DECISION

Fair Work Act 2009
s 158—Application to vary a modern award if necessary to achieve modern awards objective
s 160—Application to vary a modern award to remove ambiguity or uncertainty or correct error

Application by the Australian Industry Group
(AM2023/28)

Application by Parkerville Children and Youth Care Incorporated
(AM2024/16)

Application by Australian Municipal, Administrative, Clerical and Services Union & Others
(AM2024/30)

SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES INDUSTRY AWARD 2010
[MA000100]

Social, community, home care and disability services

VICE PRESIDENT GIBIAN
DEPUTY PRESIDENT DOBSON
COMMISSIONER PERICA

SYDNEY, 13 APRIL 2026

Applications to vary the Social, Community, Home Care and Disability Services Industry Award 2010 – Rostering of work for sleepover periods – Further submissions made as to form of variations to be made – Determination issued – Modern award to be varied.

Introduction

[1] On 24 December 2025, this Full Bench handed down its decision in *Re Social, Community, Home Care and Disability Services Industry Award 2010* [2025] FWCFB 292 (the **December Decision**). That decision concerned a number of applications to vary the *Social, Community, Home Care and Disability Services Industry Award 2010* (the **SCHADS Award**) in relation to the rostering and pay arrangements relating to sleepover periods. The Full Bench decided to vary the SCHADS Award in the manner described in the decision and published a draft determination setting out the variations it proposed.

[2] The Full Bench invited submissions from the parties in relation to the form of the proposed variations having regard to its decision. Directions were issued to provide for

submissions to be filed. The directions were later varied to provide for additional time for submissions to be filed and for the filing of submissions in reply.

[3] Submissions were filed by the Australian Industry Group (the **Ai Group**), Business NSW and Australian Business Industrial (**Business NSW and ABI**) and the Australian Municipal, Administrative, Clerical and Services Union, the Health Services Union, the Australian Workers' Union, the United Workers' Union and the Community and Public Sector Union (collectively, the **Joint Unions**) between 13 February and 9 March 2026. Parkerville Children and Youth Care Incorporated supported the submissions of the Ai Group but did not make a separate submission.

[4] It is convenient to address the issues raised by the parties in turn.

Proposed clause 25.1(c)

[5] Proposed clause 25.1(c) set out in the Full Bench's draft determination is in the following terms (emphasis added):

> (c) By agreement between the employer and employee, the ordinary hours in clause 25.1(a) may be worked up to 12 hours per shift in circumstances in which part of the shift is performed immediately before and part of the shift immediately after a sleepover period in accordance with clause 25.7 provided that the separate period of work before or after the sleepover shall be up to a maximum of eight hours.

[6] The Ai Group expresses concern that the underlined portion of the draft clause is potentially unclear, or less clear than the Commission's intention as explained in its decision. Business NSW and ABI similarly submit that it was not the Full Bench's intention to prohibit longer periods of work entirely and that the drafting of the draft determination might be read as having that effect.

[7] The Ai Group submit that clause 25.1(c) should instead read:

> By agreement between the employer and employee, the ordinary hours in clause 25.1(a) may be worked up to 12 hours per shift in circumstances in which part of the shift is performed immediately before and part of the shift immediately after a sleepover period in accordance with clause 25.7. In such circumstances, no more than eight ordinary hours of work may be performed before or after a sleepover. ~~provided that the separate period of work before or after the sleepover shall be up to a maximum of eight hours.~~

[8] Business NSW and ABI submit that the proposed clause 25.1(c) should be incorporated into a redrafted clause 25.1(b) such that clause 25.1(b) would read:

> (b) Notwithstanding clause 25.1(a), by agreement between an employer and employee, the ordinary hours in clause 25.1(a):
>
> (i) may be worked up to 10 hours per shift; and
>
> (ii) may be worked up to 12 hours per shift where the shift involves a sleepover (in accordance with clause 25.7) and work is performed both immediately before

> and immediately after the sleepover period, save that the maximum number of ordinary hours to be worked before or after the sleepover period is 8 hours.

