



Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

Name

(Please provide the name of the person lodging the submission)

Kelly Maher

Organisation

(If this submission is completed on behalf of an organisation or group of individuals, please provide details)

Resources for Humans

Contact details:

Street Address 1: 58 Monaro Street

Street Address 2:

Suburb/City: Merimbula NSW

Postcode: 2548

Email: info@resourcesforhumans.com.au

Telephone: 0430 241 745

Modern Award Review Stream:

Arts and Culture:

Job Security:

Work and Care:

Usability of awards:

11 Exhibition
Street

Melbourne
Victoria 3000

GPO Box
1994

Melbourne
Victoria 3001

T +61 3
8661 7777

INT (613)
8661 7777

F +61 3 9655
0401

E
awards@fwc.gov.
au

How to prepare a submission

Submissions should be emailed to awards@fwc.gov.au. Directions set out the due dates for submissions. Directions are issued by a Member of the Commission and will be published on the [Commission website](#).

Make sure you use numbered paragraphs and sign and date your submission.

Your submission. Provide a summary of your experience and any relevant issues. You may wish to refer to one or more of the issues outlined in the relevant discussion paper.

Issues

1. Attached is our submission as it applies to the most problematic clauses as it applies to the Social, Community, Home Care and Disability Services Industry Award 2010 (SCHADS Award), for your consideration.

Proposals

2. The attached submission provides proposed solutions and draft text for consideration.

Signature:

K Maher

Name:

Kelly Maher

Date:

16 March 2024



Resources for Humans

EXPERT ADVICE WHEN YOU NEED IT, NOT WHEN YOU DON'T!

Modern Awards Review 2023-2024

AM2023/21

Prepared for :
Fair Work Commission
Making awards easier to use
(AM2023/21)

Prepared by :
Kelly Maher
Chief HR Consultant and Founder
Resources for Humans
info@resourcesforhumans.com.au

Issued : **16 March 2024**



Dear Deputy President/s,

Modern Awards Review 2023-2024: Making awards easier to use (AM2023/21)

Thank you for the opportunity to submit feedback regarding the useability of the Social, Community, Home Care and Disability Services Industry Award 2010 (SCHADS Award), for your review and consideration.

1. Introduction: [Resources for Humans](#)

Resources for Humans is a small Human Resources (HR) consultancy practice based in the Bega Valley, NSW. We provide HR advice and support to employers both locally and across Australia. A significant proportion of our clients are regionally based not-for-profit organisations that provide disability, social, and community services to NDIS recipients and the public.

These clients predominately employ staff under the SCHADS Award, and for those who operate under single Enterprise Agreements, their EAs are also underpinned by the SCHADS Award. We provide a wide range of services including supporting negotiations for replacement EA's and assisting employers to resolve compliance matters that are under investigation by the Fair Work Ombudsman (FWO).

We currently have multiple live matters where clause interpretation issues, coupled with different interpretations existing within the industry, conflicting advice provided by employment lawyers, payroll companies and FWO often gives rise to more questions than answers. It is our experience that the following are the key issues that contribute to the SCHADS Award's reputation of being one of the most highly complex awards, and makes SCHADS clauses difficult to interpret in the workplace, in practical terms.

This submission, while it may not be sophisticated in its delivery (we are not lawyers), we are using scenarios based on real examples to illustrate why certain clauses are problematic in their current form.

2. Summary of key issues

The key issues that employers and their employees continue to raise as being most problematic and difficult to interpret relate to the following clauses:

- **Clause 25. Ordinary hours of work** – the rates of pay that applies to full-time employees where full-time ordinary hours are something 'other' than 38 hours per week.
- **Clause 25.8 24-hour care** – the inadvertent reduction of hourly rate when moving from a penalty rate into overtime.
- **Clause 28. Overtime rates** – namely clause 28.3 (a) & (b) Rest period after overtime when the employee has not had 10 consecutive hours off duty between shifts and the definition of the subjective term "so much overtime".
- **Clause 20.5. Meal allowances** – namely whether employees working overtime of more than 5 hours are entitled to an additional overtime meal allowance on each consecutive occurrence where they work more than 4 hours overtime in a single shift. This is often an issue on multiple overnight excursions.
- **Clause 4.2. Coverage** – namely the interplay between the SCHADS Award and the Health Professionals and Support Services Award 2010 (HPSS Award).
- **Clause 3. Definitions and interpretation** – whether a single "shift" is considered a single "start", for the purpose of calculating overtime.

