



Australian Higher Education Industrial Association

Submission to
Fair Work Commission

Modern Awards Review – Work and Care
Stream

12 March 2024



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Introduction

The Australian Higher Education Industrial Association (AHEIA) welcomes the opportunity to provide a response to the Discussion Paper in the Modern Awards Review 2023-2024 – Work and Care.

As the only registered employer association registered representing the higher education sector (**the sector**) under the Fair Work (Registered Organisation) Act 2009 we work with our 33 university members, governments, and other industry groups to influence policy and provide advice and representation on workplace relations to the sector.

The sector has some of the most generous industrial conditions in Australia. The sector is not award dependent with its two main modern awards: The Higher Education Industry Academic Staff Award 2020 (**Academic Staff Award**) and the Higher Education General Staff Award 2020 (**General Staff Award**) (together **Sector Awards**), serving as a base comparator for the Better Off Overall Test (BOOT) in Enterprise Agreement (EA) bargaining only. When compared to other sectors, universities pay significantly more than their reference sector awards.

The sector's generous conditions include 17% superannuation, transferable long service leave, substantial paid parental leave, flexible work arrangements, professional development/scholarships and other forms of paid leave above the National Employment Standards (NES), most of which are applicable to permanent and fixed term staff alike.

AHEIA notes that to vary, make or revoke a modern award in accordance with Section 157 of the Fair Work Act 2009 (**Act**) the Commission must be satisfied that it is necessary to achieve the Modern Award Objective (**MAO**) at section 134 of the Act as amended. Section 138 of the Act states:

“A modern award may include terms that is permitted to include, and must include terms that is required to include, only to the extent necessary to achieve the modern awards objective emphasis added.”

Furthermore,

“[n]o particular primacy is attached to any individual section 134 consideration, and not all of the considerations will necessarily be relevant in the context of a particular matter. Further, the matters which the Commission may take into account are not confined to the section 134 considerations”¹



AHEIA notes the importance of considering potentially competing MAO considerations which may be relevant in this review including (but not limited to) the need to:

- *“encourage collective bargaining”;*
- *“to promote social inclusion through increased workforce participation”;*
- *“promote flexible modern work practices and the efficient and productive performance of work; and*
- *“[consider] the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy”.*

Subject to our comments below, AHEIA’s view is that variations to Sector Awards are not required.

AHEIA asserts that Division 4 —*Requests for flexible working arrangements* of the National Employment Standard (NES) of the Act are the appropriate mechanism for employees with carer’s responsibilities to seek and realise flexible working arrangements that meet their needs as carers and the operational needs of the workplace.

The Explanatory Memorandum to *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 (SJBP)* notes the purpose of amendments to Division 4 provisions are to achieve the following:

- *expand the circumstances in which an employee may request a flexible working arrangement where they, or a member of their immediate family or household, experiences family or domestic violence, to align the coverage of family violence with the entitlement to family and domestic violence leave;*
- *support employee access to flexible working arrangements by strengthening employer obligations when considering an employee’s request, based on the model award term developed by the FWC; and*
- *introduce dispute resolution provisions enabling the FWC to make orders where an employer refused an employee’s request or did not respond to the request within 21 days, including consideration of whether the employer has reasonable business grounds to refuse a request.*

AHEIA notes the Commission’s observation that:

“The SJBP amendments provide, inter alia, that an employer can only refuse a request for flexible working arrangements on reasonable business grounds and only if it has first genuinely tried to reach agreement with the employee and has had regard to the consequences of the refusing the request for the employee. The new section 65A was based on the model award term developed by the Commission and inserted into modern awards during the 4 Yearly Review”.ⁱⁱ

In addition, if refusing a request, the employer must explain in writing, the grounds for refusal and inter alia:



“...set out the changes (other than the requested change) in the employee’s working arrangements that would accommodate, to any extent, the circumstances ... and that the employer would be willing to make.” (emphasis added) or ... state that there are no such changes...” iii

This requirement is likely to increase the alignment between the operational needs of the employer and the work and care needs of the employee.