[9] The Joint Unions initially proposed that substantial additional provisions be included in clause 25.1 to provide what may be described as procedural safeguards to ensure that an agreement to extend the ordinary hours in a shift to 12 hours when part of that period occurs before and part after a sleepover is genuinely entered into and documented. The Joint Unions subsequently indicated that they did not, at this stage, press for all of the amendments they proposed and that those matters could be dealt with in the subsequent stage of the proceedings addressing the remainder of their application in AM2024/30.

[10] The Joint Unions submit that, at this stage, the word 'written' should be inserted before the word 'agreement' at the commencement of the proposed clause 25.1(c) and that a new subclause be inserted as follows:

> An employee has a workplace right to refuse a request by an employer to enter into an agreement for the purposes of clause 25.1(c) above.

[11] Other than accepting that there is merit in the proposed clause 25.1(c) being broken into two sentences to add clarity, the Joint Unions oppose the amendments proposed by the Ai Group and Business NSW and ABI. The Joint Unions submit that changing the reference from 'eight hours' to 'eight ordinary hours' would represent a substantive change which is at odds with the December Decision and would mean it would be open to employers to roster employees to work an unlimited number of hours immediately before and/or after a sleepover period so long as only eight of those hours are paid at an ordinary rate.

[12] In relation to the amendments proposed by the Ai Group and Business NSW and ABI, we will amend the proposed clause substantially in the form proposed by the Ai Group. The new clause will read:

> (c) By agreement between the employer and employee, the ordinary hours in clause 25.1(a) may be worked up to 12 hours per shift in circumstances in which part of the shift is performed immediately before and part of the shift immediately after a sleepover period in accordance with clause 25.7. In such circumstances, a maximum of eight ordinary hours of work may be worked before or after a sleepover period. ~~provided that the separate period of work before or after the sleepover shall be up to a maximum of eight hours.~~

[13] A consequent amendment will be made to proposed clause 28.1(b)(iv) to also refer to ordinary hours of work.

[14] To the extent that the Joint Unions submit that they understood the December Decision to have intended that the clause would impose a prohibition upon working more than eight hours before or after a sleepover (including overtime), this submission does not read the decision correctly. At paragraph [189](b), the Full Bench summarised its determination in this respect as follows:

> (b) Given the nature of a sleepover period, and the potential benefits of the same employee performing work immediately before and after a sleepover period, the SCHADS Award should permit the employer and employee to agree to a longer period of ordinary hours for a shift if the shift includes a sleepover period. Clause 25.1 should be varied to provide that the employer and

> employee may agree that the ordinary hours of a shift performed partly before and partly after a sleepover period can be up to 12 hours provided that the maximum period of work either before or after the sleepover shall be eight hours. For example, an employee could be rostered to work eight hours prior to the sleepover and four hours after the sleepover, or six hours before and six hours after a sleepover. Clause 28.1(b) should also be varied such that a part-time or casual employees could work up to 12 hours without the payment of overtime where the shift includes a period immediately before and after a sleepover.

[15] Read in context, it is apparent that the reference to a maximum period of 'eight hours' on either side of a sleepover period is intended to refer to ordinary hours. This is consistent with the acknowledgment at paragraph [130] that no party submitted that 'care workers are prohibited from working an eight hour shift prior to a sleepover period and another eight hour shift immediately following the sleepover' and at paragraph [189](c) that a longer extension shift could be worked following a sleepover period provided that any additional period of work is paid at overtime rates.

[16] In relation to the amendments proposed by the Joint Unions, we see potential merit in the agreement contemplated by clause 25.1(c) to be in writing. We expect that responsible employers would ensure that any such agreement is in writing. However, a number of existing provisions of the SCHADS Award provide for variations to conditions to be made by agreement without requiring the agreement to be in writing, including the immediately preceding clause being clauses 25.1(b) (see also clauses 25.4(b), 25.5(d)(ii)(A), 25.6(b) and 25.8(b)). In those circumstances, we consider that the question of whether the agreement should be required to be in writing should be considered together with the other amendments proposed by the Joint Unions to be dealt with in the subsequent stage of the proceedings. We indicate that, at that time, we will also give consideration to whether other clauses providing for an agreement to be made with an employee should also require those agreements to be in writing.

