



Fair Work
Commission

AM2023/21 – Modern Awards Review 2023
Making Awards Easier to Use stream
Clerks Award

SUMMARY OF SUBMISSIONS – Clerks Award

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.

Parties have been invited to advance any proposals to make modern awards easier to use while not reducing entitlements for award-covered employees.

This document has been prepared to assist parties in **consultation 3** dealing with the Clerks—Private Sector Award 2020 (Clerks Award).

The summary of submissions document does not represent the concluded view of the Commission on any issue.

Contents

Glossary	4
Submissions in reply key	4
Clerks – Private Sector Award 2020	5
No changes are necessary - ASU	5
NEW Clause - Exemption rate for clerical employees - ABI and BNSW	5
Clause 1 - Title and Commencement - AWCC.....	5
Clause 2 - Definitions - AWCC.....	6
Clause 3 – meaning of electronic - AWCC.....	6
Clause 4 - Coverage - AWCC	6
Clause 5 - Individual Flexibility Arrangements - AWCC.....	6
Clause 6 - Requests for flexible working arrangements - AWCC.....	8
Clause 7 - Facilitative provisions - AWCC.....	8
Clause 8 - Types of Employment - AWCC.....	8
Clause 9 - Full-time employees- AWCC.....	8
Clause 10 - Changes to part-time employee’s hours and days - AWCC.....	8
Clause 10.5 - Minimum Engagement Period for Part-time Employees - Ai Group.....	9
Clause 11 - Casual Employees - AWCC.....	9
Clause 12 - Classifications - AWCC	9
Clause 13 - Ordinary hours of work - AWCC.....	9
Clause 15 – Breaks – AWCC	11
NEW Clause 15.4 - Taking a meal break – Ai Group.....	11
Clause 16 - Wages and allowances - AWCC	12
Clause 17 - Payment of wages - AWCC	12
Clause 18 - Annualised wage arrangements - AWCC.....	12
Clause 18 - Annualised Wage Arrangements – Ai Group	12
Clause 19 – Allowances - AWCC.....	13
Clause 19 - Exemption rates – Ai Group.....	13
Clause 21 - Overtime and Penalty Rates -AWCC	14
Clause 21.5 - Returning to duty remotely – Ai Group	14
Clause 23 - Time Off Instead of Payment for Overtime - AWCC	15
Clause 25 - Shiftwork - AWCC.....	15



Fair Work
Commission

AM2023/21 – Modern Awards Review 2023
Making Awards Easier to Use stream
Clerks Award

Clause 28 - Overtime for shiftwork - AWCC	16
Clause 29 - TOIL Overtime for Shiftwork - AWCC	16
Clauses 32.6-32.8 Excessive leave accruals - AWCC	16
Clause 32.9 - Cashing out of annual leave - AWCC.....	17
Clause 33 - Personal/carer's leave and compassionate leave - AWCC	18
Clause 34 - Parental leave and related entitlements - AWCC	18
Clause 36 - Family and domestic violence leave - AWCC.....	18
Clause 38 - Superannuation - AWCC	18
Clause 39 - Coverage and Duration - AWCC	18
Clause 40 - Facilitative provisions - AWCC	18



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
AWCC	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

Clerks – Private Sector Award 2020						
Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
ASU	-	1.		No changes are necessary - ASU	ASU submits that no changes are necessary to the Award.	-
ABI and BNSW	NEW	2.	5, p10	<p>NEW Clause - Exemption rate for clerical employees - ABI and BNSW</p> <p>Employers are required to navigate complex award entitlements even for employees earning significantly above the award rates, leading to regulatory burdens without necessarily enhancing employee protections.</p>	<p>Proposal summary: Application to vary the Award has been submitted.</p> <p>ABI and BNSW propose introducing an exemption rate in the Clerks Award for employees in higher grades (Grades 3-5), allowing for a simplified pay arrangement for those earning significantly above the award.</p> <p>Proposed clause:</p> <ul style="list-style-type: none"> The proposal suggests employers agree to pay employees at Levels 3, 4, or 5 a salary rate 55% above their weekly base rate, covering up to 50 hours of work per week, including overtime and penalties but excluding public holidays. For hours worked beyond 50 per week, employees would be entitled to 200% of their ordinary hourly rate. <p>X Exemption Rate</p> <p><i>X.1 An employer and a full time employee paid at Levels 3, 4 or 5 rate of pay may enter into an agreement to pay the employee no less than 155% of their relevant Level weekly rate of pay as set out in clause 16 Minimum Rates of this award (the Exemption Rate).</i></p> <p>X.2 Where an agreement to pay the Exemption Rate has been made, the following clauses of this award shall not apply:</p> <p>(a) clause 15.4 (Breaks - penalty) (b) clause 16 (Minimum Rates) (c) clause 19 (Allowances) (d) clause 21 (Overtime) (e) clause 22.4 (Rest period after working overtime) (f) clauses 24.1 to 24.3 (Penalty Rates) (g) clause 32.3 (Annual leave loading)</p> <p>X.3 Where an agreement has been made to pay an employee the Exemption Rate:</p> <p>(a) the Exemption Rate remunerates employees for up to 50 hours work per week (or 50 hours per week averaged over up to 4 weeks); (b) for hours worked in excess of 50 hours per week (or 50 hours per week averaged over up to 4 weeks), the employee must be paid 200% of the employee's base rate of pay for their Level under clause 16; and (c) for any hours worked on a public holiday, the employee must be paid in accordance with clause 37 of this Award based on the employee's base rate of pay for their Level under clause 16.</p> <p>X.4 The Exemption Rate shall be the rate for the purposes of calculating:</p> <p>(a) personal leave; (b) annual leave; and (c) superannuation.</p> <p>X.5 Clause X does not apply to shiftworkers.</p> <p>NOTE: Under the NES (see section 62 of the Act) an employee may refuse to work additional hours if they are unreasonable. Section 62 sets out factors to be taken into account in determining whether the additional hours are reasonable or unreasonable.</p>	<p>ACTU oppose – reduction in entitlements</p> <p>ASU oppose – adds complexity (47, p1; 67, p151)</p> <p>Ai Group disagrees (para/s 52–54, p/.13) because the proposal is overly confined and does not provide adequate relief from having to comply with the hours of work provisions contained in the Clerks Award. Ai Group refers to its own exemption rate proposal for the Clerks Award.</p>
AWCC	1	3.	9.2(a)(i) p101	Clause 1 - Title and Commencement - AWCC	Proposal Summary: Provide a detailed explanation or reference to variations for enhanced transparency.	-

