

19/02/2024

Fair Work Commission – Pay Equity and Awards Team

By e-mail: [awards@fwc.gov.au](mailto:awards@fwc.gov.au)

Dear Sir/Ma'am,

### **AWCC Submission in response – Making awards easier to use – part of the Modern Awards Review 2023-24**

The Australian Workforce Compliance Council Ltd (AWCC) is Australia's first and only member owned peak body association which represents payroll professionals and employment technology providers (EmployTech).

The creation of AWCC was a key outcome of this research which found that Australia had no member owned peak body association or "voice" to objectively represent and advocate for those who operationalise Australia's workforce and related labour legislation.

AWCCs board, volunteers and management would like to thank the FWC for its patience and understanding by taking the time to issue the statement and clarification dated 17<sup>th</sup> January 2024, thereby providing AWCC Ltd with the opportunity to continue with its contribution towards this very important review process.

AWCC submits the following list of responses to submissions made by other non Payroll and Employtech Practitioners and industry representatives. This submission was compiled by our [Modern Award Joint Advisory Committee \(MAJAC\)](#) which consists of payroll practitioners and related industries representatives who work with modern awards on a daily basis.

During this process, AWCC adhered to the requirements of the submission process, with an emphasis on ensuring compliance with the following aspects of [President Hatchers statement](#) dated 15 September 2023 including the underlined points of paragraph 4:

.....*"The Minister further states that he considers it critically important that the modern award system be easy to understand, stable, and sustainable, and encourages the use of the proposed review to identify what parties believe could be done to make awards easier to use. The Minister also notes the Government's view that the review should not result in any reduction in entitlement for award-covered employees."*.....

Therefore, in accordance with the Minister and FWC Presidents direction, AWCC adopted these underlined points as principles to be addressed in this submission and identified potential non-compliance of this direction in other submissions made by payroll operational intermediaries including

Employer Groups and non-Payroll consultants. We also note a lack of Union submission and consequently, did not include any in our response.

Our contact for any queries is Ciaran Strachan CEO AWCC Ltd via [ciaran.strachan@awcc.asn.au](mailto:ciaran.strachan@awcc.asn.au)

Thankyou

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Australian Workforce Compliance Council Ltd



Australian Workforce  
Compliance Council

# AWCC Submission in Response

Making awards easier to use  
- part of the  
**Modern Awards Review  
2023-24**



The Australian Workforce Compliance Council Ltd

Australian Company Number (ACN): 663 421 805

Australian Business Number (ABN): 1166 342 1805

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# 1. About AWCC Ltd

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## 1.1 Background on the creation of AWCC Ltd

- (a) AWCC Ltd was created following three years of research into wage-theft and other payroll related non-compliance.
- (b) The Australian Workforce Compliance Council Ltd (AWCC), Australia's first and only member owned peak body association which represents payroll professionals and employment technology providers (EmployTech). AWCC Ltd was incorporated on the 27 October 2022.

## 1.2 The drivers to create AWCC and its relation to Wage-Theft

- (a) The following drivers were identified as a result of research that originally began with an aim to develop a permanent wage-theft solution for Australia.
  - (i) Australia's Workplace Relations<sup>1</sup> System had no regulated operational workforce unlike the Department of the Treasury's Tax/BAS Agent<sup>2</sup> system.
  - (ii) Professions, Universities and Associations which claim to know and represent the National Workplace Relations system in an operational context, have insufficient knowledge, skills, education, training and/or capacity to comment on operational contributing factors pertaining to Workforce Compliance including wage-theft. Most of these institutions teach foreign methodologies impacting and somewhat watering down Workforce Compliance education in Australia. University and VET sector qualifications reviewed included: Human Resources, Industrial Relations, Accounting, Bookkeeping, Law including Tax and Employment Law Specialisations. This review included all major Accounting, Law, HR and related associations certifications and equivalent. The review also included a total of 22 Australian Universities degrees in these and related areas including both under and post graduate degrees, and some PhDs and recent academic journals pertaining to wage-theft.
  - (iii) During the past three years of research, a number of initiatives were identified as needed in order to address those best positioned to mitigate Workplace Relations non-compliance including wage-theft<sup>3</sup>. These initiatives are to be centred around payroll and payroll related digital service providers (Payroll Technology). Collectively this sector manages the countries entire payroll for its over 13.5 million workers.
  - (iv) Many current limitations exist that must be resolved to develop national capabilities able to mitigate and manage Workplace Relations and State/Territory related compliance risk. This risk ranges from wage-theft to income tax (Pay As You Go / Withholding), superannuation and taxation non-compliance.
  - (v) Limitations identified included no interest or limited understanding of the payroll function by Universities (22 were interviewed), nor was any interest expressed to

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<sup>1</sup> <https://www.dewr.gov.au/australias-national-workplace-relations-system>

<sup>2</sup> <https://www.tpb.gov.au/tax-agent-services>

<sup>3</sup> [https://www.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/ExploitationofCleaners/Report](https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/ExploitationofCleaners/Report)

conduct research into payroll by the same Universities. Thus, no appropriate AQF 7 or higher (bachelor's or above) degree exists for payroll.

