

From: Kyle Scott <Kyle.Scott@ablawyers.com.au>

Sent: Thursday, 2 September 2021 2:53 PM

To: AMOD <AMOD@fwc.gov.au>

Cc: Chambers - Ross J <Chambers.Ross.j@fwc.gov.au>

Subject: AM2018/26: Social, Community, Home Care and Disability Services Industry Award 2010

Dear Associate,

AM2018/26: Social, Community, Home Care and Disability Services Industry Award 2010

I refer to the above matter and to the Direction issued yesterday.

In accordance with Item 3 of the Directions, we set out our clients' proposed amendment to clause 10.3(f) of the Draft Determination and short reasons in support of the proposed amendment.

Proposed amendment to clause 10.3(f) of the Revised Draft Determination

1. At [987] of the 4 May 2021 Decision, the Full Bench expressed the provisional view that the Award should be varied to make it clear that working additional hours is voluntary. That provisional view does not appear to have been challenged by any party in subsequent submissions.
2. There appears to be a disconnect between the provisional view and the proposed drafting.
3. Item 1 of the Draft Determination proposes a new clause 10.3(f) which provides that:

Nothing in clause 10.3(e) requires an employee to agree to any change in their guaranteed hours.

4. The drafting fails to give effect to the provisional view because it relates to 'agreed changes' under clause 10.3(e) rather than 'additional hours'.
5. Our clients propose the following alternate drafting:

An employer must not require a part-time employee to work additional hours in excess of their guaranteed hours. However, an employee may agree to work hours that are additional to their guaranteed hours.

We trust this short note assists.

Yours sincerely

Kyle Scott

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