3.1 Issues and Proposals - Clause 25. Ordinary hours of work – when ‘full-time’ is something ‘other’ than 38 hours per week.

Clause 25.1 (a) defines full-time as being 38 hours per week (or an average of 38 hours) and goes on to list the patterns by which the 38 hours can be worked in weekly, fortnightly and 4 weekly terms.

Often employers within their organisations, define full-time as something ‘other’ than 38 hours per week, namely that full-time is something between 37.5 – 35 hours per week. While some awards provide for such variations at the organisational level, SCHADS is silent on this matter.

By way of example, the Clerks – Private Sector Award 2020, prescribes the following:

9. Full-time employees

9.1 Each of the following is a full-time employee:

(a) an employee who is engaged to work 38 ordinary hours per week; or

(b) an employee who is engaged to work the number of ordinary hours (fewer than 38) per week that is considered full-time at the workplace by the employer.

In the course of calculating a potential underpayment of wages claim for a SCHADS client, the question arose as to whether a full-time employee working a 37.5 hour week, should be paid the full minimum weekly wage as defined in Clause 15 or whether the hourly rate that is published in the award summary document applies, if the weekly rate was to be divided by 37.5 hours instead of 38 hours.

Advice from FWO is that an employee classified as full-time by the employer, working 37.5 hours, would still be entitled to the full rate of pay expressed as the weekly minimum in Clause 15, but that they would “technically” be considered a part time employee under the award and would therefore be entitled to the part-time hourly rate (as published in the pay guides).

Why this is problematic.

At the heart of this issue is determining, with certainty, what the employee’s minimum wage is?

Scenario

If an employee, who is considered by the organisation to be full-time, works a 37.5-hour week the current advice is that they would still be entitled to the full lump sum weekly pay, when divided by 37.5 hours, which is higher than the published hourly rate.

In practical terms, this is proving problematic for employers when attempting to benchmark their EA pay rates against SCHADS in preparation for negotiations and for the BOOT test; has led to finance departments considering if they have to accommodate a two tiered pay rate system depending on whether their organisation has classified the employee as full-time or part-time, and poses an impossible task for organisations whose payroll systems only allows for ordinary rates of pay to be expressed by the hour.

In practice, the part time employee and the full-time 37.5-hour employee are paid the same hourly rate, which if FWO advice is to be followed, gives way to a potential underpayment because the hourly rate x 37.5 hours is lower than the weekly lump sum in Clause 15.

Proposals for remedy

Option 1: Provide a new point under Clause 10.2 that clarifies that organisations who define full-time employment as something other than 38 hours per week are treated as part time employees under SCHADS and are then entitled to the part-time rates expressed as hourly rates.

Or,

Option 2: Provide that employees who are classified by the organisation as full-time, when working something other than 38 hours per week, are treated as full-time employees under SCHADS and amend wage tables to remove references to weekly sums in favour of hourly rates.

Proposed draft text for consideration

Option 1: Replacement Clause

10.2 Full-time employment

(a) A full-time employee is one who is engaged to work 38 hours per week, or an average of 38 hours per week.

(b) An employee, classified by the employer as full-time, who is engaged to work ordinary hours fewer than 38 hours per week is considered part-time for the purposes of calculating minimum wages and entitlements.

Option 2: Replacement Clause

10.2 Full-time employment

(a) A full-time employee is one who is engaged to work 38 hours per week, or an average of 38 hours per week.

(b) An employee who is engaged by the employer to work full-time ordinary hours fewer than 38 hours per week is also considered full-time for the purposes of calculating minimum wages and entitlements.

Minimum rates of pay would be amended to the hourly rate only, removing the reference to the total weekly sum.

3.2 Issue and Proposal - Clause 25.8 24-hour care (d) & (e)

Clause 25.8 (d) provides that an employee is to be paid 8 hours' work at 155% of their appropriate rate for each 24-hour period, and clause (e) provides that if the employee performs more than 8 hours work in the 24-hour period, they move into overtime at the rate of time and a half for the first 2 hours and double time thereafter (with the Sunday caveat).

