

FAIR WORK COMMISSION

Matter No.: AM2018/26

4 yearly review of modern awards—Social, Community, Home Care and Disability Services Award 2010

SUBMISSIONS - UNITED WORKERS UNION

1. On 4 May 2021 FWC issued a decision in respect of the *Social, Community, Home Care and Disability Services Industry Award 2010* (**the award**) including a draft determination (**the draft determination**) giving effect to various decisions and provisional views expressed by FWC in the decision¹ (**the decision**). The decision included directions which, among other things, invited interested parties to file any submissions and evidence in respect of the draft determination and the provisional views, the timeframe for which was later extended such that submissions and evidence were required to be filed by 19 July 2021 (**the directions**).
2. This timeframe was further extended by a Statement issued by FWC on 23 July 2021 in which it directed interested parties to file any evidence and submissions in respect of the draft variation determination and provisions views by 3 August 2021².
3. Save for one matter³, the directions did not invite parties to make submissions or file evidence in respect of anything other than its provisional views or the draft determination.
4. UWU makes these submissions in relation to the provisional views and the draft determination.

The approach to this matter

5. Part 13 of the decision is entitled “next steps” and appears to set out a confined process for the finalisation these proceedings. Part 13 and the decision generally appear to treat various matters that have been the subject of the review as either:
 - a. a decided matter (including matters or claims which have been rejected); or
 - b. a matter which is the subject of a provisional view (in respect of which, FWC has invited submissions and evidence to be filed); or

¹ [\[2021\] FWCFB 2383](#).

² [2021] FWCFB 4426

³ At [376] of the decision ABI (and any other interested party) was provided with an opportunity to present further arguments and evidence in support of a proposal to provide a 1 hour minimum engagement for staff meetings and training / professional development;

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- c. a matter, either one which has been decided or one which is the subject of a provisional view, in relation to which a draft determination giving effect to the decision or view has been set out (and in respect of which, FWC has invited submissions and evidence to be filed).
6. UWU submits that the invitation to make further submissions or file evidentiary material in relation matters which properly fall into the category described above at [5(c)] (matters related to the draft determination), in so far as they relate to a decided matter, are confined to the question as to whether the draft determination gives effect to the FWC's decision and does not extend to the substance of the decision itself.
7. Subject to the foregoing, UWU submits that matters which fall into the category described above at [3(a)] and are decided matters are not properly matters which should be the subject of further submissions or evidence in these proceedings.
8. UWU has adopted the approach outlined above in relation to these submissions.

Broken shifts and minimum engagements

9. FWC has made the following decisions, and they are decided matters:
 - a. Casual and part time SACs employees, except when they are undertaking disability work, shall be entitled to a 3 hour minimum payment period⁴;
 - b. All other casual and part time employees shall be entitled to a 2 hour minimum payment period⁵;
 - c. There shall be no review of the part time employment provisions in the award on FWC's own motion, and if any party seeks to vary those provisions they should make an application to do so⁶;
 - d. Clause 25.6 of the award shall be varied to define a broken shift as a shift consisting of 2 separate periods of work with a single unpaid 'break' (other than a meal break (subject to the exception below)⁷;
 - e. A provision should also be made to accommodate the occasional need for a broken shift to involve more than 1 break; subject to:
 - i. A maximum of 2 unpaid 'breaks' per shift; and
 - ii. A 2 break shift would be subject to the agreement of the employee on a per occasion basis;

⁴ The decision at [367]

⁵ The decision at [368]

⁶ The decision at [391]

⁷ The decision at [488]

- iii. A 2 break shift would be subject to a higher payment than payable for a 1 break shift, in recognition of the additional disutility⁸.
- f. Clause 25.6 will also be varied to make clear that where a break in work for an employee (where it be travel time or 'dead time') falls within a minimum payment period, then it is to be counted as time worked and does not constitute a break in the employee's shift for the purposes of clause 25.6⁹.
- g. The case that the 'break' in the broken shift 'must exceed one hour' has not been made out and any prescription as to the duration of the break is premature¹⁰.

10. The draft determination gives effect to FWC's decision about these matters. UWU makes no further submissions in relation to these matters save for the following.

Provisional views

11. Subject to the matters outlined below (particularly those matters relating to the operation of the shift loading), UWU supports the provisional views set out in items 1 – 4 inclusive, at [1266] of the decision.

