



Fair Work
Commission

Modern Awards Review 2023-24 (AM2023/21)

Reply Submission cover sheet

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Modern Award Review Stream:

- Arts and Culture:
- Job Security:
- Work and Care:**
- Usability of awards:

Modern Awards Review 2023-24

AM2023/21

Work and Care

SDA REPLY SUBMISSION

Date Submitted: 26 March 2024

Submitted by: Gerard Dwyer
National Secretary-Treasurer



Introduction

1. The Shop Distributive and Allied Employees' Association (**SDA**) is providing this in response to submissions made to the Fair Work Commission (**FWC**) as part of the FWC Modern Awards Review 2023-24 (**Awards Review**) Work and Care Stream (**AM2023/21**).
2. The SDA is one of Australia's largest trade unions with over 200,000 members working in a broad range of areas including retail, warehousing, online retailing, fast-food, hairdressing, beauty, pharmacy and modelling.
3. The majority of SDA members are low income, with 60% being women. Retail and food services are two of the three lowest industries for median weekly earnings. The retail industry employs one of the largest proportions of Australian workers, accounting for approximately 10% of the nation's workforce.
4. The SDA will respond to the submissions most relevant to the Awards that cover SDA members, including the submissions of:
 - (a) Australian Retail Association
 - (b) Motor Traders Organisation
 - (c) Australian Industry Group
 - (d) ACCI
5. Within the constraints of time under this and other Award Reviews currently underway, the SDA hasn't had the opportunity to respond to all submissions in detail so may need to make further submissions orally in the consultations.
6. The SDA strongly supports and relies on the submissions of the ACTU.
7. The SDA's overarching view is that the employer submissions and the variations they seek are not aimed at addressing the issues raised by the Senate Work and Care Committee or FWC Discussion paper, rather they are seeking to strip rights and entitlements from employees that may assist them as worker carers. This is not within the scope of the Review which is not intended to reduce entitlements.

8. The variations sought are largely in opposition of the modern awards objectives, particularly, that the FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:
 - (a) relative living standards and the needs of the low paid; and
 - (aa) the need to improve access to secure work across the economy; and
 - (ab) the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women's full economic participation; and
 - (c) the need to promote social inclusion through increased workforce participation
9. The submissions by employer organisations also lack any evidence or articulate how the proposals for variations would assist with the issue of addressing work and care or how they would ensure awards continue to meet the Modern Awards Objectives.

Reply to submissions

Australian Retail Association

Broad Observations

10. The Australian Retail Association submits that the Fair Work Act does contain protection for carers, however they do not articulate what protections under the Act they refer to, nor do they in any way address Awards and how they are currently meeting the Modern Awards Objectives or how the terms relate to protections for carers.
11. The Discussion Paper sets out the Commission's powers to vary modern Awards, 'The modern awards objective is set out in section 134 of the FW Act and is directed at ensuring that modern awards, together with the NES, provide a 'fair and relevant minimum safety net of terms and conditions'.²¹ The modern awards objective is broadly expressed, and requires the Commission to take into account the various social and economic factors set out at section 134(1)(a)–(h) of the FW Act, with no particular primacy being attached to any individual consideration.²²'¹
12. While we note reference to no particular primacy being attached to any individual consideration, it is important that some are given greater focus given the context of this review which is to consider the impact of workplace relations settings on work and care. In particular, section 134(1):
 - (a) relative living standards and the needs of the low paid; and
 - (aa) the need to improve access to secure work across the economy; and
 - (ab) the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women's full economic participation; and
 - (c) the need to promote social inclusion through increased workforce participation
13. Additionally, the *Secure Jobs Better Pay Act 2023* amended Objective 3(a) of the Fair

¹ Fair work Commission, *Discussion Paper work And Care Modern Awards Review 2023-24*, 29 January 2024, p 19

Work Act 2009 to include the need to *'promote job security and gender equality'*, and introduced two new Modern Awards Objectives, (aa) the need to improve access to secure work across the economy; and (ab) the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women's full economic participation.

14. These new Objectives have not been considered in the construct of or in any Review of Awards and they are particularly relevant to the question of whether or not Awards continue to meet the Modern Awards Objective in the context of providing protection to carers and a fair and relevant minimum safety net of terms and conditions for them.
15. The ARA have not mentioned, let alone addressed the Modern Awards Objectives in their submission. The ARA have made no attempt whatsoever to link the updated, and to-date unsettled, objectives to the specific proposals it has made in relation to award variations.
16. The ARA, instead, refers to its application to vary the GRIA (AM2024/9). The application that in its submission² claims will provide further 'flexibilities' to employees with caring responsibilities. However, what the application does do is to seek 'flexibilities' that continue to strip rights and entitlements and provide benefits to employers by way of greater flexibility to change rosters unilaterally, minimise hours and costs, and give them ultimate scheduling control and flexibility while taking predictability, security and control away from employees.
17. As noted by the SDA in our submission to the Work and Care Award Review, worker carers need greater control and predictability of working hours not less to enable them to work and meet their caring responsibilities.
18. While the submission lists some of the variations it is seeking for consideration as part of this review it has not made submissions as to how these variations will practically assist worker carers or how they will meet the Modern Awards Objectives, particularly those that relate to the promotion of job security, which is vital to worker carers and also in relation to gender equality and the participation of women in work.
19. Given the lack of detail in relation to how the variations will result in any benefit for

² Australian Retailers Association Submission to the Work and Care Modern Awards Review 2023-24, [Submission \(fwc.gov.au\)](https://www.fwc.gov.au/submissions/australian-retailers-association)

worker carers or how the variations will meet the Modern Awards Objectives the SDA believes that little weight should be given to the ARA submissions in the context of this Review.

