



Fair Work
Commission

Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

Name

Natalie Dabarera

Organisation

United Workers Union

Contact details:

Street Address 1: 19-37 Greek Street

Street Address 2:

Suburb/City: Glebe NSW

Postcode: 2037

Email: natalie.dabarera@unitedworkers.org.au

Telephone: (02) 8204 3048

Modern Award Review Stream:

Arts and Culture:

Job Security:

Work and Care:

Usability of awards:

How to prepare a submission

Submissions should be emailed to awards@fwc.gov.au. Directions set out the due dates for submissions. Directions are issued by a Member of the Commission and will be published on the [Commission website](#).

Signature:

Name: Natalie Dabarera

Date: 26 March 2024

SUBMISSION IN REPLY OF THE UNITED WORKERS UNION

1. The United Workers Union (UWU) makes these submissions pursuant to directions issued on 21 February 2024 inviting interested parties to file submissions in reply as part of the Modern Awards Review 2023-2024 – work and care stream.¹
2. As noted in our initial submission dated 12 March 2024, UWU has a significant interest in the following awards being considered within the work and care stream of the modern award review:
 - a. Aged Care Award 2010 (Aged Care Award)
 - b. Children’s Services Award 2010 (Children’s Services Award)
 - c. Cleaning Services Award 2020 (Cleaning Award)
 - d. Fitness Industry Award 2020 (Fitness Award)
 - e. Hospitality Industry (General) Award 2020 (Hospitality Award)
 - f. Manufacturing and Associated Industries and Occupations Award 2020 (Manufacturing Award)
 - g. Miscellaneous Award 2020 (Miscellaneous Award)
 - h. Restaurant Industry Award 2020 (Restaurant Award)
 - i. Social, Community, Home Care and Disability Services Industry Award 2010 (SCHADS Award)
 - j. Storage Services and Wholesale Award 2020 (Storage and Wholesale Award)

Response to Employer Group submissions

3. These submissions are made in reply to submissions filed by the Australian Hospitality Association (AHA) and the Australian Industry Group (Ai Group), both filed on 12 March 2024.
4. UWU will respond to submissions and proposals made in relation to any of the industries in which it has an interest throughout the foreshadowed consultation process, as they arise.

¹ [2024] FWC 476.

Table A – UWU response to proposed variations across the Awards

Item	Proposed Variation	UWU Response
1	AHA proposes to introduce flexible part-time provisions from the Hospitality Award into other awards (paragraph [13], AHA submission dated 12 March 2024).	<p>UWU opposes this proposal.</p> <p>We draw upon our submission within the job security stream dated 5 February 2024:</p> <p>Most awards provide that in respect to a part time employee, at the time of engagement the employer and the part time employee will agree in writing on a regular pattern of work specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.²</p> <p>By contrast, the Hospitality Award and the Restaurant Award both provide that at the time of engagement, a part time employee will agree in writing on the number of hours of work the employee is guaranteed to be provided with over a roster cycle and on the days of the week during which an employee is available to work.³ This allows for and encourages a part-time employee’s ordinary hours of work and the days upon which they are worked being subject to significant variation from week to week (somewhat akin to casual engagement).</p> <p>The inclusion of these provisions in these awards was based in part on the very high incidence of casual employment in these industries, and a prediction that a form of flexibility such as this might increase the incidence of part time employment and decrease the incidence of casual employment.⁴ However, there is</p>

² These principles were established in the *Award Simplification Decision* [1997] M Print P7500 which used as its test case Award the predecessor to the current Hospitality Award - *the Hospitality Industry - Accommodation, Hotels, Resorts and Gaming Award 1995*. The principles were re-affirmed in the Award Modernisation Decision.

³ Clause 10.4, Hospitality Award; Clause 10.4, Restaurant Award.

⁴ *4 yearly review of modern awards – Casual employment and Part-time employment* [2017] FWCFB 3541 at [524] – [526].

		<p>very little evidence that the changes have had this effect – the incidence of casual employment in these industries remains very high and has not been impacted upon since the change was made.</p> <p>If this approach to part time engagement, which contrasts with many other awards, has not had the desired effect to increase the incidence of part time engagement and reduce casual engagement, all it does is make the part time employment that does occur under these awards a less secure form of employment.</p> <p>Further, workers with care responsibilities need regular and predictable hours to better permit them to plan around their responsibilities. Expanding this approach across modern awards would decrease the regularity and predictability of part-time employment and allow employers to treat part-time employees as de facto casuals, but without having to pay a loading.</p>
2	<p>Ai Group proposes to vary part-time employment clauses to provide:</p> <p>(a) Greater flexibility as to the fixation of employees’ ordinary hours of work;</p> <p>(b) Greater scope to vary their hours of work; and</p> <p>(c) The option to agree that the employee will work additional hours at ordinary rates (paragraph [89], Ai Group submission dated 12 March 2024).</p>	<p>UWU opposes this proposal.</p> <p>As we state just above, workers with care responsibilities need regular and predictable hours, and Ai Group’s proposals would decrease the regularity and predictability of part-time employment.</p>
3	<p>Ai Group proposes the introduction of facilitative provisions which would allow</p>	<p>We draw upon our submission in reply in the making awards easier to use stream dated 19 February 2024:</p>

