
Fair Work Commission: 4 yearly Review of modern awards

SUBMISSION IN REPLY

**4 YEARLY REVIEW OF MODERN AWARDS: (AM2018/26)
SOCIAL, COMMUNITY, HOME CARE AND DISABILITY SERVICES
INDUSTRY AWARD 2010 - SUBSTANTIVE ISSUES**

FILED ON BEHALF OF:

- **AUSTRALIAN BUSINESS INDUSTRIAL**
- **THE NSW BUSINESS CHAMBER LTD**
- **AGED & COMMUNITY SERVICES AUSTRALIA**
- **LEADING AGE SERVICES AUSTRALIA**

13 SEPTEMBER 2019

PART A: BACKGROUND

1. INTRODUCTION

1.1 This submission in reply is made on behalf of:

- (a) Australian Business Industrial (**ABI**);
- (b) the New South Wales Business Chamber Ltd (**NSWBC**);
- (c) Aged & Community Services Australia (**ACSA**); and
- (d) Leading Age Services Australia Limited (**LASA**),

collectively, '**our clients**'.

1.2 ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* and has in excess of 4,000 members. ABI represents the interests of businesses in a variety of industries including the social, community, home care and disability services industry. Its primary role is to develop workplace policy and to shape debate on major workplace relations issues.

1.3 NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009* and has some 18,000 members. NSWBC is the State's peak business organisation and represents all businesses from small enterprises to large corporations across a variety of industries including the social, community, home care and disability services industry.

1.4 ACSA is the leading peak body supporting church, charitable, other not-for-profit and government providers of residential care services, community care services and retirement living for older people in Australia.

1.5 LASA is the national peak body representing and supporting providers of age services across residential care, home care and retirement living. LASA's membership base is made up of private, not-for-profit, faith-based and government operated organisations providing care, support and services to older Australians.

1.6 Collectively, our clients represent a significant proportion of employers in the industries covered by the *Social, Community, Home Care and Disability Services Industry Award 2010* (the **Award**).

2. SCOPE OF THIS REPLY SUBMISSION

2.1 This reply submission is filed in accordance with the Amended Directions of the Fair Work Commission (**Commission**) issued on 2 September 2019. This reply submission addresses each of the union claims relating to travel time, which consists of:

- (a) a claim by the HSU to vary clause 25.6 of the Award (the **HSU Travel Time Claim**);
- (b) a claim by the United Voice to introduce a new clause 25.7 into the Award (the **UV Travel Time Claim**); and
- (c) a claim by the HSU to vary clause 20.5(a) of the Award (the **HSU Travel Allowance Claim**);

collectively referred to as the **Travel Claims**.

2.2 The HSU claims are recorded in an amended Draft Determination filed on 15 February 2019.

2.3 The United Voice claim is recorded in a Draft Determination filed on 1 April 2019.

3. LEGISLATIVE FRAMEWORK OF THE FOUR YEARLY REVIEW

3.1 The legislative framework applicable to the 4 Yearly Review has been considered in detail in *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788 (**Preliminary Issues Decision**), and *4 yearly review of modern awards – Penalty Rates* [2017] FWCFB 1001 (**Penalty Rates Decision**).

3.2 More recently, the legislative framework applicable to the 4 Yearly Review was considered in *4 yearly review of modern awards – plain language re-drafting – standard clauses* [2018] FWCFB 4177 issued on 18 July 2018¹ and summarised in *4 yearly review of modern awards – Alpine Resorts Award* [2018] FWCFB 4984.

3.3 We rely on the summary of the applicable legal principles as set out in the reply submissions filed by our clients in this matter on 5 April 2019.²

3.4 We also refer to, and agree with, the summary contained in the document titled ‘Legislative framework relevant to the Review’ published by the Commission in this matter on 12 April 2019.³

¹ [2018] FWCFB 4177 at [3]-[13].

² See [2.1]-[2.4].

³ Published pursuant to a Statement issued on 12 April 2019 ([2019] FWCFB 2514).

PART B: UNION CLAIMS

4. HSU TRAVEL TIME CLAIM

4.1 The HSU seek a variation to clause 25.6 of the Award, which deals with broken shifts.

4.2 Specifically, the HSU seek a new sub-clause 25.6(d), to provide that:

(d) Where an employee works a broken shift, they shall be paid at the appropriate rate for the reasonable time of travel from the location of their last client before the break to their first client after the break, and such time shall be treated as time worked. The travel allowance in clause 20.5 also applies.

