

In the Fair Work Commission

Modern Awards Review 2023 – 2024 – Making Awards Easier to Use Stream

AM2023/21

On behalf of UNITED WORKERS UNION

Outline of Submissions in Response

1. The United Workers Union (“UWU”) makes these submissions pursuant to the President’s Statement of 4 October 2023, which invited interested parties to file submissions in response to proposals to vary the seven Awards that are the subject of the Making Awards Easier to Use stream of the *Modern Awards Review 2023 – 2024* (“**the Awards**”) by 19 February 2024.
2. UWU members work in industries including the hospitality industry, casinos, restaurants, and the early childhood education and care sector throughout Australia.
3. In addition to submissions in relation to the common issues across the Awards, the UWU has made submissions in relation to matters that affect our membership, being proposed changes to the following Awards:
 - 3.1. The *Children’s Services Award 2010*
 - 3.2. The *Hospitality Industry (General) Award 2020*, and
 - 3.3. The *Restaurant Industry Award 2020*.

Scope of the Making Awards Easier to Use Stream of the *Modern Awards Review 2023 – 2024*

4. The President’s Statement of 15 September 2023 outlined the scope of this stream of the *Modern Awards Review 2023 – 2024* (“**the Review**”). Specifically, the Statement confirmed (at [10]):
 - 4.1. The Commission’s considerations in this stream of the Review would not involve an “open-ended consideration of the terms of modern awards”.
 - 4.2. The Commission would not engage in the same wide-ranging process that it undertook during the recent 4 yearly review of modern awards for a second time, noting that the 4

yearly review had been comprehensive in nature and had involved a significant investment of time and resources by the Commission and by interested parties.

4.3. The Commission invited submissions to this stream that would “make award easier to use without reducing entitlements for employees”.

5. The scope of this stream of the Review articulated in the President’s Statement of 15 September 2023 is consistent with the content of the correspondence from the Minister for Employment and Workplace Relations to the Commission dated 12 September 2023. In that correspondence, the Minister confirmed that it was the view of the Federal Government that the outcome of the Review should not result in a reduction in worker entitlements.
6. UWU submits that a number of the submissions proposing Award variations that have been made to this stream of the Review are beyond its scope, as articulated in the President’s Statement of 15 September 2023. This is because the proposed Award variations either involve an open-ended consideration of Award terms, seek to re-visit issues that have been comprehensively addressed in the recent 4 yearly review of modern awards, or would reduce employee entitlements.
7. We have in these submissions indicated which proposed variations we consider to be beyond the scope of this stream of the Review, with reasons. We submit that proposed Award variations which are beyond the scope of this Review should not be the subject of detailed consideration either in the conferences that have been scheduled for the Review or the ensuing report. The appropriate avenue for parties wishing to advance proposed Award variations which are beyond the scope of the Review is an application under s 158 of the *Fair Work Act 2009* (Cth).
8. With respect to proposed variations that should properly be considered in this stream of the Review, the UWU refers again to the explanation of the scope of this stream of the Review in the President’s Statement of 15 September 2023 and the Minister’s correspondence of 12 September 2023. Consistently with the Minister’s statement that “it is critically important that the modern award system be easy to understand, stable and sustainable”, the President’s Statement invited submissions which would make Awards “easier to use” (at [10](1)). This is consistent with the modern awards objective at s 134(1)(g) of the *Fair Work Act*, which refers

to the need to create a modern awards system that is “simple, easy to understand, stable and sustainable”. In the UWU’s view, proposed variations which align with the modern awards objective at s 134(1)(g) of the *Fair Work Act* are properly matters for consideration in this stream of the Review. Proposed variations which are not directed at making Awards simple and easy to understand, but which are simply advancing a particular party’s preferences with respect to certain workplace arrangements, should not be entertained as part of this Review.

Common Issues

9. The UWU notes that a number of submissions to the Review propose variations across all of the Awards. The UWU has outlined its response to each of these proposed variations in Table A below.

Table A – UWU response to proposed variations across the Awards

Item	Proposed Variation	UWU Response
1	The Awards should be varied so that an obligation for a matter to be “agreed in writing” can be fulfilled by employees communicating via electronic communications such as email or text, and so that electronic signatures can be used in relation to matters that require signature (AI Group, [172] and [176]).	The UWU is open to further discussions in relation to this proposed variation.
2	The Awards should be varied so that pay periods can be included as a matter that can be the subject of an IFA (AI Group, [79]).	The UWU is open to further discussions in relation to this proposed variation.
3	The superannuation clauses in the Awards should be replaced with a new clause, outlined in the ACCI submissions (ACCI, [2.1]).	The UWU is open to further discussions in relation to this proposed variation.