Shift loadings during a broken shift

12. UWU submits the draft determination should be varied as follows:

"Payment for a broken shift will be at ordinary pay with shift, weekend, public holiday, and overtime, penalty rates to be paid in accordance with clauses 26, ~~and~~ 28, 29 and 34."

13. The reason the draft determination should be varied as proposed is because it may not give effect to the provisional views expressed in the decision or may create ambiguity in relation to the matters that are subject to the provisional views as they relate to the operation of the proposed broken shift allowance (provisional views which are supported by UWU as submitted above). The basis of this submission is set out as follows.

14. Clause 29 of the award provides that employees covered by the award are entitled to shift allowances and penalty rates as follows:

⁸ The decision at [488]

⁹ The decision at [491]

¹⁰ The decision at [505]

- a. An afternoon shift, being a shift which finishes after 8:00PM and at or before 12 midnight, Monday to Friday, a loading of 12.5% of their ordinary rate of pay for the whole of such shift;
 - b. A night shift, being a shift which finishes after 12 midnight or commences before 6:00AM, Monday to Friday, a loading of 15% of their ordinary rate of pay for the whole of such shift;
 - c. A public holiday shift, being a shift of any time worked between midnight on the night prior to the public holiday and midnight of the public holiday, a loading of 150% of their ordinary rate of pay for that part of such shift which is on the public holiday.
15. When a broken shift is worked, these entitlements apply, and clause 25.6(b) of the award, which deals with broken shifts, contains a “cross reference” to the entitlement provided for in clause 29.
16. The purpose of the entitlement to shift allowances and penalty rates is to compensate employees for the disutility associated with working at the times those allowances and penalty rates are prescribed to apply.
17. The provisional views propose that:
- a. The additional remuneration for working a broken shift under clause 25.6 of the SCHADS Award should be an allowance calculated as a percentage of the standard weekly rate¹¹.
 - b. The proportion of the standard rate in the award should be set towards the upper end of the range of other modern awards¹².
 - c. An employee working a ‘1 break’ broken shift under clause 25.6 should receive a broken shift allowance of 1.7% of the standard rate, per broken shift (\$17.10 per broken shift)¹³.
 - d. The broken shift allowance payable for a 2 break broken shift should be set at 2.5% of the standard rate (\$25.15 per broken shift)¹⁴.
 - e. An employee who is a day worker performing work outside of the ordinary span of hours (including as part of a period of work in a broken shift) is entitled to overtime for such work¹⁵.

¹¹ The decision at [547] and [1266]

¹² The decision at [552]

¹³ The decision at [553] and [1266]

¹⁴ The decision at [554] and [1266]

¹⁵ The decision at [556] and [1266]

18. The purpose of the decision to vary the award to introduce a broken shift allowance to compensate employees for the disutility of working a broken shift¹⁶, further expressed by FWC as to be intended to compensate employees for two disutilities, namely:
- a. "...the length of the working day being extended because hours are not worked continuously"; and
 - b. "...the additional travel time and cost associated with effectively presenting for work on 2 occasions."¹⁷
19. The reason FWC expressed a provisional view that the broken shift allowance should be set as a proportion of the standard rate towards the upper end of the range of other modern awards was because:
- a. employees in home care and certain disability services have no "base location" where they start at and finish at each day. The work site for such employees is the home of the client, or locations where the client may need to be taken (such as medical centres, shopping centres, social events).; and
 - b. a broken shift of 2 portions of work and a break will usually mean that the employee will travel between the end of the first portion of the shift and the start of the second. Depending on the duration of the break they may travel home or to the location of their next engagement; and
 - c. with respect to a "2 break broken shift" "the adverse impact on employees (or disutility) of multiple breaks in a broken shift is likely to be greater than a single break between 2 portions of work. Multiple breaks between engagements are likely to result in increased 'dead time'; time for which employees are not paid."
20. The broken shift allowance is not intended to compensate employees for the disutility of working at particular times of the day or days of the week which attract a particular disutility ("shifts"). The shift loadings / penalties do that.
21. Accordingly, an employee who works a broken shift which, because of the time of day worked or the day of the week worked, would attract a shift loading / penalty rate under clause 29 of the award, should be entitled to both the broken shift allowance and the relevant shift loading / penalty.

