



Summary of Decision

4 May 2021

4 yearly review of modern awards — Social, Community, Home Care and Disability Services Industry Award 2010 AM2018/26 and AM2020/100 [\[2021\] FWCFB 2383](#)

1. Background

[1] A number of substantive claims have been made to vary the *Social, Community, Home Care and Disability Services Industry Award 2010* (the SCHADS Award) as part of the 4 yearly review of modern awards (the Review).

[2] The SCHADS Award covers employers (and their employees in the classifications listed in Schedules B to E of the SCHADS Award) in the following sectors:

- crisis assistance and supported housing
- social and community services (including social work, recreational work, welfare work, youth work or community development work (including organisations which primarily engage in policy advocacy or representation on behalf of organisations carrying out such work) (SACS) and the provision of disability services including the provision of personal care and domestic and lifestyle support to a person with a disability in a community and/or residential setting including respite centre and day services)
- home care (the provision of personal care, domestic assistance or home maintenance to an aged person or a person with a disability in a private residence), and
- family day care (the operation of a family day care scheme for the provision of family day care services).

[3] The claims were split into two separate tranches. Tranche 1 dealt with the following claims (the Tranche 1 claims):

UWU claims:

- S44A – deletion of or variation to 24-hour-care clause
- S40 – consequential variation to the sleepover clause (arising from the deletion of the 24-hour-care clause (S44A))
- S47 – variation to excursions clause
- S51 – variation to overtime clause

- S57 – variation to public holidays clause.

ASU claims:

- S6 – provision of a Community language skills allowance.

HSU claims:

- S19 – first aid certificate renewal
- S43 – deletion of the 24-hour-care clause
- S48 – Saturday and Sunday work (casual employees receiving casual loading in addition to Saturday and Sunday rates).

[4] The Tranche 1 claims were heard on 15 – 17 April 2019 and on 2 September 2019, the Full Bench issued a decision¹ with dealt with the nature of the Review, the SCHADS Award, the SCHADS Sector, the National Disability Insurance Scheme and the Tranche 1 claims. In dealing with the Tranche 1 claims, the Commission decided to:

- vary the rates of pay of casual employees who work overtime and on weekends and public holidays (subject to the views expressed therein about transitional arrangements)
- reject the first aid certificate renewal claim
- reject the UWU’s claim to vary the public holiday clause
- defer consideration of the ASU’s claim for a community language skills allowance
- set out a process for addressing the lack of clarity and other deficiencies in the 24-hour-care clause.

[5] On 18 October 2019 the Commission issued a decision² resolving the transitional arrangements in respect of the decision to vary the rates of pay for casuals working overtime and working on weekends and public holidays. The Commission decided that the increases in overtime, weekend and public holiday rates for casuals would come into operation, in full, from 1 July 2020. A determination³ was issued on 21 October 2019 giving effect to the decision.

¹ [\[2019\] FWCFB 6067.](#)

² [\[2019\] FWCFB 7096.](#)

³ [PR713525.](#)

2. The Tranche 2 Decision

[6] On 4 May 2021, the Full Bench issued a decision in relation to the Tranche 2 claims.

[7] The decision deals with claims relating to the following issues:

- Minimum engagements
- Broken shifts
- Travel time
- Variations to rosters clause
- Remote response work/ Recall to work overtime away from the workplace
- Cancellation
- Variation to clothing and equipment allowance (uniforms)
- Overtime for part-time and casual workers beyond rostered hours/8 hours.
- 24- hour care
- Sleepover
- Telephone allowance
- Community language allowance.

[8] The decision was made in the context of the 4 yearly review of modern awards. The legislative framework applicable to the Full Bench's consideration of the claims is set out at [32] to [37] of the decision.

Rejected claims

[9] The Full Bench rejected the following claims:

1. UWU's claim to vary clause 25.5(d) – change in roster
2. ABI's claim to vary clause 25.5(d)(ii) – change in roster
3. UWU's claim to insert a new clause 20.3(b) – clothing and equipment
4. HSU's claim to vary clauses 28.1(b)(ii) – (iii) – Overtime for part-time and casual employees
5. UWU's claim to vary clause 20.6 – Mobile phone allowance
6. ASU's claim to insert a new clause 20.10 – Community language allowance, and
7. HSU claim that there be *no* client cancellation clause in the SCHADS Award.

