

BEFORE THE FAIR WORK COMMISSION

Fair Work Act 2009 (Cth)

Title of matter: 4 yearly review of modern awards—Social, Community, Home Care and Disability Services Industry Award 2010

Matter Number: AM2018/26

Document: Submissions pursuant to Fair Work Commission Statement dated 9 August 2021

Date: 30 August 2021

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Background

1. These submissions in reply are filed in response to paragraph 7 of the Fair Work Commission's (the '**FWC**') Statement dated 9 August 2021.
2. References to the '**Award**' or '**SCHADS Award**' in these submissions means the Social, Community, Home Care and Disability Services Industry Award 2010.
3. AFEI has had an opportunity to review the submissions in reply of the Australian Industry Group ('**AiG**') filed with the FWC on 30 August 2021 ('**AiG further submissions**').
4. AFEI supports and adopts the AiG further submissions but wishes to raise the following points.

Broken Shifts

5. AFEI notes the submissions filed with the FWC by Challenge Community Services ('**Challenge**') dated 30 August 2021 in relation to these proceedings ('**Challenge submissions**').
6. Challenge is a disability services provider and is covered by this Award.¹ Challenge's workers are regularly rostered on broken shifts,² which include broken shifts rostered past 8:00pm,³ to up to 11:30pm.⁴ By virtue of clause 25.2(b) and clause 29 of the Award, these workers are 'shiftworkers'.
7. In AFEI's experience, it is not uncommon for broken shifts to be performed by shiftworkers.
8. Shiftworkers working broken shifts are necessary to meet participant needs because most participants do not require ongoing and continuous assistance or care throughout the day and only require services for short periods of time.⁵
9. Restricting clause 25.6 of the Award to day workers would:
 - a. require reorganisation of practices in an undesirable, unattractive and unsustainable manner for both participants and employees, by either rostering different employees to attend to the same participant (not ideal for participants with complex care needs who require personal services such as toileting and bathing who choose to receive these services from workers who the participants trust) or rostering shiftwork employees to work in a continuous block of hours without breaks and would thus be paid for hours not worked or required;⁶
 - b. result in significant increase to costs due to payment of hours not required or needed and payment of overtime instead of shift penalties.⁷

Remote Response

¹ Paragraphs 1 - 5, Challenge submissions.

² Paragraph 6, Challenge submissions.

³ Paragraph 14, Challenge submissions.

⁴ Paragraph 18, Challenge submissions.

⁵ Paragraph 16, Challenge submissions.

⁶ Paragraphs 20 - 24, Challenge submissions.

⁷ Paragraph 26, Challenge submissions.

10. AFEI refer to paragraphs 75 – 77 of the ASU submissions dated 26 August 2021 ('ASU submissions') including 'Attachment A' to the ASU's submissions.
11. AFEI attaches at **Annexure A** to these submissions commentary on the modern awards containing remote work provisions identified by the ASU. In summary:
 - a. Remote work provisions are not common in Modern Awards. The ASU's table identifies a number of enterprise-based instruments and public sector instruments, that also are arguably enterprise-based instruments, and only five modern awards that contain remote work provisions. The enterprise-based instruments should not be considered relevant as comparators for the SCHADS Award.
 - b. In relation to the five modern awards, AFEI makes the following observations:
 - i. the coverage of the Contract Call Centres Award 2020 (CCCA) is considerably narrower than the SCHADS Award. As noted below the highest classification is Contract Call Centre Industry Technical Associate. Remote work performed by senior employees and managers of contract call centre operations is not covered by the CCCA and in all likelihood such employees would be award free;
 - ii. similarly the coverage of Telecommunications Award 2020 (TA) is more limited than the SCHADS Award, again more senior employees and managers are not covered by the TA, and the remote work provisions are limited in the TA to the Technical stream only;
 - iii. the Nurses Award 2010 (NA) is an occupational award, and unlike the SCHADS Award does not apply to most, if not all, employees within an organisation. Moreover, the two highest classifications of registered nurses are exempt from the NA's overtime payments; and
 - iv. of the five modern awards identified by the ASU, the Local Government Industry Award 2020 (LGIA) and the Water Industry Award 2020 (WIA) are the most comparable to the SCHADS Award in employee coverage, and it appears that the remote work provisions are not limited to any particular employees. The remote work entitlements, however, appear to be significantly different to the Joint Proposal.⁸ Neither the LGIA nor the WIA contain minimum payments, other than rounding-up payment for actual time work to the nearest 15 minutes, nor do the two awards make any distinctions between the time remote work is performed.

