

**Circular No. 170/2021**

26 October 2021

## *Social, Community, Home Care and Disability Services Industry Award 2010: Further FWC Decision tranche 2 ‘substantive issues’*

Recently the Fair Work Commission (FWC) handed down its third and final decision (**the October Decision**) concerning the *Social, Community, Home Care and Disability Services Industry Award 2010 (the Award)* tranche 2 substantive matters. Members will be aware that the latest FWC decision follows the earlier decisions on 4 May 2021 (see [Circular 55/2021](#)) (**the May Decision**) and 25 August 2021 (see [Circular 143/2021](#)) (**the August Decision**).

### **The October Decision**

The October Decision has determined several “outstanding matters” from the earlier FWC proceedings. These included: *remote work*; *broken shifts and broken shift allowances*, *damaged clothing allowance*; and the FWC’s provisional views concerning *transitional arrangements* for changes to *part time minimum engagement periods*. The FWC proceedings associated with each of the decisions included several highly contentious matters, with significant implications for service providers in the SACS sector. The key outcomes of the October Decision are outlined below.

#### **Remote work**

In the May Decision, the FWC indicated that it would introduce a new award entitlement providing minimum payments for the performance of remote work, with potentially different levels of payment depending on whether an employee is on call (and receiving on call allowances) and the time of the day at which the remote work is performed. In the October Decision, the FWC has determined the matters as follows:

- Remote work is work performed by an employee at the employer’s direction/with employer authorisation, and is:
  - o not part of the employee’s ordinary hours of work;
  - o not additional hours worked by a part time employee or is not overtime; and
  - o not required to be performed at a designated workplace
- The minimum payments that will apply to remote work are as follows:

<b>On-call/not on-call</b>	<b>Time the work is performed</b>	<b>Minimum payment</b>
On-call	6:00am – 10:00pm	15 minutes
On-call	10:00pm – 6:00am	30 minutes (*the unions wanted 1 hour)
Not on-call	N/A	1 hour
Participation in staff meetings/training	N/A	1 hour

- Each separate instance of remote work performed will incur the above minimum payments, unless any subsequent remote work is performed within the minimum pay period;
- Remote work performed outside the span of 6:00am – 8:00pm and remote work that is in excess of 10 hours a day will be at the rate of 150% for the first 2 hours and 200% thereafter (for casuals - 175% for the first 2 hours and 225% thereafter);
- Remote work performed in excess of 38 hours a week or 76 per fortnight will be paid at overtime rates;
- Remote work performed on weekends and public holidays will incur the applicable weekend/public holiday penalties;
- Employees performing remote work must maintain and provide time sheets; and
- Remote work does not count as work for the purposes of break provisions in the Award (eg, break after overtime).

### **Broken shifts**

In the May Decision, the FWC determined that broken shifts are to be limited to only one break per day, or except by agreement, a maximum of two breaks, with allowances payable for such broken shifts. The FWC expressed a provisional view that the allowance for one break would be 1.7% of the Award's *standard rate* (SR) (currently \$17.53) and 2.5% of the SR for two breaks (currently \$25.78). The FWC also expressed a view that broken shifts could be worked only by day workers, meaning all time worked after 8pm (Monday to Friday) would be overtime.

In the August Decision, the FWC determined that an agreement per occasion is not required where 2 break broken shifts are part of an agreed regular pattern of work.

In the October Decision, the FWC determined as follows:

- Confirmed that broken shifts are subject to one break only, except by agreement with an employee, a maximum of two breaks (agreement per occasion not required where 2 break broken shifts are part of an agreed regular pattern of work);
- Broken shift allowances to be paid per broken shift:
  - 1.7% of the SR for 1 break (currently \$17.53);
  - 2.25% of the SR for 2 breaks (currently \$23.20)
- Confirmed that minimum engagement periods for part time and casual employees apply to each "part" of a broken shift; Weekend, public holidays and overtime penalties apply to work performed on a broken shift where appropriate
- The FWC accepted the employers' submissions and evidence that the Award should not restrict broken shifts only to day work;
- The FWC also accepted the employers' submissions that shift penalties, where payable, would apply only to the part of the broken shift that meets the definition of afternoon or night shift. For example, an employee performing a broken shift from 9.00am-11.00am and then from 5.30pm-8.30pm, would be entitled to the afternoon shift allowance on the 5.30pm-8.30pm part of the broken shift.