4.3 This is one aspect of a broader proposal by the HSU to substantially vary the broken shifts clause. Our clients responded to the non-travel related aspects of the HSU claim to vary clause 25.6 in our Reply Submission filed on 12 July 2019.

4.4 We confine these submissions to the proposed new clause 25.6(d).

4.5 The current clause 25.6 does not contain any provision similar to that sought by the HSU.

4.6 Currently, clause 25.6 permits home care stream employees as well as employees in the social and community services stream who are undertaking disability services work to work 'broken shifts'.

4.7 A 'broken shift' is defined at clause 25.6(a) as 'a shift worked by an employee that includes one or more breaks (other than a meal break) and where the span of hours is not more than 12 hours'.

4.8 Accordingly, clause 25.6 permits specified classes of employees to work hours on a non-consecutive basis, in the sense that they can work shifts which are split into two or more portions of work, with intervening periods of unpaid non-work time.

4.9 Employees who work broken shifts are entitled to shift allowances in accordance with clause 25.6(b).

4.10 Under the current Award, employees are not entitled to any payment in respect of the non-work time which falls between the portions of work time in a broken shift.

4.11 The HSU claim proposes to materially alter that position.

4.12 Under the HSU claim, employees will be entitled to "be paid at the appropriate rate" for the "reasonable time of travel" from the location of their last client before the break to their first

client after the break”, and appears to deem the time as “time worked” (“such time shall be treated as time worked”).

4.13 In support of this variation, the HSU submit that:

- (a) firstly, the broken shifts provision is “manifestly open to exploitation” in the absence of appropriate minimum engagement provisions;⁴ and
- (b) secondly, the capacity for multiple breaks during a broken shift can result in:
 - (i) employees having to undertake work on a non-consecutive basis over an extended period of time in order to generate a reasonable amount of earnings;⁵
 - (ii) employees being paid only for a proportion of the time that is expended in performing the work required by the employer; and
 - (iii) employees enduring stretches of “dead” time waiting time during the course of the day.

4.14 We note that the first ground outlined above is sought to be addressed by a proposed variation to the minimum engagement periods in the Award.

4.15 As to the second category of grounds advanced in support of the claim, we note that there are multiple claims being advanced by union parties that are designed to rectify these alleged issues. For example, the ASU claim for a 15% loading to be applied to broken shifts appears designed to address the issues outlined above, which are relied on by the HSU in support of its proposed variation.

5. THE UNITED VOICE TRAVEL TIME CLAIM

5.1 United Voice seeks the introduction of a new clause 25.7 into the Award. The proposed new clause is in the following terms:

25.7 Travel time

- (a) *Where an employee is required to work at different locations they shall be paid at the appropriate rate for reasonable time of travel from the location of the preceding client to the location of the next client, and such time shall be treated as time worked. The travel allowance in clause 20.5 also applies.*

⁴ HSU submission at [36]

⁵ Ibid at [37]

(b) *This clause does not apply to travel from the employee's home to the location of the first client nor does it apply to travel from the location of the last client to the employee's home.*

5.2 There is considerable similarity between the UV Travel Time Claim and the HSU Travel Time Claim. However, the two claims also vary in two respects. These are:

(a) First, the HSU claim only applies in relation to broken shifts, whereas the UV claim applies to all forms of shifts and working arrangements; and

(b) Second, the HSU claim only applies to employees in the home care and disability services streams, whereas the UV claim applies to all streams of work and categories of employees covered by the Award.

5.3 The grounds relied upon by United Voice in support of the UV Travel Time Claim are summarised as follows:

(a) the time spent travelling between the homes of clients is "essential" to perform the duties of the job;⁶

(b) the current terms and conditions of the Award lend themselves to inappropriate and unsustainable work patterns;⁷

(c) there is little or no incentive for employers in what is an increasingly competitive and diverse sector to structure work efficiently;⁸ and

(d) the cost of poor rostering decisions and taking on work which is geographically remote or at different times of the day are able to be shifted onto employees.⁹

6. HSU TRAVEL ALLOWANCE CLAIM

6.1 Separately, the HSU seek an additional variation relating to travel.

6.2 The HSU also seek to amend the existing clause 20.5(a), which provides a travel allowance/ reimbursement of \$0.78 per kilometre for employees required and authorised by their employer to use their motor vehicle in the course of their duties.

