



SUMMARY OF SUBMISSIONS - common issues

This submission summary document has been prepared by staff of the Fair Work Commission to assist with the Making Awards Easier to Use stream of the Modern Awards Review 2023-24. It has been prepared to assist parties in consultation 1 dealing with the common issues. The summary document does not represent the concluded view of the Commission on any issue.

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Glossary

ABI/BNSW	Australian Business Industrial (ABI) and Business NSW
ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
AHA	Australian Hotels Association
Ai Group	Australian Industry Group
ARA	Australian Retailers Association
ASU	Australian Services Union
AWC	Australian Workforce Compliance Council
BCA	Business Council of Australia
CCIWA	Chamber of Commerce and Industry WA
HSU	Health Services Union
MGA	Master Grocers Australia
NECA	National Electrical and Communications Association
NRA	National Retail Association
RAFFWU	Retail and Fast Food Workers Union
SDA	Shop, Distributive and Allied Employees' Association
UWU	United Workers Union

Submissions in reply key

Proposal is agreed

Proposal is
somewhat agreed

Proposal is opposed

Common Issues

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Awards	Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
<p>Common issue in:</p> <p>Childrens Award</p> <p>Clerks Award</p>	ABI and BNSW	<p>Clerks: 13.6(a) Childrens: 21.2</p>	1.	2, p5	<p>1. Working hours continuously - ABI/BNSW</p> <p>The Clerks Award and the Children’s Award mandate employees to work their ordinary hours continuously, preventing the split of work periods within a day.</p>	<p>Summary proposal: ABI/BNSW propose modifications to the Clerks Award and the Children’s Award to allow employees the option to work their ordinary hours in a non-continuous manner if they prefer, facilitating greater flexibility in work arrangements.</p> <p>Proposed wording: P.18 Childrens Award- by deleting clause 21.2 and inserting as follows: <i>Ordinary hours will be worked in periods not exceeding eight hours, in unbroken periods save for meal breaks, between Monday and Friday, unless an employee has individually requested to work their hours non-continuously. Subject to the provisions of clause 7–Individual flexibility arrangements, by agreement between and employer and an employee, an employee may be rostered to work up to a maximum 10 hours in any one day.</i></p> <p>P.17 Clerks Award - by deleting clause 13.6(a) and inserting as follows: <i>continuously (unless an employee has requested to work their hours non-continuously), except for rest breaks and meal breaks as specified in clause 15 –Breaks (employees other than shiftworkers).</i></p>	<p>Ai Group refers to its own proposals in respect of employees working from home for the Clerks Award (48–49, p13)</p> <p>Ai Group agree - in relation to Childrens with consideration given to making clear that the broken shift allowance (at clause 15.1) is not payable when an employee works from home (245–246, p43)</p> <p>ACTU oppose – reduction in entitlements (p5)</p> <p>ASU oppose - in relation to Clerks (45, p 11)</p> <p>UWU oppose –the proposals rationale doesn’t apply to employees in ECEC, who do not work from home (p13)</p>
<p>Common issue in:</p> <p>Childrens Award</p> <p>Clerks Award</p> <p>SCHADs Award</p>	ABI and BNSW	<p>Childrens: 10.3 Clerks: 10.4(d)(i) SCHADs: 10.3(e)</p>	2.	3, p6	<p>2. Variation to part-time working hours - ABI/BNSW</p> <p>The Clerks, SCHADs, and Children’s Awards permit variations to the regular pattern of working hours for part-time employees upon written agreement between the employer and the employee. There has been confusion among employers about</p>	<p>Summary proposal: BNSW and ABI propose that to modify the Clerks, SCHADs, and Children’s Awards to align with the updated provisions in the Retail Award concerning part-time work variations. This proposal aims to provide clear guidance on the process for varying part-time employees’ hours, specifying that such variations can be temporary or ongoing, must be in writing, and agreed upon before the varied hours are worked.</p> <p>Proposed Wording: P.23 In the Childrens Award – By deleting clause 10.4(d)(i) and inserting as follows: <i>The employer and the employee may agree to vary the regular pattern of work agreed under clause 10.4(c) on a temporary or ongoing basis, with effect from a future date or time. Any such agreement must be recorded in writing:</i></p>	<p>AiG does not oppose the proposed variations to the Clerks Award (50–51, p13), SCHCDS Award (199, p37) and the Children’s Services Award (248, p43)</p> <p>ASU oppose – reduction in entitlements (in relation to SCHADs at 9, p4; in relation to Clerks at 46, p11)</p>