The new section 65B of the Act provides a dispute resolution process which may be escalated from workplace level to the Commission for conciliation and arbitration (section 65C) if required^{iv}.

While the Commission notes that two recent cases have recently tested these provisions and upheld employer decisions to not approve requested flexible work arrangements, the discussion paper also noted:

“[g]iven the recency of amendments commencing operation, the impact of the new amendments are not yet known”.^v

Responses to specific questions in discussion paper

1. Part-time - discussion question

ARE THERE ANY SPECIFIC VARIATIONS TO PART-TIME PROVISIONS IN MODERN AWARDS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE?

AHEIA submits that there no variations are required to the General Staff Award or the Academic Staff Award to continue to meet the MAO.

Clause 10 of the General Staff Award is on the following terms:

“10. Part-time employment

Part-time employment means employment for less than the normal weekly ordinary hours specified for a full-time employee, for which all award entitlements are paid on a pro rata basis calculated by reference to the time worked.”

In addition, **clause 8.2** provides:

“8.2 Requirement to state terms of engagement

Upon engagement, the employer must provide to the employee an instrument of appointment which stipulates the type of employment and informs the employee of the terms of engagement at the time of the appointment in relation to:



- a) *for employees other than casual employees, the classification level and salary of the employee on commencement of the employment, and the hours or the fraction of full-time hours to be worked;*
- b) *for fixed-term employees, whether the term of the employment, the length and terms of any period of probation, and the circumstance(s) by reference to which the use of fixed-term contract for the type of employment has been decided for that employment;*
- c) *for part-time employees, the employer and the part-time employee will agree on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day;” (emphasis added)*

AHEIA submits that the two provisions detailed above, when combined provide certainty as to:

- total hours;
- pattern of work and hours worked each day; and
- days of the week worked; and
- actual starting and finishing times each day.

This certainty is sufficient to enable employees with carer responsibilities to balance their work and carer arrangements appropriate to their circumstances and time fraction.

2. Individual flexibility agreement (IFA) – discussion question

ARE THERE ANY SPECIFIC VARIATIONS TO THE INDIVIDUAL FLEXIBILITY AGREEMENT PROVISIONS IN MODERN AWARDS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE ?

AHEIA submits that no variations are necessary to the award to meet the modern awards objective. The model IFA clause in Modern Awards remains consistent with the MAO.

While statistics are not currently available, anecdotal evidence suggests that the use of IFA's in the higher education sector is very low.

Division 4 – Requests for flexible working arrangements of the NES, provides a robust framework for supporting employees with carer responsibilities.

3. Facilitative provisions - discussion question:

ARE THERE ANY SPECIFIC VARIATIONS TO THE FACILITATIVE PROVISIONS IN MODERN AWARDS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE ?

Clause 7 of the General Staff Award provides for a small number of facilitative provisions:

Facilitative provisions [Varied by [PR751033](#); corrected by [PR761345](#)]



“7.1 A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or an employer and the majority of employees in the enterprise or part of the enterprise concerned. [7.2 varied by [PR751033](#); corrected by [PR761345](#) ppc 01May23]

7.2 Facilitative provisions in this award are contained in the following clauses:”

Clause	Provision	Agreement between an employer and:
18.1	Payment of wages	The majority of employees
22.5	Time off instead of paid overtime	An individual
29.2	Substitution of public holidays where employer holidays provided	An individual

AHEIA notes that the aforementioned facilitative provisions, provide for agreement at the workplace level in respect of the specified award provisions.

In concert with other Sector Award provisions and NES provisions, the current facilitative provisions are assessed by AHEIA as sufficiently meeting the MAO and do not require variations.

4. Working from home - discussion question:

ARE THERE ANY SPECIFIC VARIATIONS NEEDED IN MODERN AWARDS REGARDING WORKING FROM HOME ARRANGEMENTS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE?

AHEIA's asserts that no specific variations are required to Sector Awards to provide for the ability of employees with carers responsibilities to request work from home arrangements, including hybrid combinations of work from home/work in the office.