### **Repair and replacement of clothing other than uniforms/Laundering of clothing other than uniforms allowance**

The FWC accepted the unions' claims that employers should reimburse employees for damaged clothing. Employers are to reimburse employees' reasonable costs in the repair/replacement of clothing with a substitute item that is soiled/damaged (excluding normal wear and tear) in the course of performance of duties. Employees will be required to provide notice of soiling/damage and employers can request evidence of how soiling occurred and the reasonable repair/replacement costs. Reasonable costs are only payable if the employee has complied with any direction to wear protective equipment and the soiling/damage not caused by negligence of the employee. The

entitlement will not be applicable to employees who are permitted/required to wear uniforms/entitled to payment under clause 20.2 - clothing and equipment.

Further, the FWC has decided that an allowance of 32 cents per shift will be payable if, during any day/shift, the employee's clothing (other than a uniform) is soiled in the course of performance of their duties. Employees are to provide notice of soiling and employers able to request evidence of how soiling occurred; and the allowance is only payable if the employee has complied with any reasonable direction to wear protective equipment.

### **Transitional Arrangements for Part time employees**

The FWC has determined that transitional arrangements will apply to part time employees whose agreed minimum engagement periods are less than the new minimum engagement periods (that commence 1 July 2022). The transitional arrangements, that include specific consultation requirements and conditions relating to changes in a part time employee's minimum contracted hours will apply to employees employed prior to 1 February 2022.

### **Operative Date**

The transitional arrangements concerning part time employees will commence on **1 February 2022** (although any variations made pursuant to the transitional arrangements must not come into operation before 1 July 2022). All other changes noted above, and changes determined in the May Decision and the August Decision, will commence on **1 July 2022**.

### **What next?**

The FWC has invited interested parties to file submissions relating to the **draft** determination issued alongside the October decision. The draft determination, which sets out all changes to the Award determined by the May, August and October Decisions, can be viewed following this circular.

**Webinar** - AFEI will present a webinar discussing the FWC's decisions and the various award changes in coming weeks. Details of presentation times and registration will be available shortly.

### **What do I need to know?**

If you would like further information about the Award and the FWC Decision, please contact the **AFEI Hotline** on **02 9264 2000**.

LEVEL 2, 97-99 BATHURST STREET, SYDNEY NSW 2000  
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**ATTACHMENT 1 – FURTHER REVISED DRAFT DETERMINATION**

MA000100 PRXXXXXX



**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), 25 AUGUST 2021 ([2021] FWCFB 5244) 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) An employer must not require a part-time employee to work additional hours in excess of their guaranteed hours. However, an employee may agree to work hours that are additional to 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), or as subsequently varied under clause 10.3(e), to increase their guaranteed hours.
  - (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.
  - (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.
  - (viii) An employee cannot make a request for a review of their guaranteed hours when:
    - (A) The employee has refused a previous offer to increase their guaranteed hours in the last 6 months; or

- (B) The employer refused a request from the employee to increase their guaranteed hours based on reasonable business grounds in the last 6 months.

2. By deleting clause 10.4(b).
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**

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 inserting a new clause 10.5A as follows:

#### **10.5A Transitional arrangements applying to minimum payments for part-time employees**

Clause 10.5A operates from 1 February 2022 until 1 October 2022.

NOTE: From 1 July 2022, this award will include a requirement for part-time employees to be paid for the following minimum number of hours, at the appropriate rate, for each shift or period of work in a broken shift: social and community services employees (except when undertaking disability services work)—3 hours; all other employees—2 hours (the **minimum payment requirements**). This clause provides transitional arrangements for the minimum payment requirements.

- (a) Clause 10.5A applies in relation to agreements made under clause 10.3(c) before 1 February 2022, where the employee’s agreed regular pattern of work includes shifts or periods of work in broken shifts of less than:
  - (i) 3 hours for social and community services employees (except when undertaking disability services work);
  - (ii) 2 hours for all other employees.
- (b) The employer must discuss the relevant minimum payment requirements with the employee and genuinely try to reach agreement on a variation to the agreement made under clause 10.3(c) that will 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) and will reasonably accommodate the employee’s circumstances.
- (c) Notwithstanding any prior agreement between the employer and the employee and despite clause 10.3(e), if the employer has genuinely tried to reach an agreement with the employee under clause 10.5A(b) but an agreement is not reached (including because

the employee refuses to confer), the employer may vary the agreement made under clause 10.3(c) to provide for shifts or periods of work in broken shifts that are consistent with the hours specified in clause 10.5A(a)(i) or (ii), by providing 42 days' notice to the employee in writing.

