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**Sent:** Monday, March 18, 2024 5:06 PM

**To:** Awards <[Awards@fwc.gov.au](mailto:Awards@fwc.gov.au)>

**Subject:** AM2023/21 - Making Awards Easier to Use - United Workers Union Further Submission on SCHADS Award

Good afternoon,

Please see **attached** for filing a brief further submission from the United Workers Union on a proposed variation to clause 25.4 of the Social, Community, Home Care and Disability Services Industry Award 2020 discussed at the consultation conference on Wednesday 13 March 2024.

Please contact the writer if further information is required.

Kind regards,

**Annette van Gent** (she / her)

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In the Fair Work Commission

Modern Awards Review 2023 – 2024: Making Awards Easier to Use Stream

AM2023/21

**United Workers Union – Supplementary Submission on clause 25.4 of the Social, Community,  
Home Care and Disability Services Award 2010 (“SCHADS Award”)**

1. The United Workers Union (“UWU”) refers to the consultation conference on the SCHADS Award that took place on Wednesday 13 March 2024.
2. At that conference, a variation to clause 25.4 of the SCHADS Award proposed by the Australian Workforce Compliance Council (“AWCC”) was discussed. The proposed variation is reference no. 26 in the Commission’s summary of submissions on the SCHADS Award.
3. Parties were invited to consider and provide further submissions in relation to this proposed variation. Following that invitation, the UWU has given careful consideration to the proposed variation, both in the context of this stream of the Modern Awards review and the proceedings initiated by the Australian Industry Group to vary the sleepover provisions of the SCHADS Award (AM2023/28), which are currently before the Commission.
4. The UWU has the following concerns in relation to the proposed variation:
  - 4.1. The proposed variation directly overlaps with the issues to be determined in AM2023/28.

As part of its rationale for the proposed variation, AWCC has said that, “*Employers require explicit guidance on whether a four hour minimum shift is needed before or after sleepovers...*”. The time that can be rostered before and after a sleepover is directly relevant to AM2023/28.
  - 4.2. The proposed variation does not make the current clause 25.4 clearer or easier to understand. Incorporating the marked up changes to clause 25.4 in the Commission’s summary of submissions, the varied clause would read:

**25.4 Rest breaks between rostered work**

*[25.4 substituted by PR531544 ppc 21Nov12]*

*(a) An employee must have a break of at least than 10 hours between the conclusion of one shift or period of work and the commencement of another;*

*(b) Notwithstanding the provisions of subclause (a), upon mutual agreement between the employee and the employer, the break between:*

*(i) the interval between the conclusion of a shift and the initiation of a shift directly preceding; or*

*(ii) the time between a shift commencing subsequent to a shift directly following a sleepover shall not be less than eight hours.*

The meaning created by this drafting is unclear, particularly at clause 25.4(b)(ii).

4.3. The proposed variation creates additional ambiguity. Because it refers to “a sleepover” rather than “a shift contiguous with a sleepover”, it is unclear if the clause is saying that there must be a break between the end of a shift and the start of a new shift that includes a sleepover, or if it is saying that there must be eight hours between the end of a shift and the start of the sleepover period in a shift that includes a sleepover.

4.4. The proposed variation has the potential to reduce entitlements. If clause 25.4 was varied in accordance with this proposal and interpreted to mean that there must be an eight hour break between the end of a shift and the start of the sleepover period in a shift that includes a sleepover, it could result in employees being given a reduced break period between shifts. For example, an employee working a shift commencing at 6pm which is active until 10pm and then a sleepover until 6am could have their rest period reduced, on the basis that the rest period concludes at 10pm (the start of the sleepover period) not 6pm (the start of the shift that includes the sleepover period).

5. For these reasons, the UWU is opposed to the proposed variation.

United Workers Union

Monday 18 March 2024