- (vi) Current legislation misaligns the payroll profession to either Accounting or Bookkeeping via the Tax Agent Services Act 2009<sup>4</sup>, placing Tax/BAS Agents with inappropriate skills, education and training at the centre of Workplace Relations activities, including award interpretation. Specifically, this Act requires all who charge a fee for payroll and superannuation services to be an accountant. Thereby locking out the payroll profession from solely working on payroll related superannuation and taxation, and placing pressure on accountants and bookkeepers to work beyond their skills and education in the areas of Fair Work Act, Regulations, awards and state base instruments. However, many accountants surveyed stated they rely on the services of a Payroll professional to advise them on all aspects of not only the Workplace Relations system, including award interpretation, but the correct calculation with corresponding payroll related instruments including payroll taxation and superannuation.
- (vii) Payroll as a profession needs significant assistance to bring it up to speed with that of other regulated professions including Taxation and Business Activity Statement (BAS) Agents, and in addition to Professional Standards Scheme self-regulated professions such as Accountants who hold a certificate of practice and Lawyers regulated by their respective Law Society/Bar.
- (viii) Payroll lacks any dedicated degree from AQF 7 (Bachelor) or higher (Master) AQF 8-9. Such degrees exist in other OECD countries including the UK, whose Chartered Payroll Practitioners have access to advanced<sup>5</sup>, bachelor's and master's degrees<sup>6</sup> in payroll.
- (ix) Until the creation of AWCC Ltd, Australia had no member-based association or "voice" to represent those who operationalise Australia's Workforce and related labour legislation. The total economic representation to the Federal, State and Territory Governments is in the order of roughly 1/3<sup>rd</sup> of the nation's GDP. This was noted in the 2019 Independent Review of the Tax Practitioners Board dated 2019<sup>7</sup>, by the peak bodies. Of particular interest in the report were the following statements in relation to payroll:

*"payroll service providers and Digital service providers are what we (Peak Bodies) refer to as tax intermediaries.....and it is important any changes as part of this review are future proofed."*

*"payroll service providers....may have qualifications that do not necessarily fit within the structure as contained in the TASR."*

*"There were no submissions suggesting any changes to the current arrangements for payroll service providers."*

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<sup>4</sup> <https://www.tpb.gov.au/legislation>

<sup>5</sup> <https://www.cipp.org.uk/training-and-education/study/fdpayroll.html>

<sup>6</sup> <https://www.cipp.org.uk/membership/chartered-membership/why-become-chartered-with-the-cipp.html>

<sup>7</sup> <https://treasury.gov.au/review/review-tax-practitioners-board-final-report>

- (b) As the above demonstrates, to date, payroll and payroll service providers including EmployTech providers have had no representation to Government (both State and Federal), and it has been left to intermediaries to fill this void for them for representational purposes. These intermediaries (known as the peak bodies) consist of associations for bookkeepers, accountants, superannuation funds and in some cases, lawyers (Law Council of Australia).
- (c) The other sector which influences national policy in this space are politically affiliated groups such as Unions and Employer Groups. Both of which utilise experts that mostly consist of economists and lawyers. Each of which AWCC views as not having the appropriate level of skill and experience to understand and provide insight into operational aspects of Wage-Theft and related non-compliance.
- (d) AWCC also identified other wider issues that include a lack of a Standards framework, to the use of potentially right wing influenced post graduate degree education for Human Resources and Management, resulting in Governance and capability related issues for Workforce Compliance and Corporate Governance, including ESG (Environmental, Social and Governance) C-Suite risk frameworks.
- (e) At a more appropriate juncture, AWCC Ltd will put forward its full comprehensive Workforce Compliance solution (with a focus on prevention) to all nine Governments, including the Federal Government, and is Ministers for Workplace Relations and Treasury.

### 1.3 AWCCs purpose and strategic pillars:

- (a) In response to the drivers listed above, the Australian Workforce Compliance Council (AWCC Ltd) was formed on 27 October 2022, and work began to create the first membership-based association for payroll professionals and their EmployTech providers including payroll and industrial relations technology.
- (b) AWCCs Purpose is defined in its Constitution as follows:
  - (i) Provide a voice for the payroll practitioners and employment technology providers who operationalise Australia's labour and related legislation.
  - (ii) Endeavour to increase the public standing, credibility and capability of its payroll practitioners and employment technology providers.
  - (iii) Advocate on behalf of our members to all governments on matters of national policy in relation to the operational application of labour and related legislation.
  - (iv) Conduct and publish research to support our industry.



## 2. Australian Chamber of Commerce & Industry (ACCI)

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### 2.1 General – Complexity and Vetting of Changes

- (a) ACCI's proposal aims to alleviate difficulties but emphasises the need for thorough vetting to prevent new complexities or ambiguities. ACCI expresses concern about the complexity of modern awards, proposing changes to alleviate difficulties faced by employers and employees.
- (b) The proposed changes aim to improve award usability, reduce wage underpayments, and enhance productivity but can have unintended consequences for employers and employees without insight into the operationalisation of award changes.
- (c) AWCC supports the aim to alleviate difficulties but also emphasises the need for thorough vetting to prevent new complexities or ambiguities, which aligns with AWCC's proposal for a more robust review framework and consultation process. Concerns might arise if the changes disproportionately benefit one party (employer or employee) over the other and there is an increased likelihood of this occurring, along with non-compliance should operational experts including Payroll and Employtech not be included in such a process, and in with regard to operational risk, implementation and through life compliance, both heads of Payroll and Employtech (usually called a systems configuration expert) must have the final sign off to ensure compliance with any payroll related legal instrument including Enterprise Agreements and Modern Awards.

### 2.2 General / Common Awards – Employer Engagement

- (a) ACCI acknowledges constraints on employer engagement due to legislative changes and advocates for recognition of these limitations.
- (b) Recognition of limited engagement ensures a balanced understanding of employer concerns during the review process.
- (c) AWCC supports the recognition of limited employer engagement, which is an essential requirement to ensure a balanced understanding of concerns during the review process. However, there could be concerns about whether all employer and employee constraints are adequately recognised and addressed in the absence of a structured review and stakeholder identification framework and consultation process. Concerns might arise if the changes disproportionately benefit one party (employer or employee) over the other and there is an increased likelihood of this occurring, long with non-compliance should operational experts including Payroll and Employtech not be included in such a process, and in with regard to operational risk, implementation and through life compliance, both heads of Payroll and Employtech (usually called a systems configuration expert) must have the final sign off to ensure compliance with any payroll related legal instrument including Enterprise Agreements and Modern Awards.

