
CIRCULAR: GEN/137/NAT/137/21

DATE: 5 May 2021

SUBJECT: Social, Community, Home Care and Disability Services Industry Award 2010 – 4 Yearly Review Decision

ATTENTION: Chief Executive Officer

A Full Bench of the Fair Work Commission (**FWC**) has issued their decision in relation to the 4 Yearly Review of Modern Awards for the *Social, Community, Home Care and Disability Services Industry Award 2010 (the SCHADS Award)* - [2021] FWCFB 2383 (**the Decision**) – available [here](#).

<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/2021fwcfb2383.pdf>

The Decision is long and commensurate with the breadth of the review and the evidence heard and considered by the FWC, noting that ‘Tranche 1’ considered 9 claims and ‘Tranche 2’ considered 12 claims.

Summary of the Decision

The FWC has prepared a **Summary of the Decision** which is available [here](#).

<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/2021fwcfb2383-summary.pdf>

The Summary of the Decision also includes the *Draft Determination* (see from page 10 of the Summary of the Decision) that has been prepared by the FWC to give formal effect to the variations proposed to the SCHADS Award by the FWC.

Importantly, the Draft Determination, on its current terms, would not come into effect until the start of an employee’s first full pay period that starts on or after **1 October 2021**, meaning that there will be time for business to consider the operational impact of the Decision / Determinations and adapt accordingly.

Scope of the Decision

In terms of the claims that have been granted, these include:

- introduction of a minimum payment / engagement for part time employees of:
 - SACS employees (except when undertaking disability work) – 3 hours pay; and
 - All other employees – 2 hours pay.
- revision to the definition of ‘broken shift’ to mean a shift consisting of (only) 2 separate periods of work with a single unpaid break (other than a meal break);
- further to the above, a process to accommodate the need for a broken shift to involve *more than 1* break subject to:
 - a maximum of 2 unpaid breaks in the shift; and
 - the agreement of the employee for *each* occasion; and
 - an additional payment being made to the employee;
- a new clause is required in the SCHADS Award that deals with remote response work;
- a revised client cancellation clause providing for:
 - two options for the employer in the event of a cancellation:
 - direct the employee to perform other work; or
 - cancel the rostered shift;
 - where the shift is cancelled, the revised clause provides that:
 - the employer can pay the employee the amount that they would have received had the shift not been cancelled; or

- provide the employee with make up time – which must be performed within 6 weeks of the date of the cancelled shift (noting the employer group seeking the claim had originally sought a 3 month window for make up time) – however, the employer cannot require that the employee work make up time where the employer is permitted to charge the client in respect of the cancelled service;
- a new provision providing 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 (terms will be subject to further deliberations between the parties);
- some amendments to the 24-hour care clause (see Draft Determination, page 17 of the Summary of Decision document for details – noting that one amendment is that a person who works 8 x 24 hour shifts will be a ‘shiftworker’ for the purposes of accruing an additional week of annual leave); and
- sleepovers – an employee performing a sleepover will be entitled to clean bed linen and access to food preparation facilities.

The FWC also expressed *provisional* views in relation to the below matters:

- a ‘1 break’ broken shift should trigger an allowance of 1.7% of the standard rate - \$17.10 per broken shift;
- a ‘2 break’ broken shift should trigger an allowance of 2.5% of the standard rate - \$25.15 per broken shift;
- an employee who is a dayworker and performing work outside the ordinary span of hours is entitled to overtime for such work;
- in relation to the remote response work clause (see above), the minimum payment should be:
 - where the work is performed between 6am and 10pm: 30 minutes; and
 - where the work is performed between 10pm and 6am: 1 hour.

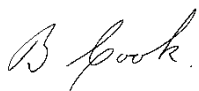
In relation to the issue of travel time between client engagements, the FWC accepted as a ‘*general proposition, that employees should be compensated for the time spent travelling between engagements*’. The FWC expressed the provisional view that the matters of minimum engagement, broken shift and travel time were inter-related matters. At this stage, the FWC has not made a decision on how the SCHADS Award will be varied to address travel time and this will be the subject of a further conference on 27 May 2021.

Next Steps

Interested parties have been invited by the FWC to file any submissions / evidence on the Draft Determination by 22 June 2021.

There will be a hearing on 30 June 2021 on the Draft Determination and the ‘provisional’ views put forward by the FWC.

If you have any questions or if you require further information, please contact the SIAG National Advisory Service on 03 9644 1400 or 1300 (SIAG HR) / 1300 742 447.



Brian Cook
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