4	<p>The excessive annual leave accruals in each of the Awards should be replaced with a new clause, outlined in the ACCI submissions (ACCI, [5.1], ABI / BNSW [6.2]- [6.3]).</p>	<p>The clause that has been proposed by the ACCI removes important protections from the clauses in the Awards that are directed at ensuring genuine consultation between employers and employees about taking annual leave, and also ensuring that employees retain some control over when and how they use their leave. This proposed variation is not directed at making the Awards easier to use, but rather at diminishing employee entitlements and re-litigating matters that were the subject of very extensive and careful consideration during the recent 4 yearly review of modern awards. As such, this proposal is beyond the scope of this Review. UWU is opposed to these proposals.</p>
6	<p>The consultation clause in the Awards should be amended to (i) combine consultation requirements with respect to major change and changes to rosters and (ii) require the employer to invite employees to discuss the proposed change, rather than engage in discussions: (ACCI, [6.1]).</p>	<p>The UWU does not consider that this variation is necessary to make the Awards easier to use. The UWU considers it appropriate for separate requirements to apply to consultation in relation to major change, and in relation to changes to rosters or hours of work, given that major change would generally entail broader and more significant ramifications for employees than changes to rosters or hours of work. The</p>

		<p>UWU considers that it is important to retain the existing requirements for consultation on both matters to involve discussions between employers and employees, not merely an invitation to discuss, as this ensures that the requirements of the consultation clause cannot be met simply by an employer notifying its employees of a major change or changes to rosters and hours of work.</p>
7	<p>The Awards should be varied to include a new sub-clause into the individual flexibility agreement (IFA) clause, which provide that employees will be better off overall for the purpose of an IFA if the IFA does not disadvantage the employee overall, and “is preferred by the employee in comparison to the relevant Award terms because it better meets their genuine needs” (ACCI, [7.1]).</p>	<p>This proposed variation involves the introduction of a new “better off overall test” for IFAs as opposed to enterprise agreements. This would add complexity to the interpretation of Awards, rather than making them easier to use.</p> <p>This proposed variation also appears to introduce the possibility that IFA could result in the employee not being better off than they would be under the relevant Award, provided that the IFA met the employee’s “genuine needs”. In so doing, it creates the possibility for IFAs to be used to reduce employee entitlements under the Awards.</p>

8	The Awards should be varied to insert schedules providing guidance and templates for employers seeking to enter into annualised wage arrangements and IFAs (ACCI, [9.4]).	<p>The inclusion of schedules with additional guidance and templates would add to the length and complexity of the Awards, increasing their complexity rather than making them easier to use.</p> <p>The FWO and FWC can, and does, provide guidance in relation to entering into annualised wage arrangements and IFAs. Employer and employee representative groups can, and do, provide information and guidance in relation to these matters. Guidance and templates in relation to these matters therefore do not need to be included in the Awards.</p>
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Children’s Services Award 2010

10. The UWU has outlined its response to each of the proposed variations to the *Children’s Services Award* in Table 1 below.

Table 1 – UWU response to proposed variations to the Children’s Services Award

Item	Proposed Variation	UWU Response
1	Vary clause 10.5(c) to provide that an employee and casual employee can reduce the minimum engagement period to less than two hours (AIG, [35]).	The UWU notes the FWC’s explanation of the rationale for minimum engagement periods in the <i>4 yearly review of modern awards – casual employment and part-time employment</i> [2017] FWCFB 3541 as being “to ensure the employee receives a