### 2.3 Various Awards – Superannuation Clauses

- (a) ACCI proposes replacing superannuation clauses in common awards with a simplified clause to meet statutory requirements and address problems with length and redundancy. Default funds are specified unless superannuation legislation mandates contributions to another fund. Absence due to work-related injury/illness is addressed, ensuring compliance with NES. Proposal A suggests replacing superannuation clauses in Common Awards with simplified language, referencing NES and superannuation legislation.
- (b) Simplifying superannuation clauses aligns with the goal of making awards easier to understand and use. Providing clarity on default funds and absence due to work-related issues reduces confusion and ensures compliance with legal requirements. Proposal A aims to align superannuation clauses with statutory requirements, remove redundancy, and enhance clarity for employers regarding their obligation.
- (c) AWCC supports the alignment of superannuation clauses with statutory requirements but raises concerns about inadvertently reducing benefits for employees and creating ambiguity regarding employer obligations. These proposals involve changes to various clauses and arrangements within awards, emphasising clarity, simplicity, and alignment with statutory requirements. However, each change should be carefully scrutinised to ensure that it doesn't inadvertently weaken protections or introduce ambiguity. Additionally, all references imbedded within awards should ensure alignment and compliance with the relevant Superannuation Act, Regs, operational, governance and policy requirements under Treasuries superannuation framework. Failure to ensure this is appropriately embedded within Modern Awards will result increased non-compliance as only operational experts (payroll and Employtech) have a degree of wider non-Workplace Relations legal compliance knowledge, whereas inhouse legal councils who manage Industrial/Workplace Relations do not have sufficient Taxation and Superannuation legal and operational expertise. As previously stated in this submission, both heads of Payroll and Employtech must have the final sign off to ensure compliance with any payroll related legal instrument, in this instance, this includes payroll related superannuation and taxation.

### 2.4 Various Awards – Worker Entitlements

- (a) ACCI emphasises the distinction between substantive worker entitlements and procedural obligations within awards, urging consideration for usability improvements.
- (b) Clarification of entitlements ensures meaningful reforms without compromising worker protections.
- (c) AWCC supports ACCI's proposal for distinction between substantive worker entitlements and procedural obligations, however it is important to ensure that proposed changes do not inadvertently reduce worker protections or entitlements.

## 2.5 Various Awards – Statutory Requirements

- (a) ACCI argues that Proposal A satisfies statutory requirements regarding superannuation clauses in modern awards, ensuring compliance with relevant legislation.
- (b) Adherence to statutory requirements ensures legal clarity and compliance for employers, reducing the risk of confusion or misinterpretation of obligations.
- (c) AWCC position is that with respect to any changes from this proposal, it is important to ensure that compliance with statutory requirements do not compromise fairness or clarity of obligations.

## 2.6 Various Awards – Time off in lieu (TOIL)

- (a) ACCI highlights issues with existing TOIL clauses including complexity, overregulation and administrative burdens, advocating for simplification and usability improvements. Proposal B suggests replacing complex TOIL clauses in multiple awards with simplified versions addressing administrative burdens, readability and usability issues. The proposal includes a standardised clause allowing employees to take time off instead of payment for overtime, with clear guidelines for agreement and payment.
- (b) Proposal B seeks to streamline TOIL clauses making them more user-friendly and aligning them with the objective of promoting flexible work practices while reducing regulatory burdens. Proposal B seeks to improve the usability and accessibility of TOIL arrangements, aligning with the objectives of modern awards to facilitate flexible work practices and reduce regulatory burdens.
- (c) AWCC acknowledges the benefits of simplifying TOIL clauses and has made a similar proposal to make TOIL clauses clearer, however we emphasise the need to ensure clarity to prevent misunderstandings or disputes between employers and employees. Each change should be carefully scrutinised with cross referencing to other related clauses to ensure that it does not inadvertently weaken protections or introduce further ambiguity. AWCC disagrees with the proposal for removal of text proposed. Due to the management of TOIL arrangements the removal of text guidance would create opportunities for ambiguity and misinterpretation of overtime rates, agreements and payment. Removal of text guidance will increase the likelihood of underpayments and create a legal loophole for employers to legally commit wage-fraud (dishonestly obtain a benefit). Likewise, we have also heard of instances where employees have committed TOIL theft where line supervisors have deliberately misinterpreted legal instruments to deliberately award more TOIL than allowed. Without guidance, it is difficult to prove a misinterpretation by any party and enforce policy, including code of conduct action and salary related budget forecasting and reconciliation.

## 2.7 Clerks, HIGA & RIA – Annualised Wage Arrangements

- (a) ACCI aims to introduce new clause for annualised wage arrangements and provides an explanation of the proposed changes.
- (b) The proposal aims to simplify and streamline annualised wage arrangements.
- (c) AWCC conducted a 2022 analysis of lodged (for that year) Workplace Relations high court case class action cases. Of these, the total financial risk pertaining to maximum settlement figures proposed (not actual settlement) (roughly \$500 million for that Financial Year). Two consistent factors stood out with every case lodged, these were:
  - (i) Each case pertained to the retail award.
  - (ii) Each case was lodged due to incorrect calculation of Annualised Salaries. In particular (and after analysis), AWCC concluded all would have been avoidable had the Employer regularly (at least annually) reviewed their Enterprise Agreement clauses for annualised salary compliance with Modern Awards and yearly Minimum Wage increases. AWCC does not subscribe to the “its too complex” as an acceptable narrative resulting in non-compliance for annualised salary calculations. It was, in almost every case, the result of a “set and forget” mentality by respective employers and IR/WR, HR and Accounting making strategic decisions which only Payroll and Employtech (combined) are capable of making and managing.
- (b) Further, AWCC believes the introduction of simplified clauses for annualised wage arrangements may create confusion if not comprehensive to guide business decisions and operationalisation consistency. Changes to annualised salary clauses and the removal of guidance with respect to calculations may be to the detriment of employees and employers. Additionally, further considerations should be made with respect to the proposed change prior to acceptance and implementation, these are:
  - (i) Administrative Burden: The comprehensive record-keeping requirements, including tracking starting and finishing times of work and unpaid breaks, could impose an administrative burden on employers. Small businesses or those with limited resources may find it challenging to comply with these requirements efficiently. It should also be noted that many Employtech systems, including small business accounting systems do not comply with the Archives Act, and when subscriptions are no longer paid, these systems lock employers and employees out of their payroll history. As such, the emphasis on document storage and record keeping should be addressed at an Employtech industry level directly with Government for a national solution and with AWCC Ltd.
  - (ii) Potential for increased costs: While the intention is to ensure that employees are not disadvantaged, the requirement for regular reviews and potential payments of shortfalls could increase labour costs for employers. This might be particularly burdensome for businesses operating in industries with tight profit margins or facing economic challenges.
  - (iii) Reactive rather than preventative: Overall, the annualised salary calculation is a good safeguard practice, but is not a best practice mechanism as it fails to understand and incorporate competing pressures for employers. Of which, the largest is salary budget forecasting, meaning, in the event an annualised salary calculation is carried out, there is no guarantee the budget exists to pay a newly detected large-scale underpayment that Financial Year. AWCC recommends the annualised salary calculation incorporate