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					whether such agreed variations could lead to additional or different hours being worked without incurring overtime payments.	<p>(c) if the agreement is to vary the employee's regular pattern of work for a particular rostered shift – before the end of the affected shift; and (d) otherwise – before the variation takes effect.</p> <p>NOTE 1: An agreement under clause 10.4(d)(i) could be recorded in writing including through an exchange of emails, text messages or by other electronic means.</p> <p>NOTE 2: An agreement under clause 10.4(d)(i) cannot result in the employee working 38 or more ordinary hours per week.</p> <p>P.19: Clerks - by deleting clause 10.3 and inserting as follows: The employer and the employee may agree to vary the regular pattern of work agreed under clause 10.2 on a temporary or ongoing basis, with effect from a future date or time. Any such agreement must be recorded in writing: (a) if the agreement is to vary the employee's regular pattern of work for a particular rostered shift – before the end of the affected shift; and (b) otherwise – before the variation takes effect.</p> <p>NOTE 1: An agreement under clause 10.3 could be recorded in writing including through an exchange of emails, text messages or by other electronic means.</p> <p>NOTE 2: An agreement under clause 10.3 cannot result in the employee working 38 or more ordinary hours per week.</p> <p>P.21 In the SCHADs Award - by deleting clause 10.3(e) and inserting as follows: The employer and the employee may agree to vary the regular pattern of work agreed under clause 10.3(c) on a temporary or ongoing basis, with effect from a future date or time. Any such agreement must be recorded in writing: (a) if the agreement is to vary the employee's regular pattern of work for a particular rostered shift – before the end of the affected shift; and (b) otherwise – before the variation takes effect.</p> <p>NOTE 1: An agreement under clause 10.3(e) could be recorded in writing including through an exchange of emails, text messages or by other electronic means.</p> <p>NOTE 2: An agreement under clause 10.3(e) cannot result in the employee working 38 or more ordinary hours per week.'</p>	<p>HSU opposes – in relation to SCHADs Award (6a, p2)</p>
							<p>UWU oppose –on Childrens Award temporary variations are already allowed (p14)</p>
<p>Common issue in:</p> <p>Childrens Award</p> <p>Hospitality Award</p>	<p>ABI and BNSW</p>	<p>Childrens: 13.1 Hospitality: 14 Restaurant: 14 SCHADs: 13.1-13.3</p>	<p>3.</p>	<p>4, p8</p>	<p>3. Classification of employees - ABI/BNSW</p> <ul style="list-style-type: none"> Classification structures differ across awards, reflecting the diverse work requirements in each industry. 	<p>Summary proposal: ABI and BNSW propose inserting similar guidance to clause 12.2 in the Clerks Award into the Restaurant Award, Hospitality Award, SCHADs Award, and Children's Award.</p> <p>Proposed Wording: Childrens Award, clause 13.1; Hospitality Award, clause 14; Restaurant Award clause 14; SCHADs Award, clause 13.3: The classification by the employer must be based on the characteristics that the employer requires the employee to have, and skills that the employer requires the employee to exercise, in order to carry out the principal functions of employment."</p>	<p>AiG sees merit in discussing this proposal further for the SCHCADS Award (para/s 201–202) and the Children's Services Award (para 253).</p> <p>ACTU oppose – reduction in entitlements (p6)</p> <p>ASU oppose – reduction in entitlements (10. p4)</p>

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Restaurant Award SCHADS Award					<ul style="list-style-type: none"> Courts have applied a "principal purpose" test for classifying employees, focusing on the main functions of the role. The Clerks Award provides additional guidance on classification, emphasising the skills and characteristics required by the employer for the role, which helps ensure consistent and practical application. <p>Other awards, such as the Restaurant Award, Hospitality Award, SCHADs Award, and Children's Award, lack similar guidance, potentially leading to confusion and misclassification, especially regarding irrelevant qualifications.</p>		<p>HSU oppose - proposal regarding SCHADs – reduction in entitlements (6b, p2)</p> <p>UWU oppose – variation is not necessary; schedule sets out how classification apply (for the Hospitality Award @ p17)</p>
<p>Common issue in:</p> <p>Clerks Award</p> <p>Childrens Award</p> <p>Hospitality Award</p> <p>Restaurant Award</p>	ABI and BNSW	<p>Clerks: 32.6-32.8</p> <p>Childrens: 24.5 – 24.7</p> <p>Hospitality: 30.6-30.8</p> <p>Restaurant: 25.5-25.7</p> <p>SCHADs: 31.6-31.8</p>	4.	6, p15	<p>4. Excessive annual leave - ABI/BNSW</p> <p>ABI/BNSW supports ACCI's proposals for dealing with excessive annual leave balances (see below).</p>	<p>Summary proposal: replace current processes in the Clerks, Childrens, Hospitality, Restaurant and SCHADs Award with a simpler process whereby directions can be given in relation to the taking of excessive annual leave accruals.</p> <p>Proposed wording for Clerks, Childrens, Hospitality, Restaurant and SCHADs awards:</p> <p><i>X.X Excessive leave accruals Despite anything else in this clause, an employer may direct an employee to take a period of paid annual leave if:</i></p> <p>(a) the employee has accrued at least 8 weeks of annual leave;</p> <p>(b) the employer gives the employee 8 weeks' notice to take the annual leave; and</p> <p>(c) the employee retains at least 6 weeks of accrued annual leave after the direction is given by the employer.</p> <p>NB: The proposed wording is different to ACCI's related proposal.</p>	<p>AiG agrees with the proposed variation of the Clerks Award (55–56, p.14), SCHADs Award (203, p37) and the Childrens Award (253, p44).</p> <p>HSU oppose - proposal regarding SCHADs – reduction in entitlements (6c, p2)</p>