Claims granted and provisional views

[10] A copy of the draft determination giving effect to the decision and provisional views of the Full Bench is attached to this summary.

(i) *Broken shifts and minimum engagements*

[11] The Full Bench decided to make the following variations to the SCHADS Award:

1. Introduce a minimum payment period for part-time employees by deleting clause 10.4(c) and inserting a new clause 10.5 to provide the following minimum payment periods for part-time and casual employees:
 - social and community service employees (except when undertaking disability work) – 3 hours' pay, and
 - all other employees – 2 hours' pay.
2. Vary clause 25.6 to:
 - define a broken shift as a shift consisting of 2 separate periods of work with a single unpaid 'break' (other than a meal break)
 - clarify how this interacts with the new minimum payment clause, and
 - to accommodate the occasional need for a broken shift to involve more than 1 break subject to:
 - a maximum of 2 unpaid 'breaks' in the shift
 - the agreement of the employee, and
 - an additional payment.

[12] The Full Bench expressed the following *provisional* views:

1. The additional remuneration for working a broken shift under clause 25.6 of the SCHADS Award should be an allowance calculated as a percentage of the standard weekly rate.
2. An employee working a '1 break' broken shift under clause 25.6 should receive a broken shift allowance of 1.7% of the standard rate, per broken shift (\$17.10 per broken shift).
3. The broken shift allowance payable for a '2 break' broken shift should be set at 2.5% of the standard rate (\$25.15 per broken shift), and

4. An employee who is a day worker performing work outside of the ordinary span of hours (including as part of a period of work in a broken shift) is entitled to overtime for such work.

[13] The Full Bench provided ABI (and any other interested party) an opportunity to present further arguments and evidence in support of its proposal for a 1 hour minimum engagement for staff meetings and training or professional development.

(ii) *Travel Time*

[14] The Full Bench expressed the view that minimum engagement, broken shifts and travel time are inter-related. Each of these impact on how work is organised and the remuneration for that work. All parties acknowledged the connection between these issues.

[15] The Full Bench noted that the changes proposed in relation to broken shifts and minimum payment periods are likely to result in changes to rostering practices and to how work is organised. These changes may also change the extent of 'unpaid' travel between engagements. Further, the broken shift allowance proposed is intended to compensate for 2 disutilities:

- the length of the working day being extended because hours are not worked continuously, and
- the additional travel time and cost associated with effectively presenting for work on 2 occasions.

[16] The Full Bench accepted, as a general proposition, that employees should be compensated for the time spent travelling between engagements. However, they noted that framing an award entitlement to address this issue raises several issues, including the circumstances in which any payment is to be made and the calculation of that payment. The Full Bench also noted that they were conscious of the s.134 considerations, in particular:

- the needs of the low paid
- the impact on employment costs and the regulatory burden, and
- the need to ensure that any provision is simple and easy to understand.

[17] A conference will be convened to seek the views of interested parties in relation to these issues.

(iii) *Roster changes*

[18] The Full Bench expressed the view that there is merit in varying clause 25.5(d) to permit the variation of a roster by mutual agreement in circumstances where the variation is proposed by an employee to accommodate an agreed shift swap with another employee.

(iv) *Remote response/recall to work*

[19] The Full Bench concluded that it is necessary to introduce an award term dealing with remote response work and made the following general observations about such a term:

1. A shorter minimum payment should apply in circumstances where the employee is being paid an ‘on call’ allowance.
2. There is merit in ensuring that each discrete activity (such as a phone call) does not automatically trigger a separate minimum payment.
3. A definition of ‘remote response work’ or ‘remote response duties’ should be inserted into the Award. We note that ABI proposes the following definition:

‘In this award, remote response duties means the performance of the following activities:

- (a) Responding to phone calls, messages or emails;
 - (b) Providing advice (“phone fixes”);
 - (c) Arranging call out/rosters of other employees; and
 - (d) Remotely monitoring and/or addressing issues by remote telephone and/or computer access.’⁴
4. The clause should include a mechanism for ensuring that the time spent by an employee working remotely is recorded and communicated to their employer.

