

Part-time provisions (Q1)  
Availability and guaranteed regular hours (Q9)  
Overtime for part-time employees (part of Q10)  
Individual flexibility arrangements (Q2)  
Facilitative provisions (Q3)

## SUMMARY OF SUBMISSIONS

This submission summary document has been prepared by staff of the Fair Work Commission (**Commission**) to assist with the Work and Care stream of the Modern Awards Review 2023-24. The summary document does not represent the concluded view of the Commission on any issue.

This document been prepared to assist parties on **Consultation Day 1** dealing with the following issues related to part-time employment and workplace flexibilities.

### **Morning Session: Part-Time Employment**

- **Discussion question 1 - Part-time employment** - Are there any specific variations to part-time provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?
- **Discussion question 9 - Availability and guaranteed hours** - Are there any specific variations to guaranteed hours or availability of hours provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?
- **Part of discussion question 10 - Overtime for part-time employees** - Overtime as it relates to part-time employment.

### **Afternoon Session: Workplace Flexibilities**

- **Discussion question 2 - Individual flexibility arrangements** - Are there any specific variations to the individual flexibility agreement provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?
- **Discussion question 3** - Are there any specific variations to the facilitative provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

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# AM2023/21 – Modern Awards Review 2023-24

## Work and Care Stream

### Consultation day 1

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<b>Glossary</b>	
<b>ABI/BNSW</b>	Australian Business Industrial (ABI) and Business NSW
<b>ACCI</b>	Australian Chamber of Commerce and Industry
<b>ACTU</b>	Australian Council of Trade Unions
<b>AHA</b>	Australian Hotels Association
<b>AHEIA</b>	Australian Higher Education Industrial Association
<b>Ai Group</b>	Australian Industry Group
<b>AMWU</b>	Australian Manufacturing Workers' Union
<b>ANMF</b>	Australian Nursing and Midwifery Federation
<b>ARA</b>	Australian Retailers Association
<b>ASU</b>	Australian Municipal, Administrative, Clerical and Services Union
<b>Carers Tas</b>	Carers Tasmania
<b>CEPU</b>	Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia
<b>CFW</b>	Australia Institute - Centre for Future Work
<b>CGCL</b>	Circle Green Community Legal
<b>CLC Group</b>	South-East Monash Legal Service, WEstjustice CLC and Jobwatch
<b>CPSU</b>	Community and Public Sector Union - Public Services Union Group
<b>CPSU-SPSF</b>	Community and Public Sector Union - State Public Service Federation Group
<b>FAAA</b>	Flight Attendants Association of Australia
<b>HSU</b>	Health Services Union
<b>LCA</b>	Law Council of Australia
<b>MEU</b>	Mining & Energy Union
<b>MTO</b>	Motor Trades Organisations
<b>NECA</b>	National Electrical and Communications Association
<b>NTEU</b>	National Tertiary Education Union
<b>SDA</b>	Shop, Distributive and Allied Employees' Association
<b>UWU</b>	United Workers Union
<b>WFPR</b>	Work and Family Policy Roundtable

<b>Part-Time Provisions - Discussion Question 1</b>					
Are there any specific variations to part-time provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?					
Party	REF	THEIR REF	Issue	Commentary	Proposal
ABI/BNSW	1.	15 p6	No specific variations to part-time provisions - ABI/BNSW	ABI/BNSW submit that they do not propose any specific variations to part-time provisions in modern awards.	<b>Proposal Summary:</b> No variation proposed.
ACCI	2.	42-51 p12-13	No specific variations to part-time provisions - ACCI	ACCI submits that the imposition of further restrictions has the potential to undermine the current flexibilities being used by workers with caring responsibilities and their employers to accommodate their specific needs. The creation of part-time provisions which are rigid or provide “one-way” flexibility are likely to disincentivise employers from agreeing to, or being able to accommodate, part-time arrangements.	<p><b>Proposal Summary:</b> ACCI does not propose any specific variations to part-time provisions in modern awards and would reject any attempts by other parties to vary modern awards to make them more unattractive to employers, particularly by introducing further rigidity.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• NECA</li> <li>• Clubs Australia</li> </ul>
ACTU	3.	29-34 p18-20	Part-time employment variations - ACTU	<p>ACTU submits that many part-time employees are engaged on (often very) low hour contracts, but regularly rostered to perform close to full-time hours. This makes it more likely for part-time workers to agree to work additional hours over their agreed minimum hours when asked to. Employee’s rosters can be filled up entirely with “additional hours” at no overtime pay, there is no regular agreed pattern of those additional hours, and as a result, weekly hours and wages become variable. This compounds upon low rates of pay in feminised industries and creates a high level of insecurity and uncertainty, resulting in workers being reluctant to use leave entitlements or request flexibility.</p> <p>ACTU concurs with Recommendations 21 and 25 of the Final Report of the Senate Select Committee on Work and Care pertaining to ensuring employees have a “right to say no” and</p>	<p><b>Proposal Summary:</b> Employees should have as much certainty and predictability about their hours week-to-week as possible. Some factors are being addressed in job security stream and in other submissions to work and care stream.</p> <p>Awards should be varied considering the following:</p> <ul style="list-style-type: none"> <li>• Providing security around patterns of hours that have become regular. For example, where additional hours are worked on a regular basis over 6 months, employees should have the right to elect to convert those additional hours to be part of their permanent ordinary contracted hours. There should be</li> </ul>

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Party	REF	THEIR REF	Issue	Commentary	Proposal
				restrictions of low base hour contracts that can be “flexed up” without incurring pay penalty.	<p>provision for 6 monthly reviews of part time hours to facilitate this.</p> <ul style="list-style-type: none"> <li>• Fairness and certainty on minimum engagements, including on a weekly basis for part time workers (for example a 15-hour minimum for part time employees in the awards that cover SDA members, as identified in the SDA submission).</li> <li>• Ensuring that prior to commencing employment, employees and employers agree in writing on a regular pattern of work including the days, hours and start/finish times.</li> <li>• Ensuring part time workers are paid overtime for working outside agreed hours.</li> <li>• Providing a process whereby employees who work hours that are “irregular, sporadic or unpredictable” are given an opportunity to express their interest in working hours which are regular and predictable, and an obligation on employers to provide such hours where operational requirements allow.</li> <li>• Requiring employers to inform those employees when such hours were available to them (even if only on a temporary basis), and what payment they would attract.</li> </ul> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> <li>• AMWU (para 8)</li> </ul>
AHA	4.	6-13 p2-3	<b>Standard definition of part-time employment</b>	AHA submits that flexible part-time provisions improve access to secure work, facilitate women’s full economic participation in the workplace and promote the need to have flexible modern work practices and efficient and productive performance of work for both employers and employees.	<b>Proposal Summary:</b> Propose a standard definition for part-time employment across modern awards based on the Hospitality Award clause 10:



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			<b>based on Hospitality Award - AHA</b>	<p>AHA notes the standardisation of part-time provisions in modern awards will ensure consistency in business practices, especially for businesses operating across several awards.</p> <p>Flexible part-time provisions of the Hospitality Award contain several key safeguards that are necessary to continue over into other modern awards.</p> <p>Flexible part-time provisions also provide option for increased flexibility for part-time employees, compared to rigid provisions currently contained in some awards e.g. clause 10 of the Retail Award. For employees who prefer the certainty of having the same hours on the same days week to week, flexible part-time provisions do not displace those arrangements.</p> <p>For employees who require more flexibility, including those with caring commitments or managing a medical condition, having a higher degree of flexibility can still occur with employment security afforded by their permanent employee status. Provisions encourage employer's ability to provide ad hoc flexibility to employees.</p>	<ul style="list-style-type: none"> <li>• Minimum and maximum engagements per week (clause 10.2(a)).</li> <li>• Obligation to provide employees with reasonably predictable hours of work (clause 10.2(b)).</li> <li>• Setting of guaranteed hours to be provided and paid to employee over roster cycle (clause 10.4(a)).</li> <li>• Changes to an employee's guaranteed hours occurring only by written consent of the employee (clause 10.5).</li> <li>• Rostering protections not to be rostered outside employee's agreed availability (clause 10.7(a)).</li> <li>• Entitlement to payment of overtime in cases where employee is required to work outside availability (clause 10.13(b)).</li> <li>• Ability to work additional hours within employee's advised availability, above their guaranteed hours, by employee agreement (clause 10.6).</li> </ul>
<b>AHEIA</b>	5.	1 p4-5	<b>No variations needed - AHEIA</b>	AHEIA submits that in relation to part-time General Staff Award, the combination of clauses 10 and 8.2 provide certainty with respect to total hours, pattern of work and hours worked each day, days of the week worked, and actual starting and finishing times each day.	<b>Proposal Summary:</b> No variation proposed.
<b>Ai Group</b>	6.	86-89 p35-36	<b>Propose a standard definition of part-time employment - Ai Group</b>	<p>Ai Group submits that standard part-time model clauses in modern awards usually contain the following:</p> <ul style="list-style-type: none"> <li>• A definition of part-time employee as one who works a "regular pattern" of hours and/or who has "reasonably predictable hours".</li> <li>• The employer and employee must agree on the arrangement of the employee's ordinary hours upon engagement, including the days they will work each week and the specific start and finish times. Some modern awards require agreement as to when the employee will take their meal breaks and for how long.</li> </ul>	<p><b>Proposal Summary:</b> Propose a standard definition for part-time employment across modern awards. Liberalise access to part-time employment in awards that adopt the standard part-time model in the following ways:</p> <ul style="list-style-type: none"> <li>• Greater flexibility as to the fixation of employees' ordinary hours of work.</li> <li>• Greater scope to vary their hours of work.</li> <li>• Option to agree that the employee will work additional hours.</li> </ul>