Why this is problematic.

The penalty rate at 155% as per clause (d) is higher than the 150% being time and a half for overtime. It appears counterintuitive that an employee moving from an 8-hour shift with an attached penalty rate would receive a rate of pay that is 5% less when they move into overtime.

Proposals for remedy

We suggest replacing clause (e) with the following:

(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 200%, except on public holidays where the rate will be 250% of their ordinary rate. An employer and employee may utilise the TOIL arrangements in accordance with clause 28.2.

Issues noted: This provides a greater entitlement.

3.3 Issue and Proposal - Clause 28. Overtime rates – Cl 28.3 (a) & (b)

In our experience, this is the most contentious issue, particularly in the disability support industry, where organisations roster for operational hours that span 24 hours/7 days per week.

At the heart of the issue is the interpretation of Clause 28.3 (a) and (b) as it relates to rest periods in general, between the end of one shift and the beginning of the next, when the first shift is ordinary hours and not overtime. The issues with this clause are best illustrated by scenario.

Scenario 1:

Organisation A provides 24/7 care to residents living in purpose-built disability accommodation across multiple sites in the same demographic area.

Employee 1: is a shift worker who regularly works their ordinary hours either side of Sleepover shifts. The employee is a part-time Social and Community Services employee Level 2.pp 1, and works the following standard roster each fortnight:

Shift counter	Day and Date	Start time	End Time	Sleepover Allowance	# of hours @ loaded rate and allowances	Total Hours in shift	"Start" Counter
	Monday, 11 March	4 pm	10 pm	n/a	6 hours @ 115%		
	Sleepover Mon-Tue	10 pm	6 am	Yes	1 x S/O Allowance		
	Tuesday, 12 March	6 am	10 am	n/a	4 hours @ 115%		
1	Total hours in Shift					10 hours	
	Hours rest between shifts					30 hours	
	Wednesday, 13 March	4 pm	10 pm	n/a	6 hours @ 115%		
	Sleepover Wed-Thurs	10 pm	6 am	Yes	1 x S/O Allowance		
	Thursday, 14 March	6 am	8 am	n/a	2 hours @ 115%		
2	Total hours in Shift					8 hours	
	Hours rest between shifts					10 hours	
	Thursday 14 March	6pm	10pm	n/a	4 hours @ 115%		
	Sleepover Thurs-Friday	10pm	6am	Yes	1 x S/O Allowance		
	Friday, 15 March	6am	10am	n/a	4 hours @ 115%		
3	Total hours in Shift					8 hours	
	Saturday, 16 March				Non-working day		
	Sunday, 17 March				Non-working day		
	Monday, 18 March				Non-working day		
	Hours rest between shifts					102 hours	
	Tuesday, 19 March	4 pm	10 pm	n/a	6 hours @ 115%		
	Sleepover Tues-Wed	10 pm	6 am	Yes	1 x S/O Allowance		
	Wednesday, 20 March	6 am	10 am	n/a	4 hours @ 115%		
4	Total hours in Shift					10 hours	
	Hours rest between shifts					30 hours	
	Thursday, 21 March	4 pm	10 pm	n/a	6 hours @ 115%		
	Sleepover Thurs-Fri	10pm	6am	Yes	1 x S/O Allowance		
	Friday, 22 March	6am	10am	n/a	4 hours @ 115%		
5	Total hours in Shift					10 hours	
	Saturday, 23 March				Non-working day		
	Sunday, 24 March				Non-working day		
Analysis and totals for fortnight							

Total shift count = 5
 Total number of non-working days = 5
 Total hours to be paid at 115% (night shift loading) = 46 hours
 Total number of Sleepover Allowances to be paid in fortnight = 5

In the scenario above, the employee has the required minimum break of at least 10 consecutive hours between shifts, so rostered hours are compliant with award provisions and no overtime applies.