[20] The Full Bench expressed the provisional view that the minimum payment for remote response work performed between 6.00am and 10.00pm should be 30 minutes and the minimum payment between 10.00pm and 6.00am should be 1 hour. However, they noted that there is an inter-relationship between the minimum payment period and the rate of payment.

[21] A conference will be convened to discuss the issues relating to payment for remote response work.

(v) *Client cancellation*

[22] ABI sought to replace the current clause 25.5(f) to provide employers with 2 options in the event of a client cancellation:

Option 1: The employer would have the right to direct the employee to perform other work during the hours that they were rostered to work.

⁴ [ABI Submission](#), 10 February 2020, p 58.

In these circumstances the employer would be required to pay the employee the amount they would have been paid had the employee performed the cancelled service or the amount payable for the work actually performed; whatever is greater.

Option 2: The employer would be permitted to cancel the shift.

In these circumstances the employer would be required to:

- (i) pay the employee the amount they would have received had they performed the cancelled service, or
- (ii) provide the employee with make-up time. Such make up time must be rostered to be performed within 3 months of the date of the cancelled shift. The employer must consult with the employee about when the make-up time will be performed.

[23] The ABI claim also proposed expanding the application of the clause to employees working in home care or disability services. The Full Bench granted the ABI claim with 2 amendments:

1. first, the Full Bench expressed a *provisional* view that proposed clause 25.5(f)(v) be amended as follows:

- (v) The make up time arrangement ~~cannot~~ can only be used where the employee was notified of the cancelled shift at least ~~after arriving at the relevant place of work to perform~~ 12 hours prior to the scheduled commencement of the shift. In these cases, clause 25.5(f)(iv)(A) applies.

2. secondly, amending clause 25.5(f)(vii)(B) to delete '3 months' and insert '6 weeks'.

(vi) *Clothing and equipment*

[24] The Full Bench expressed the view that the SCHADS Award should be varied to provide for the reimbursement of reasonable costs associated with the cleaning or replacement of personal clothing which has been soiled or damaged in the course of employment.

[25] Parties were directed confer about the form of a suitable variation, reflecting the views expressed above. The Commission will convene a conference to facilitate those discussions.

(vii) *Overtime for part-time workers*

[26] Having reviewed the part-time employment terms in the SCHADS Award and having regard to the evidence and submissions, the Full Bench expressed the provisional view that the SCHADS Award should be varied in 2 respects:

- to make it clear that working additional hours is voluntary, and
- to introduce a mechanism whereby a part-time employee who regularly works additional hours may request that their guaranteed hours be reviewed and increased, and their employer cannot unreasonably refuse such a request.

(viii) *24-hour-care clause*

[27] In a decision issued in September 2019⁵, the Full Bench found that 24-hour-care shifts are used in the industry and, while only a minority of employers used the 24-hour-care clause, those who do utilise the clause do so regularly. The Full Bench confirmed the *provisional* view that a 24-hour-care provision should be retained, but that the existing clauses require amendment.

[28] The Full Bench proposes to vary clauses 25.8 and 31.2 as follows:

25.8 24 hour care

This clause only applies to home care employees.

(a) A 24-hour care shift requires an employee to be available for duty in a client's home for a 24 hour period. During this period, the employee is required to provide the client with the services specified in the care plan. The employee is required to provide a total of no more than 8 hours of care during this period.

(b) An employer may only require an employee to work a 24-hour care shift by agreement.

(c) The employee will be afforded the opportunity to sleep for a continuous period of eight hours during a 24-hour care shift and employees will be provided with a separate room with a bed and clean linen, the use of appropriate facilities (including access to food preparation facilities and staff facilities where these exist), and free board and lodging for each night when the employee sleeps over.

(d) The employee engaged will be paid 8 hours work at 155% of their appropriate rate for each 24-hour period.

(e) If the employee is required to perform more than 8 hours' work during a 24-hour care shift, that work shall be treated as overtime and 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. An employer and employee may utilise the TOIL arrangement in accordance with clause 28.2.

(f) An employee may refuse to work more than 8 hours' work during a 24 hour care shift in circumstances where the requirement to work those additional hours is unreasonable.

31.2 Quantum of leave

For the purpose of the NES, a shiftworker is:

⁵ [\[2019\] FWCFB 6067](#).