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SCHADs Award							
<i>Withdrawn - Common to all 7 awards</i>	<i>ACCI</i>	<i>Withdrawn - Superannuation</i>	<i>-</i>	<i>A, p9</i>	<i>Superannuation clauses - ACCI</i>	<i>Proposal withdrawn</i>	<p><i>ACCI (para 1.9, p.2) withdrew this proposal in its reply submission.</i></p> <p><i>Ai Group suggests it is not necessary or appropriate to reconsider the clause following the Full Bench decision to vary modern award superannuation clauses in [2023] FWCFB 264 (para 9, p.5)</i></p> <p><i>ACTU oppose – previously determined</i></p> <p><i>ASU oppose – reduction in entitlements (11, p4; 50, p 12)</i></p> <p><i>AWCC supports</i></p> <p><i>HSU Oppose (p3)</i></p> <p><i>NECA (p.3) proposes changes to the draft clause (set out in the 'Proposal' column).</i></p> <p><i>RAFFW oppose (para 12.a)</i></p> <p><i>UWU open to discuss (p3)</i></p>
Common to all 7 awards	ACCI	TOIL clauses	5.	B, p16-20	<p>5. TOIL clauses - ACCI</p> <p>Current TOIL clauses are long, complex and difficult to use, leading to confusion.</p>	<p>Proposal Summary:</p> <p>Simplify TOIL clauses to ensure clear understanding and ease of use, stating that TOIL may be agreed in writing without undue pressure, must be taken as agreed, and paid out if not taken within 12 months or upon employment termination.</p> <p>Proposal for: Clerks Award – (replacement for clause 23); Children’s Award; Hospitality Award; SCHADs</p>	<p>ABI/BNSW agree – reduces prescriptive nature of clause, allows an ongoing agreement, removes non-essential cross reference to s 65 of the FW Act.</p> <p>Ai Group agree - subject to:</p> <ul style="list-style-type: none"> Inserting “(by electronic means)”

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Awards	Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
						<p>X.X Time off instead of payment for overtime</p> <p>(a) An employer and employee may agree in writing to the employee taking an equivalent amount of time off instead of being paid for a particular amount of overtime worked by the employee, provided that no undue influence or undue pressure is exerted on either party.</p> <p>(b) The time off must be taken at a time or times agreed by the employer and employee.</p> <p>(c) The employer must pay the employee as soon as practicable for any overtime hours that were subject to an agreement under subclause (a) and have not been taken off where:</p> <p>(i) the employee decides to cancel the agreement;</p> <p>(ii) the employee does not take the agreed time off within 12 months of the overtime hours being worked; or</p> <p>(iii) the employment is terminated.</p> <p>Additional clause to be varied in the Clerks Award – clause 29</p> <p>29 Time off instead of payment for overtime (shiftworkers)</p> <p>Clause 23 also applies to shiftworkers</p> <p>Proposal for: Fast Food Award; Retail Award; Restaurant Award</p> <p>X.X Time off instead of payment for overtime</p> <p>(a) An employer and employee may, without undue influence or pressure, freely agree in writing to the employee taking time off instead of being paid for a particular amount of overtime.</p> <p>(b) The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made. EXAMPLE: By making an agreement under clause X.X, an employee who worked 2 overtime hours at the rate of 150% is entitled to 3 hours' time off.</p> <p>(c) The employer must pay the employee as soon as practicable for any overtime hours that were subject to an agreement under subclause (a) and have not been taken off where:</p> <p>(i) the employee decides to cancel the agreement;</p> <p>(ii) the employee does not take the agreed time off within 6 months of the hours being worked; or</p> <p>(iii) the employment is terminated.</p>	<p>after “freely agree in writing” in X.X(a)</p> <ul style="list-style-type: none"> Dealing with “undue influence or undue pressure” by an employer on an employee without undermining the validity of an agreement to take TOIL Making clear the rate an employee is to be paid under X.X(c) Providing clarity around an employee’s right to “cancel” an agreement to take TOIL under X.X(c) “Banking” of TOIL for up to 12 months should only occur where the employer and employee agree.’ <p>(para/s 12–21, p.6)</p> <p>ACTU oppose – reduction in entitlements (p5)</p> <p>ASU oppose – reduction in entitlements (for SCHADs @ 12, p5; for Clerks @ 51, p12)</p> <p>AWCC (para 2.6, p.9) disagrees with removing text guidance within TOIL clauses because it creates opportunities for ambiguity and misinterpretation of overtime rates, agreements and payments. It refers to</p>