		<p>sufficient amount of work, and income, for each attendance at the workplace to justify the expense and inconvenience associated with that attendance....” (at [399]).</p> <p>Providing for employees to work less than the minimum engagement period of two hours is inconsistent with this rationale.</p> <p>The UWU does not consider that the inclusion of a requirement for employer and employee to agree to reduce the minimum engagement period provides a sufficient protection against employees being required, unwillingly, to incur the expense and inconvenience associated with a very brief attendance at work. The proposed variation ignores the power imbalance existing between employers and employees – particularly casual employees – which may result in employees feeling compelled to accede to an unfavourable arrangement in order to remain employed. The existence of minimum entitlements – such as the minimum employment period – protects employees against this possibility, and should not be eroded.</p>
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2	Delete clause 10.4(d)(iii), and make other consequential amendments, such that employers are not required to provide seven days' notice of a roster change in the event of an employee being unexpectedly absent from work (AI Group, [422]-[423]).	The Award presently strikes an appropriate balance between providing for predictable and stable roster patterns, and dealing with emergency situations. This proposal is unnecessary.
3	Discuss a new clause relating to roster changes due to client cancellations (AI Group, [427]).	The UWU notes no specific proposal has been made by AI Group in relation to this issue.
4	Vary clause 13.1 (classification structure) to insert a new clause, being, "The classification by the employer must be based on the characteristics the employer requires the employee to have, skills the employer requires the employee to exercise, in order to carry out the principal functions of employment" (ABI / BNSW, [4.12]- [413]).	The current classification structure in this Award provides a clear basis on which employees are to be classified. The Award already provides, at Schedule B, that "all employees will be classified by the employer into one of the levels contained in this Schedule in accordance with the employee's skills, responsibilities, qualifications, experience in the industry and duties". The proposed variation is not necessary, and is opposed.
5	Vary clause 10.4(e) to remove the minimum engagement period for employees who are attending meetings or engaged in training (AI Group, [431] – [432]).	The UWU is of the view that this proposed variation represents a reduction in current employee entitlements, and as such, is beyond the scope of this stream of the Review.

		<p>The UWU again notes the FWC's explanation of the rationale for minimum engagement periods in the <i>4 yearly review of modern awards – casual employment and part-time employment</i> [2017] FWCFB 3541. The submission in support of this proposed variation assumes that the expense and inconvenience associated with attending for work does not arise when the employee is working remotely (for example, attending a meeting or training via Microsoft Teams). Based on the UWU's experience, this is not correct. Employees who are engaged in online training and meetings are still required to make arrangements to enable their attendance, such as child care arrangements. Making these arrangements involves time, inconvenience, and sometimes, expense. It is appropriate that employees who have to make these arrangements in order to attend an online training session or meeting are appropriately compensated by way of a minimum engagement period, in line with the FWC's rationale in [2017] FWCFB 3541.</p>
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		<p>The AI Group’s proposed draft clause 10.4(e) provides that employees engaged in training or meetings on an engagement of less than two hours “would not be required to attend a designated workplace for that purpose” (at [431]-[432]). “Designated workplace” is not defined, leaving open the possibility that an employer could, under the proposed clause, direct an employee to a training centre or other location outside their usual place of work for the purpose of training or a meeting, and not apply the minimum engagement period. The inclusion of the words “would not be required to attend a designated workplace for that purpose” therefore does not address the concerns in relation to this proposal raised by the UWU.</p>
6	<p>Insert a new clause 14.2 that would allow full-time employees either to be paid at the weekly rates specified in the Award or the hourly rate multiplied by 38 (AI Group, at [151]-[152]).</p>	<p>The UWU is open to further discussions in relation to this proposed variation.</p>
7	<p>Insert a new clause 19.4 that would allow employees whose hours are averaged to be paid for the average number of hours worked during a relevant pay period (AI Group, [57]).</p>	<p>This proposed variation appears to be seeking to introduce pay averaging or annualised wage arrangements into this Award, with none of the protections</p>

		<p>contained in annualised wage arrangements provisions in other Awards (such as mechanisms for ensuring the employees are paid relevant allowances, and are paid for hours of work undertaken in addition to their average hours). This proposed variation would risk reducing rather than maintaining employee entitlements and is beyond the scope of the Review.</p>
8	<p>Delete clause 21.7(a) and replace with a clause allowing rosters to be made available through electronic means (AI Group, [439]).</p>	<p>The UWU is open to further discussions in relation to this proposed variation.</p>
9	<p>Insert a new clause 22.2(d) providing that employees who are required to “have a meal while actively supervising children as part of the normal work routine or program” are to have their meal time treated as ordinary time worked and paid as such (AI Group, [443]).</p>	<p>The proposed clause 22.2(d) is inconsistent with the proposed clause 22.2(c), and the current clause 22.1(b). Proposed 22.2(c) and current 22.1(b) provide that employees whose meal break is interrupted by work are entitled to an overtime payment. Proposed 22.2(d) provides that employees whose meal break is interrupted by work are simply to be paid at ordinary time rates. As the clauses directly contradict one another, the UWU’s view is that this proposal would add to rather than diminish the ambiguity and complexity of the Award, making it less easy to use.</p>