(a) an employee who works for more than 4 ordinary hours on 10 or more weekends during the yearly period in respect of which their annual leave accrues; or

(b) an employee who works at least eight 24-hour care shifts in accordance with clause 25.8;

and is entitled to an additional week's annual leave on the same terms and conditions.'

(ix) *Sleepover*

[29] The Full Bench decided to vary clause 25.7(c) – Sleepovers to provide employees performing a sleepover shift with access to clean bed linen and access to food preparation facilities.

(x) *Equal Remuneration Order issue*

[30] The Full Bench decided to depart from the provisional view expressed in a statement issued on 26 November 2020.⁶ The ERO rates will be set out as a note to clause 15 of the SCHADS Award.

3. Next Steps

[31] Interested parties are to file any submissions and evidence in respect of the draft variation determination the provisional views set out in the decision by **4.00pm (AEST) Tuesday, 22 June 2021**.

[32] A Conference will be convened on **Thursday, 27 May 2021 at 10:30am (AEST)** to discuss each of:

- the travel time claim
- remote response/recall to work, and
- clothing and equipment claims.

[33] A Hearing will be listed on **Wednesday, 30 June 2021**. At this Hearing, interested parties will be provided with an opportunity to make oral submissions in response to the submissions and evidence received relating to the draft determination and the *provisional* views set out in the decision.

This summary is not a substitute for the reasons of the Fair Work Commission nor is it to be used in any later consideration of the Commission's reasons.

- ENDS -

⁶ [2020] FWCFB 6333.

MA000100 PRXXXXXX



DRAFT DETERMINATION

Fair Work Act 2009
s.156—4 yearly review of modern awards

**Application to vary the Social, Community, Home Care and Disability
Services Industry Award 2010**
(AM2018/26 and AM2020/100)

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

Social, community, home care and disability services

JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER LEE

MELBOURNE, XX MONTH 2021

*Four yearly review of modern awards – Award stage – Group 4A awards – substantive issues
– 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) and XX MONTH 2021 ([2021] FWCFB XXXX), the above award is varied as follows:

1. By deleting clause 10.3 and inserting the following:

10.3 Part-time employment

- (a) A part-time employee is one who is engaged to work less than 38 hours per week or an average of less than 38 hours per week and who has reasonably predictable hours of work.
- (b) The terms of this award will apply to part-time employees on a pro-rata basis on the basis that the ordinary weekly hours of work for full-time employees are 38.
- (c) Before commencing employment, the employer and employee will agree in writing on:
 - (i) a regular pattern of work including the number of ordinary hours to be worked each week (**the guaranteed hours**), and

- (ii) the days of the week the employee will work and the starting and finishing times each day.
- (d) The agreed regular pattern of work does not necessarily have to provide for the same guaranteed hours each week.
- (e) The agreement made pursuant to clause 10.3(c) may subsequently be varied by agreement between the employer and employee in writing. Any such agreement may be ongoing or for a specified period of time.

(f) Nothing in clause 10.3(e) requires an employee to agree to any change in their guaranteed hours.

Commented [FWC1]: See decision at [987].

(g) Review of guaranteed hours

- (i) Where a part-time employee has regularly worked more than their guaranteed hours for at least 12 months, the employee may request in writing that the employer vary the agreement made under clause 10.3(c) to reflect the ordinary hours regularly being worked.
- (ii) The employer must respond in writing to the employee's request within 21 days.
- (iii) The employer may refuse the request only on reasonable business grounds.

EXAMPLE: Reasonable business grounds to refuse the request may include that the reason that the employee has regularly worked additional agreed hours is temporary—for example where this is the direct result of another employee being absent on annual leave. For home care employees, reasonable business grounds to refuse a request may also include the lack of continuity of funding, changes in client numbers and client preferences.

Commented [FWC2]: This example is adapted from the ABI proposal.

