

Wednesday, 1 September 2021

Justice Ross
Fair Work Commission

By Email: chambers.ross.j@fwc.gov.au

Dear Associate,

RE: AM2018/26 Social, Community, Home Care and Disability Services Industry Award 2010

Further to Directions issued in the above proceedings on Wednesday 1 September 2021 the Health Services Union files the attached minor changes to the Commissions Draft Determinations issued in the Background Paper 3 issued on 31 August 2021.

1. The changes to Client Cancellation at 25.5(f)(v) varies the wording to ensure the applicability of payment under clause 25.5(f)(iv)A is triggered where a minimum of 12 hours' notice of a cancelled service has not been provided by the employer.
2. A minor typographical error at 25.5(f)(vi)B has been corrected by inserting the word 'be'.
3. The changes to Broken Shifts at 25.6(b)(ii) varies the wording to reference the 10.3(e) which makes provisions for variations to agreed work patterns and hours made under clause 10.3 generally.
4. Alternately the HSU submits that the clause could be varied to reference agreements made or varied in accordance with clause 10.3.

All proposals are provided as tracked changes to the relevant parts of the Draft Determinations reproduced in the attached.

Yours sincerely,



Leigh Svendsen
Senior Industrial and Compliance Officer



Attachment 1 – Revised Draft Determination

MA000100



DRAFT DETERMINATION

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 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:

11. 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. For the purposes of clause 25.5(f), a client cancellation includes where a client reschedules a scheduled home care or disability service.

(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 or the affected part of the 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 or part of the shift not been cancelled; or
 - (B) subject to clauses 25.5(f)(v), provide the employee with make-up time in accordance with clause 25.5(f)(vi).
- (v) The make-up time arrangement can only be used where the employee was notified of the cancelled shift (or part thereof) at least 12 hours prior to the scheduled commencement of the cancelled service. ~~In these cases~~ **If less than 12 hours' notice is provided**, clause 25.5(f)(iv)(A) applies.
- (vi) Where the employer elects to provide make-up time:
 - (A) despite clause 25.5(a), the employer must provide the employee with 7 days' notice of the makeup-time (or a lesser period by agreement with the employee);
 - (B) the make-up time must **be** worked within 6 weeks of the date of the cancelled service;
 - (C) the employer must consult with the employee in accordance with clause 8A regarding when the make-up time is to be worked;
 - (D) the make-up time 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; and
 - (E) an employee who works make-up time 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.
- (vii) 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).

12. 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 an 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 **under 10.3(e)**.

OR

- (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 or subsequently varied in accordance with** 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 and overtime penalty rates to be paid in accordance with clauses 26 and 28.
- (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.