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							<p>its own proposals to make TOIL clauses clearer.</p> <p>HSU oppose - proposal regarding SCHADs – reduction in entitlements (6b, p2)</p> <p>NECA (p.7) proposes changes to the draft clause for clarity:</p> <ul style="list-style-type: none"> At X.1(a) insert “worked by the employee” after “particular amount of overtime”. At X.1(b)(i) insert “overtime” prior to “hours being worked”. <p>RAFFW oppose - notes no changes to Retail Award or Fast Food Award.</p> <p>UWU oppose – proposal is not only administrative, removes some protections, including agreement on TOIL as it occurs, rather than rolling TOIL; right to convert TOIL to overtime; right to take TOIL or access overtime within a reasonable amount of time; protection from undue pressure (p14)</p>
Common issue in:	ACCI	Annualised Wage	6.	C, p21-28		<p>Proposal Summary: Introduce a new, simplified clause for annualised wage arrangements to make it easier for employers to offer annualised wages, ensuring that employees are not disadvantaged by such</p>	ABI and BNSW agreed (3.30, p12)

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Awards	Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
Clerks Award Hospitality Award Restaurant Award					<p>6. Annualised wage arrangements - ACCI The existing annualised wage arrangement clauses in the Clerks Award, Hospitality Award, and Restaurant Award are considered complex and burdensome, leading to underuse, especially among small businesses. Some employers use common law contracts to implement annualised salary arrangements, potentially exposing them to compliance and legal risk.</p>	<p>arrangements. The new clause specifies that the annualised wage must cover all entitlements that would have been earned under the award and requires employers to keep a detailed record of the annualised wage and its components.</p> <p>X. Annualised wage arrangements</p> <p>X.1 Annualised wage instead of award provisions</p> <p>(a) An employer may pay a full time employee an annualised wage in satisfaction of any or all of the following provisions of the award: [specified clauses]</p> <p>(b) Where an annualised wage is paid, the employer must advise the employee in writing, and keep a record of:</p> <p>(i) the annualised wage that is payable; and</p> <p>(ii) which of the provisions of this award will be satisfied by payment of the annualised wage.</p> <p>X.2 Annualised wage not to disadvantage employees</p> <p>(a) The annualised wage must be no less than the amount the employee would have received under this award for the work performed over the year for which the wage is paid (or, if the employment ceases earlier, over such lesser period as has been worked).</p> <p>(b) At least once per year, the employer must review the annualised wage of the employee to ensure that the compensation is no less than the amount the employee would have received under this award for the work performed over the year for which the wage is paid.</p> <p>X.3 Base rate of pay for employees on annualised wage arrangements For the purposes of the NES, the base rate of pay of an employee receiving an annualised wage under clause X comprises the portion of the annualised wage equivalent to the relevant rate of pay in clause X – Minimum rates and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.</p>	<p>ACCI (42–43, p.12) supports changes to clause 18 of the Clerks Award subject to it also applying to part-time employees.</p> <p>ACTU oppose – reduction in entitlements (p6)</p> <p>ASU opposes – outside scope (2, p7; 53, p12)</p> <p>AWCC (2.7, p10) believes introducing simplified annualised wage arrangement clauses may create confusion if not comprehensive to guide business decisions and operationalisation consistency. Further consideration should be given to:</p> <ul style="list-style-type: none"> • Administrative burden • Potential for increased costs • Reactive rather than preventative • Complexity • Impact on flexibility. <p>HSU oppose (p3) – appears unilateral by employer</p> <p>RAFFW opposes – however notes the proposal does not relate to the Retail Award or Fast Food Awards.</p> <p>UWU oppose – reduces entitlements; already considered in 4 yearly review (for the Hospitality Award @ p17)</p>