- (iv) Before refusing a request made under clause 10.3(g)(i), the employer must discuss the request with the employee and genuinely try to reach agreement on an increase to the employee's guaranteed hours that will give the employee more predictable hours of work and reasonably accommodate the employee's circumstances.
- (v) If the employer and employee agree to vary the agreement made under clause 10.3(c), the employer's written response must record the agreed variation.
- (vi) If the employer and employee do not reach agreement, the employer's written response must set out the grounds on which the employer has refused the employee's request.
- (vii) Clause 10.3(g) is intended to operate in conjunction with clause 10.3(e) and does not prevent an employee and employer from agreeing to vary the agreement made under clause 10.3(c) in other circumstances.

Commented [FWC3]: This example is adapted from the ABI proposal.

2. By deleting clause 10.4(c).
3. By renumbering clause 10.5 as 10.6.
4. By inserting a new clause 10.5 as follows:

10.5 Minimum payments for part-time and casual employees

Commented [FWC4]: See decision at [377].

Part-time and casual employees will be paid for the following minimum number of hours, at the appropriate rate, for each shift or period of work in a broken shift:

- (a) social and community services employees (except when undertaking disability services work)—3 hours;
- (b) all other employees—2 hours.

5. By deleting Note 1 and Note 2 appearing at the beginning of clause 15.
6. By inserting the following note as a new paragraph after the end of clause 15:

NOTE 1: A **transitional pay equity order** taken to have been made pursuant to item 30A of Schedule 3A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) has effect in accordance with that item. Transitional pay equity orders operate in Queensland as provided for in items 30A (6) and (7).

7. By inserting the following note as a new paragraph after the end of clause 15:

NOTE 2: An equal remuneration order [PR525485] also applies to employees in the classifications in Schedule B—Classification Definitions—Social and Community Services Employees and Schedule C—Classification Definitions—Crisis Accommodation Employees of this award. The final rates of pay resulting from the equal remuneration order are set out below. The ‘current hourly wage’ and ‘current weekly wage’ in the tables below form employees’ ordinary rates of pay for all purposes:

Commented [FWC5]: See decision at [1259].

Equal remuneration rates for applicable Social and Community Services employees—from 1 December 2020

	Clause	Minimum weekly wage	Final ERO Rate Percentage	Current weekly wage	Current hourly wage
Classification		\$	%	\$	\$
Social and community services employee level 2	15.2				
Pay point 1		877.60	123	1079.45	28.41
Pay point 2		905.10	123	1113.27	29.30
Pay point 3		932.60	123	1147.10	30.19
Pay point 4		957.60	123	1177.85	31.00

	Clause	Minimum weekly wage	Final ERO Rate Percentage	Current weekly wage	Current hourly wage
Social and community services employee level 3	15.3				
Pay point 1 (associate diploma/advanced certificate)		957.60	126	1206.58	31.75
Pay point 2		985.10	126	1241.23	32.66
Pay point 3 (3 year degree)		1006.10	126	1267.69	33.36
Pay point 4 (4 year degree)		1026.70	126	1293.64	34.04
Social and community services employee level 4	15.4				
Pay point 1		1054.20	132	1391.54	36.62
Pay point 2		1081.80	132	1427.98	37.58
Pay point 3		1109.60	132	1464.67	38.54
Pay point 4		1134.30	132	1497.28	39.40
Social and community services employee level 5	15.5				
Pay point 1		1162.00	137	1591.94	41.89
Pay point 2		1186.90	137	1626.05	42.79
Pay point 3		1214.60	137	1664.00	43.79
Social and community services employee level 6	15.6				
Pay point 1		1242.30	140	1739.22	45.77
Pay point 2		1269.70	140	1777.58	46.78
Pay point 3		1297.20	140	1816.08	47.79
Social and community services employee level 7	15.7				
Pay point 1		1324.70	142	1881.07	49.50
Pay point 2		1352.50	142	1920.55	50.54
Pay point 3		1380.00	142	1959.60	51.57
Social and community services employee level 8	15.8				
Pay point 1		1407.50	145	2040.88	53.71
Pay point 2		1435.10	145	2080.90	54.76
Pay point 3		1462.90	145	2121.21	55.82