Clerks – Private Sector Award 2020

Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
				Lack of transparency regarding variations made since 2010.		
AWCC	2	4.	9.2(a) (ii) p102	Clause 2 - Definitions - AWCC Lack of precision and alignment with industry standards.	Proposal Summary: Review and refine definitions to ensure clarity and industry alignment.	-
AWCC	3	5.	9.2(a) (iii) p102	Clause 3 – meaning of electronic - AWCC Lack of guidance on the format and accessibility of electronic copies.	Proposal Summary: Explicitly outline the format and accessibility of electronic copies for ease of reference.	-
AWCC	4	6.	9.2(a) (iv) p102	Clause 4 - Coverage - AWCC Issue: Lack of clarity on exclusions and rationale behind them.	Proposal Summary: Clarify exclusions and provide examples for better understanding.	-
AWCC	5	7.	9.2(a)(v) p102 9.3 p109	Clause 5 - Individual Flexibility Arrangements - AWCC Complex language and insufficient guidance on assessing employee benefit.	Proposal Summary: Simplify language and offer additional guidance on assessing employee benefit. Proposed wording: 5.1 <i>Despite anything else in this award, both the an employer and an individual employee can may agree to vary the application of the adjust certain terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:</i> (a) arrangements for wWhen work is performed; or (b) overtime rates; or (c) penalty rates; or (d) allowances; or (e) annual leave loading. 5.2 An <i>The</i> agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress <i>pressure or threat</i> . 5.3 An <i>Such</i> agreements may can only be made after the individual employee has commenced employment with the employer. 5.4 An <i>If the</i> employer who wishes <i>wants</i> to initiate <i>propose</i> the making of an agreement, <i>they</i> must: (a) give Present the employee a written proposal to the employee; and (b) if the employer is aware that the employee has, or should reasonably be aware that the employee may have, <i>If the employee has</i> limited understanding of written English, take reasonable steps (including providing a translation in an	ASU opposes – removes translation resulting in a reduction in entitlements (para 69, p 16)

Clerks – Private Sector Award 2020

Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
					<p>appropriate language) to ensure that the employee understands the proposal (including providing a translation in an appropriate language).</p> <p>5.5 An <i>The</i> agreement must result in <i>ensure that</i> the employee <i>is</i> being better off overall <i>compared to the standard terms of the award when the agreement is</i> at the time the agreement is made than if the agreement had not been made.</p> <p>5.6 An <i>The</i> agreement must <i>include</i> do all of the following:</p> <ul style="list-style-type: none"> (a) state the <i>n</i>Names of the employer and the employee; and (b) identify <i>T</i>he <i>specific</i> award term, or award terms, the application of which is to be varied being adjusted; and (c) set out how the application of the award term, or each award term, is varied <i>How the specific award terms and/or their application is being adjusted</i>; and (d) set out <i>h</i>How the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and (e) <i>The</i> state the date <i>when</i> the agreement is to starts. (f) <i>The</i> employer is to ensure a conversation to determine if an employee is “better off overall” under the agreement, including expected hours of work and span of hours, overtime hours, reasonable expectation of overtime hours and conditions both before and after the agreement. The employer and employee should assess if the changes improve the employee's situation overall, taking into account factors such as financial benefits, work-life balance, and job security. (g) The classification is to be agreed upon, specifically part time, full time or casual. For part time, hours are to be both written and agreed upon in the agreement. With casual, anticipated or expected hours to work acknowledging the nature of casual employment. (h) The determination for the financial component including salaries is also to comply with other legal instruments outside of this award including taxation and superannuation act. <ul style="list-style-type: none"> (i) If there is any uncertainty from the employer and/or employee, the employer should seek advice or clarification to ensure fairness and compliance. <p>5.7 An agreement must be:</p> <ul style="list-style-type: none"> (a) in writing; and (b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian <i>must also sign</i>. <p>5.8 Except as provided <i>for (b) in clause 5.7(b), an</i>the agreement must <i>does</i> not require the <i>need</i> approval or consent of a person other than the employer and the employee <i>anyone else</i>.</p> <p>5.9 The employer must keep the agreement as a time and wages record and <i>provide</i> give a copy to the employee.</p> <p>5.10 The employer and the employee <i>Both parties</i> must genuinely agree <i>to any changes</i>, without duress or coercion <i>feeling forced or threatened</i> to any variation of an award provided for by an agreement.</p> <p>5.11 An agreement may be terminated:</p> <ul style="list-style-type: none"> (a) at any time, by written agreement between the employer and the employee; or (b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013). <p>NOTE: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in section 144 of the <i>Act</i> then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see section 145 of the <i>Act</i>).</p> <p>5.12 An agreement terminated as mentioned in clause 5.11(b) ceases to have effect at the end of the period of notice required under that clause.</p> <p>5.13 The right to make an agreement under clause 5 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.</p>	<p>Ai Group oppose (para/s 58–70, p.15) because the changes are not necessary (ie they do not clarify or simplify the existing clause).</p>