- (d) A variation by the employer under clause 10.5A(c) varies the agreement between the employer and employee made under clause 10.3(c).
- (e) A variation made under clause 10.5A(c) must not come into operation before 1 July 2022.
- (f) Clause 10.5A(c) 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.

6. By deleting Note 1 and Note 2 appearing at the beginning of clause 15.

7. 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).

8. 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:

**Equal remuneration rates for applicable Social and Community Services employees—from 1 December 2020**

	Clause	Minimum weekly wage	Final Rate ERO Percentage	Current weekly wage	Current hourly wage
Classification		\$	%	\$	\$
<b>Social and community services employee level 2</b>	15.2				
Pay point 1		899.50	123	1106.39	29.12
Pay point 2		927.70	123	1141.07	30.03
Pay point 3		955.90	123	1175.76	30.94
Pay point 4		981.50	123	1207.25	31.77
<b>Social and community services employee level 3</b>	15.3				

	<b>Clause</b>	<b>Minimum weekly wage</b>	<b>Final Rate ERO Percentage</b>	<b>Current weekly wage</b>	<b>Current hourly wage</b>
Pay point 1 (associate diploma/advanced certificate)		981.50	126	1236.69	32.54
Pay point 2		1009.70	126	1272.22	33.48
Pay point 3 (3 year degree)		1031.30	126	1299.44	34.20
Pay point 4 (4 year degree)		1052.40	126	1326.02	34.90
<b>Social and community services employee level 4</b>	15.4				
Pay point 1		1080.60	132	1426.39	37.54
Pay point 2		1108.80	132	1463.62	38.52
Pay point 3		1137.30	132	1501.24	39.51
Pay point 4		1162.70	132	1534.76	40.39
<b>Social and community services employee level 5</b>	15.5				
Pay point 1		1191.10	137	1631.81	42.94
Pay point 2		1216.60	137	1666.74	43.86
Pay point 3		1245.00	137	1705.65	44.89
<b>Social and community services employee level 6</b>	15.6				
Pay point 1		1273.40	140	1782.76	46.91
Pay point 2		1301.40	140	1821.96	47.95
Pay point 3		1329.60	140	1861.44	48.99
<b>Social and community services employee level 7</b>	15.7				
Pay point 1		1357.80	142	1928.08	50.74
Pay point 2		1386.30	142	1968.55	51.80
Pay point 3		1414.50	142	2008.59	52.86
<b>Social and community services employee level 8</b>	15.8				
Pay point 1		1442.70	145	2091.92	55.05
Pay point 2		1471.00	145	2132.95	56.13
Pay point 3		1499.50	145	2174.28	57.22



**Equal remuneration rates for Crisis Accommodation employees—from  
1 December 2020**

	<b>Clause</b>	<b>Minimum weekly wage</b>	<b>Final Rate ERO Percentage</b>	<b>Current weekly wage</b>	<b>Current hourly wage</b>
<b>Classification</b>		<b>\$</b>	<b>%</b>	<b>\$</b>	<b>\$</b>
<b>Crisis accommodation employee Level 1</b>	15.3				
Pay point 1 (associate diploma/advanced certificate)		981.50	126	1236.69	32.54
Pay point 2		1009.70	126	1272.22	33.48
Pay point 3 (3 year degree)		1031.30	126	1299.44	34.20
Pay point 4 (4 year degree)		1052.40	126	1326.02	34.90
<b>Crisis accommodation employee level 2</b>	15.4				
Pay point 1		1080.60	132	1426.39	37.54
Pay point 2		1108.80	132	1463.62	38.52
Pay point 3		1137.30	132	1501.24	39.51
Pay point 4		1162.70	132	1534.76	40.39
<b>Crisis accommodation employee level 3</b>	15.5				
Pay point 1		1191.10	137	1631.81	42.94
Pay point 2		1216.60	137	1666.74	43.86
Pay point 3		1245.00	137	1705.65	44.89
<b>Crisis accommodation employee level 4</b>	15.6				
Pay point 1		1273.40	140	1782.76	46.91
Pay point 2		1301.40	140	1821.96	47.95
Pay point 3		1329.60	140	1861.44	48.99