⁶ Supplementary submission of United Voice at [4]

⁷ Ibid at [9]

⁸ Ibid

⁹ Ibid

6.3 The HSU propose a new clause 20.5(a) as follows:

(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.*

Disability support workers and home care workers shall be entitled to be so reimbursed in respect of all travel:

(i) *from their place of residence to the location of any client appointment;*

(ii) *to their place of residence from the location of any client appointment;*

(iii) *between the locations of any client appointments on the basis of the most direct available route.*

6.4 While the HSU claim does not seek to disturb the existing travel allowance / reimbursement of \$0.78 per kilometre, it seeks to extend the application of that entitlement so that it applies where certain specified classes of employee travel from their place of residence to their first working location prior to the commencement of work, and from their last working location to their place of residence after the cessation of work.

6.5 For clarity, our clients consider that the activities described in:

(a) items (i) and (ii) of the HSU proposed drafting represent an extension to the existing Award position; and

(b) item (iii) of the HSU proposed drafting does not depart from the existing Award position, in that the activity described in item (iii) is already captured by the existing clause 20.5(a).

6.6 The grounds relied upon by the HSU in support of the Travel Allowance Claim are summarised as follows:

(a) firstly, that disability support workers and home care workers are as a matter of course required to travel considerable distances during the course of their working days in order for them to perform their work for their employers;¹⁰ and

(b) secondly, the travel to the first client and from the final client of the day:

(i) is a fundamental part of the duties performed by those workers;

(ii) is necessary in order to perform the principal caring duties; and

¹⁰ HSU Submission at [41]

(iii) well exceeds the usual travel engaged in by employees to and from their workplaces.¹¹

¹¹ Ibid.

PART C: OUR CLIENTS' POSITION IN RELATION TO THE UNIONS' TRAVEL CLAIMS

7. SUMMARY OF POSITION

- 7.1 Our clients do not have any objection to the notion that employees should receive reasonable compensation for time spent travelling in the course of their duties.
- 7.2 However, our clients do not consider that employees should be compensated for the time or cost in travelling to and from their place of residence to attend work or to return home from work at the conclusion of their shift.
- 7.3 The Award already provides compensation to employees when travelling in the course of their work, as the time spent travelling will fall within their working hours and will be paid as such.
- 7.4 The only circumstance where an employee might not receive remuneration for travelling in the course of their duties is when working a broken shift, and where an employee is expected to travel from one client's residence to another client's residence during the unpaid break (i.e. the gap) between two portions of work in a broken shift.
- 7.5 There are very clear, longstanding and compelling merit and policy reasons for the Award to permit the working of non-consecutive working hours or 'broken shifts', given the nature of the work undertaken by support workers and the patterns of service/labour demand.¹² Broken shifts are a fundamental and necessary part of the home care and disability services sectors.
- 7.6 To the extent that clause 25.6 is capable of being applied in a manner that does not appropriately compensate employees for time spent travelling between clients' residences when working broken shifts, our clients are not opposed to that issue being rectified.
- 7.7 However, we make the following observations in respect of addressing this issue:
- (a) First, the Travel Claims advanced by the union parties do not address the issue in a satisfactory or workable manner;
 - (b) Second, there are government-imposed limitations on the charges that employers can pass onto consumers in respect of travel costs in the disability services sector, and these limitations should be taken into account; and
 - (c) Third, the industry must be given a reasonable period of time to prepare for any variation (in the form of a delayed commencement date of any variation).

¹² See paragraphs 7.15-7.16 of our Reply Submission, 12 July 2019.

- 7.8 Each of the above issues is addressed in more detail in Section 8 below.
- 7.9 In light of our clients' position as set out in paragraphs 7.6 and 7.7 above, we propose an alternative variation for the Commission's consideration which our clients consider address any issue with the existing broken shifts provision, but which does not suffer from the problems with the Union proposals which we consider are significant and insurmountable, as detailed below.
- 7.10 Details of the alternative variation proposed by our clients are set out in Section 9 below.
- 7.11 Our clients are not opposed to the introduction of the alternative formulation, subject to there being an appropriate delay to its implementation to provide the industry with time to prepare for its implementation.