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Common to all 7 awards	ACCI	Excessive Annual Leave Accrual	7.	D, p29-32	<p>7. Excessive annual leave - ACCI</p> <p>Current excessive annual leave accrual clauses are lengthy (nearly 800 words) and complex, reducing their usability. Proposal D aims to simplify these clauses by establishing clear conditions under which an employer can direct an employee to take annual leave to address excessive accruals.</p>	<p>Proposal Summary: Introduce a simplified clause allowing employers to direct employees to take annual leave if they have genuinely attempted to reach an agreement with the employee, the employee has accrued at least 8 weeks (10 for shiftworkers), and the employer provides at least 8 weeks' notice, ensuring the employee retains a minimum of 6 weeks of accrued leave.</p> <p>X.X Excessive leave accruals <i>Despite anything else in this clause, an employer may direct an employee to take a period of paid annual leave if:</i></p> <ul style="list-style-type: none"> (a) the employer has genuinely tried to reach agreement with the employee on how to reduce their annual leave accrual; (b) the employee has accrued at least 8 weeks of annual leave (or 10 weeks' paid annual leave for a shiftworker); (c) the employer gives the employee no less than 8 weeks' notice to take the annual leave; and (d) the employee retains at least 6 weeks of accrued annual leave after the direction is given by the employer. <p>Specific variation to the Fast Food Award The Fast Food Award does not have provisions applying to "shiftworkers" and thus the words "(or 10 weeks' paid annual leave for a shiftworker)" in subclause (b) should be omitted in the clause in that award.</p> <p>Further proposal: NECA, in its reply submission, proposes an alternative draft clause:</p> <p>X.X Excessive leave accruals</p> <p>X.1 <i>Despite anything else in this clause, an employer may direct and to take a period of no less than one week's paid annual leave if:</i></p> <ul style="list-style-type: none"> (a) the employee has accrued at least 8 weeks of annual leave, or 10 weeks if the employee is a shiftworker; (b) the employer gives the employee no less than 8 weeks' notice to take the leave; (c) the employee retains at least 6 weeks of accrued annual leave when the leave directed to be taken is deducted from the employee's leave balance. <p>X.2 <i>An employee may give written notice to the employer requesting to take at least one period of no less than one weeks' and no more than four weeks (5 weeks if the employee is a shiftworker) paid annual leave if:</i></p> <ul style="list-style-type: none"> (a) the employee has had an accrued annual leave balance of at least 8 weeks (or 10 weeks for shift workers) for more than 6 months; 	<p>ABI and BNSW agree - proposes changes to the following clauses: Clerks: 32.6-32.8 Childrens: 24.5 – 24.7 Hospitality: 30.6-30.8 Restaurant: 25.5-25.7 SCHADs: 31.6-31.8</p> <p>Ai Group (para 23, p.8) prefers ABI's proposal.</p> <p>ACTU oppose – reduction in entitlements (p7)</p> <p>ASU oppose – reduction in entitlements (for SCHADs @ 13, p5; for Clerks @ 54, p12)</p> <p>AWCC (para 2.8, p.11) considers it crucial for the clause wording to support both employers and employees to understand their rights and responsibilities.</p> <p>HSU oppose proposal regarding SCHADs – reduction in entitlements (6c, p3)</p> <p>NECA (p.12) proposes an alternative draft clause (set out in the Proposal column).</p> <p>RAFFW oppose - reduction in entitlements, employees often have excessive leave balances due to employer refusal for leave (12d, p7)</p>

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						<p>(b) the employee has not been given approval or a direction by the employer to take excessive accrued annual leave, and the employee retains at least 6 weeks of accrued annual leave as a result of any excessive leave taken;</p> <p>(c) the employee gives the employer at least 8 weeks' and no more than 12 months' notice to take the annual leave.</p>	<p>UWU opposes - reduces entitlements (p4)</p>
Common to all 7 awards	ACCI	Consultation Clauses	8.	E, p33-35	<p>8. Consultation clauses - ACCI</p> <p>Issue: Current consultation clauses are lengthy and complex due to their separation into distinct clauses for major workplace changes and roster changes. Proposal E aims to amalgamate and simplify these clauses to enhance usability without compromising worker entitlements.</p>	<p>Proposal Summary: Introduce a unified consultation clause that applies to both major workplace changes and roster changes, specifying that employers must inform and invite discussions with affected employees, providing all reasonably relevant information, and promptly consider any views expressed.</p> <p>X Consultation X.1 This clause applies if the employer: (a) makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees; or (b) proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.</p> <p>X.2 In this clause, significant effects on employees include any of the following: (a) termination of employment; or (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or (c) loss of, or reduction in, job or promotion opportunities; or (d) loss of, or reduction in, job tenure; or (e) alteration of hours of work; or (f) the need for employees to be retrained or transferred to other work or locations; or (g) job restructuring.</p>	<p>ABI/BNSW agree (3.24, p12)</p> <p>Ai Group oppose (24-34, p8) as it is materially more onerous than the existing provisions.</p> <p>ACTU oppose - reduction in entitlements (p7)</p> <p>ASU oppose - reduction in entitlements (for SCHADs @ 14, p5; for Clerks @ 55, p13)</p> <p>HSU oppose proposal regarding SCHADs - reduction in entitlements (6d, p3)</p> <p>RAFFW oppose - more relevant to Job Security stream (12.e, p.7)</p>