8. By renumbering clauses 20.3 to 20.9 as clauses 20.5 to 20.11.

9. By inserting new clauses 20.3 and 20.4 as follows:

**20.3 Laundering of clothing other than uniforms**

- (a) If during any day or shift, the clothing of an employee (other than a uniform) is soiled in the course of the performance of their duties, the employee will be paid a laundry allowance of 32 cents per shift provided that:

- (i) As soon as reasonably practicable the employee provides notice of the soiling and, if requested, evidence that would satisfy a reasonable person of the soiling and/or how it occurred; and
- (ii) At the time the clothing was soiled the employee had complied with any reasonable requirement of the employer in relation to the wearing of personal protective equipment either provided or paid for by the employer in accordance with 20.2(d).

#### **20.4 Repair and replacement of clothing other than uniforms**

- (a) If the clothing of an employee is soiled or damaged (excluding normal wear and tear) in the course of the performance of their duties, to the extent that its repair or replacement is necessary, the employer must reimburse the employee for the reasonable cost incurred in repairing or replacing the clothing with a substitute item, provided that:
  - (i) As soon as reasonably practicable the employee provides notice of the soiling or damage and, if requested, evidence that would satisfy a reasonable person of the soiling or damage, how it occurred, and the reasonable repair or replacement costs;
  - (ii) At the time the clothing was soiled or damaged the employee had complied with any reasonable requirement of the employer in relation to the wearing of personal protective equipment either provided or paid for by the employer in accordance with 20.2(d); and
  - (iii) The damage or soiling of an employee's clothes is not caused by the negligence of the employee.
- (b) This clause will not apply where an employee is permitted or required to wear a uniform supplied by the employer or is otherwise entitled to any payment under clause 20.2.

10. By deleting renumbered clause 20.11 and inserting the following:

#### **20.11 On call allowance**

An employee required by the employer to be on call (i.e. available for recall to duty at the employer's or client's premises and/or for remote work) will be paid an allowance of:

- (a) **2.0%** of the standard rate (\$20.63) for any 24-hour period or part thereof during the period from the time of finishing ordinary duty on Monday to the time of finishing ordinary duty on Friday; or
- (b) **3.96%** of the standard rate (\$40.84) in respect of any other 24-hour period or part thereof on a Saturday, Sunday, or any public holiday.

11. By inserting a new clause 20.12 as follows:

#### **20.12 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%** (\$17.53) 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 **2.25%** (\$23.20) of the standard rate, per broken shift.

12. By deleting clause 25.5(d)(ii) and inserting the following:

- (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, subject to the agreement of the employer; 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.

13. 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. 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).

14. 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.
- (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, overtime and public holiday penalty rates to be paid in accordance with clauses 26, 28 and 34.

- (e) An employee must be paid the shift allowances in accordance with clause 29 in relation to work performed on a broken shift, provided that:
  - (i) The night shift allowance is not payable for work performed on a night shift that commences before 6.00 am.
  - (ii) The shift allowances are only payable in respect of periods of work in a broken shift that satisfy the definitions of afternoon shift, night shift and public holiday shift (as defined by clause 29.2 and in accordance with clause 25.6(e)(i)).

Example: If an employee performs work on a broken shift from 9.00 am – 11:00am (first period of work) and then from 5:30pm – 8:30pm (second period of work), the afternoon shift allowance will be payable on the second period of work only.

- (f) 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.
- (g) An employee must receive a minimum break of 10 hours between broken shifts rostered on successive days.

15. 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.

16. 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.

17. By inserting a new clause 25.10 as follows:

### **25.10 Remote work**

- (a) This clause applies where an employee is required by their employer to perform remote work.
- (b) For the purpose of this clause, **remote work** means the performance of work by an employee at the direction of, or with the authorisation of, their employer that is:
  - (i) not part of their ordinary hours of work rostered in accordance with clause 25.5 (or, in the case of casual employees, not a designated shift); and
  - (ii) not additional hours worked by a part-time employee under clause 28.1(b)(iii) or 10.3(e) or overtime contiguous with a rostered shift; and
  - (iii) not required to be performed at a designated workplace.
- (c) **Minimum payments for remote work**
  - (i) Where an employee performs remote work, they will be paid for the time spent performing remote work, with the following minimum payments applying:
    - (A) where the employee is on call between 6.00am and 10.00pm – a minimum payment of 15 minutes' pay;
    - (B) where the employee is on call between 10.00pm and 6.00am – a minimum payment of 30 minutes' pay;
    - (C) where the employee is not on call - a minimum payment of one hour's pay;
    - (D) where the remote work involves participating in staff meetings or staff training remotely - a minimum payment of one hour's pay.
  - (ii) Any time worked continuously beyond the minimum payment period outlined above will be rounded up to the nearest 15 minutes and paid accordingly.
  - (iii) Where multiple instances of remote work are performed on any day, separate minimum payments will be triggered for each instance of remote work performed, save that where multiple instances of remote work are performed

within the applicable minimum payment period, only one minimum payment period is triggered.