This is because as noted previously amendments to Division 4 – Requests for flexible working arrangements of the National Employment Standards provide a robust framework for pursuing such requests.

Universities already provide through policy and in some enterprise agreements, access to a diverse range of work location arrangements. Universities have various cohorts of employees working a 'hybrid' mix of office/work from home arrangements, while other employees are working predominately remotely (eg Research only staff). Others attend work site fulltime (eg. front line staff/technical staff/student counsellors/library staff).



5. A right to disconnect - discussion question:

ARE THERE ANY SPECIFIC VARIATIONS NEEDED IN MODERN AWARDS REGARDING A RIGHT TO DISCONNECT THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE?

The Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024 (**Closing Loopholes No.2**) has amended the Act to insert a Right to Disconnect commencing with effect from 26 August 2024.

The changes provide for the resolution of disputes in relation to the exercise of the right to disconnect, including Commission powers to make stop orders.

In relation to the right to disconnect modern award term, AHEIA notes that the Commission must vary modern awards to include a right to disconnect term before 26 August 2024. To this end it is understood that the Commission will soon commence a major Full Bench case to determine the model term. AHEIA reserves its submission in respect of this subject matter until the commencement of this case.

6. Minimum payment periods - discussion question:

ARE THERE ANY SPECIFIC VARIATIONS TO THE MINIMUM PAYMENT PERIODS FOR PART-TIME EMPLOYEES IN MODERN AWARDS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE?

The General Staff Award already provides sufficient minimum engagement for a casual employee as follows:

“12.2 Minimum engagement

[12.3 renumbered as 12.2 by [PR733925](#) from 27 Sep21]

The minimum period of engagement for a casual employee will be as follows:

- a) employees who are students (including postgraduate students) who are expected to attend the university on that day in their capacity as students will have a minimum engagement period of **one hour**;*
- b) a student will be taken as being expected for attendance on any Monday to Friday during the main teaching weeks of the university, other than public holidays as applied at the relevant university;*
- c) employees with a primary occupation elsewhere (or with the employer) have a minimum period of engagement of one hour; and*
- d) all other casuals must have a minimum period of engagement of 3 hours.*

The Academic Staff Award likewise already provides sufficient minimum engagement arrangements for academic casuals:



12.2 A casual employee must be engaged and paid for at least 2 hours of work on each occasion they are required to attend work by the employer, inclusive of any incorporated time and payment for preparation or associated working time provided for in **clause 16.4(a)**.”

Clause 16.4(a) referred to in 12.2 sets out the minimum rates for specified work performed by casual academic employees. For example, the total rate to be paid for one hour of tutorial delivery is a “rolled up” rate equivalent to a total of three hours of work paid, calculated on the basis of an hourly rate derived from the salary paid for the same work delivered by an equivalent full-time employee, with a 25% loading applied to each hour.

As the FWC Discussion Paper (Work and Care) notes, there is no minimum period of engagement for part time employees in either of the Sector Awards.

However, **clause 8.2(c)** states that:

“c) for part-time employees, the employer and the part-time employee will agree on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day”

AHEIA asserts that placing a minimum time that must be worked for part time employment during a week, may potentially impede the ability of some individuals to take on those roles and otherwise participate in the workforce as a part time employees.

AHEIA sees merit in having a daily minimum engagement period identical to existing arrangements for general staff casual engagement.

7. Span of hours – discussion question:

ARE THERE ANY SPECIFIC VARIATIONS TO SPAN OF HOURS PROVISIONS IN MODERN AWARDS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE?

AHEIA believes that modestly expanding the current span of ordinary hours set out in the General Staff Award may be of assistance to employees with carers responsibilities. This could also be achieved by amendment to facilitative provisions in the Sector Awards. No other variations would be required.