Clerks – Private Sector Award 2020

Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
AWCC	6	8.	9.2(a) (vii) p102	Clause 6 - Requests for flexible working arrangements - AWCC Lack of clarification on dispute resolution for flexible working arrangements.	Proposal Summary: Clarify dispute resolution procedures for flexible working arrangements.	-
AWCC	7	9.	9.2(a) (vi) p102 9.4 p110	Clause 7 - Facilitative provisions - AWCC Lack of examples or scenarios for the application of facilitative provisions.	<p>Proposal Summary: Provide illustrative examples to enhance understanding.</p> <p>Proposed wording</p> <p>7.1 This award contains facilitative provisions which allow agreement <i>allowing for agreement</i> between an employer and an individual employee, or the majority of employees, on how specific award provisions are to apply at the workplace.</p> <p>7.2 The following clauses have facilitative provisions:</p> <p>Table 1—Facilitative provisions</p> <p>Example Scenarios: <i>These scenarios are not exhaustive but are designed to demonstrate how facilitative provisions in the award can be utilised to customise certain provisions to better suit the needs of individual employees or the majority of employees in a workplace, fostering flexibility and mutual agreement between employers and employees.</i></p> <p>1. Altering Spread of Hours (Clause 13.4): <i>Scenario: An employer and an individual employee agree to alter the spread of hours to accommodate the employee's personal commitments. For example, the employee may request to compress their working hours into fewer days each week to have more consecutive days off for childcare responsibilities.</i></p> <p>2. Make-up Time (Clause 13.8): <i>Scenario: An individual employee requests to make up for hours missed due to personal reasons, such as attending a medical appointment during regular working hours. The employer agrees to allow the employee to make up for the lost time by working additional hours on other days within the same workweek.</i></p> <p>3. Substitution of Rostered Days Off (Clause 14.5(a)): <i>Example Scenario: An individual employee prefers to work on a public holiday and opts to take a different day off instead. The employer and the employee agree to substitute the rostered day off for another mutually agreed-upon day.</i></p> <p>4. Banking Rostered Days Off (Clause 14.6(a)): <i>Scenario: An individual employee wishes to accumulate additional days off for an extended vacation. The employer and the employee agree to bank the employee's rostered days off, allowing them to take an extended period of leave at a later date.</i></p> <p>5. Monthly Pay Periods (Clause 17.2(b)): <i>Scenario: The majority of employees in a workplace prefer to receive their pay on a monthly basis rather than the default weekly or fortnightly payments. The employer and the majority of employees agree to implement monthly pay periods for payroll processing.</i></p>	<p>ASU opposes – better suited to guidance (70, p 16)</p> <p>Ai Group opposes (para/s 71–74, p.76) because the changes are not necessary. It is no aware of any confusion from, or lack of clarity in, the facilitative provisions.</p>
AWCC	8	10.	9.2(a) (viii) p102	Clause 8 - Types of Employment - AWCC Need for maintaining clarity in language and providing practical examples.	Proposal Summary: Ensure clarity and offer examples or scenarios to aid understanding.	-
AWCC	9	11.	9.2(a) (ix) p102	Clause 9 - Full-time employees- AWCC Lack of practical illustrations to clarify conditions.	Proposal Summary: Provide examples or practical illustrations to clarify full-time employment conditions.	-
AWCC	10	12.	9.2(a) (x) p102	Clause 10 - Changes to part-time employee's hours and days - AWCC	Proposal Summary: AWCC seeks to clarify the process for handling changes to working hours and days.	-

