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17 August 2021

Deputy President Clancy  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3000

By email: [chambers.clancy.dp@fwc.gov.au](mailto:chambers.clancy.dp@fwc.gov.au)

Dear Deputy President,

**Re. AM2018/26 Social, Community, Home Care and Disability Services Industry Award 2010 – Remote Response & Damaged Clothing Proposals**

We refer to the above matter and a conference listed before the Fair Work Commission (**Commission**) on 19 August 2021.

As directed by the Commission<sup>1</sup>, the Australian Industry Group files the **attached** proposals regarding the following matters, for the purposes of facilitating discussions between the parties during the aforementioned proceedings:

- (a) Remote response / recall to work overtime; and
- (b) Damaged clothing.

Yours sincerely,

**Brent Ferguson**  
Director – Major Cases, Workplace  
Relations Advocacy and Policy

**Ruchi Bhatt**  
Principal Adviser – Workplace Relations  
Policy

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<sup>1</sup> 4 yearly review of modern awards—Social, Community, Home Care and Disability Services Industry Award 2010 [2021] FWCFB 4863.

## **Damaged Clothing**

### **20.3 Laundering, Repair, and Replacement of Clothing other than Uniforms**

- (a)** If during any day or shift, the clothing of an employee is soiled in the course of their performance of duties required by their employer, the employee will be paid a laundry allowance of \$0.32 per day or shift provided that:

  - (i)** The employee provides notice and, if requested, evidence that would satisfy a reasonable person of the soiling and how it occurred; and
  - (ii)** The employee complied with any reasonable requirement of the employer in relation to the wearing of personal protective equipment at the time the clothing was soiled.
  
- (b)** If the clothing of an employee is soiled or damaged (excluding normal wear and tear), in the course of their performance of duties required by their employer and to the extent that its repair or replacement is necessary, the employer must reimburse the employee for the reasonable cost of repairing the item of clothing or replacing it with a reasonably priced substitute item, provided that:

  - (i)** The employee provides notice 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)** The employee complied with any reasonable requirement of the employer in relation to the wearing of personal protective equipment, at the time the clothing was soiled or damaged;
  - (iii)** The employee complied with any reasonable requirement of the employer in relation to the nature of clothing that is to be worn or not worn in the performance of work, at the time that their clothing was soiled or damaged; and
  - (iv)** The employee has not, and is not eligible to, recover such costs through any workers compensation legislation.
  
- (c)** This clause will not apply where the damage or soiling of an employee's clothes is caused by the negligence of the employee.
  
- (d)** This clause will not apply where an employee is permitted or required to wear a uniform supplied by the employer or is entitled to any payment under clause 20.2.

## Remote Response

### 1. Insert the following definitions into clause 3.1:

**designated workplace** means a place where work is performed in accordance with the requirements of an employee's employer, other than an employee's residence or such other location that the employee chooses to work.

**remote response work** means the performance of work by an employee whilst not at a designated workplace if the employee has been directed or authorised by their employer to undertake such work in these circumstances. It does not include an employee's performance of administrative tasks associated with maintaining their employment, including: communicating with their employer in order to indicate whether they are willing to work hours outside of their roster hours or undertake a shift which is broken twice in accordance with clause [X]; responding to notification of cancelled shifts; responding to suggestions for make-up time for cancelled shifts in accordance with clause [X]; engaging with any kind of online platform or electronic system in order to obtain or arrange when they will work; reviewing or enquiring about their roster.

### 2. Insert the following new clause 20.9 in order to expand the application of the provision to contemplate remote response work:

#### 20.9 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 response work) will be paid an allowance of:

- (i) \$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
- (ii) \$40.84 in respect of any other 24 hour period or part thereof on a Saturday, Sunday or public holiday.

### 3. Insert a new clause 28.4 to clarify that the provision only applies if an employee is required to return to a designated workplace:

#### 28.4 Recall to work overtime request when on call

An employee who is recalled to work overtime after leaving the workplace and is required by their employer to attend a designated 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.