8. Notice of rosters – discussion question:

NOTING THE WORK AND CARE SENATE COMMITTEE RECOMMENDATION 21 THAT ALL EMPLOYEES SHOULD HAVE AT LEAST 2 WEEKS' NOTICE OF THEIR ROSTER EXCEPT IN EXCEPTIONAL CIRCUMSTANCES, ARE THERE ANY SPECIFIC VARIATIONS TO ROSTERING PROVISIONS IN MODERN AWARDS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE?

AHEIA asserts that no variation is required. The General Staff Award at **clause 15.2(b)** already meets Work and Care Senate Committee Recommendation 21 in terms of roster notice.

“15.2 (b) Rostering



- (i) *Shiftworkers' ordinary hours will be worked in accordance with a roster provided by the employer **at least 7 days in advance.***
- (ii) *A shift or roster may be changed at any time to enable the functions of the employer to be carried out where an employee is absent due to illness or **on account of a contingency which the employer could not have reasonably foreseen. The employee must be notified of the changed shift as soon as possible.***
- (iii) *Where changes are made by the employer to the employee's shift or roster, or the employee is transferred between rosters the employee must be notified **at least 72 hours prior to the change becoming operative. If 72 hours' notice is not provided, the employee will be entitled to a shift penalty rate of 150% of the minimum hourly rate.*** (emphasis added)."

9. Availability and guaranteed regular hours – discussion question:

ARE THERE ANY SPECIFIC VARIATIONS TO GUARANTEED HOURS OR AVAILABILITY OF HOURS PROVISIONS IN MODERN AWARDS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE?

AHEIA submits that no variation is required to the General Staff Award. **Clause 8.2(c)** for part time workers provides for terms of engagement to clearly set out:

"... a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day."

10. Overtime, TOIL, and make-up time – discussion question:

ARE THERE ANY SPECIFIC VARIATIONS TO OVERTIME, TOIL OR MAKE-UP TIME PROVISIONS IN MODERN AWARDS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE?

AHEIA asserts that no variation is required to the General Staff Award at **clause 22** – Overtime.

As the Commission's discussion paper notes, overtime is payable for employees when they perform approved work beyond their regular or scheduled hours. **Clause 22.1.** of the General Staff Award provides:

- Rest breaks of a minimum of 10 hours are provided after overtime.
- Time off in lieu is available for HEW 6 or below equivalent to the overtime payment that would have been payable.
- For HEW 7-8 time off may be taken at the overtime rate



- For HEW 9 time off may be taken “...instead of paid overtime at the rate of one hour for each hour of overtime worked when the employee is specifically required to work additional hours and it would be unreasonable for time off instead of paid overtime not to be provided”

AHEIA also notes that at **22.6 (g)** for HEW 6 or below classified employees:

“g) An employee may, under section 65 of the *Act*, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 22.6 will apply, including the requirement for separate written agreements under clause 22.6(b) for overtime that has been worked.”

NOTE: If an employee makes a request under section 65 of the **Act** for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65A(3) of the **Act**).

Academic staff average their 38 hours work hours over 46 weeks of the year, overtime and TOIL is not relevant to these employees.

Make up pay

AHEIA does not see a need for a separate make up pay term to be introduced, whereby employees could take time off during the working week and “make up” the time elsewhere.

In doing so, AHEIA notes that the Full Bench declined to insert a make-up time provision during the 4 Yearly Review as:

“...make-up time arrangements could be entered into under the model flexibility term awards and no evidence was adduced that the procedural requirements for the model flexibility term created a practical barrier to employees and employers entering into make-up time arrangements”.^{vi}

AHEIA asserts that this remains the case.

11. On-call and recall to duty – discussion question:

ARE THERE ANY SPECIFIC VARIATIONS TO ON-CALL OR RECALL TO DUTY PROVISIONS IN MODERN AWARDS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE ?

AHEIA submits that no variations are necessary.

The General Staff Award provides at **clause 22.3** paid overtime for employees recalled to duty.

“22.3 Employee recalled to duty

An employee recalled to work overtime which is not continuous with their ordinary hours of



duty must be paid a minimum of 2 hours at the appropriate overtime rate specified in clause 22.1.”