**(d) Rates of pay for remote work**

- (i) Remote work will be paid at the employee's minimum hourly rate unless one of the following exceptions applies:
  - (A) Remote work performed outside the span of 6am-8pm will be paid at the rate of **150%** of the minimum hourly rate for the first two hours and **200%** of the minimum hourly rate thereafter or, in the case of casual employees, at **175%** of the minimum hourly rate for the first two hours and **225%** of the minimum hourly rate thereafter;
  - (B) Remote work performed in excess of 38 hours per week or 76 hours per fortnight will be paid at the applicable overtime rate prescribed in clause 28.1;
  - (C) Remote work performed in excess of 10 hours per day will be paid at the rate of **150%** of the minimum hourly rate for the first two hours and **200%** of the minimum hourly rate thereafter or in the case of casual employees, **175%** of the minimum hourly rate for the first 2 hours and **225%** of the minimum hourly rate thereafter;
  - (D) Remote work performed on a Saturday will be paid at the rate of **150%** of the minimum hourly rate or, in the case of casual employees, **175%** of the minimum hourly rate;
  - (E) Remote work performed on a Sunday, it will be paid at the rate of **200%** of the minimum hourly rate or, in the case of casual employees, **225%** of the minimum hourly rate;
  - (F) Remote work performed on a public holiday will be paid at the rate of **250%** of the minimum hourly rate or, in the case of casual employees, **275%** of the minimum hourly rate.
- (ii) The rates of pay in clause 25.10(d)(i) above are in substitution for and not cumulative upon the rates prescribed in clauses 26, 28, 29, and 34.

**(e) Other requirements**

An employee who performs remote work must maintain and provide to their employer a time sheet or other record acceptable to the employer specifying the time at which they commenced and concluded performing any remote work and a description of the work that was undertaken. Such records must be provided to the employer within a reasonable period of time after the remote work is performed.

**(f) Miscellaneous provisions**

- (i) In this clause, the term 'minimum hourly rate' means the weekly rates prescribed by clauses 15, 16 and 17 (as applicable) divided by 38.

- (ii) Where remote work is performed, the minimum payments at clause 10.5 do not apply.
- (iii) The performance of remote work will not count as work or overtime for the purpose of the following clauses:
  - (A) Clause 25.3 - rostered days off;
  - (B) Clause 25.4 - rest breaks between rostered work;
  - (C) Clause 28.3 - rest period after overtime;
  - (D) Clause 28.5 - rest break during overtime.

18. 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 and, in the case of day workers, for work done outside the span of hours under clause 25.2(a):

- (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.
- (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.

19. By deleting clause 28.4 and inserting the following:

#### **28.4 Recall to work overtime**

An employee who is recalled to work overtime after leaving the workplace and requested by their employer to attend a workplace in order to perform such overtime work will be paid for a minimum of two hours' work at the appropriate rate for each time recalled. If the work required is completed in less than two hours the employee will be released from duty.

20. By deleting clause 29.4 and inserting the following:

**29.4** Shifts are to be worked in one continuous block of hours that may include meal breaks and sleepovers, except where broken in accordance with clause 25.6.

21. By deleting clause 31.2 and inserting the following:

#### **31.2 Quantum of leave**

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 during the yearly period in respect of which their annual leave accrues; and

is entitled to an additional week's annual leave on the same terms and conditions.

22. By updating cross-references accordingly.

B. Item 5 of this determination comes into operation on **1 February 2022**. In accordance with s.165(3) of the *Fair Work Act 2009* this item 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 February 2022**.

C. Items 1 to 4 and 6 to 22 of this determination come into operation on **1 July 2022**. In accordance with s.165(3) of the *Fair Work Act 2009* these items do 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 July 2022**.

PRESIDENT