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Party	REF	THEIR REF	Issue	Commentary	Proposal
				<ul style="list-style-type: none"> <li>Typically, changes can be made only by agreement.</li> <li>Minimum engagement/payment periods apply, requiring employers to engage or pay an employee for a minimum number of hours per shift. Generally, the minimum period is 3-4 hours.</li> <li>Work performed in excess of agreed hours constitutes overtime and is paid as such.</li> </ul> <p>These standard part-time model clauses are rigid and inflexible, resulting in employers employing casual employees or adopting other forms of engagement such as labour hire workers or independent contractors.</p> <p>Reforming the way part-time employees may be engaged and the terms and conditions that apply to them under awards (particularly in relation to their hours of work) would create new permanent employment opportunities. Specifically, it would provide such employees with the security of permanent and ongoing work, along with various leave entitlements that are confined to permanent employees.</p>	
<b>Ai Group</b>	7.	90-94 p36-37	<b>Definition “casual employee” and suitability of standard part-time clauses - Ai Group</b>	<p>Ai Group comment on the new definition of “casual employee” replacing existing s 15A of FW Act per Closing Loopholes No.2.</p> <p>Ai Group submit that there is still uncertainty as to the precise practical impact that the legislative amendments will have on the accessibility of casual employment in the context of awards. However, state there will foreseeably be a pressing need to reassess the suitability of current award provisions related to part-time employment that were developed in a different context. Ai Group also submit that to some degree, such a need potentially already exists, having regard to the definition at s.15A of the Act.</p>	<p><b>Proposal Summary:</b> Need to reassess the suitability of current award provisions related to part-time employment in light of these new changes. Provisions governing access to part-time employment may need to be made far less restrictive to ensure awards meet the needs of both employers and employees.</p> <p>Need to ensure employment arrangements that are inconsistent with the new definition of casual employment, or the requirements of awards relating to the definition/engagement of part-time employees, are catered for.</p>
<b>ANMF</b>	8.	34-43 p8-10	<b>Definition of part-time employees in Nurses Award - ANMF</b>	<p>ANMF submit that the definition of part-time employees in the Nurses Award does not adequately support employee access to both secure part-time work and the ability to meeting caring responsibilities.</p>	<p><b>Proposal Summary:</b> Vary the Nurses Award’s clauses 10.2, 19.1(d) and add clause at 19.1. The variation of 19.1(d) is necessary to ensure overtime payment for hours worked in excess of ordinary hours. Additional clause at 19.1 ensures clarity around payment of wages and pro-rate accrual of entitlements. These proposal amendments</p>

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Party	REF	THEIR REF	Issue	Commentary	Proposal
				<p>In the award modernisation process, the Australian Nursing Federation raised concerns over the definition inserted into awards.</p> <p>The implication of the definition allows workers to be engaged on low hour contracts that do not reflect the actual hours typically worked. It also allows for the avoidance of overtime payments. It leads to underemployment of workers due to uncertainty around ordinary hours and inability to effectively combine work and care. There is also uncertainty regarding leave entitlements and superannuation contributions.</p>	<p>promote predictability of work and provides certainty for both parties. They remove the incentive for employers to treat additional hours for part-time employees as de facto casual hours without the cost of the casual loading. Additional hours can still be given which gives some flexibility to the arrangement.</p> <p><b>Proposed Wording:</b></p> <p><i>10.2 Before commencing employment, the employer and employee will agree in writing on a regular pattern of work including the:</i></p> <p><i>(a) number of hours to be worked each week;</i></p> <p><i>(b) days of the week the employee will work; and</i></p> <p><i>(c) starting and finishing times each day.</i></p> <p><i>19(d) Part-time employees</i> <i>All time worked by part-time employees in excess of their agreed ordinary hours (except where agreement has been reached in accordance with clause 10.3) will be overtime and will be paid as prescribed in clause 19.1(a).</i></p> <p><i>19.1 (e) received remuneration, leave and other paid entitlements, on a pro-rata basis to a full-time employee employed for 38 hours per week for that classification, according to the number of hours worked.</i></p>
CFW	9.	8-10 p3-4	<b>Secure hours of work - CFW</b>	<p>CFW submits that in highly feminised award reliant sectors, part-time employment is treated as “on-demand” employment with low guaranteed hours well below the actual hours worked.</p> <p>Access to secure part-time jobs is critical to a more gender-equitable sharing of care through a shared work/shared care household model. Inadequate or highly variable hours can undermine and employee’s ability to participate in employment and access formal care services.</p>	<p><b>Proposal Summary:</b> Part-time jobs should be regular, predictable and there should be stable hours of work.</p>

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Party	REF	THEIR REF	Issue	Commentary	Proposal
CPSU	10.	23-29 p6-8	<b>Employee is not compelled to convert to full-time or part-time - CPSU</b>	<p>CPSU submits that employees should have certainty and security in their hours of work. The Statement of Common Conditions sets out two clauses guaranteeing that an employee cannot be unilaterally converted between full time and part time hours:</p> <ul style="list-style-type: none"> <li>• Employees engaged on a full-time basis will not be compelled to convert to part-time employment.</li> <li>• Employees engaged on a part-time basis will not be compelled to convert to full-time employment.</li> </ul> <p>The CPSU supports the inclusion of such provisions in modern awards.</p>	<p><b>Proposal Summary:</b> To better support and protect employees to balance their work and care responsibilities, modern awards including modern enterprise awards must ensure:</p> <ul style="list-style-type: none"> <li>• There should be no requirement for part-time employee to convert to full-time, or conversely for full-time employee to convert to part-time. The CPSU notes such protections have recently been guaranteed in service-wide bargaining and adopted in the Statement of Common Conditions for APS agencies and to which non-APS agencies should also have regard.</li> </ul>
CPSU-SPSF	11.	24-30 p5-6	<b>Strengthen part-time provisions in the SCHADS Award - CPSU-SPSF</b>	<p>CPSU-SPSF submit that the issue of part-time work is exacerbated by the NDIA funding model. Providers struggle to attract staff at current pay rates, leaving part-time workers doing extra hours. To address this, providers should be compelled by the award to review permanent hours regularly and should seek out part-time workers for additional hours. To improve gender equity, the CPSU recommends minimum shifts of 4 hours and minimum weekly hours of 15.</p>	<p><b>Proposal Summary:</b> Vary clause 10.3 of SCHADS to include:</p> <ul style="list-style-type: none"> <li>• A proactive requirement for employer review and offer after 3 months of continuous part-time work and casual work.</li> <li>• Minimum hours in a shift is 4 hours.</li> <li>• Minimum weekly employment for part-time is 15 hours.</li> </ul>
HSU	12.	17 p5	<b>Regular pattern of hours - HSU</b>	<p>HSU submits that the current practice undermines what is understood to be the spirit of the provisions which are to provide employees certainty about their weekly roster.</p>	<p><b>Proposal Summary:</b> Health Professionals and Support Services Award should be varied to expressly clarify that the regular pattern of work is to be the same each week unless the employee agrees in writing to an arrangement whereby the agreed pattern of work differs.</p> <p><b>Proposed Wording:</b> Insert a new clause 10.4 into the Health Professionals and Support Services Award providing that the regular pattern of work shall provide the same guaranteed hours each week unless the employee agrees otherwise in writing.</p>
NECA	13.	p1	<b>Flexibility to vary start and finish times - NECA</b>	<p>NECA submits that it is not currently easy for employers and part-time employees to agree on changes to their start and finish times without entering into an IFA. This limits flexibility for both parties, particularly where a carer would like to change their hours on short notice</p>	<p><b>Proposal Summary:</b> A genuinely flexible approach is required to enable start and finish times be varied upon genuine agreement between employer and employee.</p>

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				<p>due to unforeseen caring requirements without entering an IFA or having to take leave and/or lose income.</p> <p>NECA submit that a genuinely flexible approach appears to be that the start and finish times are set, where possible, but that when there is genuine agreement between the employer and the employee (on short notice or otherwise) to change those start and finish times, this would facilitate better outcomes and allow higher degrees of flexibility for carers.</p>	
UWU	14.	5-14 p4-7	<b>Definition of part-time employment - UWU</b>	<p>UWU submits that workers with care responsibilities require predictable hours to manage their duties. Currently, many part-time employees in sectors like aged care and hospitality face varying hours and are often expected to accept shifts at late notice, resembling casual employment but without the corresponding pay benefits.</p> <p>For example, the Cleaning Award does not require the employer and employee, at the time of engagement, to agree in writing on minimum weekly hours. This can result in disputes over a part-time employee's minimum hours.</p>	<p><b>Proposal Summary:</b></p> <ul style="list-style-type: none"> <li>• Enforce entitlement to regular and predictable hours for part-time employees.</li> <li>• Mandate overtime pay for hours beyond contracted ones.</li> <li>• Allow conversion of regularly worked additional hours into permanent hours with bi-annual reviews.</li> <li>• Implement sufficient minimum weekly hours for part-time employment.</li> </ul> <p><b>Proposed Wording:</b> Vary clause 10.4 by inserting a new subclause (d) in the Cleaning Award:</p> <p>10.4 <i>At the time of engaging a part-time employee, the employer and employee must agree in writing on all of the following:</i></p> <p><i>(a) the number of hours to be worked each day; and</i></p> <p><i>(b) the days of the week on which the employee will work;</i></p> <p><i>(c) the times at which the employee will start and finish work each day.</i></p> <p><i>(d) the minimum number of ordinary hours which the employee will work each week.</i></p>

