



Fair Work
Commission

Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

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

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(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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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 3– WORK AND CARE

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). 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.
3. The AMWU welcomes the opportunity to constructively contribute to this crucial issue. Our submission is directed in response to the FWC Discussion Paper, Work and Care published on 29 January 2024 (Discussion Paper).
4. 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.

AMWU INTEREST IN THE REVIEW

5. The 25 Modern Awards under consideration collectively influence the working conditions of a significant portion of the workforce, accounting for approximately 80% award-reliant employees.¹ The AMWU has a direct interest in the *Manufacturing and Associated Industries and Occupations Award 2020* (Manufacturing Award) and *Vehicle Repair, Services and Retail Award 2020* (Vehicle Award), as part of its industrial coverage.
6. Whilst we note that the 25 modern awards identified in the Discussion Paper have been selected to include the most commonly used awards, we do not accept that the review be restricted to those awards only. Limiting this stream of the review to the 25 identified awards risks uneven protection between Modern Awards and fails to address the work and care needs of the remaining award reliant workers.
7. 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 work and care across various sectors and industries. Consequently, we aim to provide insights and recommendations that may have a beneficial impact to other Modern Awards.

SUMMARY OF RECOMMENDATIONS

Recommendation 1:

That the FWC consider varying awards so that:

- Employers should be required to give advance notice of at least 4 weeks of rosters and roster changes (except in exceptional circumstances);
- Expressly prohibit employers from changing rosters without consultation and genuinely considering employee views about the impact of proposed roster changes and to accommodate the needs of the employee; and
- Ensure employees have a 'right to say no' to extra hours with protection from negative consequences.

¹ Fair Work Commission, *Work and Care Modern Awards Review 2023-24* (Discussion Paper, 29 January 2024) 26.

Recommendation 2:

That the FWC vary awards to introduce a provision that provides that employees will be paid (where a more beneficial entitlement does not already exist):

- 175% of the ordinary hourly rate for the first 3 hours and 200% thereafter for overtime performed Monday to Friday; and
- All weekend overtime is paid at 200%.

Recommendation 3:

That the FWC consider varying awards so that:

- Call-back applies when an employee is called back to perform work at a time when they would not ordinarily be at work and the employee has not been notified prior to last finishing work that they would be called back.
- an employee called back will be paid one hour's ordinary pay for the call back; and
- In addition, all time worked on a call-back will be paid for at double ordinary hourly rates of pay with a minimum of 4 hours' work or payment at that rate instead.

Recommendation 4:

That the FWC consider varying awards to extend paid annual leave to 5 weeks for all employees, including casual employees (who have worked a period of 3 months).

Recommendation 5:

That the FWC consider varying awards to introduce that an employee's entitlement to personal/carer's leave should be equivalent to 10 ordinary time shifts (regardless of length).

Recommendation 6:

That the FWC consider introducing shorter ordinary hours (at no loss of pay).

PART-TIME

8. The AMWU endorses the ACTU's submission and recommendation with respect to Part-time provisions.

INDIVIDUAL FLEXIBILITY AGREEMENT

9. The AMWU endorses the AMWU's submissions in the job security stream and the ACTU submission and recommendation with respect to Individual Flexibility Agreements.

FACILITATIVE PROVISIONS

10. The AMWU endorses the ACTU's submission and recommendation with respect to Facilitative Provisions.

WORKING FROM HOME

11. The AMWU endorses the ACTU's submission and recommendation with respect to Working from Home.

MINIMUM PAYMENT PERIODS

12. The AMWU endorses the ACTU's submission and recommendation with respect to minimum payment periods.

SPAN OF HOURS

13. The AMWU endorses the ACTU's submission and recommendation with respect to span of hours.

NOTICE OF ROSTERS

14. The AMWU welcomes the Discussion Paper's acknowledgement that employees with caring responsibilities often face negative consequences and pressures over constant roster variations.² As noted in the Discussion Paper, notice periods for rosters impact work and care planning, with a regular schedule the most common working arrangement change sought by new parents.³

15. Further, there are limited and uneven protections in Modern Awards with respect to notice of rosters as seen in **Table 1**.