Scenario 2:

At 6:30am on Thursday 14 March, **Employee 2**, calls in sick. Organisation A rings their pool of support workers, but are unable to cover the shift until 11:30 am. **Employee 1** is due to finish their shift at 8am. Organisation A asks Employee 1 if they can stay back so the residents are not left unattended, while waiting for the next employee to commence work. Employee 1’s hours of work for the fortnight now reflect the following:

Shift counter	Day and Date	Start time	End Time	Sleepover Allowance	# of hours @ loaded rate and allowances	Total Hours in shift	“Start” Counter
	Monday, 11 March	4 pm	10 pm	n/a	6 hours @ 115%		1
	Sleepover Mon-Tue	10 pm	6 am	Yes	1 x S/O Allowance		
	Tuesday, 12 March	6 am	10 am	n/a	4 hours @ 115%		1
1	Total hours in Shift					10 hours	
	Hours rest between shifts					30 hours	
	Wednesday, 13 March	4 pm	10 pm	n/a	6 hours @ 115%		1
	Sleepover Wed-Thurs	10 pm	6 am	Yes	1 x S/O Allowance		
	Thursday, 14 March	6 am	8 am 11:30 am	n/a	4 hours @ 115% + 1.5 hours @ 150% + 1x Overtime Meal Allowance		1
2	Total hours in Shift					11.5 hours	
	Hours rest between shifts					6.5 hours	
	Thursday 14 March (same calendar day as previous)	6pm	10pm	n/a	4 hours @ 200% + 1 OT Meal Allowance		1
	Sleepover Thurs-Friday	10pm	6am	Yes	1 x S/O Allowance		
	Friday, 15 March	6am	10am	n/a	4 hours @ 200% + 1 OT Meal Allowance		1
3	Total hours in Shift					8 hours	
	Saturday, 16 March				Non-working day		
	Sunday, 17 March				Non-working day		
	Monday, 18 March				Non-working day		
	Hours rest between shifts					102 hours	
	Tuesday, 19 March	4 pm	10 pm	n/a	6 hours @ 115%		1
	Sleepover Tues-Wed	10 pm	6 am	Yes	1 x S/O Allowance		
	Wednesday, 20 March	6 am	10 am	n/a	4 hours @ 115%		1
4	Total hours in Shift					10 hours	
	Hours rest between shifts					30 hours	
	Thursday, 21 March	4 pm	10 pm	n/a	6 hours @ 115%		1
	Sleepover Thurs-Fri	10pm	6am	Yes	1 x S/O Allowance		
	Friday, 22 March	6am	10am	n/a	4 hours @ 115%		1
5	Total hours in Shift					10 hours	
	Saturday, 23 March				Non-working day		
	Sunday, 24 March				Non-working day		

Analysis and totals for fortnight

Because Employee 1 has not had the minimum 10-hour rest break between the end of their shift on Thursday 14 March at 11:30am, before they were required to start their usual shift at 6pm later the same day, Employee 1 is entitled to receive 200% (double time) for each hour worked in the second shift because they were already in overtime when they didn’t get the 10 hour break. They are also entitled to 2 overtime meal allowances. This scenario presumes to meet the definition of “so much overtime” as per clause 28. 3 (a) and (b) as it currently reads.

Total shift count = 5
 Total number of non-working days = 5

Total hours to be paid at 115% (night shift loading) = 46 hours
 Total hours to be paid at 150% (overtime) = 1.5 hours
 Total hours to be paid at 200% (overtime) = 8 hours
 Total overtime meal allowances = 3
 Total number of Sleepover Allowances to be paid in fortnight = 5
 Total hours working in fortnight = 55.5

The above scenario is the approach that we advise our clients as being the correct interpretation of the clause, which reflects FWO’s advice.

Scenario 3:

At 6:30am on Thursday 14 March, **Employee 2**, calls in sick. Organisation A rings their pool of support workers but are unable to cover the shift until 10 am. **Employee 1** is due to finish their shift at 8am. Organisation A asks Employee 1 to stay back, so the residents are not left unattended, until the next employee commences work. Employee 1’s hours of work for the fortnight now reflect the following:

Shift counter	Day and Date	Start time	End Time	Sleepover Allowance	# of hours @ loaded rate and allowances	Total Hours in shift	“Start” Counter
	Monday, 11 March	4 pm	10 pm	n/a	6 hours @ 115%		1
	Sleepover Mon-Tue	10 pm	6 am	Yes	1 x S/O Allowance		
	Tuesday, 12 March	6 am	10 am	n/a	4 hours @ 115%		1
1	Total hours in Shift					10 hours	
	Hours rest between shifts					30 hours	
	Wednesday, 13 March	4 pm	10 pm	n/a	6 hours @ 115%		1
	Sleepover Wed-Thurs	10 pm	6 am	Yes	1 x S/O Allowance		
	Thursday, 14 March	6 am	8 am 10 am	n/a	4 hours @ 115%		1
2	Total hours in Shift					10 hours	
	Hours rest between shifts					8 hours	
	Thursday 14 March (same calendar day as previous)	6pm	10pm	n/a	4 hours @ 115%		1
	Sleepover Thurs-Friday	10pm	6am	Yes	1 x S/O Allowance		
	Friday, 15 March	6am	10am	n/a	4 hours @ 115%		1
3	Total hours in Shift					8 hours	
	Saturday, 16 March				Non-working day		
	Sunday, 17 March				Non-working day		
	Monday, 18 March				Non-working day		
	Hours rest between shifts					102 hours	
	Tuesday, 19 March	4 pm	10 pm	n/a	6 hours @ 115%		1
	Sleepover Tues-Wed	10 pm	6 am	Yes	1 x S/O Allowance		
	Wednesday, 20 March	6 am	10 am	n/a	4 hours @ 115%		1
4	Total hours in Shift					10 hours	
	Hours rest between shifts					30 hours	
	Thursday, 21 March	4 pm	10 pm	n/a	6 hours @ 115%		1
	Sleepover Thurs-Fri	10pm	6am	Yes	1 x S/O Allowance		
	Friday, 22 March	6am	10am	n/a	4 hours @ 115%		1
5	Total hours in Shift					10 hours	
	Saturday, 23 March				Non-working day		
	Sunday, 24 March				Non-working day		

Analysis and Totals per fortnight (pfn)

Employee 1 has not had the minimum 10-hour rest break between the end of their shift on Thursday morning when they worked back until 10am, before they came back to start their usual shift at 6pm later the same day. The total number of hours break between the end of the first shift and the start of the next is only **8 hours** and the employee has not agreed to the 8-hour adjustment to the rest break provisions.

Current advice from FWO and multiple lawyers is that Employee 1 is **not** entitled to double time for each hour worked in their next shift because they were not in **overtime** when they finished work at 10am before returning at 6pm on the same day.

Advice provided by FWO/lawyers is that this is a **“technical breach”**, of the SCHADS award, so even though FWO can issue fines for such breaches, the employee is not entitled to the double time/overtime penalty rates or overtime meal allowances, because SCHADS is silent on this matter.

Total shift count = 5

Total number of non-working days = 5

Total hours to be paid at 115% (night shift loading) = 48 hours

Total number of Sleepover Allowances to be paid in fortnight = 5

Total hours working in fortnight = 48

Why this is problematic.

The interpretation of how Clause 28.3 (a) and (b) is applied in the above scenario is inconsistent within the disability support industry and yet this scenario is very common.

Our own research and experiences with multiple organisations and payroll providers is that a sizeable cohort believe that employees working ordinary hours who do not have the minimum 10 hour break between the end of one shift and the beginning of the next, are entitled to double time for the second shift, plus the overtime meal allowances until they are released for the 10 consecutive hours. This is what they pay.

Another cohort, based on the information provided from FWO and lawyers, are of the view that it is indeed a “technical breach” of the award and therefore the employee is not entitled to overtime, for work undertaken during the second shift, when they have not had the required 10-hour break. They do not pay overtime for the second shift.

This is problematic when two like-for-like organisations working side by side in a regional area, who often employ the same people, provide different ‘minimum entitlements’ under the same award. This gives rise to multiple workplace disputes and distress when workers, having worked for both organisations, form a view that one employer is in breach of the award, technically or otherwise.

FWO’s position is that the breach should simply not occur in the first place, and that the only suitable resolution is to enforce the 10-hour rest break between shifts, without exception.

While this may appear to be a simple fix, the approach does not take into account that such breaches regularly happen in the industry, because leaving disabled residents alone and unattended due to ad hoc staff illness or lack of availability is also not a reasonable solution in the circumstances.

Why this is also problematic in the context of EA negotiations.

There is also an inconsistency between the information coming from the FWC and the information provided by FWO on how this clause is to be interpreted.