¹⁶ The decision at [535] and [539]

¹⁷ The decision at [550]

22. In the decision, FWC considered several awards which provide for a broken shift allowance – particularly to determine the appropriate quantum of a broken shift allowance under the award. The way the broken shift allowance provided for in these awards interacts with shift loadings is consistent with the submission made above:

Award	Are employees covered by the award entitled to both the broken shift allowance and a shift loading / penalty rate (if one would ordinarily apply)?
<i>Higher Education-General Staff – Award 2020</i>	Yes
<i>Hospitality Industry (General) Award 2020</i>	Yes
<i>Mining Industry Award 2020</i>	Yes
<i>Security Services Industry Award 2020</i>	Yes
<i>Cleaning Services Award 2020</i>	Yes
<i>Registered and Licensed Clubs Award 2020</i>	Yes
<i>Fitness Industry Award 2020</i>	Yes
<i>Animal Care and Veterinary Services Award 2020</i>	Yes
<i>Restaurant Industry Award 2020</i>	Yes
<i>Children’s Services Award 2010</i>	Yes

23. For the avoidance of doubt, if an employee covered by the award working a broken shift during times / days which would also attract an entitlement to a shift loading / penalty rate is entitled to both the broken shift allowance and the relevant loading / penalty, there is no basis to *reduce* the quantum of the broken shift allowance specified in FWC’s provisional view. The quantum of the broken shift allowance which is the subject of the provisional view was calculated with regard to the particular disutilities associated with working a broken shift in the settings contemplated by this award. If there is opposition to the provisional view with respect to the quantum of the broken shift allowance under this award, the appropriate question to be asked is whether it is appropriate to fix the quantum of the allowance at the upper end of the range of other

modern awards taking into account the particular disutilities associated with working broken shifts under this award – not whether the shift loading also applies. UWU submits the answer to this question is yes, given the circumstances in which employees under this award work broken shifts.

24. The draft determination, as it is currently expressed, removes from clause 25.6(b) the words “with penalty rates and shift allowances in accordance with clause 29 – Shiftwork, with shift allowances being determined by the finishing time of the broken shift”. It is possible the removal of these words was intended simply to streamline the form of expression used in the clause (given that, in any event, clause 29 would continue to apply). However, the removal of those words may create uncertainty that the intention was to remove the entitlement to the shift loadings/penalty rates applicable under clause 29. For the avoidance of uncertainty, UWU submits those words should be effectively re-inserted in the manner submitted above.

Travel Time

25. At [588] of the decision FWC says “as a general proposition we accept that employees should be compensated for the time spent travelling between engagements”. UWU submits FWC reached the correct finding in relation to this issue.
26. However FWC also says:
- “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.”¹⁸*
27. At [589] and [1270] of the decision FWC indicates this matter requires further consideration, and a conference will be convened to discuss the next steps.
28. On 27 May 2021 a conference was convened to discuss this issue (and others). In that conference FWC opined that while not rejecting any particular proposition, the discussion about travel time may be better had after the other elements that impact on it, including minimum engagement, are fully determined.
29. Below UWU submits two other matters – soiled and damaged clothing, and remote response work – are a matters appropriate to be dealt with in a further conference convened by FWC. UWU further submits that, consistent with the FWC’s opinion expressed in the conference on 27 May 2021, that the issue of travel time also be the subject of a further conference. UWU makes no further submissions about this matter

¹⁸ The decision at [588]

at this time, but we seek to reserve our rights to make submissions or lead evidence about this matter in the future.

Roster changes

30. At [617] of the decision and thereafter, FWC discusses a claim made by ABI to amend the award to allow a roster to be altered at any time by agreement between the employer and the relevant employee, provided the agreement is recorded in writing. FWC finds it is “not persuaded that the variation of the SCHADS Award in the terms sought by ABI is necessary for the Award to achieve the modern awards objective¹⁹. This is a decided matter.
31. At [643] FWC expresses a provisional view that clause 25.5(d)(ii) of the award be varied to permit the variation of a roster by mutual agreement in circumstances where the variation is proposed by an employee to accommodate an agreed shift swap with another employee. UWU supports this provisional view and submits that the draft determination (at item 9) gives effect to the provisional view.