20. The SDA has also made extensive initial submissions to the Review where many of the observations made by the ARA and variations sought have already been addressed.
21. The SDA will address the broad observations made in the ARA submission and each of the variations proposed but given the lack of detail as to how they will benefit employees managing work and care and our position above that they should be given little weight, our replies on these will be brief.
22. The ARA claim that ‘the proscriptive nature of the GRIA and operational requirements of a retail business sometimes make it more difficult to accommodate flexible work practices for employees with caring responsibilities, in comparison to other industries. For example, the GRIA contains prohibitive rostering provisions and in circumstances where full-time and part-time employees have agreed to a regular pattern of work, there are onerous administrative requirements that must be followed if flexibility is required’.
23. This claim is completely disingenuous. The SDA, in its initial submission, provided many comparisons to other Awards in relation to terms and conditions such as rostering and spread of hours which demonstrate that in fact the GRIA provides employers with much greater flexibility around rostering and a broader spread than for employers in other Awards, and much less scheduling protection and control for employees.
24. The submission by the ARA also suggests that ‘As a result of restrictive GRIA provisions, employees face additional barriers in seeking the flexibility they may require, including to attend to unplanned family commitments’. The ARA have provided no evidence to support this statement, or explained in what ways the GRIA provisions are restrictive or provide a barrier to this.
25. In the SDA’s submissions we provided evidence that what worker carers need is security, stability and predictability and in addition to this, scheduling control. This is what ‘good flex’ looks like for worker carers. What the ARA is seeking is ‘bad flex’³.
26. Varying the GRIA in the way proposed by the ARA would worsen and further entrench the ‘bad flex’ that already exists in the GRIA which is resulting in very poor outcomes for worker carers in relation to how they are able to participate in paid work and how they

³ Ed. Baird, M, Hill, E and Colussi, S, *At a turning point: Work, Care and family policies in Australia*, page 105

manage their care responsibilities. It is currently a lose lose situation for worker carers and this will only be worsened if the Award is varied in the way the ARA is proposing.

27. The ARA asserts that its position is that 'the part-time rostering provisions in the GRIA are unduly restrictive and should be amended for the mutual benefit of employees and employers'. The submissions provide no information about how they are unduly restrictive in the context of work and care and the one example they point to relates to the proposal they make relating to the taking of meal breaks, which if were amended in the way sought by the ARA would benefit the employer (by increasing their flexibility) not the employee (who would benefit from a known predictable break time to potentially assist with providing care, e.g appointments, pick ups etc.).
28. This is another example of the ARA trying to strip the Award of employee protections in favour of the employer. In its submission, the ARA 'believe there are opportunities to provide for a more balanced approach to work and care. In our sector, we believe that these outcomes can be delivered through variations to the GRIA, with minimal reliance placed on the recommendations of the Senate Report'. The variations sought by the ARA do not provide more balance. They tip the balance further toward the employer, in the context of an Award that already provides maximum employer control and minimal employee control over things like rostering and scheduling. This results in an unfair minimum safety net and impacts not only on how a worker manages their work and care but also on their ability to participate in paid work and access to a decent living standard, all of which are things that Awards should provide.

Specific Variations

29. The SDA will only address the proposals listed by the ARA in its submission to this Review and will not respond in relation to any of the other variations sought as part of its separate application to vary the GRIA.
30. The SDA again notes that no proper reason or evidence for the proposed variations or how they would meet the Modern Awards Objective, or support work and care, has been provided.

Proposal B: Split Shifts

31. Proposal B seeks an amendment to allow for split shifts with employee agreement. The ARA suggest that enabling an employee to work two shifts in one day would assist them to balance other commitments (including care and family responsibilities). However, they

have not provided any evidence to suggest that employees want this or that it would in fact assist an employee to manage their work and care.

32. We also note that in its application to vary the GRIA, the draft determination for split shifts seeks to remove entitlements such as access to minimum shift provisions and paid breaks.
33. Currently, the GRIA provides for continuous hours of work, which means that split shifts are not permissible. As discussed in the SDA's initial submission to this Review, workers in retail are Award reliant and low paid. The protection provided in the Award in relation to continuous hours is important to ensure that workers are adequately compensated for the cost of attending work.
34. The SDA submission also discussed the current rostering practices, especially for part-time workers that is framed on low base hours and unpredictable and insecure additional hours. The ARA tries to sell the use of split shifts as a way for a worker to secure more hours. This is not an appropriate way to resolve the issue of job security and access to hours in an industry wide approach. Imposed split shifts in an Award context would only serve to further fragment the way that retail workers are expected to be rostered and further punish workers who need to manage paid work with care.
35. Because of the 'hunger games' approach to rostering in retail, some employees may say yes to working imposed split shifts but that is not a preference but rather a necessity, as it is sold as a means to get more hours and a way to earn a decent living wage.
36. The concept of a split shift in an Award context is very different to a situation within enterprise bargaining. With effective Union oversight as part of a package of more secure work which includes higher base weekly minimum hours, an ability for an employee to increase base hours whenever a roster change is proposed by an employer and rostering in accordance with work and care principles is where workers feel they have genuine choice and control over the number of hours they work and the way those working hours are arranged because through their union ensure they are truly voluntary.. The work group might then agree to include voluntary split shifts in a context where the majority of workers who do not want to do split shifts feel secure that they will not be required to and the smaller group who may access them do so knowing they are truly voluntary and as part of a total package of more secure work and other negotiated benefits that leave them better off overall .
37. This is very different to this application where the ARA argue that operationally it would

assist retailers to roster for peak periods. The SDA has recently undertaken extensive research in relation to psychosocial hazards in retail with more than 11,500 retail workers responding. What this research found was that retail is severely understaffed, not just in relation to direct customer service (so meeting peak customer traffic) but also in relation to the work that supports this such as replenishment, online order fulfillment, and general and administrative store based tasks. It also found that this is having a significant impact on the health and safety of retail workers.