[17] As to the proposed new clause stating that the refusal of a request to enter an agreement under clause 25.1(c) is a workplace right, this amendment appears to be designed to ensure that adverse action is not taken against employees for refusing their employers' request to enter into an agreement. We are not convinced it is necessary or appropriate to include such a provision at this time on the evidence presently before the Commission. We would regard it as clear from the terms of the proposed provisions that an employee is entitled to refuse to agree to extend their ordinary hours of work in a shift and that adverse action taken because of such a refusal is likely to give rise to a breach of s 340(1) of the *Fair Work Act 2009* (Cth). We are inclined to consider this issue, if it is pressed, together with the other procedural safeguards proposed by the Joint Unions in the subsequent stage of the proceedings.

Proposed clause 25.4

[18] Proposed clause 25.4(c) set out in the draft determination is in the following terms:

> (c) A period of sleepover in accordance with clause 25.7 does not constitute a break within the meaning of this clause and a period of work performed immediately before and immediately after a sleepover period shall be treated as part of the same shift.

[19] The Ai Group submits that, when read with clause 25.4(a), the new provision could inadvertently give rise to an issue as to whether an employer would be in contravention of

clause 25.4(a) where an employee performs a 'period of work' on both sides of a sleepover. The Ai Group submits that the variations made to the Award should make clear that clause 25.4(a) does not prevent an arrangement that results in work being performed on both sides of a sleepover period.

[20] The December Decision contemplates that an employee may perform periods of work immediately before and immediately after a sleepover period. It was not intended that this arrangement would give rise to, or potentially give rise to, a contravention of clause 25.4(a). The Joint Unions appear to accept this proposition and submit that the concern can be addressed by deleting the words 'or period of work' from clause 25.4(a). We do not consider removing the words 'or period of work' from clause 25.4(a) is an appropriate solution. That step might potentially have unintended and unanticipated consequences.

[21] We consider the appropriate step is to add a new subclause at the end of clause 25.4 which will provide:

> (d) Clause 25.4(a) does not prevent an employee from performing work immediately before and immediately after a sleepover period (as provided for in clause 25.7) where the periods of work include ordinary hours which are part of the same shift.

[22] Business NSW and ABI submit that the wording of the proposed change to clause 25.4(b) is potentially confusing. Although those bodies welcome the removal of the word 'contiguous', they say the proposed wording is still complex and confusing. It is proposed that the subclause instead read:

> Notwithstanding the provisions of clause 25.4(a), by agreement between the employee and employer, the break between two shifts, where one of which involves a sleepover [period], may be reduced to be not less than 8 hours.

[23] We do not accept that this change should be made. No other party raised a concern in relation to the clarity of clause 25.4(b) as it was proposed in the draft determination. Clause 25.4(b) as presently contained in the SCHADS Award and as proposed in the draft determination deals with the break between one shift and the start of another shift which occurs before a sleepover and a shift commencing after a sleepover and the following shift. We consider the wording proposed in the draft determination is appropriate.

[24] In relation to clause 25.4, Business NSW and ABI submit that the proposed clause 25.4(c) would be improved by separating the two parts of the clause into separate clauses. The Joint Unions agree that this change would improve the clarity of the provision. We accept the submission and although we consider it sufficient that the proposed clause 25.4(c) be broken into two sentences in the following terms rather than separate subclauses:

> (c) A period of sleepover in accordance with clause 25.7 does not constitute a break within the meaning of this clause. Periods of work performed immediately before and immediately after a sleepover period shall be treated as part of the same shift.

[25] Finally, we note that Business NSW and ABI submit that the words 'be treated as' are imprecise and should be replaced by the word 'constitute' in what will be the second sentence of clause 25.4(c). We are unable to discern any difference in meaning between the two

formulations and consider that the provision that periods of work before and after a sleepover will be treated as part of the same shift is sufficiently clear.

Proposed clause 28.1

[26] The Full Bench proposed to insert the words ‘or shift’ after the word ‘day’ in clauses 28.1(a) and 28.1(b)(ii), to insert new clauses 28.1(b)(iii) and 28.1(b)(iv), and to renumber the remaining provisions.