		<p>As the proposed clause 22.2(d) appears to remove an entitlement to overtime in circumstances where an employee would otherwise be entitled to overtime pursuant to current clause 22.1(b), it represents a diminishment of current employee entitlements. As such, it is beyond the scope of this Review.</p>
10	<p>Vary clause 22.2(c) to remove the right to up to two paid rest pauses of 10 minutes each during any one engagement (AI Group, [448]).</p>	<p>This proposed variation represents a reduction in current employee entitlements, and as such, is beyond the scope of this stream of the Review.</p> <p>The UWU notes the AI Group’s assertion at [449] of its submission in which it states that it “does not propose the removal of the proposed rest break”. However, the rationale for the AI Group’s proposal is that employees taking children on excursions should be required to engage in constant, active supervision. This amounts to a proposal that these employees should be required to work straight through their engagement with no opportunity for an uninterrupted rest pause. This is, in effect, a proposal to remove rest breaks. As such, it represents a reduction in employee</p>

		entitlements and is beyond the scope of this review.
11	Delete Schedule A (AI Group, [452]).	The UWU acknowledges that Schedule A relates to transitional provisions which are no longer current. The UWU agrees that its removal would be a practical amendment to this Award that would enhance its usability.
12	Vary clause 21.2 to allow employees to request to work their hours non-continuously (ABI / BNSW, [2.8] and Schedule 1).	<p>The UWU understands the rationale of this variation to be that flexible work arrangements involving working from home have become more common since the COVID-19 pandemic, and as a result, employees seek to work non-continuous hours.</p> <p>The UWU does not consider that this rationale applies in the early childhood education and care (ECEC) context, as employees in this sector are not working from home. In the UWU's view, this proposed variation would be less likely to facilitate better access to flexible work arrangements for employees and more likely to result in employees being rostered to work split shifts. As the ABI / BNSW submission appears to acknowledge at [2.2], provisions in the Award that prevent the</p>

		<p>implementation of split shifts benefit employees because they avoid employees being subjected to the inconvenience and expense of having to come into work, leave and come back. The removal of protections against the implementation of split shifts represents a diminishment of employee entitlements, and as such is beyond the scope of this stream of the Review.</p>
13	<p>Delete current clause 10.4(d)(i) and insert a new clause providing for variations to agreed patterns of work on a temporary or ongoing basis (ABI / BNSW, [3.10] and Schedule 2).</p>	<p>The UWU notes clause 10.4(d)(i) already allows employers and employees to agree to temporary variations to agreed patterns of work, in writing. The UWU does not consider this proposed variation to be necessary to make this Award easier to use.</p>
14	<p>Delete clause 23.3 and insert alternate TOIL clause, which removes the following content:</p> <ul style="list-style-type: none"> • Requirement for taking TOIL instead of overtime to be agreed on each occasion (clause 23.3(3)(b)) • Requirement for record to be kept of agreement to take TOIL including the number of hours and the employee’s right to request the TOIL to be paid out as overtime, within the next pay period (clause 23.3(3)(c)), and for that 	<p>Contrary to the ACCI’s submission at [3.22], the provisions which it proposes should be removed from the TOIL provisions of the Award are not merely administrative, but represent important protections and entitlements, as follows:</p> <ul style="list-style-type: none"> • Clause 23.3(3)(b) provides employees with the entitlement to agree on TOIL arrangements on each occasion they are accrued, which protects employees from “rolling” TOIL arrangements.