budget guidance. I.e, a pre financial year annualised salary review be conducted to ensure budget alignment with anticipated costs, including anticipated wage-increases based on historical trend data. In addition to annualised budget forecasting reviews, such as the FWC announcement of wage-increases. Other related guidance may also include the recommendation to de-conflict Chief Financial Officer and related C-Suite bonus schemes from Salary forecasts as it has come to AWCC's attention many detected underpayments are kept hidden for several years to ensure C-Suite bonuses related to salary budget targets remain unaffected, after which and usually upon the exit of the CFO, the company self reports an "underpayment" for several previous financial years to authorities and media. Guidance can include that any C-Suite bonus schemes contain a clause for bonus recovery in the event the underpayment is not declared within an acceptable timeframe (ie, within the current financial year or six months of discovery, whichever is the most reasonable).

- (iv) Complexity: Despite efforts to simplify the arrangements, the detailed clauses and calculations could still be complex to understand and implemented correctly, especially for employers without dedicated human resources or legal departments. This complexity might lead to inadvertent errors in wage calculations and compliance.
- (v) Impact on Flexibility: The requirement to separately pay for hours worked beyond the outer limit amounts could reduce the flexibility offered by annualised wage arrangements. Employers might be less inclined to offer such arrangements if they perceive them as less convenient or cost-effective compared to other payment structures.

## 2.8 Clerks Award – Excessive Annual Leave Accrual Clauses

- (a) ACCI's proposal suggests amending the existing clause in the Clerks Award regarding excessive paid annual leave accruals and employee-employer agreements. The proposed change involves introducing specific conditions under which employers can direct employees to take paid annual leave when the accrued leave reaches a certain threshold.
- (b) This change aims to provide clarity and guidance for employers and employees in managing excessive leave accruals, streamlining the process, and ensuring compliance with relevant regulations.
- (c) The proposal suggests that if an employee has accrued more than 8 weeks (or 10 weeks for a shift worker) of paid annual leave, and after genuine attempts to reach agreement between the employer and the employee, the employer can direct the employee to take paid annual leave. However, there are conditions attached to this direction, such as giving the employee at least 8 weeks' notice and ensuring the employee retains at least 6 weeks of accrued annual leave after the direction is given. This could potentially impact employee rights and employer obligations regarding annual leave accrual and usage. Employees may feel that their ability to accrue leave is being restricted, while employers may see it as a necessary measure to manage excessive leave liabilities. It's crucial for the clause wording to support both parties to understand their rights and responsibilities under these proposed changes.

## 2.9 Various Awards – Individual Flexibility Arrangements

- (a) Proposal F intends to amend clauses related to individual flexibility arrangements (IFAs) in Common Awards to include provisions ensuring employees are better off overall and prefer IFAs for meeting their genuine needs.
- (b) Incorporating provisions for employee benefit and preference enhances the effectiveness of IFAs in achieving fair and flexible work arrangements. The proposed clause maintains worker entitlements while improving clarity and ease of use for employers and employees.
- (c) AWCC has submitted a significant revision to the existing clause wording, however, agrees with ACCI's proposed additional wording clarification for better off overall context as a complimentary addition.

## 2.10 Clerks Award – Rests Periods

- (a) The existing rest period clause in the Clerks Award is complex and difficult to understand, requiring multiple readings to grasp its implications. Proposal G focuses on providing clearer guidelines for rest periods after working overtime, benefiting both employers and employees in understanding their rights. Ensuring employees have adequate rest periods after working overtime is essential for their well-being and productivity, warranting a clearer and more accessible clause.
- (b) Proposal G aims to simplify the existing clause, making it more user-friendly and easier to navigate, enhancing the usability of the award. By simplifying the rest period clause, Proposal G promotes employee well-being and productivity, aligning with the objectives of modern awards. Proposal G does not reduce worker entitlements; it aims to enhance clarity and usability without compromising employee rights.
- (c) AWCC agrees that simplifying rest period clauses is beneficial, but clarity is needed to ensure that the simplification does not inadvertently omit important details or protections for employees. While providing clearer guidelines for rest periods is beneficial, it is essential to ensure that the proposed changes do not lower standards or protections for employees.

## 3. Australian Hotels Association (AHA)

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### 3.1 Hospitality Industry (General) Award 2020 – Definitions

- (a) AHA Proposes to redefine key terms aim to enhance clarity and simplify understanding, aligning to modernise the award.
- (b) The proposal contains clear definitions can streamline classification structures and improve compliance for both employers and employees.
- (c) AWCC generally supports these efforts to redefine terms for better comprehension, as this can contribute to a more transparent and accessible award system and aligns with AWCC's proposal. AWCC proposes that the classification and definitions should be reviewed more holistically, and not just with specifically in isolation for hospitality award, and as per AWCC's latest submission (07 February 2024).