38. Rostering needs to be reflective of all store based tasks and not just rostering to peak trade patterns. This means that if retailers' roster appropriately for all tasks they should not need fractured work schedules.
39. As noted by Professor Charlesworth when reflecting on the experience of Aged Care workers who are able to be rostered on split shifts during the Senate Select Committee Inquiry into Job Security⁴ 'current awards allow 'fractured scheduling' through 'broken shifts', which include gaps of 'unpaid working time and dead time' Casual and agency workers have no predictability:

What on demand work does is really create working time insecurity through dislocation of your daily life, underemployment and an increase in unpaid work and unproductive working time. We interviewed many home-care workers who sit in their cars waiting for the next appointment because they don't have time to drive homeN that's dead time. They are not available to get on with the rest of their lives. Yet that's the way that their work is organised.²¹

40. In a study of work in the disability care⁵ sector imposed split shifts had a negative impact on workers, the way their work was arranged and the impact this had on their ability to work and care, and earn a living wage:

Shifts at inconvenient times, and split shifts, were particularly difficult to manage, for example:

Shifts start too early or finish too late. It makes recovery after work very hard.

⁴ The Senate Select Committee on Job Security, *Second interim report: insecurity in publicly-funded jobs*, page 48

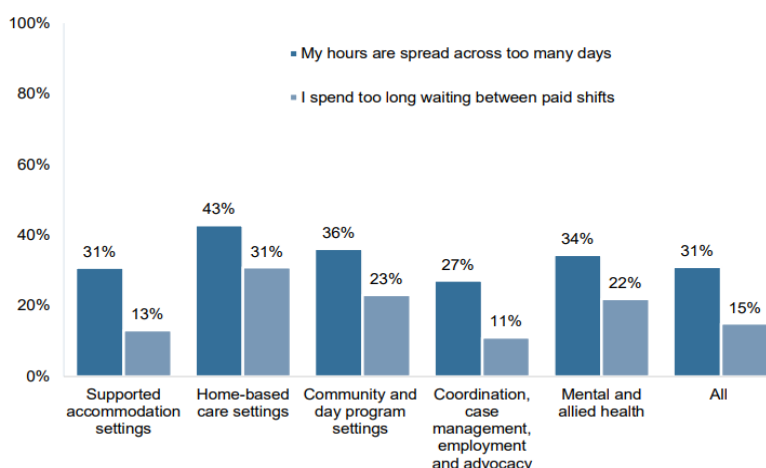
⁵ Cortis, N., & van Toorn, G. (2020). *Working in new disability markets: A survey of Australia's disability workforce* Sydney: Social Policy Research Centre, UNSW Sydney <http://doi.org/10.26190/5eb8b85e97714>

The only thing I don't like is split shifts. Especially when working at a group home. I feel I waste a lot of money on petrol on those days, as I commute to work, then drive home for the split, then drive back to work to start my afternoon split and then drive back home that night.

Causes stress and makes the work/family very difficult to balance. Long hours with large amounts of unproductive time between shifts.

Corroborating these comments, many respondents agreed or strongly agreed that their hours were spread across too many days, especially in home-based settings (43%) (see Figure 3.5, detailed data is in Appendix Table A. 10). Home-based support workers were also more likely than others to agree that they spend too long waiting between paid shifts (31% agreed compared with 15% of all respondents, Figure 3.5).

Figure 3.5 Proportion who agreed or strongly agreed with statements about spread of shifts^A



^ANote: full data, including the proportions who disagreed or were neutral, and numbers of respondents on each item, is in Appendix Table A. 10.

Several comments articulated serious concerns relating to their work time arrangements. For example, a home-based support worker explained:

I expect to work up to 3 separate runs per day, work can be added or removed at any time without notice or explanation. I am expected to carry my workphone (and answer) at all times, which can be hugely inconvenient if I have made plans or appointments. I live 20 mins away from most of my clients and my breaks are often an hour or two at a time, if I went home in those breaks I would only have to immediately return which means that instead of family time I am sitting in my car alone between shifts (with no pay) or wasting my low income in cafes or takeaway places

41. There are also global examples of the impact that imposed split shifts have on workers. Home care workers in the UK took action over split shifts and job cuts ‘The workers say that the new shift pattern (7.00-10.00; 12.00-14.00; 16.00-22.00) will make it impossible for them to have proper rest breaks and put the quality of care at risk’⁶.
42. In the 2014 Review of Modern Awards, the FWC considered existing broken shift provisions in the SCHADS Award. The Full Bench in this matter found that:

[231] As we found in the May 2021 Decision ¹⁴⁴ employees report a range of adverse consequences with working broken shifts with short engagements and unpaid travel time,¹⁴⁵ in particular:

- they **interfere with the employee’s time with family and friends, with their hobbies or with their involvement in the community**
- broken shifts and short engagements mean a **longer span of hours to make the same money** they would make if they were rostered continuously. The span of hours may be 12 hours, but the employee is only paid for 4 to 5 hours work; **this can be very tiring**
- **short engagements are not worth the time and cost involved**
- home care employees can be required to travel significant distances, the travel time is unpaid, and it is uneconomical to work, and
- **broken shifts can be ‘very disruptive’; an employee may ‘need to sit around for 2-3 hours waiting for a shift to start that only lasts for 15 minutes.’**

[emphasis added]

43. This decision demonstrates the negative consequences of split or broken shift rostering on employees in an Award context. Shifts must compensate workers for their work and for the cost of attending a shift, including things such as the cost of transport and travel time and the cost of work clothing. The additional costs that are associated with split shifts include the cost of dead wait time, the costs that might be incurred during dead wait time such as meals etc. and the cost of not being able to earn money during the break between shifts, for example through a second job.
44. The issues concerning dead time and cost of underemployment was also highlighted in the Literature Review when discussing fragmentation of working time for disability support employees where, ‘Work for both casual and part-time employees may be characterised by broken and multiple short shifts contributing to some employees being

⁶ [Home care workers take action over split shifts and job cuts | EPSU](#)

underemployed but without the working time certainty to secure income through additional and separate employment⁷.