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						<p>X.3 As soon as practicable, the employer must: (a) inform, in writing, the affected employees and their representatives (if any) of all reasonably relevant information about the changes, including: (i) what the change is; and (ii) how the change is likely to affect the employees ; and (b) invite the affected employees and their representatives (if any) to discuss the change, its expected effect, and possible measures to minimise its adverse effects; and (c) promptly consider any views expressed by the affected employees and their representatives (if any).</p> <p>X.4 For the purposes of consultation about a change in the regular roster or ordinary hours of work of an employee, references to “employees” in clause X.3 include an individual employee.</p>	<p>UWU oppose – important to retain existing requirement for discussion, rather than invitation to discuss (p4)</p>
Common to all 7 awards	ACCI	Individual Flexibility Arrangement Clauses	9.	F, p36	<p>9. Individual Flexibility Arrangements - ACCI</p> <p>Issue: Current IFA clauses are rarely used due to administrative complexity and ambiguity in ensuring an employee is better off overall. Proposal F aims to clarify and simplify the requirements for IFAs, making it clearer that agreements should not disadvantage the employee and must meet their genuine needs.</p>	<p>Proposal Summary: Introduce additional clauses to specify that an IFA must result in the employee being better off overall at the time the agreement is made may include where an IFA does not disadvantage the employee overall but still meets their genuine needs.</p> <p>X.5 An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.</p> <p>X.6 For the purposes of clause X.5, an employee would be better off overall if the agreement: <u>(a) does not disadvantage the employee overall; and</u> <u>(b) is preferred by the employee in comparison with the relevant award terms because it better meets their genuine needs.</u></p>	<p>ABI/ BNSW agree (3.2, p8)</p> <p>ACTU oppose – reduction in entitlements (p8)</p> <p>Ai Group (para/s 35–37, p.10) agrees with ACCI's concerns about clarity as to the operation of the better off overall test. It has some doubt that proposed clause X.6 conforms with s,144(4)(c) of the FW Act.</p> <p>ASU oppose – reduction in entitlements (for SCHADs @ 9, p4; for Clerks @ 56, p13)</p> <p>AWCC (para 2.9, p.12) agrees with ACCI's proposal in addition to its own proposed significant revision of flexibility clauses.</p> <p>AWU oppose – new test introduces complexity and allows potential for employees to not be better</p>

Common Issues

AM2023/21 - Making Awards Easier to Use stream – Modern Awards Review 2023-24

Awards	Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
							<p>off, if it meets the genuine needs of employers (p5)</p> <p>HSU oppose proposal for the SCHADs Award – results in a lower no disadvantage test (6(e), p3)</p> <p>RAFFW oppose– IFAs often diminish conditions (para 12.f)</p> <p>UWU oppose – potential reduction to entitlements; makes modern awards more complex (p5)</p>
Common to all 7 awards	ACCI	NEW – Arrangement schedules	10.	9, p44	<p>10. Arrangement schedules - ACCI</p> <p>Consideration for incorporating schedules into modern awards to provide guidance, templates, and examples for individual flexibility arrangements (IFAs) and annualised wage arrangements. This initiative aims to assist employers, especially small businesses, in navigating the complexities associated with implementing IFAs and annualised wage arrangements, thereby promoting flexibility and compliance.</p>	<p>Proposal Summary:</p> <ul style="list-style-type: none"> Introduce schedules in modern awards that contain provisions for IFAs and annualised wage arrangements. Include brief guidance, templates, and examples in the schedules to clarify the requirements and processes for entering into these arrangements. For annualised wage arrangements, the schedule could suggest a standard annual wage figure or a simple calculation method that meets the award requirements for standard full-time employees across different classifications. <p>This approach aims to simplify compliance and encourage the use of IFAs and annualised wage arrangements, particularly for small businesses that may find it challenging to conduct their own detailed calculations.</p>	<p>AiG oppose (para/s 38–41, p.10) – no specific proposal</p> <p>UWU oppose – additional schedules would add to length and complexity of modern awards (p6)</p>
Common issues in:	Ai Group	Minimum engagement and payment periods	11.	5, p14		<p>Proposal Summary:</p> <p>Ai Group proposes to amend these awards to enable employers and employees to agree on reducing the applicable minimum engagement/payment periods through facilitative provision.</p>	<p>ABI/BNSW agree (3.6, p9)</p> <p>ACTU oppose – reduction in entitlements (p8)</p>