	<p>record to be retained as an employee record (clause 23.3(3)(h))</p> <ul style="list-style-type: none"> • Entitlement for TOIL to be equivalent to time accrued as overtime (clause 23.3(3)(d)) • Requirement to take TOIL within 6 months of accrual (clause 23.3(3)(e)) • Entitlement to have TOIL paid out within one pay period of a request, or within one pay period from six months since accrued if TOIL not taken (clause 23.3(3)(f) and (g)) • Protection against employees being subjected to undue influence or pressure to take TOIL instead of overtime (clause 23.3(3)(i)) • Entitlement to request to take time off pursuant to s 65 of the Fair Work Act 2009 (Cth) instead of being paid for overtime (clause 23.3(3)(j)). (Australian Chamber of Commerce and Industry, [3.1]). 	<ul style="list-style-type: none"> • Clause 23.3(3)(c) and (h) provide employees with the entitlement to records about the amount of TOIL they have accrued and their right to have it converted to overtime. These records are crucial to employees understanding their exact entitlements, particularly in the context of a dispute with the employer about those entitlements. • Clause 23.3(3)(e) provides employees with the right to either take TOIL or access overtime within a reasonable period of time. • Clauses 23.3(3)(f) and (g) provide an entitlement to have overtime entitlements paid out in a specified time, providing certainty for the employee around when they will receive their overtime entitlements. • Clause 23.3(3)(i) provides employees with an entitlement to be protected against undue pressure. • Clause 23.3(3)(j) provides employees with an entitlement to access flexible work arrangements
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		<p>as an alternative to TOIL or overtime.</p> <p>This proposal is not directed at enhancing the usability of this Award, but rather at implementing the ACCI's preferred arrangements with respect to TOIL in a manner that diminishes the entitlements of employees. As such, this proposal is beyond the scope of this stream of the Review.</p> <p>The TOIL provisions of this Award, and others, were the subject of extensive consideration during the recent 4 yearly review of modern awards. The Full Bench found that the insertion of the TOIL clause in this and other Awards was necessary to achieve the modern awards objective at s 134 of the <i>Fair Work Act</i> (FWC [2016] FWCFB 2602 at [36]-[40]). The submissions advanced by ACCI do not provide sufficient reasons as to why the Full Bench's reasoning should be disturbed.</p>
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Hospitality Industry (General) Award 2020

11. The UWU has outlined its submissions in relation to each of the proposed variations to the *Hospitality Industry (General) Award 2020* in Table 2 below.

Table 2 – UWU response to proposed variations to the Hospitality Industry (General) Award 2020

Item	Proposed Variation	UWU Response
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1	<p>Vary clause 14 to insert the words, “The classification by the employer must be based on the characteristics that the employer requires the employee to have, the skills that the employer requires the employee to exercise, in order to carry out the principal functions of employment” (ABI / BNSW, [4.12 – 4.13, Schedule 3).</p>	<p>The UWU refers to its comments at Table 1, Item 4 in relation to this proposal. Schedule A of this Award already defines, clearly and in detail, the basis on which employees are classified. The UWU does not consider this variation to be necessary to enhance the usability of this Award.</p>
2	<p>Delete clause 28.5 and insert alternate TOIL clause, which removes the following content:</p> <ul style="list-style-type: none"> • Requirement for taking TOIL instead of overtime to be agreed on each occasion (clause 28.5(b)) • Requirement for record to be kept of agreement to take TOIL including the number of hours and the employee’s right to request the TOIL to be paid out as overtime, within the next pay period (clause 28.5(c)), and for that record to be retained as an employee records (clause 28.5(h)) • Entitlement for TOIL to be equivalent to time accrued as overtime (clause 28.5(d)) • Requirement to take TOIL within 6 months of accrual (clause 28.5(e)) 	<p>The UWU reiterates its comments in Table 1, Item 11 with respect to this proposal.</p>

	<ul style="list-style-type: none"> • Entitlement to have TOIL paid out within one pay period of a request, or within one pay period from six months since accrued if TOIL not taken (clause 28.5(f) and (g)) • Protection against employees being subjected to undue influence or pressure to take TOIL instead of overtime (clause 28.5(i)) • Entitlement to request to take time off pursuant to s 65 of the Fair Work Act 2009 (Cth) instead of being paid for overtime (clause 28.5(j)). (Australian Chamber of Commerce and Industry, [3.1]). 	
3	<p>Delete clause 24 (relating to annualised wage arrangements) and replace with a substitute clause that would remove entitlements including the following:</p> <ul style="list-style-type: none"> • Entitlement for annualised wage arrangements to result in employees being paid 25% more than the minimum wage under the Award (clause 24.2(a)) • Entitlement to be paid for work undertaken in excess of hours 	<p>As this proposal seeks to reduce employee entitlements under the Award, it is beyond the scope of this review.</p> <p>The UWU notes that issues relating to annualised wage arrangements in the hospitality industry were the subject of extensive and detailed consideration by the Commission during the 4 yearly review of Modern Awards, with the Commission forming the view that the annualised wage arrangements clause which has been</p>