² Ibid 39.

³ Ibid 103.

Table 1: Notice periods for roster changes and RDO changes – comparison Manufacturing and Vehicle Award

Modern Award	Notice for Rosters	Notice of changes to rosters	Notice of changes to RDOs
Manufacturing Award	48 hours' notice for shift workers (clause 2, 33.2(a)(iv))	X	X
Vehicle Award	X	X	X

16. Employees will greatly benefit from receiving roster notifications well in advance and these notice requirements should be consistent across Modern Awards to ensure that employees have equal access to provisions that assist with balancing work and care needs.
17. The AMWU;s proposed recommendations would expand on ACTU and AMWU’S job security submissions which called for greater certainty and stability in rostering and avoiding short notice periods for roster changes.

Recommendation 1:

That the FWC consider varying awards so that:

- Employers should be required to give advance notice of at least 4 weeks of rosters and roster changes (except in exceptional circumstances);
- Expressly prohibit employers from changing rosters without consultation and genuinely considering employee views about the impact of proposed roster changes and to accommodate the needs of the employee; and
- Ensure employees have a 'right to say no' to extra hours with protection from negative consequences.

AVAILABILITY AND GUARANTEED REGULAR HOURS

18. The AMWU endorses the ACTU's submission and recommendation with respect to span of hours.

OVERTIME, TOIL, AND MAKE-UP TIME

19. Overtime has become a prevalent feature in Australia. The OECD recognises that an important aspect of work-life balance is the amount of time a person spends at work. In Australia, about 13% of employees work very long hours in paid work, above the OECD average of 10%.⁴ It is undeniable that the more people work, the less time they have to spend on other activities, such as personal care, care, responsibility or leisure.
20. In addition to the ACTU's submission and recommendation, the AMWU recommends that the overtime penalty concerning the first three hours of overtime should be increased, in recognition that additional hours of work impacts work and care.

Recommendation 2:

That the FWC vary awards to introduce a provision that provides that employees will be paid (where a more beneficial entitlement does not already exist):

- 175% of the ordinary hourly rate for the first 3 hours and 200% thereafter for overtime performed Monday to Friday; and
- All weekend overtime is paid at 200%.

ON-CALL AND RECALL TO DUTY

21. When recalled to duty, workers are generally entitled to a rate that compensates them for returning to work after leaving or being at work at a time they are not ordinarily at work.
22. Table 2 sets out the minimum payment period for recall to duty in different Modern Awards the AMWU has an interest in.

⁴ <https://www.oecdbetterlifeindex.org/topics/work-life-balance/>

Table 2

Modern Award	Minimum payment period for recall to duty
Manufacturing Award	<ul style="list-style-type: none"> Recalled to work overtime after leaving the enterprise – 4 hours (clause 32.13(b)); Where an employee is required to regularly hold themselves in readiness for a callback – 3 hours (clause 32.13(c)) Vehicle manufacturing employees: recalled to work overtime after leaving the employer’s business premises – 3 hours (clause 57.6(a))
Vehicle Award	<ul style="list-style-type: none"> Breakdown call-backs for a breakdown, accident, or emergency work – 2 hours (clause 24.9) Breakdown call-backs for a breakdown, accident, or emergency work – 3 hours (clause 24.9)
Graphic Arts, Printing and Publishing Award 2020 (Print Award)	<ul style="list-style-type: none"> Recalled to work at a time when they would not ordinarily be at work - 3 hours (clause 29) Where an employee is required to regularly hold themselves in readiness for a callback – 3 hours (clause

23. The AMWU recommends that the general recall/called-back entitlement should be similar to the entitlement contained in clause 29 of the Print Award to properly compensate for the disruption and unpredictability that call back poses to work and care responsibilities.