### 3.2 Hospitality Industry (General) Award 2020 – Part time employees

- (a) Recommended amendments by AHA seek to provide greater flexibility in part-time arrangements, but potential challenges in managing schedules and ensuring compliance are highlighted.
- (b) The submission attempts to balance flexibility with the protection of part-time employees' rights is crucial to avoid unintended consequences.
- (c) AWCC's view on the proposed AHA changes highlights that whilst flexibility is important, safeguards must be in place to protect the rights and entitlements of part-time workers. While the proposed change aims to increase flexibility and support gender equality, it may lead to increased complexity in managing part-time employees' schedules, especially if implemented without proper systems in place to track and manage their hours effectively. Employers might face challenges in ensuring compliance with the new provisions while accommodating employees' availability and preferences. Strong objections might arise if the proposed change disproportionately disadvantages part-time employees or undermines their job security. If the replacement clause fails to adequately protect the rights and entitlements of part-time workers while promoting flexibility, it could face impact employees and face opposition from employee advocacy groups and unions. If the replacement clause prioritises the flexibility needs of employers over the rights and entitlements of part-time employees, objections may arise. For Example:
  - (i) Disproportionate Disadvantage to Part-Time Employees: If the replacement clause prioritises the flexibility needs of employers over the rights and entitlements of part-time employees, objections may arise. For instance, if the new clause allows employers to change part-time employees' shifts frequently without adequate notice or compensation, it could disrupt employees' work-life balance and financial stability.
  - (ii) Undermining Job Security: Part-time employees often seek stability and predictability in their work schedules to plan their lives outside of work. If the replacement clause makes it easier for employers to change or reduce part-time employees' hours arbitrarily, it could undermine job security and lead to financial insecurity for these workers. Furthermore, such a clause may have negative operational impacts on the employer as failing to regularly publish, and where possible, appropriately forewarn replacement employees of a newly available shift, or shift change will ultimately result



in higher operational costs via an increased staff turnover. Something many shift time and attendance platforms and experts see as a consequence of employees in high skill shortage areas (including hospitality) choosing to stay, or move to, more stable employment including employers with better managed roster systems and agreed upon hours of work.

- (d) Lack of Adequate Protections: Part-time employees may rely on certain entitlements and protections provided by the current clause, such as minimum guaranteed hours, access to paid leave, or protection against unfair treatment. If the replacement clause fails to include similar safeguards or weakens existing protections, it could leave part-time employees vulnerable to exploitation or unfair treatment by employers. It is important to protect and differentiate these protections as many part time employees were originally full-time and have elected to convert to part-time for an agreed upon period, including new parents who seek security and reduced hours, and no adverse impact on their career by way of CV/Resume “career gaps.” AWCC also notes that throughout its research into wage-theft, many employers failed to balance a newly converted part time employees (from fulltime) with wider operational impacts including additional hours by other staff, or increased hours as the business grew and the part-time employee’s workload and hours increased. Consequently, this created underpayment issues as many part-time staff would work “free hours” to “get the job done.” This was especially prevalent in Medium sized entities who would hire a part time office manager for 2-3 days per week, yet as the business grew, failed to make the position full-time even though the Office Managers hours increased. In one case the Office Manager was paid for 2.5 days (employment contract wording), yet after 12 months her work had grown to 37.5 hours per week. Consequently, AWCC recommends that a Part-Time to full-time “trigger clause” be inserted in all modern awards for part-time to fulltime conversion. This trigger clause should include an automatic conversion to full-time if the part-time employee has averaged 32 or more hours work per week for the last two months of work (exemptions are to be outlined including leave, public holidays etc). Note, the 32 hours comes from a minimum 2 hour “overflow” of hours to a 5<sup>th</sup> working day based on four previous working days of 7.5 hours.
- (e) Opposition from Advocacy Groups and Unions: Employee advocacy groups and unions are likely to oppose any changes that they perceive as eroding workers' rights or diminishing job security. They may advocate for retaining or strengthening existing provisions in the award to ensure fair treatment and adequate protection for part-time employees.

### 3.3 Hospitality Industry (General) Award 2020 – Annual Leave

- (a) AHA proposes amendments aim to clarify the definition of shift worker and consolidate excessive leave accrual provisions.
- (b) The proposed changes are aimed at promoting comprehension and simplify processes for managing leave.
- (c) AWCC’s view on the proposed change believes the replacement of the definition with the NES definition from section 87(3) of the Act, may create additional confusion or inconsistency, especially if there are differences between the NES definition and the current award definition. Employers may struggle to understand and apply the revised definition correctly. While the consolidation of clauses 30.6 - 30.8 aims to simplify the direction from an employer to an employee regarding excessive leave accruals, the new provision introduces several conditions and requirements. Employers may find it challenging to navigate these conditions effectively, especially regarding the notice period, conflicts with existing leave



arrangements, and the minimum leave balance requirement. The requirement for employers to give employees 8 weeks' notice of the requirement to take annual leave and the conditions for employees to request leave may lead to disputes or misunderstandings. Employees may feel aggrieved by the directive to take leave or encounter difficulties in coordinating leave requests within the specified parameters. The provision allowing employees to request leave if they have had an excessive leave accrual for more than 6 months may result in imbalances in leave scheduling and staffing levels. Employers may struggle to manage workforce planning effectively if multiple employees request leave simultaneously under this provision. Furthermore, AWCC has no evidence which suggests there is any detrimental impact on large employers balance sheets for employees holding onto leave entitlements for prolonged periods, including those planning retirement. However, there are related risks to employees not taking leave including Fraud (fraudsters do not take leave), failure to ensure adequate rest and respite and for small business, financial strain should an employee leave with short notice and who has both a Long Service and several years of annual leave to be paid out. AWCC recommends that should a clause be developed, it be restricted to a leave "aging" criterion in which this direction only applies to leave which is at least three years of age (age is determined as to when the leave was credited to the employees leave recorded) or older, and by type, ie, this applies to annual leave not long service leave etc. This ensures employers and employees are managing their wider fiduciary and operational risks pertaining to leave management including accruals, leave liability, fraud control and solvency (small business).