45. As mentioned earlier there are not operational needs that would necessitate the need to introduce split shifts in the GRIA that would outweigh the negative impacts and costs to low paid workers if it were introduced.
46. A recent study of care sector workers in Austria⁸ highlighted previous research in relation to working imposed split shifts that:
 - have consistently indicated that split shifts are linked to considerable dissatisfaction among workers
 - Some of the problems associated with them are that the time between two shifts is difficult to make use of in a meaningful way
 - They have negative effects on leisure time and social and family life
 - the flexibility demanded by the employer is often not the kind of flexibility that is needed by the worker for improving work-life balance and managing care obligations
 - they can pose problems with regard to childcare, especially for single parents
 - they may also lead to a 'desynchronization of family time' if family members work at different times, resulting in scarce shared time for couples and families
 - they have also been recognized as health-related risks and safety concerns
 - split shift workers may feel, 'paradoxically, that they are devoting their whole lives to work, while actually being employed only part time'.
47. In the study of care sector workers in Austria who work split shifts it was found that although the interruption between the two shifts is technically leisure time, it is in fact neither free time nor working time and 'Even though this interruption is experienced differently by the care workers, the findings agree that the interruption, and having to 'move out' (quote) again in the evening, affects the well-being of the care workers and places extraordinary demands on the organization of their work lives'⁹.

⁷ Smith, M and Charlesworth, S (2024) *Literature Review for the Modern Awards Review 2023-24 Relating to the Workplace Relations Settings Within Modern Awards That Impact People When Balancing Work and Care*, Western Sydney University, Page 39

⁸ Sardadvar, K and Reiter, C, *Neither work nor leisure: temporalities and life world realities of split shift work in the Austrian care sector*, Culture and Organisation 2023 Vol. 29, No. 5, 416-432, Page 417

⁹ Ibid, page 423

48. The findings show that split shifts where demanded by an employer result in a strong fragmentation of work and leisure time. This is due to a range of issues such as the need to monitor, manage and control the time during the interruption between shifts, the time it takes to recover from the demands of the first shift and then the time taken to prepare for the next (both physically and mentally), and the constraints of the interruption time and the way the time can be spent.¹⁰
49. The study also shows that it can cost workers money during the interruption particularly if they cannot go home as they need to fill in the time and may go to a café etc. In these cases, workers describe the interruption as 'lost time'.
50. The study also found that split shifts are a work, health and safety issue. 'The constant stressfulness of split shifts is inscribed in the care workers' bodies. This affects them physically, not just in the present, but also in a long-term perspective. In the interviews, several participants state that they do not expect to be able to work split shifts when they get older. It is not just the care work itself that appears to be too much to bear, but also the specific working times, especially the mobility, the interruptions, and the need to move out again. In particular, the constant intrusion of the job into free time is experienced as physically stressful'¹¹.
51. Hours in the GRIA should continue to be rostered as continuous hours of work. The ARA have not advanced any information or evidence as to how the introduction of split shifts would assist worker carers nor why it is needed in retail. As demonstrated in industries where split shifts do exist it has significant negative impacts on workers and their families. This proposal should not be considered.

Proposal G: greater flexibility for 38 ordinary hours to be worked across four days

52. The ARA has not advanced any submissions in relation to the proposal to amend the GRIA to allow greater flexibility for 38 ordinary hours to be worked across four days.
53. We do note, however, that recommendation 34 of the initial SDA submission to this Review included a recommendation to consider the introduction of a 4 day week. This proposal is something the SDA could consider for discussion at the Review consultations.

¹⁰ Ibid

¹¹ Ibid, page 427

54. This discussion however would be limited to how a four day work week could be implemented not amending the Award to extend shift lengths more broadly.

Proposal K: clarify the availability of standing consent provisions within the GRIA

55. The SDA made extensive submissions to the Review in relation to part-time work. These submissions highlighted the fact that part-time work in retail had become increasingly insecure and unpredictable, leaving part-time workers vulnerable to rosters that were not consistent and subject to frequent change. One of the main drivers of this was the increase in low base hours contracts with the 'possibility' of additional shifts that are not guaranteed and are at unpredictable times.
56. While the idea of standing consent sounds like it would be a way to solve some of this, what it does is create casual employment on top of part-time contracts but with no compensation for the lack of guaranteed and predictable hours.
57. Rather than solving access to additional hours for part-time workers with a standing consent provision to work additional hours at ordinary rates of pay, the SDA submits that the recommendations for variations to the Award made in our initial submission be accepted and implemented, including the following:

Recommendation 1:

In the Awards relevant to SDA members, a weekly minimum for Part time work should be 15 hours at least and to ensure the hours are not spread over 5 days, the minimum shift provision should be increased to 4 hours.

Recommendation 2:

Vary the Awards relevant to SDA member coverage which allow for the agreement to work additional 'ordinary' hours above base contract hours to include either payment at overtime rates or alternatively, payment as ordinary hours (with leave accrual) paid at ordinary hourly rates plus an additional penalty of at least 25%.

Recommendation 3:

Awards be varied to include a positive obligation on employers to provide employees with a 'right to say no' to additional shifts, without repercussion.

Recommendation 4:

Include a strengthened right to elect to convert regular additional hours worked by a part-time employee to their guaranteed hours (base contract hours) in all Awards. The provision should be strengthened by including:

- (a) a right to elect to convert regular additional hours to permanent hours; and
- (b) a positive obligation for an employer to convert the hours unless they can demonstrate the hours were not regular and there would be an unjustifiable hardship for them to provide the hours on a permanent basis; and
- (c) a worker should be able to elect to convert after six months of working regular additional hours; and
- (d) that the process to resolve a dispute include arbitration at the request of either party rather than by consent.

Recommendation 5:

Include a Right to become full time when working an average of 35 hours or more per week on a reasonably regular basis.

Recommendation 6:

Awards should contain roster change mechanisms by consent or mutual agreement only.

Where an Award can't be varied to include roster change by mutual agreement only, it should be varied so that where the employer proposes a roster change they must give 28 days' notice, and if the worker cannot work the proposed roster, the worker has a right to raise a dispute to the FWC for conciliation and arbitration (by either party not by consent) and the status quo (original roster) continues to be worked until the dispute is resolved.

Proposal P: provide ability for employees to waive a meal break and go home early or combine their break entitlements.

58. In its submission, the ARA state that this change will assist employees who may prefer to leave work earlier in order to attend caring responsibilities (without loss of pay). However, the ARA provides no evidence to support this.