Clerks – Private Sector Award 2020

Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
				Need for clarification on handling changes to working hours and days.		
Ai Group	10.5	13.	12, p71	<p>Clause 10.5 - Minimum Engagement Period for Part-time Employees - Ai Group Part-time employees must be rostered for at least three consecutive hours per shift. This creates a discrepancy with the treatment of casual employees under clause 11.4 and may not align with situations where part-time employees are ready, willing, and able to work but are not required for the full three hours. The current wording also conflicts with practical scenarios where an employee may not work the full three hours by their own choice, and the use of "roster" is inappropriate as the award lacks specific rostering provisions.</p>	<p>Proposal Summary: Ai Group seeks to amend clause 10.5 to ensure employers are not obligated to roster part-time employees for a minimum of three hours but instead are required to either engage them for a minimum of three hours of work on each occasion or provide a minimum payment of three hours. This adjustment aims to reflect the practicalities of work arrangements and ensure no adverse effect on employee earnings while addressing the issue of readiness to work versus actual work performed.</p> <p>Proposed wording: <i>10.5 An employer must engage a part-time employee for a minimum of 3 hours' work on each occasion or provide a minimum payment of 3 hours. This obligation applies even where the employee is required to work for fewer than 3 consecutive hours, provided the employee is ready, willing and able to perform such work.</i></p>	ASU oppose – reduction in entitlement (62, p14)
AWCC	11	14.	9.2(a)(xi) p102	<p>Clause 11 - Casual Employees - AWCC Lack of clarity in the process for offers and requests for casual conversion.</p>	Proposal Summary: Clarify the process for offers and requests for casual conversion.	-
AWCC	12	15.	9.2(a) (xii) p102	<p>Clause 12 - Classifications - AWCC Lack of guidance on factors for classifying employees</p>	Proposal Summary: Provide guidance on factors to consider when classifying employees.	-
AWCC	13	16.	9.2(a) (xiii), p103	<p>Clause 13 - Ordinary hours of work - AWCC Need for examples or scenarios to illustrate the application of ordinary hours.</p>	Proposal Summary: Include examples or scenarios to illustrate the application of ordinary hours.	-

Clerks – Private Sector Award 2020

Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
Ai Group	13.3	17.		<p>Clause 13.3 - Ordinary hours on a weekend – Ai Group The Clerks Award currently limits the working of ordinary hours to 7:00am to 12:30pm on Saturdays, with no provision for Sunday work unless associated with employees covered by a different award. This restriction does not align with the contemporary business environment and employee preferences, where weekend work is increasingly common and often desirable for various reasons, including penalty rate opportunities, family care arrangements, and study commitments.</p>	<p>Proposal Summary: To modernise the award and reflect current work practices and preferences, it is proposed that clause 13.3 be amended to allow for the working of ordinary hours from 7:00am to 7:00pm, Monday to Sunday. This change aims to provide flexibility for both employers and employees, accommodate businesses operating seven days a week, and ensure the award remains fair, relevant, and consistent with modern work practices.</p> <p>Proposed wording: <i>Ordinary hours may be worked between 7.00am and 7.00pm on Monday to Sunday.</i></p> <p>Additionally, adjustments to penalty rates and minimum payment periods for weekend work as outlined in clauses 24.2 and 24.3 would align with this new provision.</p>	ABI/BNSW not opposed (4.12, p15)
						ACTU oppose – reduction in entitlements
						ASU opposes – reduction in entitlements (64, p 15)
Ai Group	NEW 13.9	18.	B, p72	<p>NEW clause 13.9 - Remote work – Ai Group The current provisions of the Clerks Award do not accommodate the realities of remote work, particularly in relation to the continuous working of ordinary hours within specific times, and minimum engagement periods for part-time and casual employees. These limitations restrict flexible working arrangements, such as taking breaks for personal matters or making up work hours outside the standard spread of hours, especially relevant for employees working from home.</p>	<p>Proposal Summary: It is proposed to introduce a new clause (13.9) to explicitly allow for flexibility in remote working situations. This clause would enable agreements between employers and employees that exempt them from the constraints of specific award clauses (13.3 on spread of hours, 13.6(a) on continuous work hours, 10.5 on minimum engagement for part-time employees, and 11.4 on minimum payment for casual employees) when working remotely. This aims to legalise and facilitate flexible work arrangements that are beneficial to both employees and employers.</p> <p>Proposed Wording: <i>13.9 If an employee is working from a location other than a workplace designated by the employer, the employer and employee may agree that clauses 10.5, 11.4, 13.3 and 13.6(a) (as applicable) will not apply when the employee is so working.</i></p>	ACTU oppose – reduction in entitlements
						ASU opposes – reduction in entitlements (63, p 15)
AWCC	15	19.	9.2(a) (xiv) p103	<p>Clause 15 - Breaks - AWCC Lack of a clear definition of "ordinary hours" leading to potential confusion.</p>	<p>Proposal Summary: Define "ordinary hours" and clarify when rest breaks should be taken.</p>	-

