



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.
- (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.

- (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 [FWC1]: See decision at [987].

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

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:

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

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

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

(f) Client cancellation

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

(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);

- (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.

- (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

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.

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

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

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