Remote response/recall to work

32. The decision determines that a term will be introduced into the award dealing with “remote response work”. This is a decided matter²⁰.
33. Neither the decision or the draft determination expresses a concluded or a provisional view on the form of such a term, in particular because the rate of pay which would be payable to be employee working in a remote response scenario raises complexity. At [738] of the decision FWC says the matter will be the subject of a conference convened by FWC.
34. A conference was held on 27 May 2021 during which the matter was discussed. The matter remains a matter of discussion between the industrial parties and has not been resolved.
35. Similar to the position we outline above in relation to travel time, UWU submits it is appropriate to convene a further conference to attempt to resolve this matter. In addition, we offer the following comments.
36. At [722] of the decision FWC makes the following general observations about the remote response term:
- “1. A shorter minimum payment should apply in circumstances where the employee is being paid an ‘on call’ allowance.*

¹⁹ The decision at [640]

²⁰ The decision at [722]

2. *There is merit in ensuring that each discrete activity (such as a phone call) does not automatically trigger a separate minimum payment.*

3. *A definition of ‘remote response work’ or ‘remote response duties’ should be inserted into the Award. We note that ABI proposes the following definition:*

‘In this award, remote response duties means the performance of the following activities:

(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.’

4. *The clause should include a mechanism for ensuring that the time spent by an employee working remotely is recorded and communicated to their employer.”*

37. With these comments in mind, UWU submits the following questions arise for resolution in relation to this matter:

- a. What should the definition of “remote response work” be? Should it be the definition proposed by ABI or another definition?
- b. What mechanism should be used to ensure that the time spent by an employee working remotely is recorded and communicated to their employer?
 - i. Should the mechanism be designed so strictly as to mean that an employer should be entitled to refuse payment if a timesheet or similar is not provided by an employee?
- c. What mechanism should be used to ensure each discrete period does not trigger a separate minimum payment?
 - i. Should the mechanism be similar to that used in other awards which provide that multiple electronic requests made and concluded within the same minimum payment period are compensated for within that same period, and time worked beyond that period is rounded to the nearest 15 minutes²¹?
- d. Should the minimum payment for employees performing remote response work be different depending on whether they are “on call” or not “on call”, and if so:

²¹ See for example *Nurses Award 2010* clauses 28.5 and 28.6.

- i. What should the minimum payment be for an employee who is “on call” (and in receipt of the on call allowance)? Should it be 30 minutes with respect to for remote response work performed between 6.00am and 10.00pm and 1 hour for work performed between 10.00pm and 6.00am (FWC’s provisional view)²²?
 - ii. What should the minimum payment be for an employee who is not “on call”?
- e. Should the rate of pay for employees performing remote response work be different depending on whether they are “on call” or not “on call”, and if so:
 - i. What should an employee who is on call (and in receipt of the on call allowance) be paid when they perform remote response work? Should it be the rate of pay they would have ordinarily received for the work performed under the award (taking into account shift loadings, penalty rates, allowances and other payments)? Or should it be some other payment?
 - ii. What should an employee who is on call (and in receipt of the on call allowance) be paid when they perform remote response work? Should a higher payment apply than the rate of pay the employee would have ordinarily received for the work performed under the award, such as is the case with some other awards, when overtime rates apply to such work²³?

Client cancellation

38. FWC finds as follows and UWU submits the following are decided matters:

- a. There shall be a client cancellation clause in the award²⁴;
- b. The client cancellation term should apply to both home care and disability support sectors²⁵;
- c. Broadly speaking, the client cancellation term should remove the option of withholding payment from an employee in the event of a client cancellation (subject to concerns expressed in relation to the timeframe within which an

²² The decision at [733] and [1273].

²³ See for example the *Nurses Award 2010*; *Contract Call Centers Award 2020*; *Telecommunications Services Award 2020*; *Local Government Award 2020*; *Victorian Local Government Award 2015*; *Water Industry Award 2020*.

²⁴ The decision at [792] – [794]

²⁵ The decision at [803]

employee is notified that their rostered shift has been cancelled) (see further below)²⁶;

- d. The client cancellation clause should provide that where the employer elects to provide make up time:
 - i. The make up time must be rostered in accordance with clause 25.5(a)
 - ii. The make up time must be rostered to be performed within 6 weeks of the date of the cancelled shift;
 - iii. The employer must consult with the employee in accordance with the award regarding when the make up time is to be worked prior to rostering the make up time; and
 - iv. The make up shift can include work with other clients in other areas of the employer's business provided the employee has the skill and competence to perform the work²⁷.

39. At [830] and [1276] FWC appears to give effect to its decision outlined above by finding that a clause suggested by ABI should be adopted subject to two amendments. The first amendment is the subject of a provisional view and the second amendment is a decided matter.