**Equal remuneration rates for Crisis Accommodation employees—from
1 December 2020**

	Clause	Minimum weekly wage	Final Rate Percentage	Current weekly wage	Current hourly wage
Classification		\$	%	\$	\$
Crisis accommodation employee Level 1	15.3				
Pay point 1 (associate diploma/advanced certificate)		957.60	126	1206.58	31.75
Pay point 2		985.10	126	1241.23	32.66
Pay point 3 (3 year degree)		1006.10	126	1267.69	33.36
Pay point 4 (4 year degree)		1026.70	126	1293.64	34.04
Crisis accommodation employee level 2	15.4				
Pay point 1		1054.20	132	1391.54	36.62
Pay point 2		1081.80	132	1427.98	37.58
Pay point 3		1109.60	132	1464.67	38.54
Pay point 4		1134.30	132	1497.28	39.40
Crisis accommodation employee level 3	15.5				
Pay point 1		1162.00	137	1591.94	41.89
Pay point 2		1186.90	137	1626.05	42.79
Pay point 3		1214.60	137	1664.00	43.79
Crisis accommodation employee level 4	15.6				
Pay point 1		1242.30	140	1739.22	45.77
Pay point 2		1269.70	140	1777.58	46.78
Pay point 3		1297.20	140	1816.08	47.79

8. 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 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 2.5% of the standard rate, per broken shift.

Commented [FWC6]: See decision at [547]-[556].

9. By deleting clause 25.5(d)(ii) and inserting the following:

- (ii) However, a roster may be changed at any time:
 - (A) if the change is proposed by an employee to accommodate an agreed shift swap with another employee; or
 - (B) 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.

Commented [FWC7]: See decision at [643].

10. By deleting clause 25.5(f) and inserting the following:

(f) Client cancellation

- (i) Clause 25.5(f) applies where a client cancels or changes a scheduled home care or disability service, within 7 days of the scheduled service, which a full-time or part-time employee was rostered to provide.
- (ii) Where a service is cancelled by a client under clause 25.5(f)(i), the employer may either:
 - (A) direct the employee to perform other work during those hours in which they were rostered; or
 - (B) cancel the rostered shift.
- (iii) Where clause 25.5(f)(ii)(A) applies, the employee will be paid the amount payable had the employee performed the cancelled service or the amount payable in respect of the work actually performed, whichever is the greater.
- (iv) Where clause 25.5(f)(ii)(B) applies, the employer must either:
 - (A) pay the employee the amount they would have received had the shift not been cancelled; or
 - (B) subject to clauses 25.5(f)(v) and (vi), provide the employee with make up time in accordance with clause 25.5(f)(vii).
- (v) The make up time arrangement can only be used where the employee was notified of the cancelled shift at least 12 hours prior to the scheduled commencement of the shift. In these cases, clause 25.5(f)(iv)(A) applies.
- (vi) The make up time arrangement cannot be used where the employer is permitted to charge the client in respect of the cancelled service. In these cases, clause 25.5(f)(iv)(A) applies.
- (vii) Where the employer elects to provide make up time:
 - (A) the make up time must be rostered in accordance with clause 25.5(a);

Commented [FWC8]: This is the current 25.5(d)(ii) wording which has been retained.

Commented [FWC9]: See decision at [830], [822], [823] and [818].

- (B) the make up time must be rostered to be performed within 6 weeks of the date of the cancelled shift;
 - (C) the employer must consult with the employee in accordance with clause 8A regarding when the make up time is to be worked prior to rostering the make up time; and
 - (D) the make up shift can include work with other clients or in other areas of the employer's business provided the employee has the skill and competence to perform the work.
- (viii) Clause 25.5(f) is intended to operate in conjunction with clause 25.5(d) and does not prevent an employer from changing a roster under clause 25.5(d)(i) or (ii).

11. By deleting clause 25.6 and inserting the following:

Commented [FWC10]: See decision at [488].

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 an employee may agree that the employee will be rostered to 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 on each occasion that the employee will be rostered to work a broken shift with 2 unpaid breaks.
 - (iii) An employee rostered to work 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 and overtime penalty rates to be paid in accordance with clauses 26 and 28.

MA000100 PRXXXXXX

- (e) 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.
- (f) An employee must receive a minimum break of 10 hours between broken shifts rostered on successive days.

12. By deleting clause 25.7(c) and inserting the following:

- (c) The span for a sleepover will be a continuous period of 8 hours. Employees will be provided with a separate room with a bed and clean linen, the use of appropriate facilities (including access to food preparation facilities and staff facilities where these exist) and free board and lodging for each night when the employee sleeps over.

