

Fair Work Commission

Four Yearly Review of Modern Awards

Social, Community, Home Care and Disability Services Industry Award

Matter No: AM2014/285 and AM2018/26

STATEMENT OF CHRISTOPHER FRIEND

1. I am employed as a Bargaining Officer for the Health Services Union NSW Branch (**HSU NSW**). I have been working in this role for 1 year. Prior to this role, I was an Organiser with the HSU NSW Branch for approximately 1 year, and prior to that I was employed by the Australian Services Union for approximately 8 years, representing members in the social and community sector, state government utilities and local government.
2. The HSU NSW represents members in NSW, ACT and Queensland.
3. My primary role is representing the HSU NSW in enterprise agreement negotiations with employers in the aged care sector, under the *Fair Work Act 2009 (the Act)*. Within that sector are employees in the home care sector, who fall within the classifications in Schedule E of the *Social, Community, Home Care and Disability Services Industry Award 2010 (the Award)*, or within equivalent classifications in an enterprise agreement underpinned by the Award.
4. In NSW and the ACT, the HSU is covered by 234 enterprise agreements made under the *Fair Work Act 2009* with various employers in the aged care sector. Of these agreements, 190 have coverage of home care worker roles.
5. Save in respect of the Award provision requiring that part-time employees be given a regular pattern of work at the time of engagement, the terms and conditions as contained in the Award are seldom varied significantly in enterprise agreements.
6. As a consequence, many of the industrial issues that arise for HSU members in home care roles involve the interpretation and application of terms and conditions of the Award, whether because the Award applies directly to them, or because a corresponding provision in an enterprise agreement in the same or similar terms has application.
7. Based on my work and discussions with HSU delegates and members, the primary industrial issues affecting members in home care are:

Filed on behalf of	HEALTH SERVICES UNION
Address	Suite 46, Level 1, 255 Drummond Street, CARLTON VIC 3053
Tel	03 8579 6328
Email	rachell@hsu.net.au , Rachel Liebhaber, National Industrial Officer

- a. inconsistent and precarious rostering, leading to insecure employment;
- b. extremely low, or non-existent, minimum engagements;
- c. a prevalence of broken shifts, with little or no compensation; and,
- d. high levels of unpaid work-related travel.

Rosters

8. Employers in the home care sector overwhelmingly engage part-time employees. Amongst the material filed by the HSU in these proceedings is an Australian Government Department of Health Publication entitled "The Aged Care Workforce, 2016". That report shows that some 79% of employees in the aged care home care workforce are part-time, 5.3% are full-time and 15.3% are casual.
9. HSU members report being offered employment contracts with very low minimum hours, such as 15 hours per fortnight. Commonly, the minimum number of hours is about 20 hours per fortnight.
10. The rostering practices in many organisations leave staff vulnerable and open to exploitation.
11. In my experience, the requirement for a regular pattern of work hours for part-time employees in clause 10.3 (c) of the Award is one which is rarely observed.
12. Some of the employers in the home care sector may not have an enterprise agreement, and therefore rely on the Award as their primary industrial instrument.
13. Of the 190 enterprise agreements that the HSU is covered by, which contain provisions for staff to be employed in home care roles, none of the agreements contain specific provisions that guarantee a particular pattern of shifts, in the manner provided in clause 10.3(c) the Award.
14. Where enterprise agreements are in operation in the sector, the Award requirement is often diluted. Most commonly enterprise agreements in the sector contain a provision in the following (or similar) terms:

'Before commencing part-time employment, the Employer and the Employee will agree in writing on the minimum number of hours to be worked and the rostering arrangements which will apply to those hours.'
15. Where such terms apply, in practice, they mean that prior to employment, a prospective employee is required to identify the days and times they are available to work, and are then rostered within those periods. New employees are not well-placed to demand limitations on the hours in which they are rostered.
16. Members report that changing or reducing their availability is viewed negatively by management and many say that they are fearful of repercussions were this to occur.