8. ISSUES WITH THE SPECIFIC PROPOSALS

Issues with the HSU Travel Time Claim

- 8.1 Under the HSU's proposed clause 25.6(b), a 'broken shift' is defined to be a shift that includes 'a break (other than a meal break)'. This formulation is consistent with the general notion of a broken shift; that is, a broken shift is a shift which involves two or more portions of work which are broken by periods of non-work time. See for example the existing definition of 'broken shift' at clause 25.6(a) of the Award.
- 8.2 However, their proposed clause 25.6(d) then appears to 'deem' certain periods of non-work time (that is, certain time falling during the break between the portions of work) as 'time worked':
- Where an employee works a broken shift, they shall be paid at the appropriate rate for the reasonable time of travel from the location of their last client before the break to their first client after the break, and such time shall be treated as time worked. The travel allowance in clause 20.5 also applies.*
- 8.3 Clause 25.6 appears to have the effect of deeming certain unpaid non-work time (i.e. time falling in the break period between two portions of work) as 'time worked'.
- 8.4 On the ordinary words of the proposal, it is unclear whether the time spent travelling *is* time worked or whether it is simply *treated* as time worked. This is particularly the case given the wording in the proposed clause 25.6(b).

8.5 If it is the former, the proposed drafting does not appear to achieve that objective. There would also be an apparent inconsistency between the proposed new clause 25.6(d) and the proposed clause 25.6(b).

8.6 Given the drafting, we have assumed that the intention is to *treat* certain unpaid non-work time as ‘time worked’. This appears to be reinforced by the HSU submission of 15 February 2019, which states at [39] that:

“The relevant restrictions should be ... that the employee is paid, as if working, for the time necessary to travel between clients required to be undertaken during any break in the shift”.

8.7 While it is clear that the HSU seek that the ‘reasonable time of travel’ occurring during the break of a broken shift be ‘paid at the appropriate rate’, it is not clear whether that time is intended to be recognised as ‘time worked’ for all purposes under the Award.

Is the reasonable time of travel ‘time worked’ for all purposes?

8.8 If the ‘reasonable time of travel’ undertaken during breaks between portions of work in a broken shift time is intended to be *time worked* for all purposes, this will have significant implications and flow-on impacts in respect of:

- (a) ordinary hours of work at clause 25.1(a) of the Award;
- (b) the maximum shift lengths at clauses 25.1(a)(i)-(iii) and 25.1(b) of the Award;
- (c) meal break entitlements under clause 27.1 of the Award;
- (d) tea break entitlements under clause 27.2 of the Award;
- (e) overtime entitlements under clause 28.1 of the Award;
- (f) the operation of minimum engagement provisions in the Award;
- (g) rostering requirements under clause 25.5;
- (h) leave entitlements;
- (i) superannuation contribution obligations;
- (j) the requirement at clause 10.3(c) of the Award to agree in writing on a regular pattern of work; and
- (k) the requirement under clause 8A of the Award to consult about changes to hours of work.

- 8.9 By way of example, if it is proposed that the 'reasonable time of travel' be time worked for the purposes of 'ordinary hours of work', clause 25.5 would require that the time be displayed on the roster.
- 8.10 It would also require the time be included in the written agreement made with each part-time employee under clause 10.3(c). It is not clear whether the 'actual time' would need to be specified in this agreement, or the 'reasonable time'.
- 8.11 It would also appear that any changes to the 'reasonable time of travel' would need to be the subject of consultation under clause 8A of the Award.

'Reasonable time of travel'

- 8.12 The HSU proposal would require that employees be paid for the 'reasonable time of travel'.
- 8.13 This drafting is unclear and ambiguous.
- 8.14 It is not clear whether the provision would require employees to be paid for the *actual* time spent travelling, or whether it requires employers and employees to reach agreement on a nominated 'agreed' period of time.
- 8.15 There is a distinct lack of precision as to what this phrase means or how it is intended to apply in practice.

Identifying which 'time' is the 'time worked'

- 8.16 Due to the nature of the home care and disability services sectors, there are many occasions where employees work broken shifts that involve providing support to clients for a relatively short portion of time in the morning, and then providing further support to clients for a relatively short periods of time in the evening. For example, the work may involve assisting elderly clients with showering and getting ready for the day in the morning, and then further assistance with the preparation of meals in the evening.
- 8.17 The effect of this is that quite often, a broken shift will involve a break of some 6 or more hours between the two portions of work.
- 8.18 The break time often significantly exceeds the time that would be involved in travelling between client's residences.
- 8.19 Under the HSU proposal, there will be situations where the 'reasonable time of travel' may be 30 minutes, but the period of non-work time between the two portions of work in the broken shift may be 6 hours.