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Children's Award Clerks Award Fast Food Award Retail Award		-NEW facilitative provision			11. Minimum engagement and payment periods - Ai Group Minimum engagement or payment periods for part-time and casual employees cannot be reduced even by mutual agreement, except in limited circumstances under the Retail Award for casual employees.	This flexibility aims to address operational needs and personal circumstances of employees, such as accommodating short work periods due to study commitments, caring responsibilities, peak business times, or specific client needs. Proposed wording – various as set out in the draft determinations for each Award.	ASU oppose – reduction in entitlements (for SCHADS @ 16, p6; for Clerks @ 57, p14 and 62, p15) HSU oppose proposal for the SCHCADs Award– reduction in entitlements (6a, p3) RAFFWU oppose – reduction in entitlements (18a) UWU oppose – reduction in entitlements, rational for minimum engagement periods in [2017] FWCFB 3541 (p8)
Common issues in: Children's Award Fast Food Award Retail Award SCHADS Award	Ai Group	Pay averaging	12.	6, p18	12. Pay averaging - Ai Group Awards allow work hours to be averaged over a period of up to 4 weeks, but not all provide for corresponding pay averaging. This leads to inconsistencies, especially where employees work varied hours but expect stable pay.	Proposal Summary: Ai Group suggests adding a clause to awards like the Fast Food Award, Retail Award, SCHADS Award, and others lacking pay averaging provisions. This clause would permit employees' pay to reflect the average number of ordinary hours worked over the averaging period, ensuring alignment between worked hours and pay. Proposed wording <i>Notwithstanding anything else in this award, where an employee's ordinary hours are averaged over a period of time, an employee may be paid for the average number of ordinary hours attributed to the relevant pay period.</i>	ABI/BNSW agree (3.20, p11) ACTU oppose – reduction in entitlements (p8) ASU oppose – reduction in entitlements (for SCHADS @ 17, p6; for SCHADS @ 58, p14) HSU oppose - reduction in entitlements for employees who live week to week (p3) RAFFWU oppose – likely to increase errors and greater complexity (18b) UWU oppose – reduction in entitlements, the proposal does not include relevant allowances (p11)
Common issues in: Childrens Award	Ai Group	Payment of wages – NEW facilitative provision	13.	7, p27		Proposal Summary: Ai Group proposes amendments to the Fast Food Award, Retail Award and SCHADS Award to include provisions for monthly or 4-weekly pay periods (the Childrens Award should be varied similarly, noting that it already permits monthly pay periods). The change aims to align pay cycles with work hour averaging and streamline payroll processes.	ABI/BNSW agree (3.21, p11) ACTU oppose – reduction in entitlements (p8)

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Clerks Award Fast Food Award Retail Award SCHADS Award					<p>13. Pay periods - new facilitative provision to allow monthly payment of wages - Ai Group</p> <p>Many awards mandate weekly or fortnightly pay periods, not accommodating monthly or four-weekly cycles, affecting both employer resource allocation and employee pay consistency.</p>	<p>Fast Food Award specific proposal: 16.2 Notwithstanding clause 16.1, by agreement between the employer and the majority of affected employees, wages may be paid 4 weekly or monthly. Agreement in this respect may also be reached between the employer and an individual employee.</p> <p>Retail Award, as proposed above at clause 18.2 SCAHDs Award as proposed above at clause 24.2 Childrens Award, already permits monthly pay periods, however should still be varied:</p> <p>Clerks Award 17.2 Pay period (a) The employer may determine the pay period of employees as being either weekly or fortnightly. (b) The employer and an individual employee, or the majority of employees, may agree to monthly <u>or four-weekly</u> pay periods. (c) If an agreement is made under clause 17.2(b), payment must be made on the basis of 2 weeks in advance and 2 weeks in arrears.</p>	<p>ASU oppose – the proposal for the SCHADs Award (18, p6)</p> <p>RAFFWU oppose – not aware of any employees seeking to paid monthly. RAFFW submits that IFAs should be made more restrictive, rather than less (18c and d)</p> <p>UWU open to discuss (p3)</p>
Common to all 7 awards	Ai Group	Pay periods – NEW individual flexibility arrangements	14.	8, p 32	<p>14. Pay periods - new individual flexibility arrangements - Ai Group</p> <p>IFAs cannot be made on pay periods.</p>	<p>Proposal Summary: Ai Group proposes amendments to the model flexibility term to allow agreement to 4 weekly and monthly pay periods.</p> <p>Proposed wording: X. Individual flexibility arrangements X.1 Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer: (a) arrangements for when work is performed; or (b) overtime rates; or (c) penalty rates; or (d) allowances; or (e) annual leave loading; or (f) <u>pay periods.</u></p>	<p>ABI/BNSW agree (3.21, p11)</p> <p>ASU oppose – proposal for the SCHADs Award (18, p6)</p> <p>RAFFWU oppose – not aware of any employees seeking to paid monthly. RAFFW submits that IFAs should be made more restrictive, rather than less (18c and d)</p> <p>UWU open to discuss (p3)</p>