I’ve recently had cause to review several Enterprise Agreements, underpinned and BOOT tested against SCHADS, where the FWC has required the employer to implement Section 190 Undertakings, and has provided draft text for the employer to consider as a suitable remedy that states employees **are** entitled to the double time overtime in the above scenario.

If this is being flagged as not meeting the BOOT during the assessment for a replacement agreement, it raises the question as to whether the FWC is of the view that the double time overtime rate is indeed a minimum award provision as it applies to the above scenario.

Essentially, what is being corrected in Section 190 undertakings at the FWC is not then being recognised as a minimum award provision in compliance matters investigated and enforced by FWO.

Attempting to explain “technical breaches” of award provisions like this is deeply complex and inflames workplace disputes between employers and their employees. We are seeing such occurrences unfold on a regular basis, particularly in the disability support industry.

Proposal - Clause 28. Overtime rates – Cl 28.3 (a) & (b)

If it is the FWCs view that the overtime penalty rates should be applied to the SCHADS Award, as it is in many other industry awards, that employees who do not have the required minimum rest break between the end of one shift and the commencement of the next, is entitled to be paid overtime at 200% for their second shift until such time as they achieve the 10 consecutive hour minimum rest break, this would provide the clarity required.

Proposed replacement clause for consideration:

Clause 28.3 Minimum rest periods between shifts

- (a) Employees, who have not had a minimum of 10 consecutive hours off duty between the end of one shift and the commencement of the next will be released from duty until such time as they have achieved 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during such absences.
- (b) If, at the direction of the employer, an employee continues work, or resumes working their ordinary rostered hours, without having at least 10 consecutive hours off duty in accordance with clause 28.3 (a), then all of the following apply:
 - (i) the employer must pay the employee at **200%** of the employee’s minimum hourly rate until such time as the employee is released from duty for the full 10 consecutive hours; and
 - (ii) the employer must pay any overtime meal allowances the employee is entitled to receive under clause 20.5; and
 - (iii) the employee must not suffer any loss of pay for any ordinary hours that the employee did not work as a result of being released from duty in accordance with clause 28.3 (a).

Issues noted: The above draft text provides the same entitlement to all employees including casuals, who under the current arrangements are exempt from this provision.

Creating an entitlement to double time when a sufficient break between rostered shifts has not occurred is by far a greater incentive for employers not to extend people unnecessarily if reasonable alternatives can be found.

Resolving this issue would bring much needed clarity and consensus for employers and employees within the sector.

Other areas of contention – the meaning of the words ‘shift’ and ‘start’.

We’ve had clients who have received conflicting advice from their outsourced payroll provider who specialises in the SCHADS Award payrolls across Australia, and FWO, about the definition of a “shift” as it applies to the following clause:

25.1 Ordinary hours of work

- (a) The ordinary hours of work will be 38 hours per week, or an average of 38 hours per week and will be worked either:
- (i) in a week of five days in shifts not exceeding eight hours each;
 - (ii) in a fortnight of 76 hours in 10 shifts not exceeding eight hours each; or
 - (iii) in a four-week period of 152 hours to be worked as 19 shifts of eight hours each, subject to practicality.
- (b) By agreement, the ordinary hours in clause 25.1(a) may be worked up to 10 hours per shift.

At the heart of this issue is whether a 'shift' is considered a single 'start' for the purpose of calculating overtime as it applies to 25.1 (a) (ii) the maximum of 10 shifts. Again, this is best explained in a scenario.