- 8.20 Under those scenarios, if the 'reasonable time of travel' is 'time worked' for the purposes of the Award, the 'time' will need to be capable of being identified.
- 8.21 Our clients consider that there are real difficulties with the notion of declaring the 'reasonable time of travel' (whatever that phrase may mean) as 'time worked' in the type of scenario referred to above. For example, based on the above scenario, it is unclear which 30 minute period of the 6 hour break is the 'time worked'. It is also unclear how that is to be determined, and by whom.
- 8.22 For example:
- (a) Does an employee decide when within the 6 hour period they are going to undertake the travel, or does the employer dictate when the travel is to be undertaken?
 - (b) What happens if the employee engages in misconduct during the 6 hour span? Is the employee 'at work' at the relevant time?
 - (c) What happens if the employee is injured during the 6 hour span? Is the employee 'at work' at the relevant time?
 - (d) Is the employer able to direct the employee when to undertake the travel, given it is time worked?
 - (e) What happens if the employee elects not to comply with an employer's directions about when to undertake the travel?
 - (f) What happens if the employee chooses to take a less direct route, which results in the travel time taking more than 30 minutes? If the travel takes 60 minutes, what part of the time spent travelling is work, and what part is not work?
- 8.23 If a period of time is to be declared time worked, it is important that employers and employees are able to clearly identify and distinguish between working time and non-working time. This will be relevant for all of the matters listed at paragraph 8.8 above, and will also be relevant for matters such as work, health and safety obligations.
- 8.24 Our clients acknowledge that the above issues do not arise to the same extent where the employee is undertaking 'direct' travel between locations in order to perform work, where the gap between the portions of work in the broken shift is equal to the time taken to travel between locations.
- 8.25 However, where the travel is undertaken during a larger break between engagements, a whole raft of issues arise.

Issues with the UV Travel Time Claim

- 8.26 The United Voice Travel Time Claim is in similar terms to the HSU claim, and so unsurprisingly suffers from the same problems outlined in paragraphs 8.1 to 8.25 above. The submissions above are equally applicable to the UV Travel Time Claim.
- 8.27 However, the United Voice claim has the following additional issues.
- 8.28 First, its application is not limited to broken shifts, and instead applies generally to all forms of shifts and work, and across all streams covered by the Award. This is unnecessary, given that the only circumstance where an employee could be required to travel between clients in the course of their duties and would not be entitled to be paid for that time would be when the travel time falls in the gaps between portions of work in a broken shift.
- 8.29 The broad and generalised nature of the proposed variation is also unnecessarily broad given that:
- (a) the variation is clearly targeted at home care workers and disability support workers who undertake support work at various locations (principally clients' residences);¹³
 - (b) the evidence and submissions filed in support of the variation relate to employees working broken shifts; and
 - (c) the United Voice acknowledge in their submissions that the claim is 'interrelated' to their proposal to vary the broken shifts provision.¹⁴
- 8.30 Notwithstanding the breadth of application of the proposed clause, the drafting of the proposed variation is also problematic. On the one hand, the clause refers to employees who are required to work at 'different locations'. However, in the following sentence it then refers to the location of 'clients'. That is, the clause presumes that the relevant location is the location of 'a client'.
- 8.31 While that will be the case for support workers in the home care and disability services streams, it cannot be assumed that other employees covered by the Award are always visiting 'clients' when travelling in the course of their duties.
- 8.32 For the avoidance of doubt, the UV Travel Time Claim also suffers from issues relating to:
- (a) the lack of clarity around whether it deems the 'reasonable time of travel' as 'time worked' for other purposes of the Award;

¹³ See Supplementary Submission of United Voice, 1 April 2019, at [4].

¹⁴ Ibid at [8].

- (b) the ambiguity surrounding the phrase 'reasonable time of travel'; and
- (c) the difficulties with identifying which 'time' is 'time worked' and the raft of issues that creates.

Response to the HSU Travel Allowance Claim

- 8.33 The HSU Travel Allowance Claim proposes to extend the entitlement to the travel allowance at clause 20.5 of the Award to the travel undertaken by disability support workers and home care workers in attending work from their place of residence, and in returning home from work after the conclusion of their shift.
- 8.34 Our clients are opposed to this claim.
- 8.35 The HSU Travel Allowance Claim is inconsistent with the overall system of modern award regulation, and is an outlier in the context of the award system of minimum entitlements. It does not achieve a 'fair and relevant' minimum safety net, and offends section 138 of the FW Act in that the proposal goes well beyond the extent necessary to achieve the modern awards objective.
- 8.36 The HSU Travel Allowance Claim should be dismissed.

