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**Sent:** Monday, 1 November 2021 5:19 PM  
**To:** Chambers - Ross J <[Chambers.Ross.j@fwc.gov.au](mailto:Chambers.Ross.j@fwc.gov.au)>  
**Subject:** Review of the Social, Community, Home Care and Disability Services Industry Award (AM2018/26 & AM2020/100)

Dear Associate

**Review of the Social, Community, Home Care and Disability Services Industry Award (AM2018/26 & AM2020/100)**

We refer to the above matter and to the Directions of the Full Bench outlined in the decision of 18 October 2021, as subsequently amended on 28 October 2021.

Please find below the brief submissions of our clients (ABI, Business NSW, ACSA and LASA) in relation to the Draft Determination attached to the Decision.

**Submissions in relation to the Draft Determination**

1. At item 5 of the Draft Determination, we propose some modification to the proposed clause 10.5A. We consider that clause 10.5A (b) should be varied as follows:

Where an employer wishes to vary an agreement made with an employee under clause 10.3(c) to 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), 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.

In our submission, this drafting change is necessary, as the clause currently proposed would impose a positive obligation to have discussions about changes to working hours (i.e. the clause assumes that all employers will wish to vary the hours of all employees who currently work shifts of less than the impending minimum payment periods), and it is possible that some employers may not wish to vary certain employees' agreed patterns of work.

2. At item 9 of the Draft Determination, we propose the following two amendments to clause 20.3:
  - a. Insert the word "clause" before "20.2(d) in clause 20.3(a)(ii) and again in clause 20.4(a)(ii); and
  - b. In clause 20.3(a), change "32 cents" to "\$0.32" to keep it consistent with other monetary amounts.
3. At item 10 of the Draft Determination, the language proposed in clause 20.11(b) is potentially problematic, as it potentially excludes Friday evening periods or Monday morning periods. Although this wording is part of the Joint Proposal that our clients were a part of, the Commission should give consideration to retaining the existing wording in clause 20.9(b) of

the current Award ('in respect of any other 24 hour period or part thereof, or any public holiday or part thereof').

4. At item 13 of the Draft Determination, the words 'or changes' in clause 25.5(f)(i) have not been removed. Paragraphs [217]-[218] of the August Decision suggested this wording was to be removed.
5. At item 13 of the Draft Determination, there is a typographical error in clause 25.5(f)(iv)(B) where it should read "subject to clause" rather than "subject to clausess".
6. At item 14 of the Draft Determination, there appear to be cross-referencing errors in clauses 25.6(a)(ii) and 25.6(b)(iii). The cross-references in those clauses should reference clauses 20.12(a) and 20.12(b) respectively.
7. At item 14 of the Draft Determination, there is a typographical error at clause 25.6(e) where it reads "An employee must paid be".
8. At item 14 of the Draft Determination, we consider that subclauses (i) and (ii) of clause 25.6(e) should be switched around. This change makes logical sense, will aid drafting precision and resolves a potential ambiguity as to whether the rule currently located at clause 25.6(e)(ii) applies to night shift.

Yours sincerely,

**Kyle Scott**

Director

Australian Business Lawyers & Advisors