59. The SDA has significant issues with this proposal in an Award context where proper independent industrial oversight is not available. Again, in a bargaining context where employees have access to independent advice and protection this may operate without the potential WHS risks.

Under the GRIA, employees are entitled to a 10 minute paid rest break when working 4 or more hours, and an unpaid meal break of between 30 and 60 minutes when working more than 5 hours.

60. Rest and meal breaks are provided to workers to ensure they have adequate access to breaks for the purpose of rest, recuperation and sustenance. These are vital for health and safety. This is particularly important in the retail environment where workers are exposed to long periods of standing and manual handling, as well as the mental demands of dealing with customers, particularly in an environment of increasing abuse, harassment and violence from customers. It is important that the Award continues to provide this provision to ensure those unable to work a longer period are not forced to do so.
61. The SDA opposes the proposed Award variation. In an Award context the access to independent industrial protection is not available and the variation is not necessary to meet the Modern Awards Objectives. The ARA has provided no evidence to suggest otherwise.
62. The SDA has significant issues with this proposal, most notably the impact that this will have on an employee's health and safety. Under the GRIA, employees are entitled to a 10 minute paid rest break when working 4 or more hours, and an unpaid meal break of between 30 and 60 minutes when working more than 5 hours.
63. Rest and meal breaks are provided to workers to ensure they have adequate access to breaks for the purpose of rest, recuperation and sustenance. These are vital for health and safety. This is particularly important in the retail environment where workers are exposed to long periods of standing and manual handling, as well as the mental demands of dealing with customers, particularly in an environment of increasing abuse, harassment and violence from customers.
64. The SDA strongly opposes the proposed variation. This is not necessary to meet the Modern Awards Objectives and the ARA has provided no evidence to suggest otherwise.

Motor Trade Organisation

Facilitative provisions

65. MTO makes submissions that the facilitative provisions of the Vehicle Award do not need to be varied to ensure it continues to meet the modern awards objective, but that consideration could be given to enabling all provisions to be utilised by agreement between an employer and individual employee (rather than by majority agreement) and expanding the list to include additional terms.
66. The MTO makes no suggestions as to how these changes will assist work and care or how they would meet the Modern Awards Objectives.
67. The SDA made initial submissions in relation to facilitative provisions and continues to rely on those.

IFA's

68. The MTO claims that facilitative provisions are important because IFA's are too complex and an administrative burden, particularly for small business, however, make no submissions to demonstrate how or why they are complex or a burden and how any change to the IFA provisions would assist an employee manage their work and care or how a change would meet the Modern Awards Objective.
69. The only thing the SDA can assume from these submissions is that the MTO prefers facilitative provisions over IFAs because they don't want to have to meet the protections established in IFAs that are there to ensure employees are not being exploited or entering into arrangements that may leave them worse off.
70. The SDA made initial submissions to the Review regarding IFA provisions, and we continue to rely on those.

Minimum payment period

71. The Vehicle Award currently contains no minimum payment period for part-time employees. The MTO makes submissions that prescribing minimum payment periods for part-time employees is not appropriate because the minimum number of ordinary hours worked on any day is agreed in writing between the employer and employee.
72. While we note that there is an agreement between an employer and an employee on the minimum number of hours worked, there needs to be a minimum payment period set out

in the Award to ensure that employees are appropriately compensated for the cost of attending a shift. While the MTO suggests that it is up to an employer and employee to agree to what they want in terms of hours worked, there is an inherent power imbalance and in most cases an employee or prospective employee will not be in a position to bargain over hours and when they will be worked.

73. Awards, together with the NES, provide a vital minimum safety net for workers and a minimum payment period is an important term that should form part of that safety net. Minimum payment periods are also necessary to ensure the Award continues to meet the Modern Awards Objectives, in particular, S134(1)(a) and (c).
74. In Appendix 1, the Literature Review highlights that minimum engagement periods are too low for casuals and part-time worker-carers in some modern awards in feminised sectors and recommend that minimum engagements are increased in line with those in male dominated awards such as the Manufacturing Award (currently set at 4 hours).
75. This is consistent with the initial submissions made by the SDA to the Review in relation to minimum payment periods. The SDA continues to rely on those submissions and continues to press the recommendations in relation to minimum payment periods.

Span of hours and averaging

76. The MTO makes no suggestions for amendments in relation to the span of hours or averaging of hours. The SDA made initial submissions in relation to the span of hours and continues to rely on those submissions. In particular, the SDA has called for an amendment to the Vehicle Award to include a span of hours. We note the submissions of the MTO that penalty rates apply to particular hours worked and ordinary hours are worked on no more than 5 days for full-time and part-time employees (unless at the written request of an employee). However, these provisions do not resolve all of the issues that arise for an employee in relation to a 24/7 span of hours, particularly regarding rostering and sufficient compensation.

Notice of rosters

77. The MTO notes in its submission that the Inquiry Report recommended a minimum 2 weeks' notice period for rosters, but this would be antithetical to the flexibility required by small business and is therefore inappropriate to form part of the modern award safety net for industries such as automotive.

78. The MTO does not provide any evidence as to why small businesses in the automotive industry need more flexibility than other industries or why they would be unable to set rosters 2 weeks in advance.
79. They have also made no submissions in relation to the impact that a lack of notice of roster provisions have on employees who have to manage work and care.
80. We note that rosters for part-time employees under the Vehicle Award can only be changed by agreement in writing. We also refer the Commission to the SDA's initial submission to this Review in relation to notice of rosters and the recommendations we made for amendments to the Awards applicable to our members.

TOIL

81. The MTO suggests in its submission that the payment of TOIL at overtime rates rather than the equivalent amount of time off may act as a disincentive to employers agreeing to an employee TOIL request, which may adversely impact flexible working arrangements. The MTO provides no evidence to support this assertion, nor does it make any submissions as to how the removal of an entitlement would be of benefit to an employee and how an employee having access to less time would assist with their care arrangements.
82. While the SDA notes that the MTO does not suggest any specific variation to clause 24.6 of the Vehicle Award is necessary to ensure it continues to meet the modern awards objective, the SDA wants to make clear that it would strongly oppose any variation to TOIL provisions that would reduce the quantum from at the overtime rate to equivalent rate.

