

SUBMISSION IN REPLY – FOUR YEARLY REVIEW – SUBSTANTIVE ISSUES
Social, Community, Home Care and Disability Services Industry Award

Overview

These submissions are made by Business SA's as Submission in Reply to the substantive claims lodged by the Health Services Union (HSU) and United Voices (UV) to vary the Social, Community, Home Care and Disability Services Award 2010 (the Award). The matters listed in Attachment C of the Amended Directions issued by the Fair Work Commission on 28 June 2019. Business SA has not addressed all the issues set out in the Statement; however, this should not be taken as Business SA's agreement to the remaining Union claims set out in their applications.

Clothing and equipment allowance

1. United Voice (UV)¹ and the Health Services Union (HSU)² lodged substantive applications to vary Clause 20.2 – Clothing and Equipment.
2. The SCHCADS Award currently provides the following in clause 20.2 – Clothing and Equipment:

20.2 Clothing and equipment

(a) Employees required by the employer to wear uniforms will be supplied with an adequate number of uniforms appropriate to the occupation free of cost to employees. Such items are to remain the property of the employer and be laundered and maintained by the employer free of cost to the employee.

(b) Instead of the provision of such uniforms, the employer may, by agreement with the employee, pay such employee a uniform allowance at the rate of \$1.23 per shift or part thereof on duty or \$6.24 per week, whichever is the lesser amount. Where such employee's uniforms are not laundered by or at the expense of the employer, the employee will be paid a laundry allowance of \$0.32 per shift or part thereof on duty or \$1.49 per week, whichever is the lesser amount.

¹ Submission of United Voice – Four Yearly Review, 5 February 2019 para 48 - 59

² Submission of Health Services Union – Four Yearly Review – Substantive Issues, 15 February 2019 para 61-62

(c) The uniform allowance, but not the laundry allowance, will be paid during all absences on paid leave, except absences on long service leave and absence on personal/carer's leave beyond 21 days. Where, prior to the taking of leave, an employee was paid a uniform allowance other than at the weekly rate, the rate to be paid during absence on leave will be the average of the allowance paid during the four weeks immediately preceding the taking of leave.

(d) Where an employer requires an employee to wear rubber gloves, special clothing or where safety equipment is required for the work performed by an employee, the employer must reimburse the employee for the cost of purchasing such special clothing or safety equipment, except where such clothing or equipment is provided by the employer.

3. The HSU has made an application to amend the uniform allowance to ensure that a uniform is provided, or an allowance is paid; and providing a new entitlement for the replacement of damaged clothing.

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.

4. UV has made an application to vary subclause 22.2(b) to provide:

An adequate number of uniforms should allow an employee to work their agreed hours of work in a clean uniform without having to launder work uniforms more than once a week.

The HSU Claim

5. The HSU submits the Award should include a damaged clothing allowance, to take into account that employees' clothing will frequently become damaged, soiled or worn given the nature of the work they do. Where such damage occurs, upon provision of proof of the damage, employees should be compensated at the reasonable replacement value of the damaged or soiled item of clothing.
6. Business SA acknowledges that not all workplaces provide uniforms, or the uniform provided will be a company shirt and not pants and there is a requirement for employees to wear some of their own clothing.
7. Business SA acknowledges that employees covered by the SCHCADS Award may undertake work that results in the soiling or damage of clothing, such as using harsh cleaning chemicals or from bodily fluids.
8. The HSU witness, Ms Waddell states that their uniform becomes damaged or worn out very quickly and that clothing can become spoiled with bodily fluids.

9. It is not unusual for employees to wear their own clothes to work and general wear and tear of such clothing should not be the liability of the employer. Employees are expected to take all reasonable care necessary to protect their clothing.

10. The HSU has proposed the following wording:

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

11. The standard wording for reimbursement of clothing allowance is as per the Manufacturing Award and has been used in a number of other, similar awards.

Manufacturing Award: 32.2 (d) Damage to clothing, spectacles, hearing aids and tools

(ii) Where an employee as a result of performing any duty required by the employer, and as a result of negligence of the employer, suffers any damage to or soiling of clothing or other personal equipment, including spectacles and hearing aids, the employer is liable for the replacement, repair or cleaning of such clothing or personal equipment including spectacles and hearing aids.