The right to disconnect legislative changes mean that an employee may refuse to monitor, read or respond to contact, or attempted contact, from an employer or a third party outside of the employee’s working hours unless the refusal is unreasonable. Considerations as to whether contact outside of employee hours is reasonable or unreasonable includes whether the employee is compensated for being contacted.

12. Travel Time – discussion question:

ARE THERE ANY SPECIFIC VARIATIONS TO TRAVEL TIME PROVISIONS IN MODERN AWARDS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE?

AHEIA submits that no variations are necessary to include a Travel time term in the Sector’s Awards. Travelling between different campuses to perform work duties is reasonably common in the Sector and during the work day and is already compensated as paid work time.

13. Annual Leave – discussion question:

ARE THERE SPECIFIC VARIATIONS TO ANNUAL LEAVE PROVISIONS IN MODERN AWARDS, FOR EXAMPLE ANNUAL LEAVE AT HALF PAY, THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE?

AHEIA submits that no variations to the Sectors Awards with respect to annual leave are necessary.

Many universities already provide access to purchased leave schemes and similar arrangements whereby staff may forgo some of their salary, in order to take more leave at a time mutually convenient.

In addition, the General Staff Award contains an annual leave in advance provision at **clause 24.5**.

“24.5 Annual leave in advance

- a) *An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.*
- b) *An agreement must:*
 - (i) *state the amount of leave to be taken in advance and the date on which the leave is to commence; and*
 - (ii) *be signed by the employer and employee and, if the employee is under 18 years of age, by the employee’s parent or guardian.*

NOTE: *An example of the type of agreement required by clause 24.5 is set out at Schedule H—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule H—Agreement to Take Annual Leave in Advance.*



- c) *The employer must keep a copy of any agreement under clause 24.5 as an employee record.*
- d) *If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 24.5, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued."*

NES flexibility provisions at Division 4 further enable such requests for employees with carer responsibilities to be pursued.

No variation to the annual leave term of the Sector's Awards is required.

14. Personal/Carer's Leave – discussion question:

ARE THERE ANY SPECIFIC VARIATIONS TO PERSONAL/CARER'S LEAVE PROVISIONS IN MODERN AWARDS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE?

AHEIA submits that with respect to personal/carers leave no variations are required to the Sectors Awards.

Clause 25 of the General Staff Award provides:

"[p]ersonal/carers leave and compassionate leave are provided for in the NES, save that the entitlement will be 3 days of compassionate leave for each permissible occasion".

The Senate Select Committee at Recommendation 18 states:

"The committee recommends the Australian Government consider the adequacy of existing leave arrangements and investigate potential improvements in leave arrangements in the Fair Work Act 2009, including separate carer's leave and annual leave."

In amending the MAO and other NES provisions, it was open to the Government to also amend the NES to expand the entitlement and circumstances that personal/carers leave could be accessed - It did not.

Flexible work arrangements can be pursued through Division 4 of the NES, without the need to vary the term and entitlement. The Commission should not substitute itself for the legislature, by varying the Award to meet this recommendation.

15. Definition of immediate family – discussion question:

NOTING THE WORK AND CARE SENATE COMMITTEE RECOMMENDATION 17 THAT THAT THE DEFINITION OF IMMEDIATE FAMILY SHOULD BE EXPANDED ARE THERE ANY SPECIFIC VARIATIONS IN MODERN AWARDS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE?

Section 12 of the Act 2009 defines ‘immediate family’ as:

“immediate family of a person means:

- a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the person; or*
- b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the person.”*

The Senate Select Committee on Work and Care in its [Recommendation 17](#) stated the following:

*“The committee recommends that **the definition of 'immediate family' in the Fair Work Act 2009 be amended** and broadened for the purposes of an employee accessing carer's leave. In addition to the current definition, the following persons should be classified as 'immediate family':*

- any person who is a member of an employee's household, and has been for a continuous period of over 18 months;*
- any of the employee's children (including adopted, step and ex-nuptial children);*
- any of the employee's siblings (including a sibling of their spouse or de facto partner); and*
- any other person significant to the employee to whom the employee provides regular care.” (emphasis added).*

In amending the MAO and other recent amendments to NES provisions, it was open to the Government to also amend the definition of “immediate family” at section 12 - it did not.