Right to Say No to Additional Hours					
Party	REF	THEIR REF	Issue	Commentary	Proposal
ACTU	15.	32 p18	<b>Right to say no to extra hours - ACTU</b>	ACTU concurs with Recommendations 21 and 25 of the Final Report of the Senate Select Committee on Work and Care pertaining to ensuring employees have a “right to say no” and restrictions of low base hour contracts that can be “flexed up” without incurring pay penalty.	<b>Proposal Summary:</b> No variations proposed.
CPSU	16.	23-29 p6-8	<b>Right to say no to extra hours - CPSU</b>	CPSU note that part-time employment is an important type of employment that enables employees to balance their work and family commitments. Women are more than twice as likely as men to work part-time hours in Australian workplaces. Over the past 20 years in the APS, the number of women working part-time has steadily increased, while for men it has remained largely unchanged.	<b>Proposal Summary:</b> To better support and protect employees to balance their work and care responsibilities, modern awards including modern enterprise awards must ensure: <ul style="list-style-type: none"> <li>Part time workers (and workers in insecure work) have a right to say no to extra hours with the protection from negative consequences consistent with the recommendation 21 of the Final Report of the Senate Select Committees on Work and Care.</li> </ul>
SDA	17.	84-94 p3-6	<b>Right to say no to additional hours - SDA</b>	SDA submit that employees have little control over hours and are forced to accept additional shifts which do not match their caring responsibilities. If these shifts are refused, employees are fearful that they will not be offered further shifts.  SDA provide that report conducted by the University of NSW Social Policy Research Centre showed that there are high levels of workplace discrimination towards employees who have family and caring responsibilities. 28 per cent of SDA members reported turning down work opportunities and activities because of caring responsibilities. SDA submit that despite the existence of flexible working policies, many workers are punished and made to feel bad for communicating their availability, refusing unsuitable shifts, or taking leave.	<b>Proposal Summary:</b> Consistent with Recommendation 21 of Senate Report which called for a “right to say no” to extra hours and protection from negative consequences, awards should be varied to include a positive obligation on employers to provide employees with a “right to say no” to additional shifts without repercussion.

Other Part-Time Issues Raised					
Party	REF	THEIR REF	Issue	Commentary	Proposal
ARA	18.	p2	<b>Remove requirements on timing of meal breaks - ARA</b>	<p>ARA submit that part-time rostering provisions in the Retail Award are unduly restrictive and should be amended for the mutual benefit of employees and employers.</p> <p><u>ARA submission advanced in AM2024/9</u> ARA note currently clause 10.5(c) requires an employer to agree in writing with a part-time employee at the time of engagement as to when meal breaks may be taken and their duration. This practice is overly restrictive on both the employer and the employee. In practice, many employers and employees organise meal breaks with reference to the circumstances at the time (including when other staff members need to take breaks, staff availability, employee preference and in light of carer responsibilities). Many of these factors cannot be known at the time of engaging a part-time employee. The changes provide flexibility for employees and employers and align with modern ways of working.</p>	<p><b>Proposal Summary:</b> Remove various restrictions on rostering part-time employees, including by removing proscriptive requirements in respect of when meal breaks may be taken and their duration, by deleting clauses 10.5(c) and 16.3 of the Retail Award.</p>
CPSU-SPSF	19.	31-36 p6	<b>Casual conversion to permanent part-time - CPSU-SPSF</b>	<p>CPSU-SPSF submit that if a casual is working regular shifts, these shifts should be offered to be converted to permanent part-time employment.</p>	<p><b>Proposal Summary:</b> Vary clause 10.6 of SCHADS to include a 3-month automatic for proactive offer.</p>
FAAA	20.	61-64 p18	<b>Working on blank day to receive same entitlements to working on day off - FAAA</b>	<p>FAAA provide that blank days are not the same as rostered days off. FAAA submit that part-time employees are regularly drafted to work on blank days enabled by employers' ability to reassign employees an alternative duty for operational reasons at any time during the roster period. FAAA submit that working a blank day does not provide the entitlements attached to working on a designated day off such as a rostered day off or buffers between duties or replacement days.</p> <p>Many awards contain the requirement for employers and employees to 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" but not under ACCA is limited to "agree in writing on a regular pattern of work".</p>	<p><b>Proposal Summary:</b> Vary clause 10.2 to specify that the number of rostered days off in a roster is pro-rated in reverse. Variation proposed ensures that part-time employees drafted to work on a blank day receives entitlements attached to working on a day off. Full time crew are entitled to 8 rostered days off in a 28-day roster (which is the equivalent to a weekend for day workers in other industries). Pro rata provides an entitlement to 4 rostered days off in the 28-day roster.</p> <p>Proposal is responsive to Airlines' needs to maximise utility whilst ensuring employees have predictable hours and entitlements. Will improve roster stability for part-time Cabin Crew and provides with stability with their notional weekends, which permanent part-time workers in other industries have as a standard condition.</p> <p><b>Proposed Wording:</b> 10.2</p>



Other Part-Time Issues Raised					
Party	REF	THEIR REF	Issue	Commentary	Proposal
					<p>(a) Part-time employees are entitled on a pro rata basis to equivalent pay and conditions to those of full-time cabin crew members who do the same work in the classification concerned.</p> <p>(b) The pro rata provisions for part time employees regarding rostered days off are prorated in reverse.</p> <p><b>Example of how the pro rata provisions in 10.2(b) works:</b> a part-time employee working half the hours of a fulltime employee is entitled to 16 rostered days off in a 28 day roster’.</p>
FAAA	21.	65-66 p19	<b>Standard clause for changes to agreed regular patterns of work - FAAA</b>	FAAA provide that their proposal aligns part-time provisions with other modern awards and protects employee from an employer unilaterally changing the terms of the agreement. Any choice to enter into secure part-time work should be protected from unilateral change by the employer.	<p><b>Proposal Summary:</b> Vary clause 10.3 to include the standard modern award provision which requires that any changes to the agreed regular pattern of work are to be in writing and require employee agreement, be attached to the employee record and to provide employee with a copy.</p> <p><b>Proposed Wording:</b> 10.3 At the time of engagement the employer and the part-time cabin crew member will agree in writing on a regular pattern of work. Such pattern of work will only be varied by agreement in writing, with a copy to be given to the employee and a copy to be kept as an employee record.</p>
NECA	22.	p2	<b>Flexibility to change working hours on short notice - NECA</b>	NECA submit that their proposal would further enable flexible working arrangements for carers, having regard to the needs of the business and its part-time employees.	<b>Proposal Summary:</b> Awards to include an ability to change working hours and/or work overtime on short notice where possible and genuinely agreed by the employer and the employee.
SDA	23.	95-106 p6	<b>Increasing part-time permanent hours - SDA</b>	SDA submit that low base hours have a detrimental effect on workers, especially those providing care. The Retail Award contains a mechanism at clause 10.11 which allows a part-time employee to request to increase their guaranteed hours if their guaranteed hours are less than the ordinary hours they have been working over the previous 12 months. The other awards covered by the SDA do not have this clause.	<p><b>Proposal Summary:</b> All awards should be varied to include a strengthened right to elect to convert regular additional hours to their guaranteed hours. Include a right to become full time when working an average of 35 hours or more per week on a reasonably regular basis.</p> <p>Provision should include:</p>



Other Part-Time Issues Raised					
Party	REF	THEIR REF	Issue	Commentary	Proposal
				SDA submit that the current Retail Award clause does not support the promotion of secure work as it is a weak entitlement as it allows the employer to easily refuse. While an employee can file a dispute if their employer refuses, arbitration is only by consent.	<ul style="list-style-type: none"> <li>a right to elect to convert regular additional hours to permanent hours;</li> <li>a positive obligation for an employer to convert the hours unless they can demonstrate that the hours are not regular and there would be unjustifiable hardship for the employer to provide those hours on a permanent basis;</li> <li>an employee should be able to elect to convert after 6 months of working regular additional hours; and</li> <li>the process to resolve a dispute includes arbitration at the request of either party rather than by consent.</li> </ul>
WFPR	24.	10-12 p4-5	<b>Cap on working hours for full-time - WFPR</b>	<p>WFPR submit that there are substantial gender gaps in working hours in Australia, with part-time work disproportionately feminised and often subject to inferior conditions and pay. Among Australia's 29 most feminised sectors, 26 have above-average rates of part-time work.</p> <p>WFPR submit that many workers, particularly men, work very long full-time hours, reflecting and reinforcing gendered patterns of industrial and occupational segregation and household division of labour. The polarisation of men's and women's working time continues to drive gender gaps in income and wealth and inequalities in the provision of unpaid care.</p> <p>WFPR submit that there are poorer regulatory protections for part-time workers in modern awards. Gender differences in working time minima are evidence for workers in feminised industries, including care awards. The relatively poorer conditions of part-time employees relative to full-time employees suggests Australia may be in breach of its obligations under the ILO Convention on part-time work, which was ratified in 2011.</p>	<p><b>Proposal Summary:</b> WFPR makes the following recommendations:</p> <ul style="list-style-type: none"> <li>Improve the quality of part-time work with decent, secure and appropriately paid work in line with working time provisions that adhere to full-time work.</li> <li>Enforce a cap on long working hours to increase men's opportunities to participate in care.</li> </ul>