Clerks – Private Sector Award 2020

Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
AWCC		20.	9.5, p113	<p>Clause 15 – Breaks – AWCC The issue highlights the lack of clear guidance in the Clerks Award on scheduling rest breaks around meal breaks for employees with two paid rest breaks. This ambiguity can cause confusion and inconsistent break scheduling, impacting employee well-being and productivity.</p>	<p>Proposal Summary: AWCC calls for explicit guidelines in the award, suggesting employers schedule one rest break before and one after the meal break, considering business needs and various operational factors. The aim is to ensure fair and consistent break management practices, aligning with safety, legal compliance, and workplace agreements</p> <p>Proposed Wording:</p> <p>15.3 An employee who works more than 5 hours at a time is entitled to one 30 to 60 minute unpaid meal break, to be taken within the first 5 hours of work and within 5 hours after resuming work after a meal break.</p> <p>15.4 An employer must pay an employee who is required to work through their meal break 200% of the minimum hourly rate from when the meal break would have commenced until a meal break is allowed.</p> <p>NOTE: Where suitable to business requirements, the employer may arrange for an employee who is entitled to 2 paid rest breaks to take one rest break before, and one rest break after, their unpaid meal break.</p> <p><i>15.5 The following circumstances may be considered as justification under which an employer or employee can arrange rest breaks before and after a meal break.</i></p> <p>1. Operational Needs: <i>If the nature of the work or operational requirements of the business necessitates a specific break schedule, the employer may arrange rest breaks before and after the unpaid meal break to ensure smooth workflow and adequate coverage.</i></p> <p>2. Employee Preferences: <i>Employers may consider the preferences of their employees when scheduling breaks. Some employees may prefer having a break before their meal to recharge and refocus, while others may prefer it after to wind down after completing a task.</i></p> <p>3. Peak Workload Periods: <i>During peak workload periods, such as busy seasons or deadlines, employers may adjust break schedules to optimise productivity. Arranging rest breaks strategically before and after the meal break can help employees manage their energy levels more effectively during demanding work periods.</i></p> <p>4. Safety Considerations: <i>In certain industries or workplaces where safety is paramount, employers may schedule breaks to ensure that employees are alert and focused during critical tasks. By providing rest breaks before and after the meal break, employers can help mitigate fatigue-related risks and promote a safe working environment.</i></p>	<p>Ai Group oppose (para/s 75–76, p.17) because it is not aware of any confusion existing note’s scope. The proposal also risks narrowing the types of matters that can be taken into account when considering “business requirements.”</p> <p>ASU opposes – (71, p 16)</p>
Ai Group	NEW 15.4	21.	C, p76	<p>NEW Clause 15.4 - Taking a meal break – Ai Group The Clerks Award mandates a meal break for employees working more than five hours, with no provision for employees working slightly longer (up to six hours) to forego this break by agreement. This limitation does not offer flexibility for</p>	<p>Proposal Summary: Introduce a new provision allowing employers and employees to mutually agree that the employee can forego the meal break for work periods up to six hours. This change aims to provide flexibility, accommodating personal preferences or operational needs, while maintaining safeguards for employee welfare.</p> <p>Proposed Wording:</p> <p><i>15.4 Notwithstanding clause 15.3, an employer and an employee who works up to six hours may agree that the employee will forfeit the meal break. Such agreement may be reached in relation to one or more specific periods of work, or on an ongoing basis.</i></p>	<p>ABI/BNSW – propose alternate wording: ‘provided that, by agreement of an individual employee, an employee who works shifts of 6 hours or less may forfeit the meal break’. (4.14, p17)</p> <p>ACTU oppose – reduction in entitlements</p>

Clerks – Private Sector Award 2020

Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
				employees preferring shorter shifts or employers needing to meet operational demands without the interruption of a meal break.		ASU opposes – reduction in entitlements (65, p 15)
AWCC	16	22.	9.2(a) (xv) p103	Clause 16 - Wages and allowances - AWCC Need for examples or scenarios to clarify the application of minimum rates.	Proposal Summary: Provide examples or scenarios to clarify the application of minimum rates.	-
AWCC	17	23.	9.2(a) (xvi) p103	Clause 17 - Payment of wages - AWCC Lack of a definition for "ordinary time of ending work."	Proposal Summary: Include a definition for "ordinary time of ending work."	-
AWCC	18	24.	9.2(a) (xvii) p103	Clause 18 - Annualised wage arrangements - AWCC Lack of clarity on the definition of "reasonable overtime."	Proposal Summary: Define "reasonable overtime" for better understanding.	-
Ai Group	18	25.	E, p78	Clause 18 - Annualised Wage Arrangements – Ai Group Clause 18 currently allows employers to pay full-time employees an annualised wage covering various award provisions but does not extend explicitly to part-time employees. It also imposes specific record-keeping and reconciliation requirements on employers, which can be	Proposal Summary: Ai Group proposes to extend annualised wage arrangements to part-time employees and modify the existing framework to increase flexibility and efficiency in the reconciliation process, extend the timeframe for paying shortfalls, and impose an obligation on employees to comply with reasonable employer directions to keep records of their work hours. 18. Annualised wage arrangements 18.1 Annualised wage instead of award provisions (a) An employer may pay a full-time <u>or part-time</u> employee an annualised wage in satisfaction... <u>18.2 Changes to part-time employees' hours of work</u> <u>(a) Clause 18.2 applies to a part-time employee who is being paid an annualised wage and their employer, if in accordance with clause 10.3 or clause 10.4, the employee's hours of work agreed under clause 10.2 are varied on an ongoing basis.</u>	ACTU oppose – reduction in entitlements