40. The first amendment to the clause suggested by ABI is dealt with at [830] and [1276] where FWC expresses a provisional view that the clause it decided to adopt in replacement of clause 25.5(f) should be varied as follows:

- e. to provide that the make up time arrangement can only be used where the employee was notified of the cancelled shift at least 12 hours prior to the scheduled commencement of the shift; and

41. The second amendment to the clause suggested by ABI is dealt with at [818], [830] and [1276] where FWC finds that the make up time must be rostered to be performed with 6 weeks, not 3 months of the date of the cancelled shift.

42. FWC also appears to find that the client cancellation term should address an explicit statement that the employer may only require an employee to work make-up time where the employer is permitted to charge the client a cancellation fee²⁸. Sub-item (f)(vi) of item 10 of the draft determination gives effect to this finding, and UWU submits it is appropriate this be included in the variation made to the award.

²⁶ The decision at [815] – [816]

²⁷ The decision at [822] – [823]

²⁸ The decision at [826] – [827]

Clothing and equipment

43. FWC finds that an award variation is warranted to provide for the reimbursement of reasonable costs associated with the cleaning or replacement of personal clothing which has been soiled or damaged in the course of employment. This is a decided matter²⁹.
44. At [889] of the decision FWC directed parties to confer about the form of suitable variation to give effect to this decision, and said that a conference would be convened to facilitate those discussions.
45. On 27 May 2021 a conference was convened to discuss this issue (and others). The upshot of that conference was that parties were to continue to discuss the matter. Those discussions have continued and are continuing. Accordingly, UWU submits that FWC should convene a further conference for parties to continue (and resolve) this matter. UWU makes no further submissions about this matter at this time, but we seek to reserve our rights to make submissions or lead evidence about this matter in the future.

Overtime for part-time workers

46. HSU proposed two changes to the award in relation to overtime:
- f. The first variation proposed was to provide that casual and part time employees are paid at overtime rates for all time worked in excess of 8 hours per day, instead of 10 hours per day (**the first proposed variation**); and
 - g. The second variation proposed was to provide that part time employees are paid at overtime rates for all time worked in excess of the hours agreed to at the commencement of employment (in accordance with the award) (**the second proposed variation**).
47. FWC made a finding against the first proposed variation. This is a decided matter³⁰.
48. FWC made a finding against the second proposed variation. This is a decided matter³¹.
49. However FWC expressed provisional views to make two variations to the award, namely:

²⁹ The decision at [882] and [1279]

³⁰ The decision at [964]

³¹ The decision at [973]

- h. To make it clear that working additional hours is voluntary (**the first provisional view**)³²; and
- i. To introduce a mechanism whereby a part-time employee who regularly works additional hours may request that their guaranteed hours be reviewed and increased, and their employer cannot unreasonably refuse such a request (**the second provisional view**)³³.

50. The UWU supports the second provisional view and submits that item 1 of the draft determination gives effect to this provisional view.

Voluntary overtime

51. UWU remains concerned that a variation which simply confirms employees' rights to refuse to work additional hours (or to provide that working additional hours is voluntary) does not provide a fair and relevant minimum safety net for employees working in the settings contemplated by this award.
52. Clause 10.3 of the award provides that before commencing employment, the employer and a part time employee will agree in writing on a regular pattern of work including the number of hours to be worked each week and the days of the week the employee will work and the starting and finishing times each day (**the guaranteed hours**)³⁴.
53. However a part time employee covered by this award is not entitled to be paid overtime when work is performed beyond the guaranteed hours unless they work beyond 38 hours in the course of a week or 76 hours in the course of a fortnight or beyond 10 hours in a day³⁵.
54. Working beyond the guaranteed ordinary hours is voluntary, and FWC has expressed a provisional view that the award should make this clear by providing that "nothing ... requires an employee to agree to any change in their guaranteed hours ..."³⁶.
55. In the decision FWC found (a) that the evidence clearly establishes that employers regularly offer part-time employees work in excess of their guaranteed hours³⁷; but

³² The decision at [987]

³³ The decision at [987]

³⁴ Item 1 of the draft determination appears to propose to vary clause 10.3(c)(i) in the manner depicted by the mark ups as follows: "a regular pattern of work including the number of ordinary hours to be worked each week (the guaranteed hours), and ...". UWU supports this proposed amendment.

