



## DECISION

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

s.157—FWC may vary etc. modern awards if necessary to achieve modern awards objective

### **4 yearly review of modern awards—*Social, Community, Home Care and Disability Services Industry Award 2010*** (AM2018/26 & AM2020/100)

Social, community, home care and disability services

DEPUTY PRESIDENT CLANCY

MELBOURNE, 31 JANUARY 2022

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

[1] Further to the decisions issued by the Full Bench of the Fair Work Commission in relation to the *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADS Award) on 4 May 2021 ([\[2021\] FWCFB 2383](#)) (the *May 2021 Decision*), 25 August 2021 ([\[2021\] FWCFB 5244](#)) (the *August 2021 Decision*) and 18 October 2021 ([\[2021\] FWCFB 5641](#)) (the *October 2021 Decision*), the Full Bench published a further revised draft determination as **Attachment A** to the *October 2021 Decision*.

[2] Any comments on the further revised draft determination that were confined to technical amendments were to be filed by 4.00pm on Wednesday, 27 October 2021. Submissions in reply were to be filed by 4.00pm on Friday, 12 November 2021. Following an [extension](#), these dates were amended to Monday, 1 November 2021 and Wednesday, 17 November 2021 respectively.

[3] Submissions were received from Australian Business Industrial, NSW Business Chamber Ltd, Aged and Community Services Australia and Leading Age Services Australia (ABI) dated 1 November 2021 ([ABI submission](#)) and the Australian Industry Group (Ai Group) dated 1 November 2021 ([Ai Group submission](#)).

[4] ABI firstly proposes an amendment to item 6 (clause 10.5A(b)) of the further revised draft determination that would insert the words “Where an employer wishes to vary an agreement made with an employee under clause 10.3(c) to make each of the employee’s shifts or periods of work in broken shifts consistent with the hours specified in clause 10.5A(a)(i) or (ii)” at the start of clause 10.5A (b). ABI’s proposed amendment seeks to confine the obligation to consult to when an employer wishes to vary an employee’s shifts to make them consistent with the minimum payment periods. ABI submits that this drafting change is necessary because

the clause currently proposed would impose a positive obligation to have discussions about changes to working hours and it is possible that some employers may not wish to vary certain employees' agreed patterns of work, notwithstanding they will still have to meet minimum payment requirements. On the basis of the material submitted, I do not consider it necessary to make the amendment proposed by ABI. More broadly, I consider it would be sound business practice for consultation to be undertaken regardless of an employer's intended approach so that the new minimum payment requirements are understood.

[5] I agree with the amendments proposed by ABI that would insert the word "clause" in both clause 20.3(b) and clause 20.4(a)(ii). In both cases, they are required. Further, I agree to the quantum of the laundry allowance in clause 20.3(a) being expressed as "\$0.32" per shift, instead of "32 cents".

[6] I also agree with the suggestion of the ABI that the existing wording in clause 20.9(b) of the SCHADS Award be retained in clause 20.11(b) to confirm that Friday evening periods or Monday morning periods are not excluded from the application of the on call allowance. Further, I will make the change to clause 25.5(f)(i) suggested by ABI. It reflects what was decided at paragraphs [217]-[218] of the *August 2021 Decision*.

[7] The change ABI proposes to clause 25.5(f)(iv)(B) to amend "clauses" to "clause" is necessary and will be made, as are the numbering changes proposed in clause 25.6(a)(ii) and clause 25.6(b)(iii) and the correction of a typographical error in clause 25.6(e), an error also noted by Ai Group. In addition, I have noted that a formatting change to clause 25.5(f)(vi)(A) is required so that "make-up time" is used instead of "makeup" time.

[8] Finally, I agree with the ABI suggestion to change the format of clause 25.6(e) so that the clause deals firstly with various shift types and then with a specific night shift circumstance.

[9] There are no other technical and drafting matters to be determined in relation to the SCHADS Award.

[10] A final variation determination incorporating the changes to the SCHADS Award in this decision will be issued with this decision, with an operative date of 1 February 2022.



DEPUTY PRESIDENT

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