impact employers from employing new part-time employees, even on shorter hours.
11. It does, however, preclude an employer from making a contract with an employee that will be subject to change without advising them of the fact that imminent changes will occur.
12. It acts to ensure that an employee who is employed over the next 10 months will be aware of the new minimum payment provisions that will apply to them. And diminishes the number of employees who could have a unilateral variation to their contract imposed on them after being kept in the dark.
13. The HSU supports the ASU proposed amendments to Draft Determination with the exception of clause (a) which should read:
 - (a) *Clause 10.5A applies in relation to agreements made under clause 10.3(c) before 1 October 2021, where the employee's agreed regular pattern of work includes shifts or periods of work in broken shifts of less than:*
 - (i) *3 hours for social and community services employees (except when undertaking disability services work);*
 - (ii) *2 hours for all other employees.*

TECHNICAL AND DRAFTING MATTERS

14. The HSU is still reviewing the draft determinations and will make some short oral submissions at the Hearing on 1 September. If we intend proposing any variations, we will provide written copies to the Commission and all parties in advance. We do not anticipate make anything beyond minor technical proposals.

Submissions in Reply

15. The HSU made submissions in relation to the remaining matters, remote response, damaged clothing and broken shifts.

16. In particular we point the Commission to our submissions on 3 August⁴ paragraphs 6-35 and again on 25 August⁵ from paragraph 19 concerning Broken shifts; the disutility of working broken shifts and the different and distinct disutility of working unsociable hours.
17. We rely on those submissions and confirm our submissions that shift worker who work broken shifts are subject to two different types of disutility and should be compensated for both.
18. The HSU notes that primarily the parties agree that broken shifts are currently worked by shift workers, that this should continue and express various views about the current interpretation of the award.
19. The HSU reiterates our submission that the Commission should make adjustments to the provisions which ensure clarity and corrects any anomaly, the extent that one currently exists, so that it is clear in the new provisions that shift worker can work broken shifts.
20. The ABI propose that the potential anomaly created by 29.4 be resolved as follows:

29.4 With the exception of social and community services employees when undertaking disability services work and home care employees, shifts are to be worked in one continuous block of hours that may include meal breaks and sleepover
21. The HSU does not support this proposal as it has significantly broader application than the anomaly relating to broken shifts which the ABI purports to be addressing.
22. Both the NDS⁶ at paragraph 38 of their submissions and AiG⁷ at paragraph 43 propose variations which confine the working by shift workers of non-continuous shifts to broken shifts in accordance with clause 25.6. Either of these proposals would be supported by the HSU.

⁴ [20210803 HSU submission](#)

⁵ [20210825 HSU submission](#)

⁶ [20210825 NDS Submissions](#)

⁷ [20210825 AiG Submissions](#)