³⁵ Clause 28.1(b) of the Award

³⁶ The decision at [987] and the draft determination at item 1, proposed clause 10.3(f)

³⁷ The decision at [973]

(b) “there is no evidence to suggest that part-time employees are being forced to work additional hours”³⁸.

56. UWU does not cavil with these findings. However FWC can find, and UWU submits should find that employees working under this award often work additional hours because they feel obliged to – because they feel a sense of professional and caring responsibility - and as such free consent to accept or reject the working of such hours (which occurs frequently) often may not exist, whatever the award says.

57. UWU understands a proposal will be made to introduce a mechanism within the award similar to that which exists in some other awards, which would provide that an employee who has not signed a consent form to perform additional hours at ordinary rates of pay (up to the relevant limits) would, if they did perform additional hours be paid for that work at overtime rates. UWU supports that proposal.

24-hour-care clause

58. At [1012] and [1283] FWC confirms a previously expressed provisional view that clause 25.8 of the award, which is a provision relating to 24 hour care, should be retained in the award, but that it requires amendment. This is a decided matter.

59. At [1029] FWC finds that it is “appropriate” to include an entitlement to an additional weeks’ annual leave for employees who regularly work 24 hour care shifts. In relation to the threshold as to what constitutes “regular”, at [1034] FWC finds that the threshold should be less than the ten 24 hour care shifts proposed by ABI, but more than the 4 shift threshold proposed by the Unions, and that the threshold should be eight 24 hour care shifts in any 12 month period. This is a decided matter.

60. At [1283] FWC says it has decided to vary clause 25.8 of the award to give effect to these decisions, in the manner set out therein (and as set out in item 13 of the draft determination). FWC also says it has decided to make an amendment to clause 31.2 of the award, which is set out in sub-item 31.2(b) of item 15 of the draft determination, to give effect to its decision in relation to additional leave for employees who regularly work 24 hour care shifts.

Sleepover

61. At [1114] and [1285] of the decision FWC decides to make variations to clause 25.7 of the award, which relates to sleepover. This is a decided matter, and the decision is given effect to by item 12 of the draft determination.

³⁸ The decision at [972]

Equal Remuneration Order issue

62. At [1287] of the decision FWC decides to include ERO rates as a note to clause 15 of the award. This is a decided matter and is given effect to by item 6 of the draft determination.

Operative date of the proposed variation

63. At [1289] FWC expresses the provisional view that an operative date for the proposed variations of 1 October 2021 is appropriate.

64. UWU supports this provisional view. In support of this provisional view, UWU submits as follows:

- a. A reasonable delay between the finalisation of the variations flowing from the decision and their operative date is appropriate.
- b. UWU concedes that some of the variations to the award arising from the decision may require adjustment in relation to work practices, administrative systems and may give rise to operation issues. The most significant variations which may require such adjustment are:
 - i. The variations to minimum engagement
 - ii. The variations to broken shifts, particularly with respect to the variation which would limit broken shifts to only a “1 break” broken shift (or a “occasionally” a ‘2 break’ shift);
 - iii. The variation to include a remote response work clause;
 - iv. The variation to include a client cancellation clause;
- c. The decision was handed down by FWC on 4 May 2021. In the decision, the four matters referred to above were decided matters. While parties were invited to make submissions or file evidence in relation to the precise form of the variations to the award to give effect to those decisions (with respect to the draft determination, which had also been published) the prospect that the award would be varied so as to give effect to those decisions should have been treated by parties a decided matter.
- d. The decision also put parties on notice that FWC’s *provisional* view was that the date upon which those decided matters would be given effect would be 1 October 2021.
- e. Accordingly, if an operative date of 1 October 2021 is adopted by FWC in relation to the proposed variations, parties have had about five months from

the date the decision was published, to the date the changes will begin to have effect. UJU submits this is a significant period of time for parties to make such adjustments as are required to implement the variation. It is difficult to conceive of a reason why more than five months to implement adjustments in relation to work practices, administrative systems or to resolve operational issues might be required. We note further that the proceedings have been on foot for some years. Accordingly, it should have been in the contemplation of the parties that changes to the award such as those that will be made as a result of FWC's decision were at least possible well before 4 May 2021.

- f. If there are limited matters arising from the decision that are not determined they are not matters which justify the delay of the operation of other variations found by FWC to be warranted. FWC could and should give effect to those variations that are determined using an operative date of 1 October 2021 (where undetermined matters could be given effect to at a later date).

UNITED WORKERS UNION

3 August 2021