### 3.4 General Retail Industry Award 2020 - Breaks

- (a) The proposed changes aim to simplify meal break rules without reducing entitlements for workers.
- (b) The changes are designed to enhance the clarity and fairness in meal break provisions.
- (c) AWCC acknowledges the positive steps taken by AHA in the proposed changes and emphasise the importance of careful design and implementation to avoid unintended consequences. AWCC proposes a holistic definition of meal breaks, including defining meals and corresponding break requirements, aligning with liquor licensing definitions to guide break types, lengths, and allowances.

### 3.5 Hospitality Industry (General) Award 2020 – Annualised Wages

- (a) The proposed changes in annualised wage arrangements, allowances, overtime, and penalty rates aim to simplify compliance and ensure consistency with modern award objectives.
- (b) Simplifying compliance processes can lead to better adherence to regulations and fair treatment of employees.
- (c) AWCC acknowledges and supports the positive steps taken in the proposed changes and emphasise the importance of careful implementation to avoid unintended consequences, particularly where businesses operate under HIGA and RIA. Additionally, AWCC recommends that HIGA be reviewed in conjunction with other related industry awards as application, as referenced in this submission response. The justification is to ensure employers interpreting HIGA and RIA together have consistency. AWCC would like to highlight to all parties that this consistency is essential as a significant portion of employers, especially small to medium businesses operate both awards. Therefore, consistency between these awards will increase

the likelihood of compliance both in an operational context, and with employtech developers as this will reduce developmental overheads for shift/time and attendance platforms, many of which specialise in small to medium businesses and whose produce can cost a business as little as \$5.00 per employee per month.

### 3.6 General Retail Industry Award – Hours of Work – Full Time Employees

- (a) AHA’s proposal is to redraft full-time hours provision for clarity and allow rostering across 20 days per 4-week cycle.
- (b) AHA’s proposed changes are intended to enhance usability, maintains employee rights, and reduces administrative burden.
- (c) AWCC Supports the efforts of AHA to simplify and clarify provisions to enhance operational efficiency and compliance within the hospitality industry. While the proposed change aims to simplify the provisions and reduce administrative burden, it may introduce complexities in managing full-time employees' schedules across 20 days per 4-week cycle. Employers would need robust systems to track employees' requests for specific scheduling arrangements and ensure compliance with the agreed-upon terms. Objections may arise if the proposed change leads to excessive work hours for full-time employees without adequate safeguards or if it disproportionately favours employers over employees' rights to work-life balance and reasonable working hours.

### 3.7 General Retail Industry Award – Salaries Absorption

- (a) AHA’s proposed changes introduce salaries absorption clause for managerial staff (Retail Employee Levels 6-8) from HIGA
- (b) The changes are aimed at providing flexibility for managerial staff, balancing work and personal responsibilities.
- (c) AWCC does not agree with these proposed changes in their current form as introducing a salaries absorption clause could potentially disadvantage some managerial staff if not implemented carefully, and if such a clause neglected previously cited preventative solutions including annualised budget forecasting measures, this again will increase the likelihood of noncompliance. Employers might find it too complex to calculate salaries that are at least 25% above the minimum rates while absorbing entitlements for rostering arrangements, overtime, and penalty rates. This could lead to errors in payroll processing and potential disputes with employees over their entitlements. Such clauses if introduced could only be feasible if:
  - (i) The clauses did not use a determined percentage, which in this instance is 25%, but rather, a formula which would consist of the maximum rate plus maximum overtime shift penalty, plus a cap on overtime which would otherwise trigger an overtime penalty at the maximum rate only (ie, restricted to a cap of 20 hours overtime within one working week).
  - (ii) Other clauses needed include: the absorption calculation is only valid for the current financial year, and must be re-calculated when: a new Enterprise agreement or agreed upon wage increase takes effect, a FWC wage-review increase takes effect.

- (d) Furthermore, percentage rates cause significant coding risk for payroll systems including configurable systems which are those used by medium to large enterprises. Consequently, AWCC will not support the use of percentage-based clauses to amend awards as this will increase the likelihood of non-compliance including underpayments, overpayments and wage-fraud resulting in both criminal risk, and financial disadvantage for both the employee and employer.

### 3.8 General Retail Industry Award – Rostering Arrangements

- (a) AHA's proposal is to simplify rostering provisions for clarity and consistency with other modern awards.
- (b) Simplifying provisions can benefit both employers and employees by promoting easier compliance and understanding.
- (c) AWCC poses that redrafting rostering provisions to make them more user-friendly could involve changes in Employtech (technology) solutions used for scheduling and timekeeping. Employers will need to invest in updating their systems to accommodate the revised requirements and ensure accurate recording and communication of schedules to employees. Objections might arise if the redrafted provisions fail to adequately protect employees' rights to reasonable working hours, rest periods, and predictability in their schedules. Employers may also object if the proposed changes introduce unnecessary administrative burdens or complexity in managing schedules. Depending on the size of the organisation and system/s used, these budgets (in our experience) can be significant and are frequently forgotten in the Employment Agreement and Awards life cycle, resulting in Underpayments and Overpayments due to a lack of a systems budget for upgrades. Consequently, significant changes to these clauses should include a 12 to 24 month lag time for system changes including new budget allocation, tech support, system configuration, training and education in addition to new Corporate Governance requirements such as overtime monitoring.