<b>Availability and Guaranteed Regular Hours - Discussion Question 9</b>					
Are there any specific variations to guaranteed hours or availability of hours provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?					
Party	REF	THEIR REF	Issue	Commentary	Proposal
ABI/BNSW	25.	85 p18	<b>No specific variations with respect to availability and guaranteed hours - ABI/BNSW</b>	ABI/BNSW submit that they do not propose any specific variations with respect to availability and guaranteed hours.	<b>Proposal Summary:</b> No variations proposed.
ACCI	26.	164-166 p32	<b>Guaranteed hours and availability may create rigidities - ACCI</b>	<p>ACCI submit that the creation of rigidities in the system in relation to certainties of rosters also has the potential to reduce the ability of employers to provide ad hoc flexibilities to employees, including those with caring responsibilities.</p> <p>Restrictions applied to part-time employment are also likely to give rise to an increased impetus to engage casual staff.</p>	<b>Proposal Summary:</b> No variations proposed.
ACTU	27.	103-105 p42-43	<b>Include guaranteed weekly hours and employee availability in awards - ACTU</b>	<p>ACTU submit that only 2 of the 25 modern awards examined in the discussion paper prohibit employers rostering employees outside their nominated available hours. These awards specify that upon engaging part-time employees, the employer is required to agree with the employee their guaranteed number of hours of work each week as well as the times they are available to work those guaranteed hours.</p> <p>Some awards also impose restrictions on employers requiring part-time employees to perform work in excess of their guaranteed hours or outside their agreed ordinary hours, except by agreement or with payment of overtime. Some awards provide part-time employees who have regularly worked in excess of their guaranteed hours for a period of at least 12 months with a right to request the employer increase their guaranteed hours to match their regular work pattern.</p> <p>ACTU submit that the use of low hour contracts or base rosters with fluctuating additional hours is a significant problem in many industries and is compounded by large span of hours provisions.</p>	<p><b>Proposal Summary:</b> Modern awards should be varied to:</p> <ul style="list-style-type: none"> <li>Require employees agree to a guaranteed number of hours each week with the employee and the time the employee is available to work those hours.</li> <li>Restrict an employer's ability from requiring employees to work outside their agreed available hours, except with some form of penalty such as overtime payments.</li> <li>Ensure employees have written records of their engagement and agreed hours.</li> </ul> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>MEU (3, p2)</li> <li>CEPU (6, p3)</li> <li>AMWU (para 18)</li> </ul>

### Availability and Guaranteed Regular Hours - Discussion Question 9

Are there any specific variations to guaranteed hours or availability of hours provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

Party	REF	THEIR REF	Issue	Commentary	Proposal
AHEIA	28.	p9	<b>No variations required to higher education sector awards - AHEIA</b>	No variation is required to the General Staff Award. Clause 8.2(c) provides for terms of engagement of part-time employees.	<b>Proposal Summary:</b> No variation proposed.
ANMF	29.	44-46 p10	<b>Availability and guaranteed regular hours - ANMF</b>	ANMF submit that the Nurses Award contains no provision for a review of part-time hours. Where an employee works in excess of their contracted hours, the employee should be able to request a variation of their contract to reflect those hours. The Retail Award contains a review clause that can be adopted.  ANMF also supports the ACTU's proposal for 6-monthly reviews of part-time hours.	<b>Proposal Summary:</b> Nurses Award should be varied to include a part-time guaranteed hours review clause.
ANMF	30.	64-68 p13-14	<b>Full-time provisions should be enhanced in Awards - ANMF</b>	ANMF is concerned about full-time employees having fewer guaranteed hours and rostering control than part-time workers. Employers have more control over full-time hours without consulting employees about their availability.  The realities of the health care environment operating on a 24/7 basis are acknowledged. Employees must have access to consultation and dispute mechanisms.	<b>Proposal Summary:</b> The definition of full-time employment needs to be improved in certain awards that are applicable to shift workers, such as the Nurses Award. The following enhancements are proposed: <ul style="list-style-type: none"> <li>• Ensure a regular pattern of hours, or reasonably predictable hours.</li> <li>• Agree on the days of the week to be worked, specified start and finish times, and possibly the time and duration of meal breaks upon engagement.</li> <li>• Record the terms of the agreement in writing and allowing variations only through further written agreement.</li> <li>• Specify a minimum engagement period.</li> </ul>
ASU	31.	20-22 p7	<b>Increasing part-time permanent hours - ASU</b>	ASU note that short-hour contracts are prevalent in the community and disability sector. ASU submit that employees in this sector often need to take up multiple jobs to make ends meet. While employees have the right to refuse additional hours as per the SCHADS regulations, it is not always easy to exercise this right in practice. Employers can engage staff on contracts with as few as 10 guaranteed weekly hours as per the SCHADS, and they can vary the employee's working hours as per their needs without incurring any additional costs.	<b>Proposal Summary:</b> Awards should allow employees to request updated working hours after consistently exceeding their contract for 6 months. Full-time employment should be considered if an employee consistently works full-time hours.

### Availability and Guaranteed Regular Hours - Discussion Question 9

Are there any specific variations to guaranteed hours or availability of hours provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

Party	REF	THEIR REF	Issue	Commentary	Proposal
CFW	32.	17 p5	<b>Part-time work should be regular, predictable, and stable - CFW</b>	CFW submit that it should not be possible for guaranteed work hours to be set so low such that a large proportion of an employee's working time from week to week is flexible and insecure.	<b>Proposal Summary:</b> No variation proposed.
CGCL	33.	7.4(a)	<b>Guaranteed hours and availability of hours provide certainty - CGCL</b>	CGCL submits that provisions that include guaranteed hours and availability of hours provide certainty for workers which assist working carers to plan their work and care obligations in advance without prejudicing their employment.	<b>Proposal Summary:</b> CGCL is supportive of provisions that prohibit employers from rostering an employee to work outside their nominated available hours and provisions that impose restrictions on employers requiring part-time employees to work in excess of their guaranteed hours, or outside of their agreed ordinary hours.
FAAA	34.	119-121 p29-30	<b>Change from 90 to 72 ordinary hours of duties per fortnight - FAAA</b>	FAAA submit that secure work for Cabin Crew that requires working 45 ordinary hours paid at minimum award wages is not consistent with a fair and relevant minimum safety net. 90 hours averaged fortnightly are inconsistent with NES. FAAA proposed variation aligns full-time arrangements for regional Cabin Crew with full-time hours for Cabin Crew who fly domestically and internationally and with NES and supports Cabin Crew meeting caring obligations.  Improving access to standard of hours for Cabin Crew who fly regionally should include access to full-time employment consistent with NES for hours of work if the ACCA and NES are to be a fair and relevant safety net of terms and conditions.	<b>Proposal Summary:</b> Vary clause B.2.3(a) to reduce the maximum fortnightly hours of duty from 90 hours to 72 hours plus reasonable additional overtime.  <b>Proposed Wording:</b> <i>B.2.3 Fortnightly hours</i> <i>(a) An employer must not roster a regional cabin crew member to fly when completion of the flight will result in the regional cabin crew member exceeding 72 hours of duty of any nature associated with the regional cabin crew member's employment standing alone.</i>
HSU	35.	19 p5	<b>Availability and guaranteed regular hours - HSU</b>	HSU submit that a common problem is underemployment. HSU submits that employees are often engaged on low hour contracts but regularly rostered to perform close to full-time hours. Employees should have as much certainty and predictability about hours week-to-week as possible.  Given coverage of feminised industries and the high rates of part-time employment the Aged Care, SCHADS and HPSS Awards should include provisions requiring employers to carry out regular reviews of part-time employees' hours with a view to increasing employees' minimum guaranteed hours in circumstances where an employee has been regularly performing more than their guaranteed hours. Proposal would give effect	<b>Proposal Summary:</b> Insert new clause 10.3(f) Aged Care Award and insert new clause 10.4 HPSS Award. Also, clause 10.3(g) SCHADS Award be varied to give effect to the following: <ul style="list-style-type: none"> <li>An employer must make an offer to a part-time employee to increase their guaranteed hours if the employee has regularly worked more than their guaranteed hours with the same employer for at least 6 months;</li> <li>The offer to increase the guaranteed hours must reflect the regular hours actually performed by the employee over the relevant period. Where an employee has regularly worked 38 hours or an average of 38</li> </ul>

### Availability and Guaranteed Regular Hours - Discussion Question 9

Are there any specific variations to guaranteed hours or availability of hours provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

Party	REF	THEIR REF	Issue	Commentary	Proposal
				to Recommendation 25 of the Senate Report as a way of restricting the use of low hours contracts.	<p>hours a week, the employee will be offered conversion to full-time employment;</p> <ul style="list-style-type: none"> <li>The offer must be in writing and include details of the hours worked by the employee over the relevant period relied on by the employer to determine the number of increased hours offered;</li> <li>An employer is not required to make an offer only if: <ul style="list-style-type: none"> <li>There are reasonable business grounds not to make the offer;</li> <li>The reasonable business grounds are based on facts that are known, or reasonably foreseeable, at the time of deciding not to make the offer.</li> </ul> </li> <li>Before making a decision not to make an offer to increase a part-time employee's guaranteed hours, an employer must: <ul style="list-style-type: none"> <li>Discuss the review it has undertaken with the employee;</li> <li>Genuinely tried to reach agreement with the employee about increasing the employee's guaranteed hours;</li> <li>Have genuine regard to the consequences of the refusal for the employee.</li> </ul> </li> <li>If an agreement cannot be reached and the employer proceeds to refuse to make an offer, the employer must communicate this to the employee in writing and include details of the reasons for not making an offer;</li> <li>If a dispute arises over an offer or a refusal or make an offer, dispute resolution procedures apply requiring, in the first instance, the parties to attempt to resolve the dispute at a workplace level, and failing that allowing either party to refer the dispute to the FWC to be dealt with by any means including arbitration.</li> </ul>
SDA	36.	54-58 p7	<b>Minimum hours for part-time work - SDA</b>	SDA provides that it is common in the retail and fast-food industries to be offered permanent part-time contracts which provide low weekly contract hours with fluctuating rosters and offers of additional hours. The "low base plus additional hours" model for permanent part-time work results in poor working time security with many SDA members working non-standard hours with unstable and unpredictable work. This model places pressure on workers to accept all shifts regardless of late notice and unpredictability to not lose the opportunity of being offered more shifts. This situation impacts everyone but is particularly detrimental for workers who need to provide	<b>Proposal Summary:</b> Awards that are relevant to SDA members should be varied to allow for a weekly minimum for part-time work of 15 hours per week. Moreover, the minimum shift length provision should be increased to 4 hours.