Recommendation 3:

That the FWC consider varying awards so that:

- Call-back applies when an employee is called back to perform work at a time when they would not ordinarily be at work and the employee has not been notified prior to last finishing work that they would be called back.
- an employee called back will be paid one hour’s ordinary pay for the call back; and
- In addition, all time worked on a call-back will be paid for at double ordinary hourly rates of pay with a minimum of 4 hours’ work or payment at that rate instead.

TRAVEL TIME

24. The AMWU endorses the ACTU's submission and recommendation with respect to Travel Time.

ANNUAL LEAVE

25. Paid annual holidays have been a standard feature of Australia's industrial relations system since 1941. While the amount of annual leave increased from 1 week a year in 1941 to 4 weeks in 1973, there has been no further developments to this entitlement.⁵ Only certain shift workers are entitled to 5 weeks of annual leave.

26. Further, the entitlement to annual leave typically does not extend to casual employees, with few exceptions. For example, in the Manufacturing Award, casual vehicle manufacturing employees engaged in the technical field are entitled to a casual loading of 17.5% along with annual leave and annual leave loading on a pro rata basis (see clause 48.1). The AMWU calls for extending annual leave to casual employees, so that more workers can have access to leave arrangements that provide relief and support for balancing work and care obligations.

27. However, extending annual leave to casual employees is not enough, the AMWU is of the view that employees should be entitled to 5 weeks annual leave regardless of their shiftworker status. An increase in paid annual leave entitlements would be a meaningful step forward to ensuring that leave entitlements align with contemporary work practices and support a more flexible approach to workforce participation.

28. In 2023, the AMWU conducted a survey of its membership (**AMWU Member Survey**) to ascertain the pressing concerns of the membership about working life including questions about quality of life for workers, their view on the hours worked a week, time for leisure and other commitments. 94.27% of survey participants reported support for an increase in the minimum entitlement to annual leave to 5 weeks. An increase to annual leave entitlements also ranked in the top 3 claims AMWU members identified as priorities in bargaining.

⁵ The Australian Institute, *Annual leave in Australia: An analysis of entitlements, usage and preferences* (Discussion Paper, No 56, July 2003).

29. When compared to other countries, Australia's four weeks annual leave entitlement is relatively low. The average annual leave entitlement in the European Union is over five weeks.⁶ In Austria, Denmark, France, Luxembourg and Sweden, the statutory minimum paid leave is 25 days, while in Portugal and Spain it is 22 days.⁷

Recommendation 4:

That the FWC consider varying awards to extend paid annual leave to 5 weeks for all employees, including casual employees (who have worked a period of 3 months).

PERSONAL/CARER'S LEAVE

30. The AMWU endorses the ACTU's submission and recommendation with respect to personal/carer's leave.
31. Additionally, the AMWU recommends that an employee's entitlement to personal/carer's leave should be equivalent to 10 ordinary time shifts (regardless of length).
32. The High Court decision⁸ cemented the 'notional day' construction of a 'day' in the Fair Work Act.
33. The effect of the decision is that shift workers may exhaust their entitlement to '10 days' of personal leave in a year before they can take 10 separate calendar days of leave without loss of pay.
34. This decision has had adverse consequences for shift workers who have work and care responsibilities. If an employee works a 12-hour shift and needs to take a sick day, then they

⁶ Jessica Irvine, 'How did we get four weeks' annual leave – and are we due a rise?' *Sydney Morning Herald* (21 January 2021) < <https://www.smh.com.au/business/the-economy/how-did-we-get-four-weeks-annual-leave-and-are-we-due-a-rise-20201216-p56nuk.html> >

⁷ OECD, *OECD Employment Outlook 2021 : Navigating the COVID-19 Crisis and Recovery* (Web Page) <https://www.oecd-ilibrary.org/sites/5a700c4b-en/1/3/5/index.html?itemId=/content/publication/5a700c4b-en&_csp_=d31326a7706c58707d6aad05ad9dc5ab&itemIGO=oecd&itemContentType=book>

⁸ *Mondelez Australia Pty Ltd v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union*; *Minister for Jobs and Industrial Relations v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union* [2020] HCA 29

should be paid for their normal hours of work, in recognition that these long and unsociable hours detract from work and care responsibilities.