17. When I have raised this issue during enterprise agreement negotiations, employers have responded that it is often too difficult to accommodate changes to an employee's availability.
18. One employer has told me in enterprise bargaining negotiations that if an employee requests to change their availability, they reserve the right to refuse the request, potentially leading to termination as a result.
19. Alternatively if an employee requests to reduce their availability, they can expect the minimum hours in their contract of employment to be reduced, proportionally with the reduction in their availability.
20. Most HSU members work additional hours, in excess of their minimum number of contract hours.
21. Classifying work as 'additional hours', rather than regularly rostered hours, means that Award provisions such as consultation about roster changes (8.2) or notice about roster changes (25.5 (d)) do not apply.
22. Staff who have extremely low guaranteed hours per week are in a weak negotiating position to refuse the hours or to request changes to any additional hours offered.
23. Many members report feeling pressured to accept additional hours, even if the hours offered do not suit the staff member.
24. Members commonly say that if they do not accept additional hours that are offered, they will not be offered additional hours in the future.
25. One member said that when she declined to work additional hours, she was told that she would be rostered on the hours anyway and that she would now need to apply for annual leave if she did not want to work them.
26. Many staff rely on working 'additional hours' and could not survive on the extremely low minimum contracted hours, so are forced to accept whatever additional hours are offered.
27. This gives the employer little incentive to avoid short-notice roster changes and provides them with a group of staff that are willing to accept almost any shift that is offered to them.
28. By providing employment contracts with extremely low minimum hours, employers maximise their flexibility, minimise their liability and create a significant power imbalance by giving employees very little job security.
29. For staff members who do have regularly rostered shifts, they may still be changed at very short notice.
30. Changes are often caused by clients cancelling, or altering, their visits.
31. The Award provision regarding client cancellation (25.5 (f)) is replicated in most enterprise agreements.

32. This provision enables employers to change any upcoming shifts, up to 5pm on the day before a shift, if the client cancels or requests a change in time.
33. That means that employees, who may have been scheduled to work a morning shift close to their home, can be redirected to work an afternoon shift far away from their home, with less than 24 hours of notice.
34. Worse still, in the case of employees who are rostered to work 'additional hours' which are then subject to client cancellation, there is simply no obligation on the employer to provide alternate work and fulfil the shift that has been rostered.
35. So employees working high numbers of 'additional hours' are subject to far more precarious employment when it comes to client cancellation.
36. Our members also report changes to the roster on the day of shifts being worked, without any notice or consultation.
37. Most enterprise agreements make a provision similar to the Award condition 25.5 (d) (ii) that says:

(ii) However, a roster may be altered at any time to enable the service of the organisation to be carried on where another employee is absent from duty on account of illness, or in an emergency.
38. In the case of home care employees, what constitutes an 'emergency' is often given a very wide interpretation by an employer.
39. Our members report that it is not uncommon for a roster to be changed on the same day, in some cases while en route to a client visit, and this being deemed an 'emergency' change by the employer.
40. Our members are then directed to change their shift pattern for the day, with no regard for any other plans or responsibilities the employee may have made, based on the scheduled roster.
41. If the member complains or refuses to work the altered shift, but the change is within the employees originally agreed 'availability roster', members report being told that they will not be paid as they are refusing work.
42. The cumulative effect of rostering patterns that change from cycle to cycle, along with frequent, short-notice changes within a cycle, is a highly destabilised workforce that is vulnerable to exploitation.

Minimum engagements

43. While casual home care employees have a 1 hour minimum engagement under the *Social, Community, Home Care and Disability Services Industry Award 2010*, there is

no such minimum engagement for part-time home care employees who make up the overwhelming majority of care staff in the home care industry.

