



BACKGROUND PAPER 2

Fair Work Act 2009
s.156—4 yearly review of modern awards

4 yearly review of modern awards—Award stage—Group 4—*Social, Community, Home Care and Disability Services Industry Award 2010—substantive claims*
(AM2018/26)

MELBOURNE, 9 AUGUST 2021

This is a background document only and does not purport to be a comprehensive discussion of the issues involved. It does not represent the view of the Commission on any issue.

Damaged Clothing

Background

[1] The HSU seeks to introduce a new ‘damaged clothing allowance’ requiring employers to compensate employees for damage or soiling of any clothing or other personal effects (excluding hosiery) in the course of employment; at clause 20.3 (and renumber current clauses 20.3 – 20.9) as follows:¹

‘20.3 Damaged clothing allowance

- (i) Where an employee, in the course of their employment suffers any damage to or soiling of clothing or other personal effects (excluding hosiery), upon provision of proof of the damage, employees shall be compensated at the reasonable replacement value of the damaged or soiled item of clothing.
- (ii) This clause will not apply where the damage or soiling is caused by the negligence of the employee.’

[2] Under the proposed clause employers must compensate employees to the amount of the ‘reasonable replacement value’, for ‘any damage to, or soiling of, clothing or other personal effects (excluding hosiery)’ which occurs during the employee’s employment, save where the damage or soiling is caused by the employee’s negligence.

¹ [HSU Amended Draft Determination](#), 15 February 2019.

[3] In the May 2021 Decision the Full Bench noted that the evidence in respect of the HSU's claim was limited but that despite these limitations a number of propositions were largely uncontentious²:

'We agree with ABI's contention that the limited evidence suggests that it is common for support workers in the disability services sector to not wear uniforms when undertaking work and that:

The benefits of such an approach include that it helps to break down barriers between support workers and clients and avoids unwanted attention when in public.³'

[4] At [881] the Full Bench concluded:

'We also agree with the employers that the HSU's assertion that employees' clothes '*frequently* become damaged, soiled or worn' given the nature of the work they do, overstates the evidence. However, it is likely that *some* employees will have their clothing damaged or soiled because of the work they are required to undertake.'

[5] The Full Bench also said that it was 'not attracted to the variation of the SCHADS Award to insert a provision in the same terms as clause 32.2(d) of the Manufacturing Award', and went on to say: 'nor do we think that negligence should be a prerequisite to reimbursement of soiled or damaged clothing'.

[6] The Full Bench directed the parties to confer about the form of a suitable variation, reflecting the views expressed above. A conference was subsequently held on 27 May 2021. The transcript of the conference is available [here](#).

² May 2021 Decision at [879]

³ Exhibit HSU3 - Witness Statement of William Elrick, 14 February 2019 at para 38.