



## Modern Awards Review 2023-24 (AM2023/21)

### Submission cover sheet

#### Name

(Please provide the name of the person lodging the submission)

#### Organisation

(If this submission is completed on behalf of an organisation or group of individuals, please provide details)

“Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers Union (“AMWU”)

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Usability of awards:

## How to prepare a submission

Submissions should be emailed to [awards@fwc.gov.au](mailto: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](#).

Make sure you use numbered paragraphs and sign and date your submission.

Your submission. Provide a summary of your experience and any relevant issues. You may wish to refer to one or more of the issues outlined in the relevant discussion paper.

## Issues

1. [Using numbered paragraphs, outline the main issues you want the Fair Work Commission to consider as part of the Modern Award Review 2023-34 including your responses to any questions set out in Commission discussion papers. Include, if possible, references to any relevant sections of the *Fair Work Act 2009*, or other legislation or specific clauses in modern awards that apply].

## Proposals

2. [Tell us your proposals to the address the issues you have raised in the submission. If you are proposing that the Commission should consider varying an award, you should include draft wording for the proposed variation]

Signature: 

Name: Luigi Amoresano

Date: 05 February 2024



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## IN THE FAIR WORK COMMISSION

### s.157 – Variation of Modern Awards

**Matter no: (AM2023/21)**

**Party:** “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Union (AMWU)

### MODERN AWARDS REVIEW 2023-2024 STREAM 2 – JOB SECURITY

#### In Response to FWC Discussion Paper - Job Security (18 December 2023)

#### Introduction

1. The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers Union (“AMWU”) represents over 55,000 workers across a range of industries across Australia.
2. On 15 September 2023, (**September 2023 Statement**) the President issued a Statement outlining the scope of the Modern Awards Review 2023-2024 (**Review**)<sup>1</sup>. The Review was initiated on the Commission’s own motion in response to a letter received by the President from the Minister for Employment and Workplace Relations on 12 September 2023<sup>2</sup>.
3. The AMWU directs this submission to the second of the Minister’s priority areas as follows (**Stream 2 – Job Security**):

*“(2) considering whether the terms of modern awards appropriately reflect the new object of the FW Act and modern awards objective regarding job security and the need to improve access to secure work across the economy, including by:*

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<sup>1</sup> Modern Awards Review 2023-2024, President's Statement (15 September 2023)

<sup>2</sup> Letter from the Hon Tony Burke, Minister for Employment and Workplace Relations and Minister for the Arts to Hatcher J, President of the Fair Work Commission, 12 September 2023, p.1.

- (a) *Considering award provisions concerned with rostering, guaranteed shifts, and the interaction of permanent, part-time and casual classifications; and*
- (b) *Reviewing standard award clauses with general application across the award safety net, to assess their continuing suitability in light of the updated modern awards objective;*<sup>3</sup>

4. The AMWU welcomes the opportunity to constructively contribute to this crucial issue. Our submission is directed in response to the FWC Discussion Paper, *Job Security* published on 18 December 2023<sup>4</sup> (**Discussion Paper**).
5. The AMWU has reviewed a preliminary version of the Australian Council of Trade Unions (**ACTU**) submission and we strongly endorse the proposals put forth by the ACTU.

## **DISCUSSION PAPER ‘JOB SECURITY’**

6. The Discussion Paper at section 5<sup>5</sup> sets out seven ‘Discussion questions’ for consideration by interested parties directed to four general themes in context of how they interact with job security:
  - Questions 1 to 3 are directed to provisions in modern awards which relate to job and income security including notions of the regularity and predictability of the hours of work and income, and restricts the capacity of employers to terminate at will;
  - Questions 4 to 5 are directed to the exclusions of casual employees from accessing certain National Employment Standard (**NES**) entitlements (including paid leave) and the potential supplementation of NES entitlement gaps for casual employees;
  - Question 6 is directed to the use of individual flexibility arrangements (**IFA**) in awards; and
  - Questions 7 to 9 are directed to the group of standard clauses in modern awards including:
    - Individual flexibility arrangements;
    - Consultation about major workplace change;

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<sup>3</sup> Modern Awards Review 2023-2024, President's Statement (15 September 2023) at [3]. The other priority areas are (1) Arts and culture sector; (3) Work and care; and (4) Making awards easier to use.

<sup>4</sup> Fair Work Commission; Discussion Paper, Job Security, Modern Awards Review 2023-2024 (18 December 2023)

<sup>5</sup> Discussion Paper; pp 108-109

- Consultation about change to rosters or hours of work;
- Dispute resolution;
- Termination of employment; and
- Redundancy.