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⁸ Agreement between the ASU, HSU, UWU, NDS, Australian Business Industrial, The NSW Business Chamber Limited, Aged & Community Services Australia, and Leading Age Services Australia on the content of the 'remote response' clause dated 23 August 2021.

Annexure A

Modern Award	Provision	AFEI observations
<p><i>Contract Call Centres Award 2020 (CCCA)</i></p>	<p>20.7 Remote service/support</p> <p><i>(a) An employee required to work overtime providing service or support over the telephone or via remote access arrangements must be paid for each occasion that such work is carried out:</i></p> <p><i>(i) for a minimum of half an hour at the appropriate overtime rate where such work commences between 5.00 am and up to 10.00 pm;</i></p> <p><i>(ii) for a minimum of one hour at the appropriate overtime rate where such work commences after 10.00 pm and up to midnight; or</i></p> <p><i>(iii) for a minimum of one and a half hours at the appropriate overtime rate where such work commences after midnight and before 5.00 am;</i></p> <p><i>except where the overtime is continuous (subject to a meal break) with the commencement or completion of ordinary hours.</i></p> <p><i>(b) The employee will not be required to work the full half an hour or one hour or one and a half hours if the work which the employer requires to be performed is completed within a shorter period.</i></p> <p><i>(c) If an employee has completed the job and finished work but is required to perform further work within the half hour, one hour or one and a half hours, the balance of the minimum period for that job will be cancelled and the employee will only be paid up to the commencement of the next work period. The employee will then be entitled to be paid for a minimum of half hour, one hour or one and a half hours as the case may be for the next work period.</i></p> <p><i>(d) Overtime worked in circumstances specified in clause 20.7 will not be regarded as overtime for the purposes of clause 20.4 where the time worked is less than 3 hours during the work period or each work period. Provided that where the total number of hours worked on more than one work period is 4 hours or more then the provisions of clauses 20.4(b) will apply.</i></p> <p><i>(e) Overtime worked in circumstances specified in clause 20.7 will not be regarded as overtime for the purposes of clause 20.6.</i></p>	<ol style="list-style-type: none"> 1. The ASU appears to have quoted the incorrect provision in the CCCA. The remote service provisions of the CCCA are contained in clause 20.7 and not 26.7. Further, we note the provision as it appears in the ASU's table differs from the actual provision as it appears in the CCCA. 2. The highest classification under the CCCA is that of Contract Call Centre Industry Technical Associate. In contrast, the SCHADS Award can cover roles up to executive management. 3. The minimum rate for the Contract Call Centre Industry Technical Associate is \$1,137.30 per week, which is substantially lower than the minimum rate for Level 8 under the SACS stream of the SCHADS Award, being \$1,499.50 per week.
<p><i>Local Government Industry Award 2020 (LGIA)</i></p>	<p>21.6 On-call</p> <p><i>(a) An employee directed by the employer to be available for duty outside of the employee's ordinary working hours will be on-call. An employee on-call must be able to be contacted and immediately respond to a request to attend work.</i></p> <p><i>(b) An employee who is on-call may be paid an on-call allowance in accordance with clause 19.2(e).</i></p> <p>(c) Call out</p> <p><i>(i) An employee who is on-call and in receipt of an on-call allowance will be paid at the appropriate overtime rate in clause 21 for time required to attend work.</i></p> <p><i>(ii) Actual time worked will be deemed to apply from the time the employee leaves home.</i></p> <p>(d) Remote response</p> <p><i>(i) An employee who is in receipt of an on-call allowance and available to immediately:</i></p> <ul style="list-style-type: none"> ▪ respond to phone calls or messages; 	<ol style="list-style-type: none"> 1. Remote response in the LGIA is paid for time actually taken in dealing with each particular matter at the applicable overtime rate rounded to the nearest 15 minutes notwithstanding the time in which remote response work is actually undertaken.