Annual Leave at half pay under facilitative provisions.

83. The MTO suggests in its submission that while it does not consider there needs to be any variation to the Vehicle Award to ensure it continues to meet the Modern Award Objectives, annual leave at half pay would appear to be the most appropriate provision to be included as a facilitative arrangement.
84. If the FWC were to consider annual leave at half pay as a potential term in Awards to assist workers manage care responsibilities, there would need to be protections in relation to the use of annual leave at half pay, including that it would only be able to be accessed at the request of the employee.

Australian Industry Group and ACCI

Part-time employment proposal

85. In its submissions, the Ai Group proposes that through this process, consideration is given to liberalising access to part-time employment in awards that presently adopt the Standard Part-time Model, in the following ways:
- (a) Greater flexibility as to the fixation of employees' ordinary hours of work;
 - (b) Greater scope to vary their hours of work; and
 - (c) The option to agree that the employee will work additional hours at ordinary rates.
86. Ai Group argues that 'provisions governing access to part-time employment may need to be made far less restrictive in order to ensure that awards meet the needs of both employers and employees. At the very least, there may be a need to ensure that employment arrangements that are not consistent with either any new definition of casual employment under the Act or requirements of awards relating to the definition or engagement of part-time employees are catered for'.
87. Ai Group claims that the 'Standard Part-time Model is overwhelmingly rigid and inflexible; so much so that it is commonly prohibitive and results in employers instead employing casual employees or adopting other forms of engagement (such as labour hire workers or independent contractors)'. However, the Ai Group provides no evidence to demonstrate this.
88. Evidence in fact points to the contrary. 'The casual employee share of total employees remained relatively stable at around 25 per cent during the period between the mid-1990s and 2019 which indicates more balanced growth in both casual and permanent employment'¹². While, 'the permanent part-time employee share of total employment almost doubled from 8.2% in 1992 to 15.8% in 2021'¹³. There has also been little change in the proportion of those employed in labour supply services (Labour Hire), 'Over the past ten years the industry has accounted for between 2.0% and 2.7% of total employment'¹⁴.

¹² Parliamentary Library, *Recent and long-term trends in the use of casual employment*, Statistical Snapshot Research paper Series, 24 November 2021.

¹³ *ibid*

¹⁴ [Labour hire workers, June 2023 | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/labour-hire-workers-june-2023)

89. Further, Ai Group argue that reforming the manner in which part-time employees may be engaged and the terms and conditions that apply to them, particularly in relation to their hours of work would create new permanent employment opportunities. Again, no evidence has been demonstrated to support this.
90. The Ai Group have also provided no evidence regarding their claim that part-time employment needs to be made less restrictive in order to ensure that awards meet the needs of both employers and employees. Nor how a change of this kind would meet the Modern Awards Objectives.
91. ACCI has also made submissions in relation to part-time employment. While not advancing any variations they have indicated they will not support any further restrictions.
92. The SDA made extensive initial submissions to the Review in relation to the existing regulations around part-time employment and the misuse of this by employers, creating a quasi-casual part-time workforce with little protection in relation to working time arrangements which is creating insecure and unpredictable work for 'permanent' employees and resulting in the inability for worker carers to arrange their work time and time to care.
93. The Literature Review describes the 'on-demand' forms of part-time work that are similar to what the Ai Group are seeking, where, 'under the terms of some awards, an employee's hour may be flexed up and down above a set of guaranteed minimum weekly hours,¹⁰¹ or where they are exposed to rostering practices which 'extinguish any reasonable predictability of working hours'.¹⁰² ¹⁵
94. The Literature Review found that on-demand forms of part-time work have been found to create working time insecurity for worker-carers,¹⁰⁴ which together with job insecurity appears to impact negatively on worker-carers'¹⁶.
95. The SDA presented evidence in our initial submission regarding the issues that a liberalised part-time employment model, as suggested by Ai Group, creates for worker carers and their families. Varying part-time models in Awards in the way suggested by the Ai Group will simply benefit the employer, by providing them greater control over

¹⁵ Smith, M and Charlesworth, S (2024) *Literature Review for the Modern Awards Review 2023-24 Relating to the Workplace Relations Settings Within Modern Awards That Impact People When Balancing Work and Care*, Western Sydney University, Page 21

¹⁶ Ibid, page 21

working hours and scheduling when fixing and varying hours, and with this greater control, paying for the additional hours at a reduced rate (ordinary), with no compensation for the fact that employees have little or no control over the hours they work or the income they earn.

96. The Literature Review highlighted the retail industry in its section regarding On demand flexibility, unpredictable rosters, which is an example of what could result if the Ai Group proposal for more 'bad flexibility' in the part-time model of employment is implemented:

5.5.1 On-demand flexibility, unpredictable rosters

Rostering instability and unpredictable work hours is impactful for all employees but **is particularly adverse for worker-carers**. In the retail industry poor rostering practices, enabled by weak award protections and employer practice, marginalise many workers' income security and deny them the ability to provide care in preferred ways, described as 'care-theft'.²⁰⁸ Within the industry **employer driven flexibility is evidenced through regular adjustments to the number of hours worked**.²⁰⁹ While the General Retail Industry Award requires full-time hours to be agreed and those of part-time workers to be 'reasonably predictable', the reported experience of retail industry employees is they are **subject to unstable scheduling, with some employers implementing an 'on-demand flexibility'** presuming that workers are able to change start and finish times or days of work. There is some evidence changes may be advised unilaterally and without agreement or consultation.²¹⁰ **Through such rostering practices, resources for care are depleted** and the impact of requirements for almost constant availability, leads to the **reorganisation of care plans and impacts employees' children and others who rely on them for care and support**.²¹¹ 'On-demand' flexibility or 'on call' work extends beyond the retail industry and operates in tandem with the practice of minimum-hour work arrangements and casual work arrangements. **Women with caring responsibilities are disproportionately likely to be 'on-demand' workers** in either casual employment or in short-hours part-time employment. **The irregular, fragmented hours inherent in on demand work adversely affects worker-carers**. In particular, this **working-time insecurity and underemployment dislocates daily life and provides limited control over work-care schedules**.²¹²