Recommendation 5:

That the FWC consider varying awards to introduce that an employee's entitlement to personal/carer's leave should be equivalent to 10 ordinary time shifts (regardless of length).

DEFINITION OF IMMEDIATE FAMILY

35. The AMWU endorses the ACTU's submission and recommendation with respect to the definition of immediate family.

UNPAID CARER'S LEAVE

36. The AMWU endorses the ACTU's submission and recommendation with respect to unpaid carers leave.

PERSONAL/CARER'S LEAVE

37. The AMWU endorses the ACTU's submission and recommendation with respect to personal/carers leave.

CEREMONIAL LEAVE

38. The AMWU endorses the ACTU's submission and recommendation with respect to ceremonial leave.

OTHER VARIATIONS – SHORTER ORDINARY HOURS

39. The National Employment Standards set out that the maximum weekly hours of work are 38 hours per week and additional overtime must be reasonable. The medium hours worked in Australia are 38 hours per week.⁹

⁹ Australian Bureau of Statistics, *2021 Census: Fewer Australians working 40 hours or more per week* (12 October 2022).

40. However, AMWU workplaces have already achieved reduced ordinary hours, with the AMWU's members in the print industry securing a 35-hour work week in some enterprise agreements.¹⁰

"I currently work 6 days a week. Working these long hours doesn't leave any opportunity to help around house or spend time with loved ones. A shorter work week would help facilitate a work-life balance".

Thomas, AMWU member

41. The AMWU Member survey reported that 81.49% of respondents would support a shorter work week without loss of pay in their workplace.

42. The world's largest study and pilot on the shorter work week has revealed positive results for employers and employees.¹¹ Autonomy Research surveyed 61 companies and 2,900 employees in the U.K., across different industries (7% of the companies were in the manufacturing industry).¹² All companies involved in the survey maintained pay at 100% and gave employees a 'meaningful' reduction in work time.¹³ The Study has revealed a number of benefits, with 60% of employees finding an increased ability to combine paid work with care responsibilities and 62% reported it easier to combine work with social life.¹⁴

43. The AMWU membership is reflective of the workers in Australia who by 2050 will be aged over 55. This cohort will make up 40% of the adult population.¹⁵ One third of people aged 60-64 will have some form of caring responsibilities that are other than caring for school age children and

¹⁰ See: *Opal Fibre Packaging National Enterprise Agreement 2022; Opal Australian Paper Enterprise Agreement 2020 - 2023 Maryvale Mill Mechanical Maintenance and Engineering Store.*

¹¹ Will Stronge and Aidan Harper, 'The Shorter Working Week: A Radical And Pragmatic Proposal' Autonomy Research (2019).

¹² Kyle Lewis et al, 'The Results are in; The UK's 4 day week Pilot' Autonomy Research (2023) 6.

¹³ Ibid 20.

¹⁴ Ibid 6.

¹⁵ CEPAR, *Tapping into Australia's aging workforce: insights from recent research* (Research Brief, June 2021) 3.

the duration and load of such caring increases with age.¹⁶ Older people in the workforce may be experiencing less time spent caring but the intensity of these responsibilities of caring may be more due to an ageing partner, parents or other like responsibilities.

44. AMWU members are also those that are engaged in physically demanding work where the need for rest and physical recuperation is a necessity to ensure health. A meaningful reduction in working hours will remove a persistent barrier for workers maintaining their health as they age, and help in sustaining the meaningful community and family responsibilities they have.

“I am 55 years old and worked a 40-hour week my whole life. A shorter work week would mean I would have more time to myself. Office workers are doing it, and it should be something that it done in manufacturing”

Brad, AMWU Member

Recommendation 6:

That the FWC consider introducing shorter ordinary hours (at no loss of pay).



Brianna Munoz

Date: 12/3/2024

¹⁶ Ibid.