### Availability and Guaranteed Regular Hours - Discussion Question 9

Are there any specific variations to guaranteed hours or availability of hours provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

Party	REF	THEIR REF	Issue	Commentary	Proposal
				care. Awards do not contain adequate protections to prevent the increase of part-time work and the reduction of full-time work.	
SDA	37.	227-230 p4/	<b>Restrict employees from working outside agreed available hours - SDA</b>	SDA submit that there is merit to restricting an employers' ability to roster workers outside of availability and that a breach of this should come with some form of penalty such as the payment of overtime. To better protect working carers when they are undertaking other responsibilities like care, Awards should be amended.	<b>Proposal Summary:</b> Consider varying Awards to restrict an employer from requiring employees to work outside of agreed available hours.
SDA	38.	231-232 p4/-40	<b>Part-time employees required to be available for additional hours - SDA</b>	SDA submits that due to the low base hour contract model adopted by employers, to get desperately needed hours employees must keep themselves available to accept shifts that may or may not be offered. There is no allowance or compensation for keeping their availability open.	<b>Proposal Summary:</b> Consider an allowance for part-time employees who are required to give availability for access to additional hours.
UWU	39.	5-14 p4-7	<b>Guaranteed hours and availability - UWU</b>	UWU submits that specific awards such as the SCHADS, Hospitality, and Restaurant Awards provide for written agreements on guaranteed hours, which can be flexible to the point of making part-time work insecure. The irregularity and unpredictability in sectors covered by these awards exacerbate workforce shortages and detract from the sector's attractiveness.	<b>Proposal Summary:</b> UWU propose the following: <ul style="list-style-type: none"> <li>• Reassess the effectiveness of guaranteed hours provisions in certain awards and their alignment with the objective of modern awards.</li> <li>• Support setting a minimum number of weekly hours for part-time employees that reflect the needs of the sector and the workforce.</li> <li>• Propose amendments to address disputes over minimum hours and the use of fixed-term contracts as alternatives to part-time employment.</li> </ul>
WFPR	40.	19 p7	<b>Proposals promoting predictability in hours - WFPR</b>	WFPR notes that the issue of working time security is central to the modern awards objective.	<b>Proposal Summary:</b> WFPR propose the following: <ul style="list-style-type: none"> <li>• Working time regulation provisions in modern awards provide predictability in work schedules for all part-time and full-time employees, and facilitate mutually agreed flexibility, with any employee disamenity properly compensated by wage premia or penalty rates.</li> <li>• Inconvenience and unpredictability for casual employees would be better compensated for by a substantial increase in the current casual loading, which currently barely covers the loss of entitlements to paid annual and personal/carer's leave.</li> </ul>

<b>Availability and Guaranteed Regular Hours - Discussion Question 9</b>					
Are there any specific variations to guaranteed hours or availability of hours provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?					
Party	REF	THEIR REF	Issue	Commentary	Proposal
					<ul style="list-style-type: none"> <li>Casual status be restricted to genuinely irregular and occasional on-call employment so that regular and predictable hours of work and paid leave are much more widely available to all employees.</li> </ul>



<b>Overtime for Part-Time Employees - Discussion Question 10</b>					
Are there any specific variations to overtime, TOIL or make-up time provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?					
Party	REF	THEIR REF	Issue	Commentary	Proposal
ABI/BNSW	41.	p18	<b>No specific variations to overtime - ABI/BNSW</b>	ABI/BNSW submit that they do not propose any specific variations to overtime.	<b>Proposal Summary:</b> No variations proposed.
ACTU	42.	106-108 p43-44	<b>Overtime paid on all additional hours - ACTU</b>	<p>ACTU submit that the variation in overtime provisions across awards has a very gendered impact. For example, in road transport and manufacturing, requirement to pay overtime on any additional hours means there is a disincentive to employers offering low hour contracts that can be flexed up without penalty. There is no such requirement in aged care, so an employer can offer a low hour contract and then offer more hours week to week paying ordinary hourly rates. This means that low hour contracts that can be flexed up and down are used in female dominated industries, rather than employers being incentivised to offer ongoing additional hours to avoid paying overtime rates.</p> <p>In the Building On-Site Award and Electrical Contracting Award, both male dominated industries, all hours of work beyond ordinary hours are payable as overtime for all employees. By contrast, in the Aged Care Award, overtime is only payable for part-time or casual employees when they work in excess of 38 hours per week or 76 hours per fortnight.</p>	<p><b>Proposal Summary:</b> Awards should be varied to ensure that overtime is paid on all additional hours worked outside of ordinary hours for casual, part-time and full-time employees.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> </ul>
ANMF	43.	69-74 p14	<b>Current overtime provisions incentivise low hour contracts - ANMF</b>	<p>ANMF submit that women with care responsibilities who also work in formal care face the compounding structural inequalities of gendered undervaluing and low remuneration, with limited access to overtime and slower and lower accrual of paid entitlements.</p> <p>ANMF submit that current clause 19.1(d) in Nurses Award means that part-time employees only get overtime payments if they work beyond 8 (or 10) hours per day. This encourages employers to engage part-timers on low-hour contracts, and employers gain added flexibility at no extra cost. The current clause creates uncertainty.</p>	<p><b>Proposal Summary:</b> Vary clause 19.1(d) in Nurses Award. Proposed amendment relies on written agreements between parties to determine when overtime pay becomes due, incentivising employers to create agreements that reflect actual hours worked.</p> <p><b>Proposed Wording:</b></p> <p><i>Clause 19.1</i> <i>(d) All time worked by part-time employees in excess of the rostered daily full-time hours will be overtime and will be paid in as prescribed in clause 19.1(a).</i></p>

## Overtime for Part-Time Employees - Discussion Question 10

Are there any specific variations to overtime, TOIL or make-up time provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

Party	REF	THEIR REF	Issue	Commentary	Proposal
ARA		p3	<b>Standing consent provisions for extra part-time hours - ARA</b>	<p>ARA submit their proposal clarifies the availability of standing consent provisions within the Retail Award. ARA submit that the amendments to clauses 10.6 and 10.7 of the Retail Award are designed to promote flexible work practices and provide an administratively workable mechanism for part-time employees, including carers, to access further additional hours whilst balancing caring responsibilities.</p> <p><u>Submission advanced in AM2024/9</u></p> <p>The proposed amendments will promote flexible modern work practices, improve access to secure work and workforce participation, and to confirm the availability of an administratively workable mechanism for part-time employees to be given the option to accept to work additional hours at ordinary rates.</p> <p>Clause 10.6 of the Retail Award already allows for a part-time employee to agree to vary the hours of any shift, however there is uncertainty as to whether it allows for the 'standing consent' arrangements which are common in enterprise agreements across the retail sector.</p> <p>The availability of "standing consent" should be clarified as this provides an administratively workable mechanism for part-time employees to be able to access additional hours whilst at all times retaining the ability to decline any such hours when offered. The availability of such arrangements increases access to secure work and increases workforce participation for part-time employees (who are predominantly women). Accessing additional ordinary hours provides employees with the opportunity to access further income, and to obtain the benefit of superannuation contributions and leave accruals in respect of those hours worked.</p>	<p><b>Proposal Summary:</b> Vary clause 10.6 and 10.7 Retail Award to make available "standing consent" for part-time employees to access additional ordinary hours.</p> <p><b>Proposed Wording:</b> Vary clauses 10.6 and 10.7 of the GRIA 2020:</p> <p><b>10.6 Changes to regular pattern of work by agreement</b> The employer and the employee may agree to vary the regular pattern of work agreed under clause 10.5 on a temporary or ongoing basis, with effect from a future date or time (<i>including before the end of an affected shift</i>).</p> <p>Any <del>such</del> agreement <i>to an ongoing variation</i> must be recorded in writing.</p> <p><i>Any agreement to a temporary variation can be either:</i> <i>(a) recorded in writing, including as a selected roster option in an electronic system; or</i> <i>(b) if the employee has elected to provide written standing consent to verbally agree or decline to vary their regular pattern of work, to work additional hours at ordinary rates, then such agreement can be provided verbally.</i> <del><i>(a) if the agreement is to vary the employee's regular pattern of work for a particular rostered shift – before the end of the affected shift; and</i></del> <del><i>(b) otherwise – before the variation takes effect.</i></del></p> <p><del>NOTE 1: An agreement under clause 10.6 could be recorded in writing including through an exchange of emails, text messages or by other electronic means.</del></p> <p><i>NOTE 1: An employee cannot be required as a condition of their employment to provide 'standing consent' under clause 10.6(b).</i></p> <p><i>NOTE 2: An employee who has provided 'standing consent' under clause 10.6(b), can on any occasion verbally refuse or accept a variation proposed by an employer.</i></p>

## Overtime for Part-Time Employees - Discussion Question 10

Are there any specific variations to overtime, TOIL or make-up time provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