9. ALTERNATIVE FORMULATION TO ADDRESS THE TRAVEL ISSUE

- 9.1 In light of the issues with the unions' Travel Claims which are articulated above, and for which no party has been able to come up with a satisfactory solution, the unions' Travel Claims must be dismissed.
- 9.2 However, to the extent that the Commission finds that the existing broken shifts clause does not meet the modern awards objective of providing a fair and relevant minimum safety net of conditions, our clients consider that an appropriate way of dealing with the issue of unpaid travel time in the gaps between portions of work in a broken shift is to introduce payment mechanism into the Award in the form of an allowance. This avoids the complexities which arise if the time was to be 'time worked'.
- 9.3 We note that a number of pre-reform awards dealt with this issue in this way.
- 9.4 For example, clause 29(ii) of the *Miscellaneous Workers Home Care Industry (State) Award* (AN120341) provided for a payment at the rate of 3% of the ordinary hourly rate per kilometre travelled where employees were rostered to work with consecutive clients. The clause provided:

(ii) *Where employees are rostered to work with consecutive clients they shall be paid for the time taken to travel between locations at the rate of three per cent of the ordinary hourly rate per kilometre travelled, excluding travel from the employee's home to the first place of work and return to home at the cessation of his or her duties; provided that this payment shall not be made if the employee is being otherwise paid under this award.*

9.5 Similarly, clause 20.4.2 of the *Community Services (Home Care) (ACT) Award 2002* (AP816351CRA) had a substantially similarly worded provision. It provided:

Where employees are rostered to work with consecutive clients they shall be paid for the time taken to travel between locations at the rate of 3% of the ordinary hourly rate per kilometre travelled, excluding travel from the employee's home to the first place of work and return to home at the cessation of his/her duties.

9.6 An allowance such as those mentioned above would appear to be a sensible way of compensating employees for time spent travelling during periods that are expressed in clause 25.6(a) as not being work time.

9.7 Such an allowance appears to meet the objectives of the Unions in terms of compensating employees for travel time, without any of the complex implications outlined in paragraphs 8.8 to 8.11 above.

9.8 An allowance of this type would also appear to more readily meet the modern awards objective, in the sense that it:

- (a) provides additional remuneration for employees working broken shifts;
- (b) provides an entitlement that is simpler and easier to understand than the Unions' proposals;
- (c) addresses the relative living standards and the needs of the low paid;
- (d) provides a floor entitlement from which parties can collectively bargain;
- (e) does not prevent the utilisation of broken shifts (see the 'need to promote flexible modern work practices and the efficient and productive performance of work');
- (f) does not impose an unreasonable regulatory burden on business (notwithstanding it representing a significant new cost imposition on employers).

9.9 As stated at paragraph 7.11 above, our clients are not opposed to the introduction of a form of allowance, subject to there being an appropriate delay to its implementation to provide

the industry with time to prepare for its implementation. In this respect, we address this issue as follows.

10. FUNDING LIMITATIONS AND IMPLEMENTATION OF ANY CHANGE

- 10.1 In certain parts of the industry, there are government-imposed limitations on the charges that employers can pass onto consumers in respect of travel costs. For example, the disability services sector is regulated by the NDIS rules and regulations, and prices are effectively capped in that sector.
- 10.2 Under the NDIS Price Guide providers can only claim travel costs from participants in certain circumstances, being:
- (a) the Support Catalogue indicates that providers can claim travel for the particular support item;
 - (b) the participant agrees in advance; and
 - (c) the provider is required to pay the worker for the time spent travelling.
- 10.3 If those requirements are satisfied, the maximum amount of travel time that can be claimed is 30 minutes for some areas, and 60 minutes for others.¹⁵
- 10.4 While our clients acknowledge that government-based funding limitations do not operate as a barrier to the Commission varying modern awards, the operating environment must be taken into account in the assessment of a 'fair and relevant' minimum safety net of conditions, and issues such as funding and the overall profitability or viability of the industry are relevant to many of the considerations in section 134(1).
- 10.5 These issues should also be taken into account in the context of the proposed implementation of any variation to the Award.
- 10.6 Given that any variation will impose a new cost on employers, the implementation of any such variation should involve a delayed commencement date so the industry has an appropriate period of time to prepare for the change.

AUSTRALIAN BUSINESS LAWYERS & ADVISORS

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¹⁵ NDIS Price Guide 2019-2020, Billing for non-direct services, p.14.



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