Food and Beverage Manufacturing 26.2 (d) Damage to clothing, spectacles and hearing aids

Where an employee as a result of performing any duty required by the employer, and as a result of negligence of the employer, suffers any damage to or soiling of clothing or other personal equipment, including spectacles and hearing aids, the employer is liable for the replacement, repair or cleaning of such clothing or personal equipment including spectacles and hearing aids.

The UV Claim

12. UV have submitted that the wording “adequate” contained in the Award allows for employer discretion resulting in the employees not receiving enough uniforms.³ UV have also submitted that many workers covered by the Award carry out work that results in their clothing being stained, resulting in the employees washing their uniforms multiple times per week, which can be onerous.

13. UV submit that employees should be provided with enough uniforms so that they do not need to wash more than once per week.⁴

³ Submissions of United Voice, 4 February 2019, Para 50

⁴ Submissions of United Voice, 4 February 2019, Para 54

14. United Voice have proposed the following wording:

20.2(b) An adequate number of uniforms should allow an employee to work their agreed hours of work in a clean uniform without having to launder work uniforms more than once a week.

15. UV have relied on the modern award objective contained in the Fair Work Act 2009, specifically:

s 134(1)(a) – ‘relative living standards and the needs of the low paid’ -this variation would assist provide for the needs of the low paid. Employees covered under the SCHDS Award can generally be considered low paid.

s 134(1)(c) – ‘the need to promote social inclusion through increased workforce participation’ – participation in the workplace is facilitated by the dignity in having a clean uniform.

16. The UV witness, Ms Belinda Sinclair, indicates that she was not provided with enough uniforms to attend work in a clean uniform without having to wash her uniforms more than once a week. She states: *‘When I only had 2 shirts, I had to wash them every day of employment, so one was ready to wear the next day. Working five days in a row meant I had to wash them at least three times per week.’*

17. While washing clothing more than once a week, may be seen as an inconvenience, the Union has not provided sufficient evidence to show that by requiring an employee to wash more than once a week results in the modern award objectives are not met. Ms Sinclair’s statement does not provide evidence that participation in the workplace is facilitated by having a clean uniform or that providing additional uniform will improve the relative living standards and needs of the low paid.

18. The provision of additional uniforms to ensure an employee only washes clothing once a week is a cost on employers that is unnecessary and prohibitive. It is not possible for an employer

19. If an employee is required to wash uniforms, the employer will be in breach of the Award.

Telephone allowance

20. The SCHADS Award currently has the following provisions for telephone allowance:

20.6 Telephone allowance

Where the employer requires an employee to install and/or maintain a telephone for the purpose of being on call, the employer will refund the installation costs and the subsequent rental charges on production of receipted accounts.

21. The HSA and UV have submitted claims to increase the telephone allowance.

22. The HSU wording to be submitted is a new clause:

20.7 Telephone allowance

Where the employer requires an employee to use a mobile phone for any work related purpose, the employer will either:

(a) provide a mobile phone fit for purpose and cover the cost of any subsequent charges; or

(b) refund the cost of purchase and subsequent usage charges on production of receipts.

23. UV has submitted the following wording:

*Where the employer requires an employee to install and/or maintain a telephone **or mobile phone** for the purpose of being on call, **for the performance of work duties or to access work related information**, the employer will refund the installation costs and the subsequent rental charges on production of receipted accounts.*

24. Business SA and its members acknowledge that employees are, at times, required to use personal mobile phones in the course of their employment.

25. Business SA does not believe it is appropriate for an employer to pay for a mobile phone, which may only be used for a small amount of work, for the employee to keep. There are fringe benefit issues that need to be explored here. It is not a matter of just providing a phone.

26. Mobile phone plans vary significantly. A preliminary search of mobile phone plans shows that the availability of plans from \$15 per month with all calls and text messages covered and 3 gigs of data. An employer should only be required to pay for a suitable plan or a mobile phone allowance, rather than subsidise an employee's personal phone usage. The following provides evidence of a significant number of phone plans from various providers that do not require the payment of calls.