### 3.9 General Retail Industry Award - Allowances

- (a) AHA's proposal introduces a 'per day' first aid allowance to ensure consistency and accessibility for part-time/casual employees.
- (b) The change provides equal opportunities for part-time/casual employees to perform first aid duties.
- (c) AWCC supports the efforts of AHA to provide equal opportunities for part-time/casual employees to perform first aid duties, however, it is important to note that with regard to introducing a per-day first aid allowance for part-time and casual employees could add complexity to payroll processes, particularly if employers need to track and calculate the allowance for each shift worked by eligible employees. It will require adjustments to existing payroll systems to accommodate the new payment structure and as stated in previous sections, this should be factored in with regard to operational challenges and should include a 12 to 14 month lag time for implementation.

### 3.10 General Retail Industry Award - Overtime

- (a) AHA's proposed changes suggests simplification of payment rules and removal of redundant clauses for consistency across awards
- (b) AHA's proposal promotes consistency and clarity in overtime provisions.
- (c) AWCC acknowledges the positive steps taken in the proposed changes and emphasise the importance of careful implementation to avoid unintended consequences. It is important to consider that simplifying overtime payment rules could require updates to payroll systems to ensure accurate calculation and payment of overtime rates to eligible employees. Employers may need to invest in training staff to understand the revised provisions and ensure compliance with the updated requirements. Additionally, objections might arise if the proposed changes to overtime payment rules result in reduced compensation for employees working overtime hours or if they introduce ambiguities or complexities that make it difficult for employees to understand and enforce their rights. Objections might also arise if the proposed changes result in reduced compensation for employees working overtime hours. If the new payment rules lower the overtime rate or restrict eligibility criteria in a way that decreases overall compensation for employees working additional hours, workers may strongly object to the change. Employees may object if the proposed changes introduce ambiguities or complexities that make it difficult for them to understand and enforce their rights regarding overtime payment. If the new rules are unclear or open to interpretation, employees may feel disadvantaged or exploited, leading to objections and potential disputes with employers.

### 3.11 Restaurant Industry Award Changes - Various

- (a) AHA's suggested amendments in junior rates, apprentice rates, annualised wage arrangements, split shift allowances, and classification structures aim to enhance clarity and consistency.
- (b) AHA's submission promotes Clear and consistent provisions can improve understanding and application of the award.
- (c) AWCC supports these efforts to modernise and simplify award provisions to benefit both employers and employees. This type of update (i.e. removal of a rates table tied to a fixed period/date range, such as an apprenticeship that has a maximum term) should form part of the standard framework for updates to awards.

## 4. Australian Retail Association (ARA)

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### 4.1 Fast Food Industry Award

- (a) ARA highlights the complexity of the Fair Food Industry Award (FFIA) and the need for usability improvements to simplify awards, reduce compliance risks, and enhance flexibility for both employees and employers.
- (b) The ARA's emphasis on simplifying awards to mitigate confusion and compliance risks for employers, particularly small businesses, is noted. Unambiguous award coverage, user-friendly language, and enhanced flexibility are crucial for the retail industry's stakeholders.
- (c) AWCC acknowledges the importance of improving FFIA usability, however, AWCC has proposed a collaborative approach with government and industry representation to design a new framework for reviewing awards with similar clauses. This approach ensures updates consider businesses operating under multiple awards. This framework should at a minimum include combinations of:
  - (i) Hospitality, Fast Food and Restaurant awards, and in combination, other awards as relevant to typical combinations of streams of work for businesses and employees.
  - (ii) Fast Food, Hospitality, and Restaurant awards alongside General Retail and Fuel/Vehicle awards to ensure combination businesses (i.e. roadside restaurants who sell fuel and retail other goods) are considered in the coverage of these instruments.
  - (iii) Clerks Award alongside all other award reviews to ensure they are aligned with and are enabled to support the operationalisation of the changes to related industry awards through related changes to the clerical award provisions.

### 4.2 Hospitality General Award

- (a) The ARA suggests further enhancements to improve usability for both employers and employees, despite recent improvements.
- (b) Continued enhancements in usability can lead to better compliance, efficiency, and stakeholder satisfaction.
- (c) AWCC support the ARA's call for ongoing enhancements to ensure modern awards remain user-friendly and effective for all parties involved.

### 4.3 Restaurant Industry Award

- (a) The ARA advocates for further improvements in usability and flexibility to promote job creation and productivity.
- (b) Enhancing usability and flexibility in awards can indeed support job creation, wage growth, and productivity within the sectors.
- (c) AWCC is aligned with the ARA's perspective on the importance of improving usability and flexibility in awards to drive positive outcomes for the workforce and industries.
- (d) AWCC values the insights provided by the ARA and other stakeholders in the modern award review process. We believe that a collaborative approach, incorporating the perspectives of various stakeholders, will lead to a more effective and user-friendly modern award system that meets the needs of both employees and employers.

## 5. Business Council of Australia (BCA)

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### 5.1 Australian and New Zealand Standard Industrial Classification Framework (ANZSIC)