**4. Insert the following new provisions dealing with payment for remote response work:**

**X Payment for remote response work**

**X.1 The rate of remuneration for remote response work**

**(a)** An employee must be paid the rate that would be payable under this award for time spent performing remote response work, not including any amount payable under:

**(i)** Clause 29.3 – Shift allowances and penalty rates.

**(ii)** Clause 20.3 – Meal allowances.

**X.2 Minimum payments for remote response work - when on call**

**(a)** An employee who is on call in accordance with clause 20.9 and undertakes remote response work must receive a minimum payment for such work calculated based on the applicable minimum rate in clause 15, 16 or 17 of this award, in accordance with the following table:

<b>Time when remote response work is performed</b>	<b>Minimum payment</b>
Between 6.00am and 10.00pm	15 minutes
Between 10.00pm and 6.00am	30 minutes

**X.3 Minimum payments for remote response work – when not on call**

**(a)** An employee who is not on call in accordance with clause 20.9 but undertakes remote response work must receive a minimum payment for such work calculated based on the applicable minimum rate in clause 15, 16 or 17 of this award, in accordance with the following table:

<b>Time when remote response work is performed</b>	<b>Minimum payment</b>
Between 6.00am and 10.00pm	30 minutes
Between 10.00pm and 6.00am	45 minutes

**(b)** An employee is not entitled to the minimum payment under clause X.3 if they are entitled to overtime rates in accordance with clause 28 of this award for such work and the employee is permitted to not undertake such work but voluntarily agreed to perform it.

#### **X.4 Calculation of payments when remote response work is undertaken on multiple occasions**

- (a)** If an employee undertakes remote response work on separate instances during a period in which they are on call, or otherwise during 24 consecutive hours, the remuneration that they are entitled to be paid in accordance with clause X.1 for undertaking such work may be applied in satisfaction of the minimum payment required to be paid under clause X.2 or X.3.
- (b)** If an employee performs separate instances of remote response work during a period in which they are not on call, or otherwise during a period of 24 consecutive hours, the employee will not be entitled to multiple minimum payments but will be entitled to the greatest minimum payment applicable under clause X.3.

**Note:** Clause X.4 operates to ensure that an employee does not receive multiple minimum payments as a consequence of undertaking remote response work on multiple occasions during a single period in which an employee is 'on call' or a single 24 hour period. For example, if an employee who is not on call undertakes remote response work from 9.00pm to 9.10pm and then from 1.00am to 1.10am they will receive a minimum payment of 45 minutes.

#### **X.5 Recording of time worked and communication requirements**

- (a)** An employee who performs remote response work must either:
  - (i)** Maintain and provide to their employer a timesheet specifying the time at which they commenced and concluded performing any remote response work and a description of the work that was undertaken. This record must be provided to the employer prior to the end of the next full pay period or in accordance with any other arrangement as agreed between the employer and the employee.
  - (ii)** Comply with any reasonable requirement by their employer that the use of an electronic system for recording the time spent undertaking remote response work and the nature of the work undertaken.
- (b)** An employer is not required to pay an employee for any time spent performing remote response work if the employee does not comply with the requirements of clause X.5(a). This clause does not apply if the employer has not informed the employee of the reporting requirements.

#### **X.6 Transitional Arrangements**

The monetary obligations imposed on employers by this clause may be absorbed into over award payments made to an employee who was employed prior to the inclusion of this clause in the award on [insert commencement date of award variations].

## **X.7 Treatment of remote response work for other purposes under the award**

- (a) The performance of remote response work will not count as work for the purposes of the following clauses:
- (i) Clause 25.4 – Rest breaks between rostered work.
  - (ii) Clause 28.3 – Rest period after overtime.
  - (iii) Clause 28.5 – Rest break during overtime.

## **X.8 Remote response work that will not attract minimum payments**

If an employee performs remote response work constituting the performance of the following activities, clauses X.2, X.3, X.4 and 10.5 will not apply:

- (a) Responding to any form of electronic communication in circumstances where it is not required that such a response be provided outside of the employee's ordinary working hours.
- (b) Responding to a text message, telephone call or email in circumstances where this takes (or should reasonably take) less than 5 minutes.
- (c) Responding to a text message, telephone call or email in circumstances where this takes (or should reasonably take) less than 10 minutes where this is essential to the health or safety of a client and is required as a consequence of the employee not undertaking, or not properly undertaking, a task that they were required to perform whilst at work (e.g. calls to clarify whether a client has been given medication in circumstances where handover notes have not been properly completed by the employee).