



The Australian Industry Group  
51 Walker Street  
North Sydney NSW 2060  
PO Box 289  
North Sydney NSW 2059  
Australia  
ABN 76 369 958 788

31 August 2021

The Hon. Justice IJK Ross  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3000

By email: [chambers.ross.j@fwc.gov.au](mailto:chambers.ross.j@fwc.gov.au)

Dear Justice Ross,

**Re. AM2018/26 Social, Community, Home Care and Disability Services Industry Award 2010 – Draft Determination**

We refer to the above matter.

On 25 August 2021, the Australian Industry Group (**Ai Group**) filed a submission which, amongst other matters, dealt with the issue of the application of the broken shift provision to shiftworkers. In that submission, Ai Group contended that the *Social, Community, Home Care and Disability Services Industry Award 2010 (Award)* should be varied to expressly provide that shiftworkers can perform broken shifts and that if that proposition is accepted:

- (a) The quantum of the proposed broken shift allowances should be substantially reduced.
- (b) The shift allowances prescribed by clause 29 should be payable for only that portion of a broken shift that enlivens the entitlement to the shift allowance.
- (c) The shift allowances should be calculated by reference to the finishing time of the shift.

We **enclose** a draft determination, which seeks to give effect to the aforementioned proposals. Although parties have not been directed to file draft determinations in respect of any variations that they seek to the Award or the draft determination issued by the Full Bench, we seek leave to file the enclosed for the purposes of identifying the specific changes that would reflect our proposals.

Yours sincerely,

**Brent Ferguson**  
Director – Major Cases, Workplace  
Relations Advocacy and Policy

**Ruchi Bhatt**  
Principal Adviser – Workplace Relations  
Policy



# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards – Social, Community, Home Care and Disability Services Industry Award 2010**

(AM2018/26)

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE

MELBOURNE, [INSERT DATE]

*4 yearly review of modern awards – Social, Community, Home Care and Disability Services Industry Award 2010.*

A. Further to the decisions issued by the Full Bench of the Fair Work Commission on 4 May 2021 ([2021] FWCFB 2383), 25 August 2021 ([2021] FWCFB 5244) and [insert date] ([insert citation]) the above award is varied as follows:

1. By inserting clause 20.10 as follows:

### **20.10 Broken shift allowance**

- (a) An employee required to work a broken shift with 1 unpaid break in accordance with clause 25.6(a) will be paid an allowance of [insert quantum, less than 1.7%] of the standard rate, per broken shift.
- (b) An employee who agrees to work a broken shift with 2 unpaid breaks in accordance with clause 25.6(b) will be paid an allowance of [insert quantum, less than 2.5%] of the standard rate, per broken shift.

2. By deleting clause 25.6 and inserting the following:

### **25.6 Broken shifts**

This clause only applies to social and community services employees when undertaking disability services work and home care employees.

#### **(a) Broken shift with 1 unpaid break**

- (i) An employer may only roster an employee to work a broken shift of 2 periods of work with 1 unpaid break (other than a meal break).
- (ii) An employee rostered to work a broken shift with 1 unpaid break must be paid the allowance in clause 20.10(a).

**(b) Agreement to work a broken shift with 2 unpaid breaks**

- (i)** Despite clause 25.6(a), an employer and employee may agree that the employee will work a broken shift of 3 periods of work with 2 unpaid breaks (other than meal breaks).
  - (ii)** An agreement under clause 25.6(b)(i) must be made before each occasion that the employee is to work a broken shift with 2 unpaid breaks unless the working of the 2 break broken shift is part of the agreed regular pattern of work in an agreement made under clause 10.3 or subsequently varied.
  - (iii)** An employee who works a broken shift with 2 unpaid breaks must be paid the allowance in clause 20.10(b).
- (c)** Where a break in work falls within a minimum payment period in accordance with clause 10.5 then it is to be counted as time worked and does not constitute a break in a shift for the purposes of clause 25.6(a)(i) or clause 25.6(b)(i).
- (d)** Payment for a broken shift will be at ordinary pay with weekend, public holiday and overtime penalty rates to be paid in accordance with clauses 26, 28 and 34.
- (e)** An employee must be paid the shift allowances in accordance with clause 29 in relation to work performed on a broken shift, provided that:
- (i)** The night shift allowance is not payable for work performed on a night shift that commences before 6.00 am.
  - (ii)** The shift allowances are only payable in respect of periods of work in a broken shift that satisfy the definitions of afternoon shift, night shift and public holiday shift (as defined by clause 29.2 and in accordance with clause 25.6(e)(i)).
- Example: If an employee performs work on a broken shift at 11.00 am – 1.00 pm and 7.00pm – 10.00pm, the afternoon shift allowance will be payable on the second period of work only.
- (f)** The span of hours for a broken shift is up to 12 hours. All work performed beyond a span of 12 hours will be paid at double time.
- (g)** An employee must receive a minimum break of 10 hours between broken shifts rostered on successive days.

3. By deleting clause 29.4 and inserting the following:

**29.4** Shifts are to be worked in one continuous block of hours that may include meal breaks and sleepovers, except where broken in accordance with clause 25.6.

PRESIDENT

Printed by authority of the Commonwealth Government Printer

<Price code A>