Party	REF	THEIR REF	Issue	Commentary	Proposal
					<p><b>NOTE 3:</b> Where an employee terminates a 'standing consent' arrangement under clause 10.6(b), that termination will take effect at the commencement of the next full pay period.</p> <p><b>NOTE 24:</b> An agreement under clause 10.6 cannot result in the employee working <del>in excess of</del> 38 or more ordinary hours per week.</p> <p><b>EXAMPLE:</b> Sonya's guaranteed hours include 5 hours work on Mondays. During a busy Monday shift, Sonya's employer sends Sonya a text message asking her to vary her guaranteed hours that day to work 2 extra hours at ordinary rates (including any penalty rates). Sonya is happy to agree and replies by text message confirming that she agrees. The variation is agreed before Sonya works the extra 2 hours. Sonya's regular pattern of work has been temporarily varied under clause 10.6(a). She is not entitled to overtime rates for the additional 2 hours.</p> <p>10.7 The employer must keep a copy of any agreement under clause 10.5, and any variation of it under clause 10.6(a) or 10.11, and, if requested by the employee, give another copy to the employee. <b>The employer must keep a copy of any 'standing consent' record under clause 10.6(b), and, if requested by the employee, give another copy to the employee.</b></p>
CFW	44.	18-19 p6	Overtime and TOIL - CFW	CFW submit that the capacity for employers to flex up hours of part-time work without paying overtime rates allows part-time employees to be treated as on-demand workers.	<b>Proposal Summary:</b> All work in excess of agreed hours should be paid at overtime rates and that TOIL be equivalent to the overtime payment that would apply.
CPSU	45.	23-29 p6-8	Part-time employees paid overtime - CPSU	CPSU submit that part-time employment is an important type of employment that enables employees to balance their work and family commitments. CPSU submit that women are more than twice as likely as men to work part-time hours in Australian workplaces and that over the past 20 years in the APS, the number of women working part-time has steadily increased, while for men it has remained largely unchanged.	<b>Proposal Summary:</b> To better support and protect employees to balance their work and care responsibilities, modern awards including modern enterprise awards must ensure: <ul style="list-style-type: none"> <li>Part time workers are paid overtime for working outside their agreed hours.</li> </ul>
CPSU	46.	57-62 p14-15	Access to overtime - CPSU	CPSU notes that the APS Enterprise Award sets a "salary barrier" for the purposes of overtime payment at the minimum hourly rate payable to an employee at the Executive Level 1 classification. This leaves senior	<b>Proposal Summary:</b> Government policy parameters set for service-wide bargaining placed limits on agencies seeking to improve their Executive level overtime provisions. A variation to modern awards to recognize that senior

### Overtime for Part-Time Employees - Discussion Question 10

Are there any specific variations to overtime, TOIL or make-up time provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

Party	REF	THEIR REF	Issue	Commentary	Proposal
				<p>employees across the APS without guaranteed access to overtime payment.</p> <p>APS enterprise agreements provide for overtime for Executive level employees to varying degrees - arrangements that are equivalent to those applying to APS 1-6 classification employees, to arrangements that only allow for overtime in “exceptional circumstances”, to no provisions at all or outright exclusion from receiving overtime payment.</p>	<p>employees should be entitled to overtime would set a new minimum across the APS.</p> <p>To better support and protect employees to balance their work and care responsibilities, modern awards including modern enterprise awards must ensure:</p> <ul style="list-style-type: none"> <li>All employees covered by a modern award required to work overtime shall have access to overtime payments regardless of their classification or salary level.</li> </ul>
HSU	47.	25 p7	<b>Overtime for time worked in excess of rostered hours - HSU</b>	<p>HSU provides that in the SCHADS Award part-time hours can be varied or added to without penalty in that employers are not required to pay overtime rates unless and until a worker exceeds 38 hours of work across the week (or 10 hours a shift).</p> <p>HSU submits that provision is in direct contrast to industrial arrangements in other Awards, including Aged Care and HPSS Awards which require overtime rates to be paid for any time worked in excess of the agreed hours. Underemployment in industries covered by SCHADS makes it more likely that part-time workers will agree to work additional hours over their agreed minimum hours when called on, creating an effectively casualised or ‘on-demand’ workforce. This means employees can often work ‘additional hours’ at no overtime pay.</p>	<p><b>Proposal Summary:</b> Vary clause 28.1(b) of SCHADS to provide that all time worked in excess of a part-time employee’s rostered hours on any one day (unless an agreement has been entered into under clause 10.3(e)), will be overtime and paid at the rates prescribed by clause 28.1(b).</p> <p>Proposal would be consistent with Recommendation 25 of Senate Report which called for restriction of low base hour contracts which can be flexed up without incurring any pay penalty for additional hours worked beyond contract.</p>
SDA	48.	71-83 p1-3	<b>Overtime for additional hours above base contract hours - SDA</b>	<p>SDA provides that in several industries that SDA covers, there is no additional compensation for workers for the insecurity and unpredictability of the additional hours. Under the Retail Award, the Fast Food Award, and the Hair and Beauty Award, the payment for additional shifts is at ordinary rates if the employee agrees to work. Under the Pharmacy Award, the additional shift is paid casual loading. Under the Storage and Wholesale Award and the Vehicle Award, the additional shifts are paid at overtime rates.</p> <p>SDA submit that the payment of ordinary rates or an additional causal loading for agreed additional hours is a common feature of feminised award</p>	<p><b>Proposal Summary:</b> Awards that are relevant to SDA members should be varied to allow for the agreement to work additional ordinary hours above base contract hours to include either payment at overtime rates or payment as ordinary hours, with leave accrual, paid at ordinary hourly rates plus an additional penalty of at least 25 per cent.</p> <p>Proposal is consistent with Recommendation 25 of Senate Report which called for restriction of low base hour contracts which can be flexed up without incurring any pay penalty for additional hours worked beyond contract.</p>

### Overtime for Part-Time Employees - Discussion Question 10

Are there any specific variations to overtime, TOIL or make-up time provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

Party	REF	THEIR REF	Issue	Commentary	Proposal
				and not as common for awards that apply to more male- dominated industries.	
NECA	49.	p1-2	<b>Enable part-time employees to agree to work overtime - NECA</b>	<p>NECA submit that a current limitation for part-time employees is the inability to agree to work overtime other than under an IFA, which are not particularly well utilised nor are they useful in changing and unforeseen circumstances.</p> <p>NECA provide that for example in the Electrical Award a part-time employee is unable to work overtime unless there are “urgent and/or unforeseen circumstances”, meaning that an employer and employee cannot simply genuinely agree for the part-time employee to undertake overtime.</p>	<p><b>Proposal Summary:</b> Allow part-time employees the ability to agree to work overtime.</p> <p>By allowing part-time employees the ability to agree to work overtime, particularly when taken as “time off instead of payment”, this provides flexibility to work around unforeseen circumstances and enables a carer to take the agreed overtime during periods of intense caring such as school holidays, while still being paid for this time.</p>



## Individual Flexibility Agreement - Discussion Question 2

Are there any specific variations to the individual flexibility agreement provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

Party	REF	THEIR REF	Issue	Commentary	Proposal
ABI/ BNSW	50.	16-21 p6-7	<b>Complexity of IFA clauses - ABI/ BNSW</b>	<p>ABI/BNSW note that IFAs are rarely used. Submits that the low utilisation of IFAs is attributable to the administrative complexity arising from IFA clauses, in particular, the lack of clarity in requiring an employee to be “better off overall” under an IFA, particularly when an arrangement may involve the imposition of penalty rates.</p> <p>For example, if an employee wishes to work during a period which would give rise to overtime or out of span penalty rates, employers find it difficult to establish that the employee would be better off overall working their preferred arrangements without payment of the relevant penalty rates.</p>	<p><b>Proposal Summary:</b> No variation proposed.</p>
ACCI	51.	52-88 p13-20	<b>Clarification of “better off overall” requirement in making IFA - ACCI</b>	<p>ACCI provide that IFA clauses are a critical mechanism allowing employers and employees to agree to arrangements that differ from the terms of an award to suit the working arrangement. ACCI submit that they are rarely used and the feedback persistently received from employers and their representatives is that the low utilisation of IFAs is largely attributable to the administrative complexity and burden required. In particular, it is unclear how the requirement for an employee to be better off overall under an IFA must be satisfied. If utilised, IFAs could play a meaningful role in facilitating the balancing of work and care arrangements within the modern awards system.</p> <p>ACCI provide that s 144 FW Act prescribes a number of requirements on the content of IFA clauses. ACCI’s proposal will affect s 144(c), that the employer ensure any IFA must result in the employee being better off overall. FW Act does not define the phrase “better off overall” specifically in relation to IFAs, and the definition of “better off overall test” that must be passed by proposed enterprise agreements has been subject to significant dispute. Both IFAs and enterprise agreements require the provision of more favourable terms and conditions in comparison with the applicable modern award in an overall sense. The</p>	<p><b>Proposal Summary:</b> The proposed wording would recognise the fact that where an IFA is otherwise equivalent in benefit to the award, the preferences of the employee considering their “genuine needs” would successfully render it “better off overall”. The proposal would assure parties that even if an IFA does not result in an employee being “better off overall” in a strict monetary or quantifiable sense, if the terms of the IFA are at least equivalent to the modern award then the employee’s preference for the IFA on the basis of their genuine needs would make the IFA mechanism accessible.</p> <p><b>Proposed Wording:</b> Clauses relating to IFAs in each award should be amended to include the following additional clause:</p> <p><i>X.5 An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.</i></p> <p><i>X.6 For the purposes of clause X.5, an employee would be better off overall if the agreement: (a) does not disadvantage the employee overall; and (b) is preferred by the employee in comparison with the relevant award terms because it better meets their genuine needs.</i></p> <p><b>Proposal endorsed/supported by:</b></p>