Scenario 4

Shift counter	Day and Date	Start time	End Time	Sleepover Allowance	# of hours @ loaded rate and allowances	Total Hours in shift	"Start" Counter
	Monday, 11 March	4 pm	10 pm	n/a	6 hours @ 115%		1
	Sleepover Mon-Tue	10 pm	6 am	Yes	1 x S/O Allowance		
	Tuesday, 12 March	6 am	8 am	n/a	2 hours @ 115%		2
1	Total hours in Shift					8 hours	
	Hours rest between shifts					10 hours	
	Tuesday, 12 March	6pm	10pm	n/a	4 hours @ 115%		
	Sleepover Tue-Wed	10 pm	6 am	Yes	1 x S/O Allowance		
	Wednesday, 13 March	6 am	8 am	n/a	2 hours @ 115%		3
2	Total hours in Shift					6 hours	
	Hours rest between shifts					10 hours	
	Wednesday, 13 March	6pm	10pm	n/a	4 hours @ 115%		
	Sleepover Wed-Thurs	10 pm	6 am	Yes	1 x S/O Allowance		
	Thursday, 14 March	6am	8am	n/a	2 hours @ 115%		4
3	Total hours in Shift					6 hours	
	Hours rest between shifts					10 hours	
	Thursday, 14 March	6pm	10pm	n/a	4 hours @ 115%		
	Sleepover Wed-Thurs	10 pm	6 am	Yes	1 x S/O Allowance		
	Friday, 15 March	6 am	10 am	n/a	4 hours @ 115%		5
4	Total hours in Shift					8 hours	
	Hours rest between shifts					56 hours	
	Saturday, 16 March				Non-working day		
	Sunday, 17 March	4 pm	10 pm	n/a	6 hours @ 115%		6
	Sleepover Sun-Mon	10 pm	6 am	Yes	1 x S/O Allowance		
	Monday, 18 March	6 am	8 am	n/a	2 hours @ 115%		7
5	Total hours in Shift					8 hours	
	Hours rest between shifts					10 hours	
	Monday, 18 March	4 pm	10 pm	n/a	6 hours @ 115%		
	Sleepover Mon-Tue	10pm	6am	Yes	1 x S/O Allowance		
	Tuesday, 19 March	6am	8am	n/a	2 hours @ 115%		8
6	Total hours in Shift					8 hours	
	Hours rest between shifts					10 hours	
	Tuesday, 19 March	6pm	10pm	n/a	4 hours @ 115%		
	Sleepover Tue-Wed	10 pm	6 am	Yes	1 x S/O Allowance		
	Wednesday, 20 March	6 am	10 am	n/a	4 hours @ 115%		9
7	Total hours in Shift					8 hours	
	Hours rest between shifts					10 hours	
	Wednesday, 20 March	6 pm	10 pm	n/a	4 hours @ 115%		
	Sleepover Wed- Thurs	10pm	6am	Yes	1 x S/O Allowance		
	Thursday, 21 March	6 am	8 am	n/a	2 hours @ 115%		10
8	Total hours in Shift					6 hours	
	Hours rest between shifts					10 hours	

	Thursday, 21 March	6 pm	10 pm	n/a	4 hours @ 115%		
	Sleepover Thurs-Fri	10pm	6am	Yes	1 x S/O Allowance		
	Friday, 22 March	6am	8am	n/a	2 hours @ 115%		11
9	Total hours in Shift					6 hours	
	Hours rest between shifts					10 hours	
	Friday, 22 March	6 pm	10 pm	n/a	4 hours @ 115%		
	Sleepover Fri-Sat	10pm	6am	Yes	1 x S/O Allowance		
	Saturday, 23 March	6am	8am	n/a	2 hours @ 115%		12
10	Total hours in Shift					6 hours	
	Hours rest between shifts					10 hours	
	Sunday, 24 March				Non-working day		
Analysis and Totals per fortnight (pfn)							
<p>Total shift count = 10 Total number of non-working days = 2 Total hours to be paid at 115% (night shift loading) = 70 hours Total number of Sleepover Allowances to be paid in fortnight = 10 Total hours working in fortnight = 70</p>							

Why this is problematic.

The advice from FWO, and payroll companies specialising in SCHADS is that a 'shift' including a sleepover is counted as one shift, even though it spans two calendar days. Based on this advice when applied to the scenario above, the employee is **not** entitled to overtime on any account, because they have not exceeded the maximum 10 shifts in a fortnight as defined in Clause 25.1 (a) (ii) Ordinary Hours of Work.

However, this advice does not take into account that employees, working this very common roster pattern, do not receive four full days free from duty in the fortnight.

Therefore, the contention is, does a 'shift' have the same meaning as a 'start' for the purpose of determining if the employee is entitled to overtime because they have only had two full days off duty in the fortnight.

In the scenario above, if each new calendar day that the employee works is considered a start, then this employee has 12 starts in this fortnight and is therefore entitled to overtime for work performed in shifts 9 and 10.

This would then impact the interpretation of whether a single shift that comprises of hours worked prior to a sleepover shift, the sleepover component, followed by a morning shift that begins at 6am the following calendar day is considered two shifts and not one, which is contrary to Clause 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".