The Commission should not vary Sector Awards with respect to the definition of “immediate family” in order to meet the MAO. The Commission should not substitute itself for the legislature, by varying the Award to meet this recommendation.

16. Unpaid carer’s leave – discussion question:

HAVING REGARD TO THE PRODUCTIVITY COMMISSION’S SUGGESTION FOR MORE FLEXIBLE WORKING ARRANGEMENTS AS AN ALTERNATIVE TO EXTENDED UNPAID CARER’S LEAVE, ARE THERE ANY SPECIFIC VARIATIONS IN THE MODERN AWARDS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE?

It is not necessarily for the Commission to vary Sector Awards with respect to unpaid carers’ leave.



AHEIA notes that the Productivity Commission suggested that flexible working arrangements can be a better alternative to extended unpaid leave.

AHEIA notes in respect of Productivity Commission's suggestion, that Division 4 of the NES as recently amended, already provides for flexible working arrangements to be requested and negotiated between employees with caring responsibilities and employers.

17. Personal/carer's leave – discussion question:

NOTING SENATE COMMITTEE RECOMMENDATION 18, TO CONSIDER SEPARATING PERSONAL/CARER'S LEAVE ENTITLEMENT, ARE THERE ANY SPECIFIC VARIATIONS IN MODERN AWARDS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE?

Recommendation 18 of the Senate Committee into Work and Care states:

“The committee recommends the Australian Government consider the adequacy of existing leave arrangements and investigate potential improvements in leave arrangements in the Fair Work Act 2009, including separate carer's leave and annual leave.”

In amending the Modern Award Objective and other NES provisions it was open to the Government to also amend the NES to expand the entitlement and circumstances that personal/carers leave could be accessed - it did not.

AHEIA is of the view that it is not necessary for the Commission to vary the Sector Awards.

18. Ceremonial Leave – discussion question:

ARE THERE ANY SPECIFIC VARIATIONS TO CEREMONIAL LEAVE PROVISIONS IN MODERN AWARDS THAT ARE NECESSARY TO ENSURE THEY CONTINUE TO MEET THE MODERN AWARDS OBJECTIVE?

The majority of Awards are silent on ceremonial leave.

While absent from the safety net, ceremonial and/or cultural leave are common features of Sector Enterprise Agreements and/or workplace policies reflecting the Sector's commitment to First Nations employees and to workplace diversity.

AHEIA is supportive of a variation to provide access to employees for ceremonial and/or cultural leave, on as similar basis and mechanism to that provided in the NES compassionate leave.

19. Other variations to modern awards?

ARE THERE ANY OTHER SPECIFIC VARIATIONS TO MODERN AWARD PROVISIONS THAT WOULD ASSIST EMPLOYEES MEET THEIR CARING RESPONSIBILITIES AND ARE NECESSARY TO MEET THE MODERN AWARDS OBJECTIVE?

None.



ⁱ Page 12, Fair Work Commission - Modern Awards Review 2023-24 Discussion Paper Job Security, citing (Minister for Aboriginal Affairs and Another v Peko-Wallsend Limited and Others [1986] HCA 40, (1986) 162 CLR 24).

ⁱⁱ Page 59, Fair Work Commission - Modern Awards Review 2023-24 Discussion Paper Work and Care

ⁱⁱⁱ Section 65A(6)(c), Fair Work Act 2009

^{iv} AHEIA notes Justice Hatcher's President Statement and overview of the amendments of 9 May 2023 on Requests for flexible working arrangements and extending unpaid parental leave

^v Page 59, Fair Work Commission - Modern Awards Review 2023-24 Discussion Paper Work and Care,

^{vi} Ibid, page 124 citing AM2014/300 - 4 yearly review of modern awards—Common issue—Award Flexibility [2015] FWCFB 4466