97. In its proposals for changes to workplace relations settings in the NES and Modern Awards, the Literature Review proposes that there be a review of whether the use of low

guaranteed minimum hours part-time contracts where additional hours worked do not attract overtime premia breaches the principle of equal treatment between full time and part-time employees as contained in the ILO convention 175 Concerning Part-time Work.¹⁷

98. The SDA supports this proposal. Australia has ratified this convention and must ensure that the minimum terms and conditions of employment for part-time employees are consistent with the convention. With the casualisation of part-time work there are gaps in workplace relations regulations that is enabling this to happen, and employment of part-time employees no longer not reflects full-time employment on less hours.
99. The Literature Review also recommends that Awards provide non-negotiable working time standards for part-time employees to address the casualisation of on-demand part-time work over guaranteed minimum hours.
100. The SDA continues to rely on its initial submissions to this Review regarding the variations that are needed in relation to part-time employment, and while we will not repeat those here, we do want to reiterate that workers want more guaranteed hours and a stable and predictable roster that is not subject to variation. This is particularly important for worker carers, who need **predictable rather than flexible rosters** so they can organise their care around predictable work hours.

Minimum payment periods

101. The Ai Group submission seeks variation to minimum periods such that: (a) The relevant period can be reduced by agreement between the employer and an employee; and (b) Minimum engagement periods for ordinary hours can be satisfied by either providing a minimum period of work or by providing a minimum payment of the equivalent amount.
102. The Ai Group provides no evidence to support the variation sought, however, argues that a facilitative provision allowing for agreement between an employer and employee to reduce the minimum engagement would better enable employees with caring responsibilities to participate in paid employment, by enabling them to perform work for short periods of time. Further they suggest they might otherwise be prevented from engaging in work at those times.

¹⁷ Ibid, page 67

103. In the SDA submission we provided evidence from recent research we commissioned which was undertaken by the University of NSW Social Policy Research centre that found that more than one third (37%) of SDA member respondents agreed or strongly agreed that “I would prefer if the shifts available were longer”¹⁸.
104. Short shifts are problematic for carers, for example, short shifts are not well suited to formal care arrangements such as childcare, and the report found that access to the Child Care Subsidy and formal childcare broadly was limited for families with short hour shifts. The rostering of short shifts also results in workers being rostered over several days to meet their base hour contracts. Many members feel that their hours are spread over too many days, also impacting on their ability to provide care.¹⁹
105. Minimum payment provisions are also vital to ensure that employees are adequately compensated for the time they are working and for the cost of attending work, including the cost of transport, clothing and travel time. The ability to reduce the minimum payment provision by agreement does not provide sufficient protection that a worker is being adequately compensated for attending work and is contrary to S134(1)(a) of the Act.
106. We also refer to our submissions above in paragraph 71-72.

Span of hours proposal

107. The Ai Group suggests in its submissions that awards should be varied to include an ability to perform ordinary hours throughout weekends.
108. The SDA made initial submission to the Review in relation to span of hours and continues to rely on those submissions.

Rostering proposal

109. The Ai Group makes submissions that, where relevant, awards that contain pre-existing rostering provisions should be varied as follows: (a) To permit an employer and employee to agree to a roster variation, at any time; and (b) To provide a unilateral right

¹⁸ Cortis, N., Blaxland, M., and Charlesworth, S. (2021). *Challenges of work, family and care for Australia's retail, online retail, warehousing and fast food workers*. Sydney: Social Policy Research Centre, UNSW Sydney.

¹⁹ *ibid*

for an employer to vary the roster with a short period of notice in the event of unforeseen circumstances.

110. The SDA has made initial submissions in relation to rosters, and we continue to rely on those submissions, which highlight the unfair rostering practices which are having significant impacts on worker carers.
111. We also note that in Appendix 1 of the Literature Review poor working time security in changes to rosters with little notice or consultation for worker-carers was identified as a key area for change. The Literature Review made recommendations to address this key area of change including:
- Changes to NES and awards to improve rostering protections for permanent and casual workers, to ensure they have levels of certainty and predictability of working hours and income needed to organise their care responsibilities and other aspects of their lives.³¹³
 - Improved rostering rights in modern awards to provide for greater predictability in rosters, advanced notice of roster changes and genuine consultation regarding changes to rosters.³¹⁴
 - Improved regulation of working hours and rosters to support the creation of better quality jobs in the care economy ³¹⁵
112. The recommendations are similar to some of those put forward by the SDA in our initial submissions and are in contrast to the proposals of the Ai Group.
113. The SDA does not support the proposal of the Ai Group and refers the FWC to paragraphs 107 to 172 of our submission, and recommendations 6 to 12.

Overtime, TOIL and make up time

114. The Ai Group made submissions to vary awards to include a provision allowing for make-up time, to provide for a standing agreement to be reached between an employer and employee for TOIL to be accrued on multiple instances of overtime; and vary the model TOIL clause to permit an employer and employee to extend the period over which accrued TOIL must be taken, by agreement.
115. The SDA has concerns with this proposal. While we have concerns with each individual proposal, we are particularly concerned about what the combination of these provisions could mean from a practical perspective.