27. The United Voice witness, Trish Stewart states she spends \$170 per month on phone bills due to work commitments.⁵ Business SA submits that such a high cost is an anomaly and can easily avoided if the employee is on a cost-effective plan. Most plans include all phone call and text messaging costs and any reimbursement should be a reasonable amount and not subsidise either poor phone plan choice or an employee's personal usage.

28. HSU states in para [60], Any employees required to use a phone for work int his way should receive a telephone allowance which reflects the cost of maintaining and using such phone. Business SA agrees to a degree. Businesses should only be required to reimburse the work-related cost of maintaining and using a phone, not the personal component.

29. While Business SA is not proposing a variation to the phone allowance in the current SCHCADS Award, we draw the Commission's attention to the Real Estate Industry Award's mobile phone allowance which contemplates and better reflects the nature of using a personal mobile phone for work purposes.

⁵ Submission of United Voice para 95, witness statement Stewart at [20] - [22]

18.6 Mobile telephone allowance

- (a) Where the employer requires the employee to use the employee's own mobile phone in the course of employment and:*
- (i) the mobile telephone is provided under a mobile phone plan from a telecommunications provider, the employer and employee must agree in writing on the amount of reasonable reimbursement payable by the employer to the employee for the use of the employee's mobile phone in the course of employment provided that such reimbursement must not be less than 50% of the cost of the employee's monthly mobile phone plan, up to a maximum monthly phone plan of \$100; or*
 - (ii) the mobile phone is a pre-paid mobile phone; the employer and employee must agree in writing on the amount of reasonable reimbursement payable by the employer to the employee for the use of the employee's pre-paid mobile phone.*
- (b) Without limiting an agreed method of payment for reimbursement, an employee's salary in excess of the minimum weekly wage may be inclusive of reimbursement providing the reimbursement component of the salary is identified in the agreement.*
- (c) The mobile phone allowance under cause 18.6(a) is payable during the entire period of employment, except when the employee is on any period of leave either paid or unpaid.*
- (d) If requested, the employee must provide the employer with a copy of the mobile phone plan associated with the mobile telephone to be used by the employee in the course of employment.*
- (e) If the employee enters into a new mobile phone plan or arrangement with a telecommunications provider entitling the employee to a different allowance under this sub-clause, the new allowance will become payable from the first full pay period after the date the employee provides the employer with a true copy of the new mobile phone plan.*

Minimum Engagement

30. The HSU has made an application to vary the Award to allow for all employees, whether full-time, part time or casual to be entitled to a minimum engagement of three hours in all sectors covered by the award.
31. Currently the Award only contains a minimum engagement clause for casual employees.
32. The casual minimum engagement clause states:
- (c) Casual employees will be paid the following minimum number of hours, at the appropriate rate, for each engagement:
 - (i) social and community services employees except when undertaking disability services work—3 hours;
 - (ii) home care employees—1 hour; or

(iii) all other employees—2 hours.

33. Business SA acknowledges that there is no minimum engagement for part-time or fulltime employees and agree with the HSU that, this is generally not an issue for full-time employees due to roster arrangements.
34. The HSU, in its application has provided cogent reasons why there should be a minimum engagement for part-time employees, has not provided any evidence or rationale on why all minimum engagements should be set at three hours.
35. HSU has not provided a reason why casual employee engagement should be increased for home care employees or all other employees to three hours. and has only focused on part-time employment and then extrapolated this to other classifications.
36. In the process of creating the SCHCADS Award Australian Industrial Relations Commission (AIRC) released an exposure draft of September 2009, which contained a minimum engagement of three hours. This was argued against by employer parties on based on the inherent requirements of the industry. On 29 December 2009 the AIRC handed down a decision that varied the minimum engagement clause to the current modern award clause. The AIRC stated:

[83] The minimum engagement has been established to take into account the different sectors in the industry.
37. Although the funding model of the industry has changed, the requirements of clients who receive the services has not. The requirement for short shifts still exists. Larger organisations in some circumstances may be able to roster around the shorter shifts, however, this will not be possible for smaller and regional employers.
38. HSU has made its submission on the minimum engagement in isolation and has not explored how the proposed variation will affect the broken shift clause, re-call to work clause and responding to emails after hours clause.
39. Business SA submits that a minimum engagement of 3 hours across for all work types would be a significant cost impact to the industry and would not meet the modern award object of the need to promote flexible modern work practices and the efficient and productive performance of work⁶; and the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden.⁷