44. Given the above issues with rostering, part-time employees are open to exploitation in the form of extremely small minimum engagements.
45. There is no provision in the Award that prevents a minimum engagement for a part-time home care employee of less than 1 hour, for example 30 minutes or even 15 minutes.
46. Some enterprise agreements do provide a minimum number of hours per shift.
47. However, some employers take the view that a shift may be made up of any number of 'engagements' (i.e. the periods of work) within that shift. For example, the employee could be 'engaged' to work for 30 minutes, then be on the 'break' part of a broken shift for 3 hours, before commencing another 30 minute 'engagement' of work, to complete a 1 hour shift for the day.
48. By having no minimum engagement for part-time employees – in terms of 'total hours per shift' or 'per work period within a broken shift' - the Award effectively provides no limit on the ways work could be divided in any given period, except for limiting such period to 12 hours.

Broken Shifts

49. Broken shifts are commonplace within the home care sector in New South Wales.
50. Issues related to broken shifts are one of the most regularly raised problems from union members.
51. The Award does not provide strong protection for an employee to refuse a broken shift, when directed to work by their employer.
52. The Award provides no compensation to an employee for the inconvenience of working a broken shift. A shift of two hours performed over two hours is compensated the same as a shift of two hours performed over a span of eight hours.
53. The Award does not regulate the length of 'break' between periods of work, except indirectly by the span of 12 hours or limit the number of 'breaks' in a broken shift.
54. Members commonly report having 1 or 2 hour breaks within broken shifts, which do not give them sufficient time to undertake other constructive activities in between periods of work, particularly when travel between clients is factored in.
55. Members also regularly report having to wait in their car or a public space, for their next period of work to commence.
56. Members in regional areas often report that the distance between home and their clients makes it unfeasible to return home between periods of work and have a proper

break (eat a meal for example) and then return to the next client engagement, making the broken shift inefficient for them.

57. Some members have reported having a high number of 'breaks' in any one shift, for example up to four or five breaks, in between short periods of work in worst cases.
58. Members have reported to me that they are effectively tied up for full days performing work or waiting to attend their next client, but only being compensated for a portion of their work due to multiple 'breaks' on their broken shift.
59. Many employers do not pay travel costs for travel at the start or finish of a shift. The effect of that approach is compounded where the shift is broken – the employee gets no compensation for the drive on to the next client engagement undertaken during the break in the shift.

Work related travel

60. At clause 20.5, the *Social, Community, Home Care and Disability Services Industry Award* provides that:
 - (a) *Where an employee is required and authorised by their employer to use their motor vehicle in the course of their duties, the employee is entitled to be reimbursed at the rate of \$0.78 per kilometre.*
61. Most home care employees in New South Wales do not work from the employer's business, but move between their own home and the clients' homes in the course of their work.
62. Most home care employees in New South Wales are not provided with a company vehicle to undertake their duties, but are required by their employer to use their own vehicle in the course of their duties, in order meet the requirements set by their employer.
63. A vehicle is necessary to perform home care work to carry necessary equipment and supplies, and to take clients on trips and outings.
64. Employees could not fulfil their role adequately without using their personal vehicle to undertake their duties and most employers structure the rosters of home care employees on the assumption that the worker will drive their own vehicle from client to client.
65. Our members regularly travel significant distances in order to meet the requirements of role.
66. In regional areas, this can include regular travel of 30km-40km, in order to make a single home care visit to a client.

67. Some members report being asked to in excess of 70km in order to make a home care visit.
68. While our members are ordinarily paid for travel between consecutive clients, they usually receive no allowance to use their vehicle in order to get to or from a client, if it is their first or last client of the day.
69. In some cases, it may be their only client for the day.
70. Further, it is commonplace for employers not to pay any kilometre allowance when an employee is travelling on a broken shift.
71. This means that home care employees may be required use their vehicle to service a client, then break for several hours, before commencing a visit another client, without receiving any kilometre allowance for the use of their private vehicle to undertake any of that work.
72. Some enterprise agreements go further than the Award to explicitly prohibit any payment for travel, in either circumstance.
73. Our members do not have a regular place of work, do not work a regular pattern of work and required their employer to use their own private vehicle to undertake their work.
74. As a result, our members report significant financial disadvantage due to this allowance not being paid for all work-related travel, including to and from all clients and while traveling on a broken shift.

CHRISTOPHER FRIEND

15 February 2019