- (a) BCA's submission recommended a new modern awards model derived from the Australian and New Zealand Standard Industrial Classification (ANZSIC) system.
- (b) AWCC strongly objects to any use of either the ANZSIC and/or the Australian and New Zealand Standard Classification of Occupations (ANZSCO) in their current form to align with any current or future modern award amendments or system reforms for the following reasons:
  - (i) In 2023 AWCC published its successful amendment to ANZSCO for the payroll profession<sup>8</sup>, currently listed as a low skill (Skill level 4) occupation where it is to be updated in December 2024s ANZSCO list of published changes<sup>9</sup> to Payroll Manager at skill level 2, payroll clerk to be disbanded and replaced with Payroll Officer. Furthermore, we had all references to Payroll deleted from Human Resources Manager proposed amendment as this is a separate profession we consider to be unskilled and unqualified with regard to Payroll management oversight.
  - (ii) During this research, a number of issues came to light with regard to both the ANZSCO and ANZSIC systems which include: out of date and incorrect classifications, and integration with modern awards (the ABS/ANZSCO team could not verify a connection with it or ANZSIC). Of note, was the current and future erroneous inclusion of payroll as a sub-set of bookkeeping when it has always s been a profession in its own right. Additionally, due to this and other wider errors, payroll is administered under the clerks award, which is also incorrect, however from the information on the ANZSIC system and its use to influence modern awards, it appears the ANZSIC system has not had a major review since 2006 (despite a minor review in 2012) as almost all information on Clerks including Payroll has not been changed for almost 20 years.
  - (iii) In relation to some of the professions including Clerks and other awards under numerous FWC ANZSIC links, we have found some concerning old comments to the effect that Payroll is not differentiated between clerks, including retail clerks. Furthermore, this means that that Australian Bureau of Statistics is obtaining information on the profession potentially combined with the Retail sector, despite it having over 90% women, whom on average we believe are underpaid by as much as 29%, are not recognised as a female dominated profession in any capacity including gender paygap initiatives by the Government or Private sector.
- (c) Therefore, until both the ANZSCO and ANZSIC systems are updated (especially ANZSIC) with input from professional industry peak bodies including AWCC for payroll and employtech, we do not support an initiative to vary or replace modern awards with a system that in some cases, is almost 20 years old and/or currently misrepresents entire professions (in the tens of thousands) including payroll.

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<sup>8</sup> <https://awcc.asn.au/awcc-submission-workplace-relations-proposed-changes-may-2023/>

<sup>9</sup> [https://consult.abs.gov.au/standards-and-classifications/anzsco-comprehensive-review-round-1/results/final\\_consultationround1\\_preliminaryproposedchanges.pdf](https://consult.abs.gov.au/standards-and-classifications/anzsco-comprehensive-review-round-1/results/final_consultationround1_preliminaryproposedchanges.pdf)

## 6. Australian Industry Group (AIGroup)

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- (a) AIGroup placed a significant submission in which has taken up the most time with regard to a comprehensive analysis by our Modern Award Joint Advisory Committee.
- (b) However, as this analysis is considerable and still underway, AWCC Ltd does not feel it is practicable to insert a line-by-line response at this time.
- (c) AWCC believes that AIGroups submission in its entirety has expand upon the scope of the review set by the FWC and we appose the majority of recommendations as they will adversely impact employee entitlements.



## 7. Chamber of Commerce & Industry Western Australia (CCIWA)

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### 7.1 SCHADS – Rest Breaks between rostered work (Clause 25.4)

- (a) CCIWA addresses concerns regarding the interpretation of Clause 25.4 in the SCHADS Award, particularly focusing on the treatment of sleepovers and breaks between shifts. They propose amendments to clarify and ensure equitable treatment of employees. The proposal by Chamber of Commerce and Industry WA centres on Clause 25.4 of the SCHADS Award, specifically addressing breaks between rostered work and sleepover provisions. They highlight potential discrepancies in treatment and advocate for clarity to avoid unintended consequences.
- (b) The submission justifies its proposal based on the ambiguity and uncertainty in the current wording of Clause 25.4. Chamber of Commerce and Industry WA references potential implications for penalty rates and overtime payments, emphasising the need for clarification to protect employee entitlements.
- (c) AWCC disagrees with CCIWA's proposal regarding the treatment of sleepovers in Clause 25.4. They argue that an 8-hour break between shifts, including sleepovers, should not affect penalty rates or overtime entitlements. AWCC maintains the importance of clarity in the award's provisions.

### 7.2 SCHADS – Rosters (Clause 25.5)

- (a) CCIWA proposes amendments to Clause 25.5 of the SCHADS Award to enhance flexibility in part-time arrangements and provide greater clarity regarding roster changes. They suggest revisions to accommodate employee needs while ensuring operational continuity. The submission highlights the need for flexibility in part-time arrangements and proposes amendments to Clause 25.5 to address concerns regarding roster changes. CCIWA emphasises the importance of clear and practical provisions to support effective workforce management.
- (b) CCIWA provides justification for its proposed amendments based on challenges faced by employers and employees in managing roster changes. They reference issues related to notice requirements and advocate for changes to improve operational efficiency and employee satisfaction.
- (c) AWCC supports the rewording Clause 25.5 to address concerns raised by CCIWA regarding notice of roster changes. The proposed changes emphasise the importance of aligning the award's provisions with consultation and agreement requirements to ensure fairness and clarity for all parties involved.



## 8. Neller HR Consulting

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### 8.1 Restaurant Industry Award 2020 – Public Holidays

- (a) Neller HR Consulting addresses their concerns regarding the interpretation of Clause 30.3 (wording and interpretation of Clause 30.3 regarding additional public holiday arrangements for full-time employees) in the Restaurant Award. Specifically, Neller HR Consulting have interpreted the clause as follows: that if an employee doesn't work on the day a public holiday falls that they are better off than an employee working a rostered shift on a public holiday. Specifically focusing on scenarios where employees have rostered days off (RDOs) coinciding with public holidays. They advocate for clarification or adjustment so that the clause is easier to interpret. They propose a revision to ensure that if an employee works on a public holiday, they should not be financially worse off than if the employee didn't work on a public holiday.
- (b) Neller HR Consulting's proposal is justified by the potential risk of employees being financially worse off by working on a public holiday than if they didn't work on a public holiday, and by losing the benefit of their rostered days off due to the current interpretation of Clause 30.3. They seek clarity to prevent any unintended consequences for employees.
- (c) AWCC disagrees with Neller HR Consulting's interpretation of Clause 30.3. They clarify that the clause provides compensation for employees not rostered to work on public holidays, distinct from the provision in Clause 24.4(d) governing payment for work on public holidays. AWCC upholds the clarity and purpose of the respective clauses however highlights that this is an example of how awards can be easily misinterpreted.