## **AMWU INTEREST IN THE REVIEW**

7. The seven Modern Awards under consideration collectively influence the working conditions of a significant portion of the workforce, accounting for more than half of all award-reliant employees.<sup>6</sup> The AMWU believes, however, that the discussion on these Awards may not take into account the reliance that workers in other industries may have on the job security provisions in Modern Awards generally.
8. While the AMWU does not, as part of its industrial coverage, have a direct interest in any of the seven awards subject to the Review, however a number of our members rely heavily on the job security provisions contained in the Modern Awards, both directly and indirectly. For example, many enterprise agreements incorporate the Modern Awards and rely on some of the Awards' industry-wide provisions (such as temporary shut-down and, until the past few years, casual conversion). Other workers, including many engaged via labour hire arrangements, those employed by small businesses such as mechanics and often factory workers from non-English speaking backgrounds, working in smaller factories rely heavily on job security provisions embedded in modern awards to safeguard their employment rights.
9. It is from this perspective that we seek to contribute constructively to this review. We believe that the results of this review and standards will resonate beyond the immediate scope of the specified awards, thereby shaping the fabric of job security and employment conditions across various sectors. Consequently, we aim to provide insights and recommendations that not only reflect the interests of our members but also align with the broader objectives of promoting job security and access to secure work as envisaged by the updated modern awards objective.

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<sup>6</sup> Discussion Paper; p47

## AMWU ANSWERS TO THE QUESTIONS OF THE DISCUSSION PAPER

### Response to questions 1 to 3

10. Questions 1 to 3 are reproduced below:

1. *Are there specific provisions in the seven modern awards the subject of this review that parties consider are necessary to improve access to secure work across the economy? Parties are asked to specifically consider provisions dealing with:*
  - a. *Types or modes of employment;*
  - b. *Rostering arrangements, including rostering restrictions;*
  - c. *Payment of wages, in particular pay cycles;*
  - d. *Agreed regular patterns of work or guaranteed hours for part-time employees; and*
  - e. *Minimum engagement/payment periods.*
2. *Are there any additional specific award provisions that are consistent with the new modern awards objective? If so, parties are asked to consider and address whether it is relevant and necessary to vary any awards to include that or those specific award provision(s).*
3. *Are there specific award provisions that are not consistent with the new modern awards objective? If so, parties are asked to address whether it is relevant and necessary to vary any awards to amend or remove that specific award provision.*

11. The AMWU believes that the Facilitative Provision in the Manufacturing and Associated Industries and Occupations Award 2020 (**Manufacturing Award**)<sup>7</sup> provide additional protections for workers regarding job security. Those provisions promote job security by offering a flexible and collaborative approach to employment conditions. In particular, the requirement for agreement rather than just the obligation of the employer to consult on certain decisions, provides a more stable foundation for employees. The ability to negotiate and document agreements on an individual or collective basis ensures that their evolving needs and preferences are taken into account. The AMWU position is that this provision should be expanded to other Modern Awards.

12. In regard to the types or modes of employment the AMWU supports recommendation 18 of the “Senate Committee on Job Security Second interim report: insecurity in publicly-funded jobs, October 2021” which was directed at amending relevant Modern Awards to ensure the widespread practice of low minimum-hours part-time contracts is restricted.<sup>8</sup>

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<sup>7</sup> Manufacturing and Associated Industries and Occupations Award 2020, Clause 7

<sup>8</sup> Senate Committee on Job Security Second interim report: insecurity in publicly-funded jobs, October 2021

13. The AMWU agrees with the report and suggests that Modern Awards Part time provisions should be modified so to:
- “specifying a minimum number of part-time hours that can be included in standard contracts;
  - requiring employers to pay over-time rates for hours worked over and above contracted hours;
  - including automatic mechanisms for review—for instance, if after six months an employee is consistently working above contracted hours, they should be offered the opportunity for the contract to be amended to reflect the actual hours worked”<sup>9</sup>

### Response to Question 4 and 5

14. Questions 4 and 5 of the discussion paper raise the important issue of the interaction between the casual loading in modern awards and the NES entitlements which casual employees are excluded from.
15. The introduction of casual conversion conditions into the **NES** was useful for enhancing job security among casual workers. However, as highlighted in our submission to the “Fair Work Legislation Amendment (Closing Loophole) Bill 2023” dated 4 October 2023 (**AMWU Closing Loophole Submission**)<sup>10</sup>, the actual implementation has inadvertently diluted the robustness of conversion conditions in certain Modern Awards, thereby undermining the very essence of job security that these provisions aimed to bolster. For example the Manufacturing Award had six months qualifying period for causal conversion which was then made it harder by the NES provision at least in term of the qualifying period.
16. The AMWU's advocacy for a reduced qualifying period for casual conversion to three (3) months is rooted in a profound understanding of the precarious nature of casual employment. The data presented in our previous submission (**AMWU Closing Loophole**

