

VISA PAK ISSUE 465 — 01 APRIL 2021

## **SLEEPOVER HOURS IN THE AGED AND RESIDENTIAL CARE INDUSTRY**

The purpose of this item is to ensure the instructions are applied consistently in both temporary and residence processing. Immigration officers should include rates of pay for any sleepover hours in their remuneration calculations when assessing Skilled Migrant Category and Essential Skills applications.

Immigration instruction SM6.20(g) states that each hour of work must be paid at or above the applicable per hour remuneration threshold. Some employment agreements in the Aged and Residential Care Industry include a sleepover clause where the applicant is paid below the applicable remuneration threshold (currently \$25.50) for any hours the applicant is allowed to sleep during a shift. Sleepover hours are considered hours of work as the sleepover is an activity performed for gain or reward and is not an activity excluded from the meaning of 'work' under immigration instructions (W2.2.1) and therefore, in applications where the applicant receives less than the remuneration threshold for sleepover hours, SM6.20(g) is not met.

Rates of pay for sleepover hours also impact the calculation of applicants' remuneration when assessing an Essential Skills application. Immigration instruction WK3.5.5(g) states that each hour of work must be paid at or above \$25.50, for employment to be assessed as paid at or above the median wage (see WK3.5.1.b).

For applications where the remuneration requirement is assessed as not being met, the applicants should be provided an opportunity to comment before a decision is made on their application. At this stage the applicant may be able to resubmit a new contract for consideration without the sleepover clause or provide written confirmation from their employer that they are not required to undertake sleepover hours.