	<p>prescribed in an annualised wage arrangement (clause 24.2(c))</p> <ul style="list-style-type: none"> • Entitlement to be provided with an annualised wage agreement that details the annualised wage payable, the Award provisions satisfied by the annualised wage arrangement, the outer limit of the hours the employee can be required to work before being entitled to be paid pursuant to clause 24.2(c), • Entitlement to terminate annualised wage arrangements (clause 24.2(d)) • Entitlement to be paid any shortfall discovered through a 12 monthly review of the annualised wage arrangement (clause 24.3(c)). <p>The proposed variation would also enable employers to enter into annualised wage arrangements unilaterally, removing employees' entitlement to elect not to enter into an annualised wage arrangement (ACCI, [4.1]).</p>	<p>inserted into the Award was necessary and appropriate to ensure that employees in the hospitality industry would not be disadvantaged through annualised wage arrangements, particularly taking into account their variable and unsociable hours of work ([2022] FWCFB 51 at [3]). The ACCI submission offers no reasoning as to why the Commission's decision on this matter during the 4 yearly review of Modern Awards should be disturbed.</p>
4	<p>Vary definitions of "appropriate level of training", "liquor service employee" and "rostered day off" (AHA, Section 1)</p>	<p>The UWU considers the definition of "appropriate level of training" to be adequate and not requiring amendment.</p>

		<p>The UWU acknowledges that an amendment to the definition of “liquor service employee” to incorporate the Fair Work Ombudsman’s 2023 advice about paying juniors working as liquor service employees the relevant adult rate may be a useful clarification. The UWU is open to further discussions in relation to this proposal.</p> <p>The UWU considers the existing definition of “rostered day off” is clear that this is a day on which employees are not required to work. The UWU does not consider the amendment that has been proposed to this definition to be necessary.</p>
5	Amend clause 10.7(b) to provide that the two days off each week to which employees are entitled can be averaged over a two-week period (AHA, Section 2).	The UWU is concerned that this proposal may result in employees having only one rostered day off in a working week. The entitlement to have two days off per week is an important protection for employees’ health and safety, and their capacity to balance their work and personal commitments. As the proposal erodes this entitlement, the UWU considers that it is beyond the scope of this review.

6	Vary clause 13 to merge “junior office employees” and “other than junior office employees” into one junior employee stream (AHA, Section 2).	UWU does not yet understand this proposal but is open to discuss this issue.
7	Delete current clause 15 and replace with proposed substitute clause (AHA, Section 2 and Annexure A). The proposed substitute clause removes the parameters around rostering arrangements for full-time employees set out at clause 15.1.	The rostering arrangements at clause 15.1 contain important safeguards to ensure that employees have adequate rest and recovery between shifts, and have working arrangements that enable them to balance their work and personal lives. To the extent that this proposal reduces those entitlements, the UWU is of the view that the proposal is beyond the scope of this review.
8	Delete clause 16 (relating to meal breaks) and replace with a substitute clause. The substitute clause provides that employees are to be entitled to a meal break of 30 minutes after working five hours, as well as an additional 20-minute paid rest break during eight-hour shifts and two 20-minute paid rest breaks during 10 hour shifts (AHA. Section 5).	Clause 16 of the Award specifies meal and rest breaks appropriate to different shift lengths worked by employees in the hospitality industry, tailored to ensure that employees working those shifts receive appropriate rest. By removing this detail, the proposed substitute clause creates ambiguity around when and how employees working different shift lengths are to access their meal and rest breaks, and thus creates ambiguity rather than diminishing it. The substitute clause also removes important entitlements directed at ensuring that

		<p>employees receive meal and rest breaks in a way that ensure their health and safety (for example, it removes the requirement for an employee working a ten hour shift to be given their 30 minute meal break within the first six hours of work, which has the potential to create a fatigue risk if employees are, under the substitute clause, required to work that amount of time with no substantial break). Finally, it removes important entitlements around employees being entitled to additional payment if they are required to work more than six hours without a break (at clause 16.6), and an entitlement to additional rest breaks if the employee works overtime (at clause 16.7). To the extent that this variation seeks to diminish employee entitlements, it is outside the scope of this review.</p>
9	Vary clause 18.2 to insert the minimum weekly and hourly rates for managerial staff (hotels) (AHA, Section 6).	The UWU agrees that this variation would enhance the usability of the Award by clarifying the minimum rates at which managerial staff (hotels) are to be paid.
10	Remove references to “waiting apprentices” from the Award (AHA, Section 7).	The UWU agrees that the removal of references to “waiting apprentices” would enhance the usability of the Award, given