Clerks – Private Sector Award 2020

Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
				burdensome and inflexible, particularly concerning the timing of the reconciliation process and the requirement to pay any shortfall within 14 days.	<p><u>(b) The employer must review the matters described in clause 18.1(b) before the change to the employee's hours take effect, or as soon as reasonably practicable thereafter.</u></p> <p><u>(c) After reviewing the matters described in clause 18.1(b), the employer may make changes to them to reflect the employee's revised pattern of work.</u></p> <p><u>(d) The employer must advise the employee in writing (including by electronic means) of any changes to the matters described in clause 18.1(b) and their date of operation, before they take effect, or as soon as reasonably practicable thereafter.</u></p> <p>18.23 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) The employer must, within each 12 months from the commencement of the annualised wage arrangement, or upon the termination of employment of the employee or as soon as reasonably practicable thereafter, calculate the amount of remuneration that would have been payable to the employee under the provisions of this award over the relevant period and compare it to the amount of the annualised wage actually paid to the employee. Where the latter amount is less than the former amount, the employer shall pay the employee the amount of the shortfall within 14 <u>28</u> days.</p> <p><u>(c) The reconciliation process described by clause 18.3(b) must also be undertaken:</u></p> <p><u>(i) Every 12 months, or as soon as reasonably practicable thereafter;</u></p> <p><u>(ii) Upon the termination of the employee's employment.</u></p> <p>(d) The employer must keep a record of the starting and finishing times of work, and any unpaid breaks taken, of each employee subject to an annualised wage arrangement for the purpose of undertaking the comparison required by clause 18.3(b). This record must be signed by the employee, or acknowledged as correct in writing (including by electronic means) by the employee, each pay period or roster cycle.</p> <p><u>(e) An employee must follow any reasonable requirement of their employer to keep a record of their hours of work for the purposes of clause 18.3(d).</u></p> <p>18.34 Base rate of pay for employees on annualised wage arrangements</p> <p>For the purposes of the NES, the base rate of pay of an employee receiving an annualised wage under clause 18 comprises the portion of the annualised wage equivalent to the relevant rate of pay in clause 16 – Minimum rates and excludes any incentive-based payments, bonuses, loadings, monetary allowances, overtime and penalties.</p>	ASU opposes – reduction in entitlements (66, p 15)
AWCC	19	26.	9.2(a) (xviii) p103	Clause 19 – Allowances - AWCC Lack of specific examples illustrating when allowances are applicable.	Proposal Summary: Include examples or scenarios illustrating when allowances are applicable.	-
Ai Group	19	27.	F, 85	Clause 19 - Exemption rates – Ai Group The Clerks Award initially included an exemption rate that exempted certain employees from most award provisions if they received a wage 15% above the Level 5 wage rate. This provision was	<p>Proposal Summary: Ai Group proposes the introduction of an exemption rate provision for both full-time and part-time employees earning at least 15% above the Level 5 wage rate, exempting them from a wide range of award provisions, including overtime, penalty rates, and allowances. This proposal aims to simplify the award, reduce regulatory burdens, and accommodate flexible working arrangements, particularly in light of remote working trends.</p> <p>19. Exemptions</p> <p>19.1 This clause applies to:</p> <p><u>(a) Full-time employees who are paid a salary that exceeds the minimum annual wage prescribed by clause 16.1 for level 5 by at least 15%; and</u></p>	ACTU oppose – reduction in entitlements

Clerks – Private Sector Award 2020

Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
				removed following a ministerial directive emphasising that modern awards should not exempt non-high-income employees from award coverage unless there was a historical precedent. Despite this, exemption rate provisions and annual salary clauses were common in pre-modern awards. The current annualised wage arrangement in the Clerks Award imposes a considerable compliance burden on employers and lacks flexibility.	<p><i>(b) Part-time employees who are paid a salary that exceeds the minimum annual wage prescribed by clause 16.1 for level 5 by at least 15%, calculated on a pro-rata basis; provided that in respect of employees classified as Call Centre Technical Associate, this clause applies to full-time employees who are paid a salary that exceeds the minimum annual wage prescribed at clause 16.1 for that classification level by at least 15% and to part-time employees on a pro-rata basis.</i></p> <p><i>19.2 The following provisions of the award do not apply to the employees, where applicable:</i></p> <ul style="list-style-type: none"> <i>(a) Clause 10 – Part-time employees;</i> <i>(b) Clause 13 – Ordinary hours of work (employees other than shiftworkers)</i> <i>(c) Clause 14 – Rostering arrangements (employees other than shiftworkers)</i> <i>(d) Clause 15 – Breaks</i> <i>(e) Clause 17 – Payment of wages</i> <i>(f) Clause 19 – Allowances</i> <i>(g) Clause 21 – Overtime (employees other than shiftworkers)</i> <i>(h) Clause 22 – Rest period after working overtime (employees other than shiftworkers)</i> <i>(i) Clause 23 – Time off instead of payment for overtime (employees other than shiftworkers)</i> <i>(j) Clause 24 – Penalty rates (employees other than shiftworkers)</i> <i>(k) Clause 26 – Ordinary hours of work and rostering for shiftwork</i> <i>(l) Clause 27 – Breaks for shiftwork</i> <i>(m) Clause 28 – Overtime for shiftwork</i> <i>(n) Clause 29 – Time off instead of payment for overtime for shiftwork</i> <i>(o) Clause 30 – Rest period after working overtime for shiftwork</i> <i>(p) Clause 31 – Penalty rates for shiftwork</i> <i>(q) Clause 32.3 – Annual leave loading</i> <i>(r) Clause 37.2 – Public holidays</i> <p>Amendments to clause 16.1 to include a minimum annual wage for Level 5 and Call Centre Technical Associates: <i>Level 5 \$59,908.20</i> <i>Call centre technical associate \$65,625.67</i></p> <p>The proposed exemption rate would apply in the following circumstances:</p>	
AWCC	21	28.	9.2(a) (xix) p103	Clause 21 - Overtime and Penalty Rates -AWCC Clarity concerns in defining conditions triggering overtime pay.	Proposal Summary: Clarify conditions triggering overtime pay, providing clear definitions.	-
Ai Group	21.5	29.	G, p95	Clause 21.5 - Returning to duty remotely – Ai Group The current provision in the Clerks Award (clause 21.5) requires employers to pay employees a minimum of three hours at the overtime	Proposal Summary: Ai Group proposes to clarify clause 21.5 to explicitly include work performed remotely after usual hours, with an exemption from the minimum three-hour payment requirement when work is performed at a location other than a designated workplace. This adjustment aims to reflect modern working practices, including the increasing prevalence of remote work.	<p>ABI/BNSW agree (4.19, p18)</p> <p>ACTU oppose – reduction in entitlements</p>