<b>Individual Flexibility Agreement - Discussion Question 2</b>					
Are there any specific variations to the individual flexibility agreement provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?					
Party	REF	THEIR REF	Issue	Commentary	Proposal
				proposed new words would clarify that this does not preclude circumstances where the IFA can provide more favourable terms and conditions by virtue of being preferred by the employee, which is entirely consistent with the natural and ordinary meaning of the phrase “better off overall”. The preference for or weight attached to the terms of the IFA by the employee is a benefit that can render the IFA more favourable than the award.	<ul style="list-style-type: none"> <li>• NECA (p1)</li> <li>• Clubs Australia (p1)</li> </ul>
ACTU	52.	36-40 p20-22	<b>Individual flexibility agreements be removed from awards - ACTU</b>	ACTU submit that there is a general impression of misuse of individual flexibility arrangements (IFA) to employees’ disadvantage reflected in the interactions between affiliates and members, including loss of work opportunities where IFAs are questioned or refused. IFAs are seen as being made “in the shadows” with poor legislative oversight. ACTU submit that there is evidence of misuse of IFAs, often to undermine job security and conditions.	<p><b>Proposal Summary:</b> IFAs should be removed from modern awards. FWC asked to note ACTU view that IFAs have been inconsistent with the new modern award objective and should not be required or permitted in modern awards.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> <li>• CPSU-SPSF (p6)</li> <li>• FAAA (67, p19)</li> <li>• AMWU (para 9)</li> </ul>
ACTU	53.	p25	<b>Reporting requirements of individual flexibility arrangements - ACTU</b>	ACTU provide that in the event that the government indicates that it does not intend to legislative to abolish IFAs, ACTU recommends that FWC invite parties to consider seeking variations to awards to require reporting on IFAs.	<p><b>Proposal Summary:</b> FWC invite parties to consider seeking variations to awards to require reporting on individual flexibility agreements, only in the event that the government indicates that it does not intend to legislate to abolish IFAs or require reporting in both awards and enterprise agreements.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> <li>• CPSU-SPSF (p6)</li> <li>• FAAA (67, p19)</li> </ul>



Individual Flexibility Agreement - Discussion Question 2					
Are there any specific variations to the individual flexibility agreement provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?					
Party	REF	THEIR REF	Issue	Commentary	Proposal
ACTU	54.	42-48 p23-25	<b>Adjustments to individual flexibility arrangements - ACTU</b>	<p>ACTU submit that there is scope for enhancing employees' capacity to choose to enter into work that provides regularity and predictability in hours of work and income through adjustments to the Individual Flexibility Term.</p> <p>In last subclause standard term states the right to make an individual flexibility agreement is additional to other award-based rights. Intent of provision might be better achieved if were relocated as first subclause and supplemented so that it also alerted to the NES right to request a flexible working arrangement.</p>	<p><b>Proposal Summary:</b> Relocate the final subclause of the standard term as the first and supplementing it to alert to the NES right to request a flexible working arrangement.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> <li>• CPSU-SPSF (p6)</li> <li>• FAAA (67, p19)</li> </ul>
				<p>ACTU provide that employer-initiated proposals for an IFA should require that some consideration be given regarding whether regularity and predictability in hours of work or income would be enhanced or not by entering to a proposed IFA. Can be achieved by providing greater clarity around what a "proposal" would involve. These are suggestions as additions to, rather than substitutions for, setting out the matters referred to in subclause 6 of the standard term.</p>	<p><b>Proposal Summary:</b> Include the following as additions to term:</p> <ul style="list-style-type: none"> <li>• Ensuring that an employer's "proposal" for an IFA includes a draft of the IFA;</li> <li>• Ensuring that an employer's "proposal" for an IFA includes a statement to the effect that the employee is free to choose agree or not agree to the proposal; discuss, seek advice or be represented in relation to the proposal; and put forward an alternative; and</li> <li>• Ensuring that an employer's "proposal" for an IFA, and any IFA made, states the employer's assessment as to whether the IFA will result in any improvement to the regularity and predictability of the employee's work and income.</li> </ul> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> <li>• CPSU-SPSF (p6)</li> <li>• FAAA (67, p19)</li> </ul>
				<p>ACTU submit that use of the existing standard clause may result in disagreements between employees and employers about whether a proposal would actually result in the employee being better off overall. If suggestions are adopted, may also be disagreements as to the accuracy of assessment that an IFA would or would not enhance regularity and predictability of income. Such disagreements would in</p>	<p><b>Proposal Summary:</b> Include that the dispute resolution provision can be utilised for disputes regarding IFAs by varying the clause to refer to the capacity to bring disputes under the dispute resolution procedure and to the FWC's power to conciliate, mediate, express an opinion or make a recommendation.</p> <p><b>Proposal endorsed/supported by:</b></p>

<b>Individual Flexibility Agreement - Discussion Question 2</b>					
Are there any specific variations to the individual flexibility agreement provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?					
Party	REF	THEIR REF	Issue	Commentary	Proposal
				our view be properly characterised as disputes “about a matter arising under this award” for the purposes of the standard dispute resolution term.	<ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> <li>• CPSU-SPSF (p6)</li> <li>• FAAA (67, p19)</li> </ul>
				ACTU submit that there should be consideration of the options for exiting from an IFA if it no longer ensures that the employee is better off overall, or if the employer’s expressed expectations concerning improvements to regularity and predictability of hours and income have been not fulfilled. Discuss whether a simplified mechanism could be adapted from the model provided by s 227A which would permit FWC to decide whether BOOT continued to be met or any expectations concerning improvements to regularity and predictability of hours and income have been realised. Such a process would not of its own set aside an IFA but may prompt parties to exercise their rights to exit from the IFA.	<p><b>Proposal Summary:</b> Provide capacity for FWC to review an IFA and express an opinion about whether it continues to meet the BOOT and whether any expectations concerning improvements to regularity and predictability of hours and income had been realised.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> <li>• CPSU-SPSF (p6)</li> <li>• FAAA (67, p19)</li> </ul>
<b>Ai Group</b>	55.	95-107 p38-41	<b>Pre-employment IFA - Ai Group</b>	<p>Ai Group provides that for award-covered employees, the type of flexibility requested may only be able to be lawfully implemented through an IFA. Presently, an employer cannot make an IFA with a prospective employee, which Ai Group argues is antithetical to the needs of employee carers and represents a material limitation on the utility of the model flexibility term.</p> <p>The standard model flexibility term is in all modern awards and contains a range of procedural requirements before an IFA can be implemented, including the one limitation that it can only be made after an employee has commenced employment.</p> <p>Potential benefits to employees, including prospective ones, of being able to enter into an IFA prior to commencing include certainty as to whether they can secure flexibilities critical to their ability to perform</p>	<p><b>Proposal Summary:</b> Vary modern awards to enable an IFA to be entered into by an employer and a prospective employee, prior to the commencement of their employment. Any employer and prospective employee who wish to implement an IFA should be empowered to do so. If the FWC is of the view that it cannot make this change to the model flexibility term, proposes that the potential benefits of IFAs being made pre-employment, as identified, be noted in the Final Report.</p>

<b>Individual Flexibility Agreement - Discussion Question 2</b>					
Are there any specific variations to the individual flexibility agreement provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?					
Party	REF	THEIR REF	Issue	Commentary	Proposal
				<p>their employment duties. This could also influence their decision whether or not to accept employment.</p> <p>There is some doubt as to whether FW Act permits the model flexibility clause to be varied so as to remove the restriction on IFAs being able to be made pre-employment. If FWC views it is not empowered to make this change, there would be merit in FW Act being amended to clearly enable IFAs to be made pre-employment.</p>	
AHEIA	56.	p5	<b>No variations needed - AHEIA</b>	AHEIA provide that the model IFA clause in awards is consistent with the modern awards O\objectives. The use of IFAs in the higher education sector is low.	<b>Proposal Summary:</b> No variation proposed.
ASU	57.	37-38 p11	<b>Flexible working arrangements too difficult to access - ASU</b>	ASU provides that flexible working arrangements help carers balance their care responsibilities with paid work. However, ASU submits members have reported some employers create unnecessary bureaucratic barriers when it comes to accessing these arrangements. Members also feel that their privacy is being invaded due to the employers' requirement for detailed information to approve flexible working arrangements.	<b>Proposal Summary:</b> Awards should be varied to support more workers in accessing flexible work and aligning with anti-discrimination law. Employers must have a positive duty to reasonably accommodate flexible working arrangements and only reject requests in cases of unjustifiable hardship. Once agreed, the flexible arrangement should stay until the employee's circumstances change. Employees should have a right to return to their original hours once they no longer need flexibility. ASU submits that these proposals align with the Senate Report's Recommendation 3.
ASU	58.	39-40 p11-12	<b>Stronger consultation for flexible working arrangement policies and procedures - ASU</b>	ASU submits that employees should be able to approach their employer collectively to negotiate policies and procedures dealing with flexible working arrangements. Many employers implement policies and procedures without consulting with employees and their representatives.	<b>Proposal Summary:</b> Consultation terms of modern awards should be varied to ensure that flexible working arrangement policies and procedures are subject to consultation with staff and their representatives. FW Act should be amended to permit unions to bring collective disputes on behalf of groups of members affected by employer's policy decisions.
Carers Tasmania	59.	3 p6	<b>Enhancement of individual flexibility agreements for carers - Carers Tas</b>	Carers Tasmania highlights the challenges faced by carers who need urgent flexibility in their work arrangements. The current 21-day period for employers to respond to requests for flexible working arrangements is often too lengthy for carers, who may require more immediate adjustments due to the unpredictable nature of their responsibilities.	<b>Proposal Summary:</b> <ul style="list-style-type: none"> <li>Amend the timeframe within which an employer must respond to a request for a flexible working arrangement, making it shorter than 21 days to better accommodate the urgent needs of carers.</li> </ul>

<b>Individual Flexibility Agreement - Discussion Question 2</b>					
Are there any specific variations to the individual flexibility agreement provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?					
Party	REF	THEIR REF	Issue	Commentary	Proposal
					<ul style="list-style-type: none"> <li>• Include “where work is performed” as an item within modern awards to clarify and strengthen support for employees seeking work from home as a flexible working option.</li> <li>• Ensure that avenues for challenging an employer's refusal to grant flexible working arrangements are more accessible and less time-consuming for carers.</li> </ul>
Infinite Potential	60.	2.1 p5	<b>Strengthen transparency and employee understanding - Infinite Potential</b>	Infinite Potential submit that IFAs can be a valued tool for promoting flexibility and can benefit both employers and employees.	<b>Proposal Summary:</b> Introduce mandatory training for both employers and employees on the proper use of IFAs and require a clear and transparent process for negotiating IFAs including a “cooling off” period for employees before signing.
Infinite Potential	61.	2.2 p5	<b>Review core structures of work - Infinite Potential</b>	Infinite Potential provide that the core structures are the fundamental components and frameworks that define how tasks are organised, roles are delineated, and goals are pursued within a workplace, such as job design, workflows and process, communication channels, performance management, and organisational structure.	<b>Proposal Summary:</b> All IFAs should require a review of the core structures of work to ensure that the job demands do not exceed what a person can reasonably do within the flexibility agreement.
MTO	62.	14-15 p4	<b>IFAs rarely used by small business - MTO</b>	MTO note that the administrative burden associated with IFA provisions results in IFA beings rarely used in small business settings.  MTO supports ACCI's submissions to the Making Awards Easier to Use stream which proposed changes to the IFA clauses in modern awards.	<b>Proposal Summary:</b> No variation proposed.
NECA	63.	p2	<b>IFAs excluded from other industrial instruments - NECA</b>	NECA submits that IFAs are often excluded from other industrial instruments and other areas are included (to ensure compliance with the need for a mandatory flexibility clause) that do not allow the same level of flexibility for carers.  NECA reserves the right to provide further commentary on this point in its response submissions.	<b>Proposal Summary:</b> No variation proposed.