		that apprenticeships in waiting are not offered in Australia.
11	Delete existing clause 22 (which relates to higher duties) and insert a substitute clause, which would remove the restriction on a Food and Beverage Attendant Level 2 being paid higher duties for acting as a Food and Beverage Attendant Level 3 (AHA, Section 8).	The UWU agrees that a Food and Beverage Attendant Level 2 undertaking duties as a Food and Beverage Attendant Level 3 should be entitled to payment of higher duties allowance. The UWU agrees that clarifying this issue would enhance the usability of this Award.
12	Delete existing clause 23.1 – 23.5 and replace with a substitute clause, providing that employees are to be paid in accordance with s 323 of the <i>Fair Work Act 2009</i> (Cth) (AHA, Section 10).	Clauses 23.1 – 23.5 contain important detail in relation to the frequency and method by way employees are to be paid, including how employees are to be paid when their rostered day off falls on a pay day. The UWU considers that the removal of this detail would add ambiguity to this clause, rather than clarity, and would not enhance the usability of the pay arrangements provisions of the Award.
13	Vary existing clause 24 (annualised wage arrangements) (AHA, Section 10).	The UWU refers on our comments at Table 2, Item 3.
14	Vary the allowances provisions of the Award as follows: <ul style="list-style-type: none"> • Vary clause 26.3 (forklift allowance) to provide a single rate of allowance for full-time, part-time and casual employees 	The UWU is open to discuss the proposed variations to clauses 26.3, 26.4, 26.5 and 26.6(e) of the Award. The UWU is unclear about the variation that is being proposed to clause 26.15(a). The

	<ul style="list-style-type: none"> • Vary clause 26.4 (meal allowance) to provide that employees are entitled to either a meal allowance or the provision of a meal but not both • Vary clause 26.5 (tool and equipment allowance) to clarify that the allowance is available to all employees, not chefs only only). • Vary clause 26.6(e) (special clothing allowance) to remove the words “motel employee” so that the clause simply refers to “employees” • Vary clause 26.15(a) (overnight stay allowance (AHA, Section 11). 	proposed wording appears to be the same as the current wording of that clause.
15	Vary clause 28.1 (overtime) to include a note referring to s 62 of the <i>Fair Work Act 2009</i> (Cth), in substitution of the sections of this clause replicating s 62 of the <i>Fair Work Act</i> (AHA, Section 12).	The UWU agrees that this is a practical change which would enhance the usability of the Award.
16	Vary clause 28.5 (TOIL) to allow for a written agreements to take TOIL instead of overtime to be an ongoing arrangement, able to be changed on written notification from the employee (AHA, Section 13)	The UWU is opposed to this proposal.
17	Delete clause 29.2 (overnight and early morning penalty rates) and replace with clause 24.4 from the <i>Registered and Licensed Clubs</i>	The UWU is open to discussing this proposal.

	<i>Award</i> 2020, which provides an overnight and early morning penalty rate of the same value at the rate under the Award (AHA, Section 14).	
18	Move clause 29.4 into clause 25 as both relate to public holidays (AHA, Section 15)	The UWU agrees that this proposed variation would enhance the usability of the Award, by ensuring that public holidays provisions are all in the same part of the Award.
19	Vary clause 30.2 to define “shiftworker” in accordance with the NES (AHA, Section 16, Recommendation 1).	The UWU notes that clause 30.2 of the Award already refers to the shiftworker definition in the NES. The UWU does not consider the proposed variation to be necessary to enhance the usability of the Award.
20	Vary clause 35.3 to provide that pay for public holidays is to be at the ordinary rate of pay for the equivalent hours the employee would have worked for that day, and that the equivalent hours “do not count for the purposes of hours of work, overtime or leave accruals” (AHA, Section 17).	The UWU is open to discussions in relation to clarifying the basis on which employees must be paid for public holidays, but does not consider the proposed wording to be sufficiently clear.
21	Consolidate clauses 37.4 and 37.8 (AHA, Section 18)	The UWU agrees that this variation would enhance the usability of the Award.
22	Insert a definition of “averaging arrangement” which clarifies that this term is used	UWU is open to discussing this proposal.

	interchangeably throughout the Award with “roster cycle” (AHA, Section 19)	
23	Vary the classification structure (AHA, Section 20)	UWU is open to discussing some of these proposals.

Restaurant Industry Award 2020

12. The UWU has outlined its submissions in relation to each of the proposed variations to the *Restaurant Industry Award 2020* in Table 3 below.