S.35 Broken Shifts

ASU Claim

40. The ASU is seeking a variation to Clause 25.3 to provide a 15 per cent loading to be paid to employees who work broken shifts to compensate for the disunity associated with working unusual broken shift arrangements.⁸

⁶ Fair Work Act 2009 s134(d)

⁷ Ibid s134(f)

⁸ ASU Submission, 18 February p.7

41. Broken shift allowances in other modern awards are:

- a. Children's Services Award – 1.19% of the standard weekly rate = \$10.26⁹
- b. Aged Care Award – No allowance
- c. Hospitality Industry Award:

where the time between periods of work is two hours and up to three hours—an allowance per day equal to 0.33% of the standard weekly rate; or \$2.85

where the time between periods of work is more than three hours—an allowance per day equal to 0.5% of the standard weekly rate. \$862.50 = \$4.31¹⁰

- d. Fitness Industry Award - 1.7% of the standard rate extra and for excess fares \$1.94 extra. = \$13.91¹¹
- e. Security Services Award - 1.62% of standard rate = \$14.11¹²

42. Business SA submits the claim for a 15% loading of their ordinary rate of pay for each hour from the commencement of the shift to the conclusion of the shift is significantly higher than any other industry. If a Level 2, pay point 1 casual worker receives the minimum of \$27.80 per hour and works split shifts over the maximum allowable period of 12 hours¹³, they will receive a shift allowance of \$50.04 per shift (12 x \$27.80 = \$333.59 * 15% = \$50.04). This is an extraordinarily high shift allowance for an industry with low margins and limited ability to absorb increased costs. The claim by the ASU is out of line with other industries and it is Business SA's view that the evidence provided does not substantiate a shift allowance of such a high amount, especially when viewed along with the other claims to vary the broken shift provision.

United Voice Claim

43. United Voice and HSU have submitted that broken shifts should only be worked in two parts. The evidence produced by the United Voice witness, Belinda Sinclair does not address the issue of broken shifts as she states that since the middle of 2018, she has only had once such shift scheduled as her employer does not like to use them.

44. It is Business SA's submission that evidence has not been provided to limit the splitting of shifts to only two. It is common practise in the industry to have a person provide support over three distinct parts of the day in order to meet the client's needs. If shifts are limited to only two, this will reduce the continuity of service to clients in the industry, who request the same carer for all shifts. The care of a person is a very personal choice and the client will request or choose a carer who makes them comfortable. Restricting the number of parts of

⁹ Children's Services Award 2010 cl.15.1

¹⁰ Hospitality Industry Award 2010 cl.21.3

¹¹ Fitness Industry Award 2010 cl.18.4

¹² Security Industry Award 2010 cl.15

¹³ SCHADS Award cl 25.6(a)

the broken shift to two will significantly impact the choices of the clients. As well as be a cost impact of the business due to increased scheduling.

45. In addition to limiting broken shifts to two parts, as detailed above, the HSU is also seeking to vary the broken shift clause to ensure that broken shifts can only be worked by agreement and short shifts are not broken. (Clause 25.6; ED Clause 13.6)¹⁴
46. It is Business SA's submission that preventing an employer from being able to direct an employee to work broken shifts will significantly impair the ability to provide services to clients. It is recognised that, in homecare services the provision of care to a client over the course of the day is a regular requirement.

Conclusion

47. Funding arrangements for the NDIS are complex and there is no guarantee from the Federal Government that the National Disability Insurance Scheme (NDIS) will make adjustments to cover all of the additional costs specific to the increases if the Award is varied. This will result in businesses absorbing the cost of the increases. The flow-on effect of such increases will be the reduction of services to clients, reduction in staffing numbers, organisations looking towards alternative businesses models to overcome the increased costs and the closure of businesses.
48. Consideration of applications to vary the Award should only occur in the context of industry specific criteria and the unusual difficulties faced by the industry.
49. Business SA asks the Fair Work Commission to be cautious in implementing increases and variations that will have counter intuitive results to the industry and its stakeholders.

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¹⁴ Submission of the HSU, 15 February 2019, p3