Proposed replacement or additional clauses for consideration:

3. Definitions and interpretation

3.1 **Shift** means work undertaken in one continuous block of hours that may include meal breaks and sleepovers, except where broken in accordance with clause 25.6. A shift does not have the same meaning as a start.

Start means the number of calendar days in which the employee undertakes work. In the context of a sleepover shift, hours worked prior to the sleepover, that continues after 6am and into the morning of the next calendar day will be counted as two starts for the purpose of calculating overtime.

Clause 29. Shiftwork

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.

29.5 An employee rostered to work hours that occurs before and after a sleepover will be considered to have had two starts for the purposes of calculating overtime.

29.6 Each calendar day stands alone. Should an employee work two shifts that end and begin on the same calendar day, both shifts will be counted as a single start for the purposes of calculating overtime.

28.1 Overtime rates

(c) Full-time and part-time employees

(i) An employee working more than 5 starts in a week, more than 10 starts in a fortnight, or more than 19 starts in a 4-week period will be entitled to overtime for each start thereafter.

Issues noted: The above draft text does not provide the same entitlement to casuals.

Other areas of contention – Clause 25.8 24-hour care

3.4 Issue and Proposal Clause 20.5.

Clause 20.5 Meal allowances (a) (i) provides that employees working overtime of more than 1 hour are entitled to an overtime meal allowance. Clause (a) (ii) provides that should the employee continue to work overtime that exceeds 4 hours they are entitled to a second meal allowance.

The SCHADS Award is silent on whether the employee is then entitled to additional meal allowances for every additional occurrence where they work more than 4 hours thereafter.

This matter often arises when an employee is providing around the clock client care for overnight excursions, where an employee may be paid 16 hours overtime per consecutive day. As the allowance is to compensate for meals, it is reasonable to expect that they would be entitled to more than two meal allowances in a 24-hour period. However, this is applied inconsistently in the industry, where silence is interpreted as no entitlement.

In addition to the above, clauses (b) and (c) are also contentious; (b) because whether the employee could reasonably return home for a meal is subjective and (c) meal allowances are most often paid through payroll systems and requests to be paid on the day are difficult and costly to administer as petty cash payments or as an exceptional pay run where it costs the employer more in fees than for the allowance.

Proposed replacement text for consideration

20.5 Overtime meal allowances

(a) An employee will be supplied with a suitable meal where an employer has adequate cooking and dining facilities or be paid a meal allowance of \$15.20 in addition to any overtime payment as follows:

(i) when required to work more than one hour after the usual finishing hour of work or, in the case of shift workers, when the overtime work on any shift exceeds one hour; and

(ii) provided that where such overtime work exceeds four hours a further meal allowance of \$15.20 will be paid.

(iii) provided that where such overtime continues beyond the first four hours, additional meal allowance of \$15.20 will be paid for each consecutive four-hour period thereafter.

(c) Overtime meal allowances will be paid in the same pay period in which the overtime is paid.

3.5 Issue and Proposal Clause 4.2 Coverage

It is our experience that employers employing health professionals in social and community services industries are confused as to whether such employees are covered by the SCHADS Award or the Health Professionals and Support Services Award 2010 (HPSS Award).

On its Health Professionals and Support Services Award information page, FWO states the following:

Who the Health Services Award doesn't cover

The following employers and employees are not covered by the Health Services Award:

- *nurses who are covered by the Nurses Award*
- *paramedics who are covered by the Ambulance Award*
- *medical professionals such as doctors, GPs and surgeons.*

Employers and employees in the social and community services industry should carefully assess whether a role involves the employment of a health professional employee who would be covered by the Health Services Award.

Employers and employees in social and community services industries (i.e. disability support services) who are not a health service would have greater clarity within the award itself that specifies health professionals working in these industries, have coverage under SCHADS. We propose the following be added to Clause 4.2 Coverage.

Proposed additional text for consideration

4.9 This award covers health professionals employed in social and community service industries, including disability support services, whose business and/or activity are not in the delivery of health care, medical services or dental services.

Thank you again for the opportunity to provide feedback.



Get in touch!

info@resourcesforhumans.com.au

www.resourcesforhumans.com.au

0430 241 745