[27] Both the Ai Group and Business NSW and ABI made submissions in relation to those aspects of the draft determination. The Ai Group’s submissions were relatively narrow and primarily directed at the proposed clauses 28.1(b)(ii) and 28.1(b)(iii). The submissions of Business NSW and ABI were lengthy and expressed in combative and somewhat histrionic terms.

[28] Business NSW and ABI submit that no proper merit or evidentiary basis was advanced to support or justify the variations; the December Decision does not disclose adequate reasons for determining that aspect of the Joint Unions’ claim; the variations substantively alter existing entitlements and impose additional costs for employers that are not fair or justified; and, to the extent that the variations are intended to resolve an ambiguity or uncertainty, they do not achieve that objective and introduce further ambiguity and complexity. The submissions make an array of factual assertions without any evidentiary support and attempt to provide worked examples of how they allege the clauses as drafted would operate in practice. Business NSW and ABI did not demonstrate how the posited patterns of hours could be worked consistently with the SCHADS Award, much less provide any evidence that those patterns are, in fact, worked by any employee. Business NSW and ABI were provided with the opportunity to indicate if they wished to file further evidence and declined to do so.

[29] It must be observed that, from the outset of the proceedings, the application of the Joint Unions sought to insert the words ‘day or shift’ in clauses 28.1(a) and 28.1(b). In lengthy written and oral submissions advanced in the substantive proceedings, none of these matters were raised. To the extent that Business NSW and ABI responded to that aspect of the Joint Unions’ claims, they contented themselves with asserting that they did not understand the basis of the claim. None of the adverse consequences now asserted to be caused were referred to. The new submissions are advanced for the first time now without explanation or apology. The manner in which Business NSW and ABI have conducted themselves in this aspect of their submissions is unfortunate. Nonetheless, the content and operation of a modern award applying in any industry or occupation is, obviously, important. It is, accordingly, necessary to consider the matters raised by Business NSW and ABI albeit that they are raised late and in an unsatisfactory manner.

[30] The reason the Joint Unions sought the insertion of the words ‘or shift’ in clause 28.1(a) and 28.1(b)(ii) was apparent from their application and explained in submissions. It was to ensure that overtime is payable when an employee performs work in excess of their ordinary hours on a shift where the shift includes work prior to and following a sleepover period. The existing drafting of clause 28.1(a) and 28.1(b)(ii) arguably would not achieve that outcome because the work would be performed on different days. For example, counsel for the Joint Unions explained in oral opening submissions (Transcript, 4 November 2024, PN257):

> […] if there was ambiguity, we seek the insertion of the new clause 25(4)(d) and we also seek the amendments to clause 28.1(a). That's at paragraph 3 on page 31 and also paragraph 4 on page 31 which seeks the amendment of 28.1(b)(ii). And these amendments merely reflect the fact that in a sleep – where there is a period of active duty either side of the sleepover, the period of work straddles across multiple days and in those circumstances for the purposes of calculating overtime the reference to a day is not – is somewhat ambiguous and it should be clarified by insertion of the word 'shift'.

[31] That is, the Joint Unions' case for insertion of the words 'or shift' rested on the submission that an employee should not lose their entitlement to overtime for working beyond the maximum shift length merely because a period of work straddles two calendar days.

[32] Business NSW and ABI appear to (now at least) understand that this represents the purpose of the variation sought by the Joint Unions and have no objection to that objective being achieved. In their most recent submissions, Business NSW and ABI say that '[w]e do not have any great difficulty with the logic or merit of that proposition'. The dispute concerns only the form of the variation to be made. There is no dispute as to the merit of the proposition advanced in support of the change. The submission advanced by Business NSW and ABI is that, by referring to a 'day or shift', the wording of the proposed provisions may produce a 'dual entitlement' such that a part-time employee would be entitled to overtime whenever they work more than 10 hours in a shift and if they work more than 10 hours in a day.

[33] The Ai Group also raise a concern that the words 'day or shift' in clause 28.1(b)(ii) could give rise to a dual entitlement. The premise of the submission is wrong. We accept the submission made by the Joint Unions that the word 'or' in the expression 'day or shift' is used in a disjunctive sense such that an employee is only entitled to overtime for time worked in excess of 10 hours *either* per day or per shift, and not both. That reading avoids the consequence of any double entitlement to overtime.