Modern Award	Provision	AFEI observations
	<ul style="list-style-type: none"> ▪ provide advice ('phone fixes'); ▪ arrange call out/rosters of other employees; and ▪ remotely monitor and/or address issues by remote telephone and/or computer access, <p>will be paid the applicable overtime rate in clause 21 for the time actually taken in dealing with each particular matter.</p> <p>(ii) An employee remotely responding will be required to maintain and provide to the employer a time sheet of the length of time taken in dealing with each matter remotely for each day starting from the first remote response. The total overtime paid to an employee for all time remotely responding in any day commencing from the first response will be rounded up to the nearest 15 minutes.</p>	
Nurses Award 2010 (NA)	<p>28.5 Recall to work when on call</p> <p>(a) An employee who is required to be on call and who is recalled to work at the workplace will be paid a minimum of three hours work at the appropriate overtime rate.</p> <p>(b) An employee who is required to be on call and who is required to perform work by the employer via telephone or other electronic communication away from the workplace will be paid at the appropriate overtime rate for a minimum of one hours work. Multiple electronic requests made and concluded within the same hour shall be compensated within the same one hour's overtime payment. Time worked beyond one hour will be rounded to the nearest 15 minutes.</p> <p>28.6 Recall to work when not on call</p> <p>(a) An employee who is not required to be on call and who is recalled to work at the workplace after leaving the employer's premises will be paid a minimum of three hours work at the appropriate overtime rate.</p> <p>(b) An employee who is not required to be on call and who is required to perform work by the employer via telephone or other electronic communication away from the workplace will be paid at the appropriate overtime rate for a minimum of one hours work. Multiple electronic requests made and concluded within the same hour shall be compensated within the same one hour's overtime payment. Time worked beyond one hour will be rounded to the nearest 15 minutes.</p> <p>(c) The time spent travelling to and from the place of duty will be deemed to be time worked. Except that, where an employee is recalled within three hours of their rostered commencement time, and the employee remains at work, only the time spent in travelling to work will be included with the actual time worked for the purposes of the overtime payment.</p> <p>(d) An employee who is recalled to work will not be obliged to work for three hours if the work for which the employee was recalled is completed within a shorter period.</p> <p>(e) If an employee is recalled to work, the employee will be provided with transport to and from their home or will be refunded the cost of such transport.</p>	<p>1. Clause 28.1(b) provides that overtime rates do not apply to the classifications of Registered Nurses level 4 and 5.</p>
Telecommunications Services Award 2020 (TA)	20.8 Remote service/support—Technical stream	<p>1. The TA has three streams, these being:</p>