Clerks – Private Sector Award 2020

Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
				rate if they return to duty after their usual finishing hour. This clause does not clearly address scenarios where employees perform work remotely after hours, often for less than three hours and sometimes on their own initiative rather than at the employer's direction.		ASU opposes – reduction in entitlements (para 68, p 16)
ACCI	22	30.	G, 8.1, p42	Clause 22 - Rest periods - ACCI The current clause is too complex.	Proposal Summary: redrafting the clause to be easier to use as follows: 22. Rest period after working overtime (employees other than shiftworkers) 22.1 <i>Clause 22 applies to full-time and part-time employees who are not working shifts.</i> 22.2 <i>Employees must, wherever reasonably practical, have at least 10 consecutive hours off duty between hours worked on successive days after working overtime.</i> 22.3 <i>Where an employee would be required to start working their ordinary hours without having had 10 consecutive hours off duty due to working overtime, an employer may either:</i> <i>(a) release the employee from duty for certain ordinary hours pursuant to clause 22.4; or</i> <i>(b) pay the employee at a higher rate pursuant to clause 22.5.</i> 22.4 <i>Where an employer decides to release the employee from duty under clause 22.3(a):</i> <i>(a) the employee is released from duty for sufficient hours until they have had 10 consecutive hours off duty; and</i> <i>(b) 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.</i> 22.4 <i>Where an employer decides to pay the employee at a higher rate under clause 22.3(b):</i> <i>(a) 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;</i> <i>(b) after working the ordinary hours, the employer must release the employee from duty until the employee has then had 10 consecutive hours off duty; and (c) 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.</i> 22.5 <i>For the purposes of clause 22, overtime worked in the circumstances specified in clause 21.5 must not be regarded as overtime.</i>	ABI/BNSW agree (para 4.21, p18) Ai Group disagree (para 44-47, p.12). ASU – agree to discuss AWCC agrees that simplifying rest period clauses is beneficial, but clarity is needed to ensure that this does not inadvertently omit important details or protections for employees (para 2.10, p.12)
AWCC	23	31.	9.2(a) (xx) p103	Clause 23 - Time Off Instead of Payment for Overtime - AWCC Lack of clarity in the process and requirements for time off instead of payment.	Proposal Summary: Clearly outline the process and requirements for time off instead of payment.	-
AWCC	25	32.	9.2(a) (xxi) p103	Clause 25 - Shiftwork - AWCC Lack of clarity regarding the applicability of different shift types.	Proposal Summary: Specify the types of employees and industries to which each shift type applies.	-

Clerks – Private Sector Award 2020

Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
AWCC	27	33.	9.2(a) (xxii) p103	Clause 27 - Breaks for shiftwork - AWCC Issue: Need for clear definition of when paid rest breaks should be taken and tracked.	Proposal Summary: Clearly define when paid rest breaks should be taken and guide employers on what should be expected to maintain as proof of breaks taken.	-
AWCC	28	34.	9.2(a) (xxiii) p103	Clause 28 - Overtime for shiftwork - AWCC Lack of clarity on circumstances triggering the provision of a minimum of 4 hours at the overtime rate.	Proposal Summary: Define specific situations triggering the requirement for a minimum of 4 hours at the overtime rate	-
AWCC	29	35.	9.2(a) (xxiv) p104	Clause 29 - TOIL Overtime for Shiftwork - AWCC Lack of guidance on the agreement process for time off instead of payment.	Proposal Summary: Clearly outline the process and requirements for the agreement on time off instead of payment.	-
AWCC	32	36.	9.2(a) (xxv) p104	Clause 32 - Annual leave - AWCC Complexity in the formula for calculating annual leave loading	Proposal Summary: Revise the wording to provide a clearer explanation of the formula with examples.	-
AWCC	32.5	37.	9.2(a) (xxvi) p104	Clause 32.5 - Direction to take annual leave during shutdown - AWCC Lack of details on what constitutes a "reasonable" direction.	Proposal Summary: Define criteria for a "reasonable" direction and provide examples.	-
AWCC	32.6-32.8	38.	9.2(a) (xxvii) p104	Clauses 32.6-32.8 Excessive leave accruals - AWCC Complexity in requirements and conditions for addressing excessive leave accruals.	Proposal Summary: Provide a simplified summary or flowchart outlining the steps and conditions.	-