13. By deleting clause 25.8 and inserting the following:

25.8 24-hour care

Commented [FWC11]: See decision at [1071].

This clause only applies to home care employees.

- (a) A **24-hour care** shift requires an employee to be available for duty in a client's home for a 24-hour period. During this period, the employee is required to provide the client with the services specified in the care plan. The employee is required to provide a total of no more than 8 hours of care during this period.
- (b) An employer may only require an employee to work a 24-hour care shift by agreement.
- (c) The employee will be afforded the opportunity to sleep for a continuous period of 8 hours during a 24-hour care shift and employees will be provided with a separate room with a bed and clean linen, the use of appropriate facilities (including access to food preparation facilities and staff facilities where these exist) and free board and lodging for each night when the employee sleeps over.
- (d) The employee will be paid 8 hours' work at 155% of their appropriate rate for each 24-hour period.
- (e) If the employee is required to perform more than 8 hours' work during a 24-hour care shift, that work shall be treated as overtime and 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. An employer and employee may utilise the TOIL arrangement in accordance with clause 28.2.
- (f) An employee may refuse to work more than 8 hours' work during a 24-hour care shift in circumstances where the requirement to work those additional hours is unreasonable.

14. By deleting clause 28.1 and inserting the following:

28.1 Overtime rates

(a) Full-time employees

A full-time employee will be paid the following payments for all work done in addition to their rostered ordinary hours on any day or outside the span of hours (day workers only):

- (i) disability services, home care and day care employees—for all authorised overtime on Monday to Saturday, payment will be made at the rate of time and a half for the first 2 hours and double time thereafter;
- (ii) social and community services and crisis accommodation employees—for all authorised overtime on Monday to Saturday, payment will be made at the rate of time and a half for the first 3 hours and double time thereafter;
- (iii) for all authorised overtime on a Sunday, payment will be made at the rate of double time;
- (iv) for all authorised overtime on a public holiday, payment will be made at the rate of double time and a half; and
- (v) overtime rates under this clause will be in substitution for, and not cumulative upon, the shift premiums prescribed in clause 29—Shiftwork and Saturday and Sunday work premiums prescribed in clause 26—Saturday and Sunday work.

(b) Part-time employees and casual employees

- (i) All time worked by part-time or casual employees in excess of 38 hours per week or 76 hours per fortnight will be paid for at the rate of time and a half for the first 2 hours and double time thereafter, except that on Sundays such overtime will be paid for at the rate of double time and on public holidays at the rate of double time and a half.
- (ii) All time worked by part-time or casual employees which exceeds 10 hours per day, 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.
- (iii) Time worked up to the hours prescribed in clause 28.1(b)(ii) will, subject to clause 28.1(b)(i), not be regarded as overtime and will be paid for at the ordinary rate of pay (including the casual loading in the case of casual employees).
- (iv) All time worked outside the span of hours by part-time and casual day workers will be paid for at the rate of time and a half for the first two hours

and double time thereafter, except that on Sundays such overtime will be paid for at the rate of double time and on public holidays at the rate of double time and a half.

Commented [FWC12]: See decision at [556]

- (v) Overtime rates payable under clause 28.1(b) will be in substitution for and not cumulative upon the shift premiums prescribed in clause 29—Shiftwork and are not applicable to ordinary hours worked on a Saturday or Sunday.

15. By deleting clause 31.2 and inserting the following:

31.2 Quantum of leave

Commented [FWC13]: See decision at [1071]

For the purpose of the NES, a shiftworker is:

- (a) an employee who works for more than 4 ordinary hours on 10 or more weekends during the yearly period in respect of which their annual leave accrues; or
- (b) an employee who works at least eight 24-hour care shifts in accordance with clause 25.8;

and is entitled to an additional week's annual leave on the same terms and conditions.

16. By updating cross-references accordingly.

B. This determination comes into operation on **1 October 2021**. In accordance with s.165(3) of the *Fair Work Act 2009* this determination does not take effect in relation to a particular employee until the start of the employee's first full pay period that starts on or after **1 October 2021**.

PRESIDENT

Printed by authority of the Commonwealth Government Printer