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Common to all 7 awards	Ai Group	Annual Leave Loading	15.	9, p39	<p>15. Annual leave loading - Ai Group</p> <p>Modern awards often require complex calculations for annual leave loading based on hypothetical work patterns, which is not feasible for employees with variable schedules. During the plain language redrafting process of the Fast Food Industry Award, discrepancies in the drafting of annual leave loading provisions were noted, indicating a need for consistency.</p>	<p>Proposal Summary: Ai Group suggests 3 revisions to modern awards to address complexities in calculating annual leave loading for employees with variable work patterns. The proposal aims to harmonise the drafting of annual leave loading provisions across awards and introduce a default loading rate when specific penalties cannot be determined due to variable work schedules.</p> <ol style="list-style-type: none"> For Variable Work Patterns: Introduce clauses stating that when the specific penalties for a leave period cannot be determined, a default loading of 17.5% of the employee's minimum hourly rate applies. <ul style="list-style-type: none"> Retail Award, clause 28.3: <i>Notwithstanding clauses 28.3(c) and 28.3(d), where the number of hours that would attract the penalty rates specified in clauses 28.3(c)(ii) or 28.3(d)(ii) is not known or identifiable, the employee must be paid 17.5% of the employee's minimum hourly rate for ordinary hours of work in the period.</i> Similar amendments to: SCHADs, Fast Food and Clerks Clarification of Weekend and Shift Penalties: Amend clauses to refer to "penalties" instead of "rates" to avoid the misunderstanding that employees would receive base pay plus penalties during leave, leading to a more straightforward calculation. Inserting a definition of relevant weekend / shift penalties in the terms found at clause 22.2(a) of the Fast Food Award: <p><i>In clause X.X a relevant weekend penalty amount is an applicable penalty rate prescribed by clause X—Penalty rates for working on weekends, less the minimum hourly rate.</i></p> Addressing 'Additional Payment' Ambiguity: Revise clauses that ambiguously suggest that the minimum rates clause provides an entitlement beyond the base rate. Propose language to clarify that the "loading" during leave is calculated based on the period of leave and the minimum hourly rate, such as that found in clause 22.2(b) of the Fast Food Award: <i>During a period of accrued annual leave an employee will receive a loading calculated for the period of leave on the employee's minimum hourly rate specified in clause 15 – Minimum rates.</i> <ul style="list-style-type: none"> Clerks Award: <i>During a period of accrued paid annual leave an employeer will receive a loading calculated for the period of leave on the employee's minimum hourly rate specified in must pay an employee an additional payment in accordance with clause 16 – Minimum rates for the employee's ordinary hours of work in the period.</i> Retail Award: <i>During a period of accrued paid annual leave an employeer will receive a loading calculated for the period of leave on the employee's minimum hourly rate</i> 	<p>ABI/BNSW agree (3.38, p14)</p> <p>ACTU oppose – reduction in entitlements (p8)</p> <p>ASU oppose – reduction in entitlements (for SCHADs Award @ 20, p7)</p> <p>Partially agreed on issue 2, the clarification of Weekend and Shift Penalties (61, p14)</p> <p>HSU oppose -reduction in entitlement (6c, p3)</p> <p>Partially agreed on issue 2, the clarification of Weekend and Shift Penalties for SCHADs (9a, p5)</p> <p>RAFFWU oppose – no ambiguity exists in calculating annual leave loading (18e)</p> <p>Partially agreed on issue 2, the clarification of Weekend and Shift Penalties.</p>

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						specified in must pay an employee an additional payment in accordance with clause 17 – Minimum rates for the employee's ordinary hours of work in the period.	
Common issue in: Childrens Award Fast Food Award SCHADS Award (suggests extending to all modern awards)	Ai Group	Calculation of minimum hourly and weekly rates	16.	10, p51	16. Inconsistencies in calculating minimum hourly and weekly rates - Ai Group Ai Group highlights discrepancies in modern awards regarding the calculation of minimum hourly and weekly rates for full-time employees. In many awards, multiplying the hourly rate by 38 does not exactly match the stated weekly rate, causing potential underpayments or overpayments when employers calculate weekly wages based on the hourly rate.	Proposal Summary: Ai Group proposes to Insert clauses in relevant awards to clarify that paying full-time employees either the weekly rate or the hourly rate multiplied by 38 satisfies wage obligations. This clarification should apply retrospectively to align with when hourly rates were first introduced in each award. Proposed wording in the Childrens Award, Fast Food Award and SCHADS Award <i>X.X An employer is taken to satisfy its obligation to pay a full-time employee for a 38 ordinary hour week where the employer pays an amount that is equivalent to the minimum weekly rate prescribed by clause X or the minimum hourly rate multiplied by 38.</i> Additional specific proposal in the Childrens Award: 14.1 The total minimum hourly and weekly rates of wages payable to employees in each classification level under persons employed pursuant to this award will be as are set out in the following table.	ABI/BNSW agree (3.24, p12) ASU – propose addressing outside of the Review (21, p7) HSU – propose addressing outside of the Review UWU agree to discuss (p10)
Common to all 7 awards (suggests extending to all modern awards)	Ai Group	Electronic Communications	17.	11, p61	17. Electronic communications and signature requirements - Ai Group Ai Group identifies ambiguities and inconsistencies in modern awards concerning the requirements for "in writing" and signatures.	Proposal Summary: Given the prevalence of electronic communication in contemporary workplaces, Ai Group proposes that awards explicitly permit electronic means to satisfy writing-related obligations and signature provisions. Proposed wording: Insert into all clauses containing writing-related obligation: <u>(including by electronic means)</u> Insert into all clauses containing signature provisions: <u>or confirmed using electronic means</u>	ABI/BNSW agree (3.42, p14) ACTU opposes – in relation to for example the agreement to part-time hours in Clerks and SCHADs awards (p ASU – open to discuss (43, p10; 73, p17) HSU – agree to discuss (p5)

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					Many clauses necessitate actions to be taken "in writing" or for documents to be signed, without clarity on whether electronic communications fulfill these requirements.		UWU - agree to discuss (p3)