Clerks – Private Sector Award 2020

Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
AWCC	32.9	39.	9.2(a) (xxviii) p104; 116	Clause 32.9 - Cashing out of annual leave - AWCC Lack of guidance on the frequency and conditions for cashing out annual leave.	<p>Proposal Summary: Clearly outline the conditions and limits for cashing out annual leave with examples. See below.</p> <p>32.9 Cashing out of annual leave</p> <p>(a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 32.9.</p> <p>(b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 32.9.</p> <p>(c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.</p> <p>(d) An agreement under clause 32.9 must state:</p> <p style="padding-left: 20px;">(i) the amount of leave to be cashed out and the payment to be made to the employee for it; and</p> <p style="padding-left: 20px;">(ii) the date on which the payment is to be made, <i>ensuring clarity on the timeline for the transaction</i>.</p> <p>(e) An agreement under clause 32.9 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee’s parent or guardian.</p> <p>(f) The payment <i>for cashed-out leave</i> must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.</p> <p>(g) An agreement must not result in the employee’s remaining accrued entitlement to paid annual leave being less than 4 weeks.</p> <p>(h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.</p> <p>(i) The employer must keep a copy of any agreement under clause 32.9 as an employee record.</p> <p>(j) Guidance:</p> <p>i Frequency and Conditions: <i>Cashing out of annual leave should only occur through a formal written agreement between the employer and the employee. Each instance of cashing out must be documented separately.</i></p> <p>ii Agreement Details: <i>The agreement must specify the amount of leave being cashed out and the corresponding payment, along with the date of payment. This ensures transparency and clarity for both parties.</i></p> <p>iii Minimum Payment: <i>The payment for cashed-out leave should be at least equivalent to what the employee would have received if they had taken the leave instead.</i></p> <p>iv Minimum Accrued Leave: <i>Employees must retain a minimum accrued entitlement to paid annual leave, ensuring they have at least 4 weeks of leave remaining after cashing out.</i></p> <p>v Maximum Amount: <i>There is a cap on the amount of annual leave that can be cashed out in a 12-month period, set at 2 weeks.</i></p> <p>vi Record-Keeping: <i>Employers are responsible for maintaining records of all agreements regarding cashing out of annual leave.</i></p> <p>NOTE 1: Under section 344 of the Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 32.9.</p> <p>NOTE 2: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 32.9.</p> <p>NOTE 3: An example of the type of agreement required by clause 32.9 is set out at Schedule G—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule G—Agreement to Cash Out Annual Leave.</p> <p>NOTE 4: As outlined in 23.11, upon termination of employment, time off for overtime worked by the employee to which clause 23 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.</p>	<p>Ai Group opposes (para/s 77–82, p.17) because: proposed clause 32.9(j) unnecessarily duplicates other parts of the clause; proposed “Note 4” confuses cashing-out annual leave with TOIL; and it’s unclear why the remaining changes are necessary.</p> <p>ASU opposes – replicates clause, may create confusion (63, p 15)</p>

Clerks – Private Sector Award 2020

Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
AWCC	33	40.	9.2(a) (xxix) p104	Clause 33 - Personal/carer's leave and compassionate leave - AWCC Lack of clarity on the process for obtaining longer leave periods with employer agreement.	Proposal Summary: Specify the process and conditions for casual employees to obtain longer leave periods.	-
AWCC	34	41.	9.2(a) (xxx) p104	Clause 34 - Parental leave and related entitlements - AWCC Lack of context provided, leaving uncertainty about parental leave and related entitlements.	Proposal Summary: Include relevant NES context in Clause 34 or provide a cross-reference.	-
AWCC	36	42.	9.2(a) (xxxi) p104	Clause 36 - Family and domestic violence leave - AWCC Lack of clarity on proof requirements and the accrual and utilisation of family and domestic violence leave.	Proposal Summary: Clearly define the proof requirements, accrual and utilisation process for family and domestic violence leave.	-
AWCC	36	43.	9.2(a) (xxxii) p104	Clause 36 - Notice of termination and redundancy - AWCC Need for clarification on notice periods for termination and redundancy.	Proposal Summary: Clearly define notice periods for termination and redundancy with practical examples.	-
AWCC	37	44.	9.2(a) (xxxiii) p105	Clause 37 - Consultation and dispute resolution - AWCC Lack of details on dispute resolution processes for specific scenarios.	Proposal Summary: Specify dispute resolution processes for various scenarios, ensuring comprehensive coverage.	-
AWCC	38	45.	9.2(a) (xxxiv) p105	Clause 38 - Superannuation - AWCC Lack of clarity on superannuation contributions for annual leave loading.	Proposal Summary: Clarify superannuation contribution requirements for annual leave loading.	-
AWCC	39	46.	9.2(a) (xxxv) p105	Clause 39 - Coverage and Duration - AWCC Lack of explicit details on the application and duration of the award.	Proposal Summary: Provide clearer details on the application and duration of the award for better understanding.	-
AWCC	40	47.	9.2(a) (xxxvi)	Clause 40 - Facilitative provisions - AWCC	Proposal Summary: Provide illustrative examples to enhance understanding of facilitative provisions.	-

Clerks – Private Sector Award 2020						
Party	CLAUSE	REF	THEIR REF	Issue	Proposal	Submissions in reply
				Need for examples or scenarios illustrating the application of facilitative provisions.		