116. An Award that provides standing consent for TOIL accrual for overtime worked, TOIL to be taken over a long period and the ability to take time off and work later is what a bank of hours system looks like.
117. In the retail industry, we have had bank of hours provisions in an Enterprise Agreement covering the employment of workers in a large business. For the period that the Bank of Hours system was in effect, we had frequent issues with its implementation and operation, which was largely beneficial for the employer and disadvantageous for employees.
118. The Ai Group claims that these provisions would enable a worker to better manage caring responsibilities, for example banking TOIL to be taken at a later time, for example during school holidays or taking time off for an appointment and making it up later. The issue SDA members found with the practical operation of this was that time could only be taken by agreement and this rarely lined up with when an employee needed it.
119. Instead, workers regularly worked overtime during peak periods, and this was banked rather than paid to them as overtime payments and the company would then only agree to them taking those banked hours in quieter sales periods, rather than when it suited the employee. When considering things like school holidays, in retail these are typically blacked out so that employees are not allowed to take time off during those times.
120. In the lead up to recent negotiations where we negotiated the removal of the bank of hours, a survey of SDA members found that more than 75% wanted the bank of hours removed. The response from members was that it worked in the favour of the company because the company always directed employees when they were to take banked hours. Members made the following comments in relation to bank of hours:

They use the bank of hours to fix the monthly budget & we lose hours without the team members actually using BOH ,we are forced to use it when it suits them not when we need them ,a lot of team get their roster reduced by 2 hrs a day for a month to work down the BOH & are too afraid to speak up

Bank of hours only work in company's favour, we are rarely consulted when we are told to use bank of hours

I would really like to be paid for the hours that I work, just like every other employee in every other company. It can't be that hard. I don't want time in lieu. It's not fair. The employee rarely gets to use the hours to their advantage. The Manager adjusts the rosters to his advantage. If you achieve nothing else, please abolish bank of hours.

Bank of hrs should not be forced or pressured to be taken when we go through slow periods

I start work intentionally at 1.30pm or 2pm and work 8 hours because in my previous jobs I didn't have a work life/balance. However team mates working in the day have less work/life balance because they are usually asked to work back etc. Some team members have racked up 80-100 hours in banked within a month or two, to help fill in the gaps and I don't think that's encouraging a work/life balance and this is why BOH needs to go. People end up losing their bank of hours as it's not paid out.

I've seen team members not able to use bank of hours unless its in the businesses interest.

Often accrued hours in bank are whittled away to suit budgets, and not to give meaningful time off to team members. Totally disrespectful and not in the spirit of the agreement.

Get rid of bank of hours, bring back work life balance.

121. The SDA does not support the proposals by Ai Group.

Annual leave proposal

122. The Ai Group submit that modern awards should be varied to permit an employer and an employee to agree to the employee taking up to twice as much annual leave at a proportionately reduced rate of pay. We note that this is a similar proposal to that of the Motor Trade Organisation, which we have addressed above, and also ACCI.

123. Similar to our response above, there may be some merit to this proposal, however, there would need to be protections in relation to its use. We note that the ACTU has made suggestions in relation to those protections including that any such arrangement is initiated by the employee and is granted only at their request (not by employer directive); that it is not unreasonably refused by the employer; that the employer must keep appropriate records of the arrangement; that there be pro-rating of annual leave loading to cover the period of proportionate leave; and that payment for the period of proportionate annual leave should be the relevant proportion of what the employee would have been paid had the arrangement not applied.

124. The SDA supports the submissions of the ACTU in this matter and agree that if this proposal were to be considered that it be done with the appropriate protections to ensure that it is meeting its objective which is to assist employees to manage responsibilities outside work such as the provision of care.

Literature Review

125. The SDA notes the Literature Review which was published on 8 March 2024. While we have made some references to it throughout this submission, we wanted to acknowledge the contribution this makes to the Award Review process.
126. The SDA also notes that the findings of the Literature Review broadly support our submissions and the key areas of concern and change we identified. It also supports many of the SDA's recommendations for variations to Awards.
127. The SDA is also very supportive of the recommendations contained in Appendix 1 of the Literature Review to address the key areas for change.

Principles underpinning SDA policy positions

SDA policy is driven by providing value to our members whose work is regulated by a system that has been failing them for decades.

Australians need to be supported by an economic system that has working people at its centre. Our predecessors built an industrial system which provided the foundations for shared prosperity. It is now our responsibility to modernise the industrial framework for the current and future generations. Decades of concerted attacks on our industrial relations system has seen inequality grow, and economic and political power has further concentrated in the hands of a few.

The world of work has changed and will keep changing. There is an unprecedented intersection between work and care. Income and gender inequality have combined to increase disadvantage. Predictable, secure hours of work that provide a living wage are at the centre of decent work. But, there has been growth in insecure work, digitalisation is now a matter of course, and safety concerns have persisted.

We believe that fundamental not incremental change is needed. In contributing to policy, we seek to drive a new system that acknowledges the change that has occurred and will be fit for purpose in the emerging world of work.

The SDA engages in topics that help drive this agenda and we are guided by ten principles that we believe will create value for our members. Those principles are:

- 1. Address Inequality & Enshrine Fairness**
Minimum expectations must be set and adhered to.
- 2. Equity & Empowerment**
All workers must be supported to progress so that no-one is left behind.
- 3. Mobility & Security**
A socially successful economy must provide opportunity for all, regardless of their background. Systems must be built in a way that support success and adaptation in a rapidly changing world of work.
- 4. Delivering Prosperity & Growth For All**
A foundation for prosperity and economic growth must be achieved.
- 5. Protection in Work & Beyond**
Workplaces and the community must be healthy and safe for all workers and their families during and beyond their working lives.
- 6. Workers Capital & Superannuation**
Workers capital and superannuation must be an industrial right for all workers and treated as deferred earnings designed for dignity and justice in retirement.
- 7. A Strong Independent Umpire**
A strong, independent, cost effective and accessible industrial umpire and regulator must be central to the future system of work in Australia.
- 8. Protection & Support for Our Future**
Protecting and supporting our future requires a strong and vibrant retail industry and supply chain providing jobs with fair and just remuneration and contributing to the economy including through skilled workers.
- 9. Work & Community**
Work is a fundamental human activity that provides for personal, social and economic development. Work as it operates in community must build and protect a balance between life at work and life so that workers can contribute to society through the wider community.
- 10. Institutional Support for Collective Agents**
Institutional support must provide for collective agents (registered organisations) so that they are recognised, enshrined and explicitly supported as central to the effective functioning of the system.

Details of specific policy positions can be discussed by contacting the SDA National Office.