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<sup>9</sup> Senate Committee on Job Security Second interim report: insecurity in publicly-funded jobs, October 2021

<sup>10</sup>AMWU Closing Loophole Submission <https://www.afpu.gov.au/DocumentStore.ashx?id=94ff087d-8cd6-4323-934b-9294b27e04a9&subId=749162>

**Submission)** paints a stark picture of the rising trend of casual employment, a trend that, if left unchecked, threatens to erode the job security of a significant portion of the workforce.

17. Although the NES provides the Fair Work Commission (FWC) with the ability to arbitrate disputes concerning casual conversion, the AMWU believes that the FWC should have the power to arbitrate any disputes concerning work status, contractual arrangements, and/or casual conversion, without requiring the consent of both parties. We believe this right should be included in all Modern Awards.
  
18. Moreover, the absence of a 'workplace right' for casual workers to take leave due to illness or injury without penalty is a glaring gap in the job security framework. This is particularly the case for workers who are employed by labour hire companies, but who may have rosters and other work arrangements set by the host employer. The proposal for an award-based response providing a right for casual workers to be absent due to injury or illness and safeguarding against alterations in their shifts, is a robust step to fortify job security for all workers.

### **Response to Question 7 and 8**

19. Questions 7 and 8 of the discussion paper invite consideration of whether the standard clauses engage, positively or negatively, with the amended object of the FW Act set out in s. 3(a) (“..promote job security..”). and the amended modern award objective set out in section 134(1)(aa) (“..the need to improve access to secure work across the economy..”).
  
20. Questions 7 and 8 are reproduced below:
  7. *Having regard to the following modern award standard clauses:*
    - *Individual flexibility arrangements;*
    - *Consultation about major workplace change;*
    - *Consultation about changes to rosters or hours of work;*
    - *Dispute resolution;*
    - *Termination of employment; and*
    - *Redundancy.*

*a. Are provisions of the standard clauses consistent with the new modern awards objective?*

*b. Do any of the standard clauses negatively impact job security? If so, how?*

*c. Do any or any part of the standard clauses:*

*i. prevent or limit access to secure work?*

*ii. enhance access to secure work?*

8. *Are there variations to the standard clauses that could improve access to, or remove barriers to accessing, the standard clauses by employees who are vulnerable to job insecurity?*

## **Individual Flexibility Arrangements**

21. For some workers, particularly those for whom English is not their first language and/or those who are on temporary migrant visas, they may not realize the impact that changes contained in an **IFA** might have on their roster and/or take-home pay. The AMWU notes in this regard the provision in the Textile, Clothing, Footwear and Associated Industries Award [MA000017] (**Textile and Clothing Award**).<sup>11</sup>

22. The Textile and Clothing Award contains an additional provision giving the employee seven (7) working days to enable them to seek advice from the employee's union regarding an IFA request. We argue that this provision should be extended to all Modern Awards.

## **Termination of employment**

23. The AMWU fully supports the ACTU submission on this matter.

24. One of the main issues the AMWU has with this clause is the extent to which the termination of employment clause allows the employer to terminate at will. The unfair dismissal jurisdiction does play this role, but only after an employee has "been dismissed".

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<sup>11</sup> Textile, Clothing, Footwear and Associated Industries Award [MA000017] , Clause 5.10

25. We particularly support the ACTU view that the most logical condition to embrace in such a clause would be a condition designed to prevent the employer from dismissing an employee without a valid reason, except in cases of genuine redundancy (within the meaning of s.389) or summary dismissal.

### **Consultation about changes to rosters or hours of work**

26. Ideally the obligation to consult on changes to rosters or hours of work should be extended to the host employer of labour hire workers. For workers on longstanding assignments, it is the requirements or the expectation of the host employer that determines the roster. Labour hire companies may be given set rosters or arrangements to be filled and have little or no ability to influence the host employer on those matters. Labour hire workers, especially those on long term assignments, should have the ability to influence the debate about work arrangements with the employer that sets those requirements, namely the host employer.

### **Conclusion**

27. With the skyrocketing cost of living and mortgage and rental stress, job security is a priority issue for AMWU members and all workers. We look forward to participating further in this review.