Modern Award	Provision	AFEI observations
	<p>(a) The provisions of clause 20.8 will only apply to classifications in the Technical Stream.</p> <p>(b) An employee required to work overtime providing service or support over the telephone or via remote access arrangements will be paid for each occasion that such work is carried out:</p> <p>(i) for a minimum of half an hour at the appropriate overtime rate where such work commences between 5.00 am and 10.00 pm;</p> <p>(ii) for a minimum of one hour at the appropriate overtime rate where such work commences after 10.00 pm and up to midnight; or</p> <p>(iii) for a minimum of one and a half hours at the appropriate overtime rate where such work commences after midnight and before 5.00 am; except where the overtime is continuous (subject to a meal break) with the commencement or completion of ordinary hours.</p> <p>(c) An employee will not be required to work the full half an hour or one hour or one and a half hours, as the case may be, if the work which the employer requires to be performed is completed within a shorter period.</p> <p>(d) Notwithstanding the above, where an employee has completed the job and finished work and is required to perform further work within the minimum period specified in clause 20.8(b) for that job, the balance of the minimum period for that job will be cancelled and the employee will only be paid up to the commencement of the next work period. The employee will then be entitled to be paid for a minimum of half hour, one hour or one and a half hours, as the case may be, for the next work period.</p> <p>(e) Overtime worked in circumstances specified in clause 20.8(b) will not be regarded as overtime for the purposes of clause 20.5 where the time worked is less than 3 hours during the work period or each work period. Provided that where the total number of hours worked on more than one work period is 4 hours or more then the provisions of clause 20.5(b) will apply.</p> <p>(f) Overtime worked in circumstances specified in clause 20.8(b) will not be regarded as overtime for the purposes of clause 20.6(a).</p>	<ul style="list-style-type: none"> - The customer contact stream (weekly wage ranges from \$825.20 – \$1,052.40 per week); - Clerical and administrative stream (weekly wages range from \$825.20 – \$1,052.40); and - The technical stream (weekly wage ranges from \$825.20 – \$1,137.20) <ol style="list-style-type: none"> 2. The highest classification under the Technical Stream is the Telecommunications Associate. 3. Clause 20.8 being the Remote service/support provision applies to the Technical stream only and not to all streams under the TA. 4. The remote response provision in the Joint Proposal would apply to ALL streams in the SCHADS Award.
Water Industry Award 2020 (WIA)	<p>20.6 On-call</p> <p>(a) An employee directed by the employer to be available for duty outside of the employee’s ordinary working hours will be on-call. An employee on-call must be able to be contacted and immediately respond to a request to attend work.</p> <p>(b) On-call allowance</p> <p>Where an employee is on-call, the employee will be paid an on-call allowance each day equivalent to:</p> <p>(i) \$35.51 per day if required to be on-call on a weekday;</p> <p>(ii) \$47.34 per day if required to be on-call on a Saturday; or</p> <p>(iii) \$59.18 per day if required to be on-call on a Sunday or public holiday.</p> <p>(c) Call out</p> <p>An employee who is on-call and in receipt of an on-call allowance will be paid at the appropriate overtime rate for time worked on a call out. Time worked will be calculated from the time the employee leaves home.</p> <p>(d) Remote response</p> <p>An employee who is in receipt of an on-call allowance and available to immediately:</p>	<ol style="list-style-type: none"> 1. We note the provision as it appears in the ASU’s table differs from the actual provision as it appears in the WIA (the on-call allowance amounts in the ASU’s table appear to be incorrect. For example, the on-call allowance in the ASU’s table is \$34.64 per day, whereas the WIA currently provides \$35.51 per day). 2. Remote response in the WIA is paid for time actually taken in dealing with each particular matter at the applicable overtime rate rounded to the nearest 15 minutes notwithstanding the time in which remote response work is actually undertaken.

Modern Award	Provision	AFEI observations
	<p>(i) respond to phone calls or messages;</p> <p>(ii) provide advice ('phone fixes');</p> <p>(iii) arrange call out/rosters of other employees; and</p> <p>(iv) remotely monitor and/or address issues by remote telephone and/or computer access,</p> <p>will be paid the applicable overtime rate for the time actually taken in dealing with each particular matter.</p> <p>(e) An employee remotely responding may be required to maintain and provide to the employer a time sheet of the length of time taken in dealing with each matter remotely for each day commencing from the first remote response. The total overtime paid to an employee for all time remotely responding in any day commencing from the first response will be rounded up to the nearest 15 minutes.</p>	