<p>minimum engagement/payment periods to be reduced by agreement between an employer and employee (paragraph [166], Ai Group submission).</p>	<p>The UWU notes the FWC’s explanation of the rationale for minimum engagement periods in the 4 yearly review of modern awards – <i>casual employment and part-time employment</i> [2017] FWCFB 3541 as being “to ensure the employee receives a sufficient amount of work, and income, for each attendance at the workplace to justify the expense and inconvenience associated with that attendance....” (at [399]).</p> <p>The UWU does not consider that the inclusion of a requirement for employer and employee to agree to reduce the minimum engagement period provides a sufficient protection against employees being required, unwillingly, to incur the expense and inconvenience associated with a very brief attendance at work. The proposed variation ignores the power imbalance existing between employers and employees – particularly casual employees – which may result in employees feeling compelled to accede to an unfavourable arrangement in order to remain employed. The existence of minimum entitlements – such as the minimum employment period – protects employees against this possibility and should not be eroded.</p> <p>For workers with caring responsibilities, the cost and inconvenience of short minimum payment periods is high. Short minimum payment periods may discourage carers from entering the workforce in the first place, which is a significant issue, given ongoing workforce shortages in essential sectors such as aged care, disability support and ECEC. When carers are in the workforce, the costs of arranging alternative care, travel and related expenses may erode the benefits to such an extent that the arrangement can be considered exploitative.</p>
---	--

4	Ai Group proposes: To the extent that awards with rostering provisions do not already provide for a right for the employer to change the roster at short notice in unforeseen circumstances, they should be varied to do so (paragraph [186], Ai Group submission).	UWU opposes this proposal. Enabling employers to vary rosters unilaterally at short notice undermines the regularity and predictability of work. Regular and predictable working hours enables workers with care responsibilities to plan and make alternative care arrangements.
---	---	--

Clarification of matters raised in UWU initial submission

5. In paragraph [12] of our initial submission dated 12 March 2024 we stated:

The use of minimum hour contracts is endemic in the care and education sectors of aged care, disability support and ECEC. None of the relevant awards - the Aged Care Award, the SCHDS Award and Children's Services Award - provide overtime for hours in excess of ordinary hours. Without such a provision, employers have little incentive to roster effectively. Instead, employers can rely on providing additional hours at short notice to a workforce that is largely low paid, under-employed and desperate for additional hours.

6. We seek to amend this paragraph for the following reasons:

- The inclusion of the Aged Care Award within the second sentence of this paragraph was in error and we withdraw its inclusion. Clause 25.1(b)(iii) of the Aged Care Award does provide for overtime for part-time employees who work in excess of rostered hours, unless an agreement has been entered into under clause 10.3(c).
- Clause 10.4(f) of the Children's Services Award provides for the payment of overtime for part-time employees for additional hours in excess of 8 hours beyond the employee's normal hours (in addition to hours in excess of 8 hours on any one day).

7. We amend paragraph [12] as follows:

The use of minimum hour contracts is endemic in the care and education sectors of aged care, disability support and ECEC. The Children's Services Award provides for part-time employees to receive overtime when they work more than 8 hours in excess of their normal hours. The SCHDS Award does not provide overtime for hours in excess of contracted hours for part-time employees. Without a provision requiring

payment of overtime or penalties for all hours in excess of contracted hours within these sectors, employers have little incentive to roster effectively. Instead, employers can rely on providing additional hours at short notice to a workforce that is largely low paid, under-employed and desperate for additional hours.

8. In practice, members covered by the Aged Care Award advise us that overtime for part-time employees working hours in excess of contracted hours is also uncommon. It is a widespread practice in aged care for part-time workers to be employed on what the Senate Select Committee on Work and Care referred to as “*low base hours contracts*”.⁵ This creates a pool of workers who are underemployed and need additional hours to meet their living expenses. Employers can then offer workers additional hours by “*agreement*” and argue that in those circumstances they are not required to pay overtime. Low base hours contracts are a significant concern for workers in aged care.
9. UWU notes that many of the above matters will be discussed further in consultation sessions currently listed on 3 April, 4 April, 9 April, and 10 April. UWU reserves the right to add to or vary its submissions in relation to proposals during the consultation period, including adding to or varying its own submissions as filed on 12 March 2024.

Filed on behalf of the

United Workers Union

26 March 2024

⁵ Senate Select Committee on Work and Care, Final Report, March 2023, recommendation 25.