[34] The example provided by Business NSW and ABI in their further submission dated 27 February 2026 was as follows:

Shift	Start time	Finish time	Hours
1	Mon 20:00	Tues 07:00	11
2	Tues 20:00	Wed 07:00	11
3	Wed 20:00	Thurs 07:00	11
		Total	**33**

[35] Business NSW and ABI suggest that on a 'per day' method a part-time employee working that pattern of hours would receive only two hours of overtime whereas on a 'per shift' method the employee would receive three hours of overtime. With respect, that outcome represents the purpose of the variation that Business NSW and ABI accept has 'logic and merit'.

Where a part-time employee is entitled to overtime for work beyond 10 hours, the employee should be entitled to three hours overtime having worked three 11 hour shifts. The addition of the words 'or shift' in clause 28.1(b)(ii) ensures that the employee is not denied the entitlement to overtime for an 11 hour shift simply because the shift spans two calendar days.

[36] In order to avoid any uncertainty in the operation of the provision, the Joint Unions suggest that the word 'either' could be inserted to avoid any insinuation that a part-time employee, for example, would be entitled to overtime for time worked beyond 10 hours on both a day and a shift. For example, it was suggested the clause 28.1(b)(ii) should read:

> (ii) All time worked by part-time or casual employees which exceeds 10 hours either per day or per shift, will be paid at the rate of time and a half for the first 2 hours and double time thereafter, except on Sundays when overtime will be paid for at the rate of double time, and on public holidays at the rate of double time and a half.

[37] We accept that is a sensible amendment to improve the clarity of the provision contained in the draft determination prepared by the Full Bench and should also apply to clauses 28.1(a) and 28.1(b)(iii).

[38] In addition, Business NSW and ABI submit that the variation is such that 'it will be incredibly difficult for payroll systems to be properly configured to apply these proposed new overtime rules' and 'it will accordingly be virtually impossible for employers to implement the proposed new rules and achieve compliance with the Award'. As we have observed, no evidence of any description is before the Commission to support those assertions. No employer, or other employer group, made a submission to the same effect. Business NSW and ABI were provided an opportunity to put forward evidence to support them. At the case management hearing conducted on 20 February 2026, the representative of Business NSW and ABI said (Transcript, 20 February 2026, PN217):

> Perhaps we could do this, Vice President, because I know I've indicated at the moment - like, we've put in the submission that we've put in. I accept that they're assertions unsupported by any evidence, and I've said the appropriate thing to do would be to grant leave for my clients to effectively put on evidence about this issue. Now, it may be that I'm wrong about all of this. It may be that the feedback I've had is misconceived or is not correct, so perhaps if I'm given a short window of seven days or 14 days to confirm whether or not we do make that application, then at that point the Full Bench can consider it, because it may not be needed.

[39] No evidence was subsequently filed, but the submission was not withdrawn. In the absence of any evidence, we cannot accept that the variation in the form we now propose will cause substantial difficulties for payroll systems used by employers.

[40] The Ai Group made a separate submission. The Ai Group submits that the words 'day or shift' in the proposed clause 28.1(b)(iii) are confusing and potentially give rise to a different outcome to the one contemplated by the December Decision. The Ai Group submit that clause 28.1(b)(iii) should provide as follows and the proposed clause 28.1(b)(iv) should not be included:

> (iii) Despite clause 28.1(b)(ii), where an employee is required to work in excess of the 12 hour period provided by clause 25.1(c), all time so worked will be paid at the rate of time and a

> half for the first 2 hours and double time thereafter, except on Sundays when overtime will be paid at the rate of double time, and on public holidays at the rate of double time and a half.

[41] The proposal has the virtue of brevity and apparent simplicity. However, we do not consider that it appropriately addresses the different permutations of working arrangements that are possible. In particular, a 12 hour shift including periods of ordinary hours before and following a sleepover period is only possible by agreement with an employee and, absent agreement, overtime is payable after 10 hours for a part-time or casual employee. Accordingly, we consider that it is appropriate to retain the proposed clauses 28.1(b)(iii) and 28.1(b)(iv) with the amendments referred to in paragraph [35] and [36] of this decision.