Table 2 – UWU response to proposed variations to the Restaurant Industry Award 2020

Item	Proposed Variation	UWU Response
1	Vary clause 14.1 (classification structure) to insert a new clause, being, “The classification by the employer must be based on the characteristics the employer requires the employee to have, skills the employer requires the employee to exercise, in order to carry out the principal functions of employment” (ABI / BNSW, [4.12]- [413]).	The UWU refers to our comments at Table 1, Item 4 in relation to this proposal. The UWU does not consider this proposal to be necessary to make this Award easier to use.
2	Delete clause 20 (relating to annualised wage arrangements) replace with a substitute clause that would remove entitlements including the following: <ul style="list-style-type: none"> Entitlement for annualised wage arrangements to result in employees being paid 25% more 	The UWU reiterates its comments in Table 2, Item 3 in respect of this proposal. The proposed variations relate to matters that have been extensively canvassed throughout the recent 4 yearly review of modern awards, and diminish employee entitlements. The proposed variations are not directed at making this Award simpler or

	<p>than the minimum wage under the Award (clause 20.1(a))</p> <ul style="list-style-type: none"> • Entitlement to be paid for work undertaken in excess of hours prescribed in an annualised wage arrangement (clause 20.1(c)) • Entitlement to be provided with an annualised wage agreement that details the annualised wage payable, the Award provisions satisfied by the annualised wage arrangement, the outer limit of the hours the employee can be required to work before being entitled to be paid pursuant to clause 20.1(c) (clause 20.1(d)). • Entitlement to terminate annualised wage arrangements (clause 20.1(f)). • Entitlement to be paid any shortfall discovered through a 12 monthly review of the annualised wage arrangement (clause 20.2(b)). <p>The proposed variation would also enable employers to enter into annualised wage arrangements unilaterally, removing</p>	<p>easier to understand, but involve substantive changes. As such, they are beyond the scope of this Review.</p>
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	employees' entitlement to elect not to enter into an annualised wage arrangement (ACCI, [4.1]).	
3	Delete clause 18.2(b) and (c), which require the rounding of junior rates of pay to the nearest 10 cents (AHA, Section 21).	UWU is open to discussing this proposal.
4	Delete the references to "cooking trade" in clauses 18.3 and 18.4 (relating to apprentice rates) to clarify that the apprentice provisions of the Award apply to all apprentices within coverage of the Award, not only cooking apprentices (AHA, Section 22).	UWU is open to discussing this proposal.
5	Vary clause 20.1(a) (annualised wage arrangements) to align with clause 24.2(a) of the <i>Hospitality Industry (General) Award 2020</i> (AHA, Section 23).	UWU is open to discussing this proposal
6	Delete clause 21.3 (split shift allowance) and replace with clause 24.3 of the <i>Hospitality Industry (General) Award</i> (AHA, Section 24).	The effect of this proposed variation would be that employees engaged under the <i>Restaurant Industry Award</i> who currently receive an allowance of \$4.98 for each separate work period of two hours or more would receive an allowance of \$3.98 per day when working split shifts with a break of 2 – 3 hours, or otherwise \$4.98 per day when working split shifts with a break of more than 3 hours. The effect of this

		<p>proposed variation would be to reduce the entitlements of employees under the <i>Restaurant Industry Award</i>, and as such, the proposed variation is not within the scope of this Review.</p> <p>The UWU notes the rationale for this proposed variation is to align with split shift allowances for employees engaged under the <i>Restaurant Industry Award</i> and the <i>Hospitality Industry (General) Award</i>, to reduce the administrative burden on employers who engage employees under both Awards (and have to process their pays). The UWU notes that the split shift provisions of the <i>Hospitality Industry (General) Award</i> could be varied to align with those in the <i>Restaurant Industry Award</i>. This would reduce the administrative work associated with engaging employees under the two separate Awards while also avoiding a reduction in the entitlements of any employees.</p>
7	Vary clause A2.2.2(c) to remove cleaning tables from the duties of a Food and Beverage Attendant Grade 2 (AHA, Section 25).	UWU is open to discussing this matter.

8	Vary A2.2.2(d) to remove the word “tradesperson” from the title of Food and Beverage Attendant Grade 4 (AHA, Section 25).	The UWU agrees this proposed variation would make this part of the Award easier to use.
9	Delete Schedule AA (AHA, Section 25).	The UWU notes the operation of Schedule AA expired on 10 August 2022. The UWU agrees the removal of this expired schedule would make the Award easier to use.

13. The UWU notes the updated submissions of the Workforce Compliance Council filed on 2 February 2024. The UWU is open to discussions in relation to the specific proposals contained in those submissions, for the purpose seeking clarification in relation to those proposals.

United Workers Union

19 February 2024