Proposed clause 29.3(d)

[42] The proposed new clause 29.3(d) will provide that, where an employee is rostered to perform work immediately before and immediately after a sleepover period, the portion of work prior to and following the sleepover will be treated separately for the purposes of determining shift loadings. Business NSW and ABI propose the inclusion of an example of the operation of the provision. Those parties indicate that the intention is to improve readability of the provision for employers and employees and not to alter the substantive effect of the variation determined by the Full Bench.

[43] We accept that there is merit in the suggestion that an example of the operation of the new provision should be provided. The example suggested aligns with the type of example provided in clause 25.6(e) with respect to the application of shift penalties in circumstances in which an employee performs a broken shift. We will include an example in clause 29.3(d) broadly in the terms proposed by Business NSW and ABI.

Full Court decision in *FWO v Jats Joint Pty Ltd*

[44] On 20 March 2026, the Full Court handed down its decision in *Fair Work Ombudsman v Jats Joint Pty Ltd* [2026] FCAFC 25. The Full Court dismissed the appeal from the decision of Stellios J in *Jats Joint Pty Ltd v Fair Work Ombudsman* [2025] FCA 743; (2025) 342 IR 328. The first instance decision was considered by the Full Bench. The Full Bench indicated, at paragraph [69], that it was appropriate to approach the matter on the basis that the decision of the Federal Court was correct. In circumstances in which the appeal was dismissed, the Full Court decision does not require any reconsideration of the December Decision.

[45] The Full Court (at [42]) expressed the view that clause 25.4(b), as it currently stands, indicates that a sleepover is regarded as a 'break' between shifts. The variation we propose by adding the proposed clause 25.4(c) will clarify that a sleepover period is not to be regarded as a break within the meaning of the clause. In this respect, we note that the Full Court acknowledged (also at [42]) that, in an ordinary sense, it may seem unnatural to regard a period of sleepover at a client's premises as a break between periods of work. The Full Court otherwise said (at [28] and [40]) that the provisions of the SCHADS Award lack clarity and precision and that this situation is 'regrettable in circumstances where the SCHADS Award applies to an important sector of the Australian economy and the community more broadly'. These observations support the necessity and urgency of the variations being made.

Operative date

[46] The Ai Group submit that the variations proposed by the Full Bench are likely to require many employers to implement changes to payroll systems and to rosters, including in a manner that will give rise to an obligation to consult affected employees under clause 8A of the SCHADS Award. It submits that these matters, cumulatively and in combination, warrant a delayed operative date of at least three months in order to afford industry an opportunity to consider the new terms of the SCHADS Award and their implications, assess how to respond to them, by way of changed rostering arrangement and associated matters, and to implement any changes. The Joint Unions submit that a period of one month is sufficient.

[47] Although there is no evidence before the Commission as to the steps which are likely to be required for employers to adapt to the variations, we accept that some delay in the operative date is warranted. That matter must be balanced with the fact that the existing provisions of the SCHADS Award dealing with sleepovers are accepted to be ambiguous and uncertain and employers have, over the last few years, been operating in an environment in which the effect of the provisions has been heavily contested. The evidence indicates that many employers had changed rostering practices to align with advice provided by the Fair Work Ombudsman which has now been found to be wrong by the Federal Court. There is some urgency in ensuring that the operation of the SCHADS Award is clarified going forward.

[48] In the circumstances, we consider that it is appropriate that the variations commence on 1 June 2026. A determination varying the SCHADS Award in the manner we have described will be made together with this decision.

VICE PRESIDENT

Appearances:

R Bhatt, Special Counsel, for the Australian Industry Group.
A Crocker, of counsel, for Parkerville Children and Youth Care Incorporated.
F Anwar, of counsel, for the Joint Unions.
K Scott, Director of Australian Business Lawyers and Advisers, for Business NSW and Australian Business Industrial.

Hearing details:

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Sydney (using Microsoft Teams).

Final written submissions:

9 March 2026.

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