<b>Individual Flexibility Agreement - Discussion Question 2</b>					
Are there any specific variations to the individual flexibility agreement provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?					
Party	REF	THEIR REF	Issue	Commentary	Proposal
SDA	64.	173-182 p27-3/	<b>Individual flexibility agreements be removed from modern awards – SDA</b>	<p>SDA supports the recommendation of the ACTU that IFAs should be removed from awards. In the event they are retained, the SDA supports the recommendations of the ACTU that the standard term be varied.</p> <p>Section 65 FW Act should be strengthened under the awards. Consideration should be given to extend the right to change their working arrangements to all workers regardless of circumstances. The need to change working arrangements is no less significant for workers with 12 months service than those with one month of service.</p>	<p><b>Proposal Summary:</b> Remove IFA provisions from awards. If this cannot be done, then vary the standard terms by:</p> <ul style="list-style-type: none"> <li>• Ensuring an employer’s proposal for an IFA includes a draft of the IFA.</li> <li>• Ensuring employer’s proposal for an IFA includes a statement to the effect that the employee is free to agree or disagree with the proposal and can discuss, seek advice, or be represented, and can put forward an alternative proposal.</li> <li>• Ensuring that an employer’s proposal for an IFA, and any IFA made, states the employer’s assessment as to whether the IFA will result in any improvement to the regularity and predictability of the employee’s work and income.</li> <li>• Referring to the capacity to bring disputes under the dispute resolution procedure and to the FWC’s power to conciliate, mediate, express an opinion or make a recommendation.</li> <li>• Proving a capacity for the FWC to review an IFA and express an opinion about whether it meets the BOOT and whether any expectations concerning improvements to regularity and predictability of hours and income are realised.</li> <li>• Extend right to change working arrangements to all workers regardless of the circumstances. If this is not done, the awards should be amended to ensure that carers who provide regular care to a child of school age or younger are eligible to change their working arrangements not just the parent of the child.</li> <li>• Amend awards to ensure that the only way an employer can refuse a change to working arrangements is by demonstrating an unjustifiable hardship, rather than on “reasonable business grounds”.</li> </ul>

<b>Facilitative Provisions - Discussion Question 3</b>					
Are there any specific variations to the facilitative provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?					
Party	REF	THEIR REF	Issue	Commentary	Proposal
ABI/BNSW	65.	22 P7	No specific variations to facilitative provisions - ABI/BNSW	ABI/BNSW submit that they do not propose any specific variations to facilitative provisions in modern awards as part of this stream of the review.	<b>Proposal Summary:</b> No variations proposed.
ACCI	66.	86-88 p20	No difficulties with current arrangements - ACCI	ACCI submits that it is not aware of any member feedback in relation to difficulties with the current facilitative provisions.	<b>Proposal Summary:</b> No variations proposed.
ACTU	67.	70-73 p31-32	Apply better off overall and additional principles - ACTU	<p>ACTU notes several issues with facilitative provisions:</p> <ul style="list-style-type: none"> <li>Procedural requirements for forming an IFA under the model clause, such as that employees must be better off overall, do not apply to facilitative provisions.</li> <li>Changes made through facilitative provisions are not subject to scrutiny by FWC.</li> <li>Nature and extent of facilitative provisions in particular modern award may not account for the circumstances in the industry covered by the award and the history of any existing facilitative provisions. E.g. in an industry in which employees have little or no bargaining capacity, a more cautious approach may be warranted.</li> </ul> <p>ACTU submits that consideration should be given to how changes made through facilitative provisions can be subject to scrutiny by the FWC e.g. through preparation of regular reports regarding their use, similar to the reports in relation to IFAs.</p>	<p><b>Proposal Summary:</b> Modern awards should be varied to ensure that:</p> <ul style="list-style-type: none"> <li>Any agreements made under facilitative provisions must ensure that employees are better off overall.</li> <li>Some of the principles outlined by the Full Bench in the award modernisation process for the hospitality industry should be incorporated into modern awards to clarify that: <ul style="list-style-type: none"> <li>Facilitative provisions are not a device to avoid award obligations and should not result in unfairness to employees covered by the award.</li> <li>To ensure that a facilitative provision operates fairly, the FWC may prescribe safeguards depending on the nature of the provisions sought and the circumstances of the particular industry.</li> <li>Implementation of facilitative arrangements should be recorded in the time and wages records kept by employers pursuant to Div 1 of Part 9A of the Workplace Relations Regulations.</li> <li>Relevant unions are notified of an intention to use facilitative provisions and provide them with reasonable opportunity to participate in negotiations regarding the use.</li> <li>A monitoring process under which facilitative provisions are reviewed after a reasonable period to consider its impact in practice.</li> </ul> </li> </ul>



Facilitative Provisions - Discussion Question 3					
Are there any specific variations to the facilitative provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?					
Party	REF	THEIR REF	Issue	Commentary	Proposal
					<p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> <li>• CPSU-SPSF (p6)</li> <li>• AMWU (para 10)</li> <li>• SDA (183, p30)</li> </ul>
AHEIA	68.	p5-6	<b>No variations to higher education sector awards needed - AHEIA</b>	AHEIA submit that the facilitative provisions in the higher education sector awards meet the Modern Awards Objectives and do not require variations.	<b>Proposal Summary:</b> No variation proposed.
Ai Group	69.	113-116 p43-44	<b>Facilitative provisions to allow varying one end of span of hours - Ai Group</b>	<p>Ai Group state that certain facilitative provisions provide for span of hours to be varied by agreement with employees, but the ability to expand the span of hours on both ends by agreement with an individual employee is not always permitted. Ai Group submit that expansions to spans of hours should be permissible to create opportunities for employees to work at times that best suit them.</p> <p>Employers and employees should be permitted to vary the finish time of the prescribed span (irrespective of whether the start time of the span of hours has been varied).</p>	<p><b>Proposal Summary:</b> Two awards permit a facilitative arrangement to vary one end only of the prescribed span of hours (Plumbing award and Building On-site award). Clauses should be varied to give similar effect to example below. Consequential amendments to references to clause 15.3 would also be required e.g. in clauses 7.2 and 15.2(c).</p> <p><b>Proposed Wording:</b></p> <p><b>15.3 <del>Early start</del> Altering the span of hours</b>            (a) By agreement between the employer and <b>an employee (or its employees)</b>, the <b>spread of ordinary hours prescribed by clause 15.2(c) may be altered by up to one hour at each end.</b> <del>working day may begin at 6.00 am or at any other time between that hour and 8.00 am and the working time will then begin to run from the time so fixed.</del>            (b) The daily rest breaks; <b>and</b> meal breaks <del>and finishing time</del> must be adjusted accordingly.</p>



<b>Facilitative Provisions - Discussion Question 3</b>					
Are there any specific variations to the facilitative provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?					
Party	REF	THEIR REF	Issue	Commentary	Proposal
Ai Group	70.	117-124 p44-47	<b>Expand span of hours by up to one hour on both ends - Ai Group</b>	<p>Ai Group provide that many awards contain a facilitative provision providing for prescribed span of hours to be shifted forward or backward by up to one hour. In the Manufacturing award, clause 17.2(d) states: <i>(d) The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer between 6.00 am and 6.00 pm. The spread of hours (6.00 am to 6.00 pm) may be moved up to one hour forward or one hour back by agreement between an employer and...</i></p> <p>The predecessor clause previously provided that: <i>(c) The ordinary hours of work are to be worked continuously, except for meal breaks, at the discretion of the employer between 6.00 am and 6.00 pm. The spread of hours (6.00 am to 6.00 pm) may be altered by up to one hour at either end of the spread, by agreement between an employer and the majority of employees concerned or, in appropriate circumstances, between the employer and an individual employee.</i></p> <p>The predecessor clause was amended as part of the plain language redrafting process and the current clause was incorporated into 10 other modern awards. FWC found that clauses similar to the predecessor clause containing reference to “either” were ambiguous so determined to vary relevant awards to clarify that spread of hours can only be shifted by an hour forward or backwards.</p>	<p><b>Proposal Summary:</b> Provisions that permit span of hours to be shifted should be varied to enable them to be expanded by up to one hour on both ends. This will allow an employee with caring responsibilities to commence work early or finish later in the evening. The Manufacturing award, as with many other modern awards, prescribes a maximum number of ordinary hours so employees would be protected from working more than the maximum amount on any given day.</p>
Ai Group	71.	125-127 p47	<b>Vary facilitative provisions to enable alteration to span of hours - Ai Group</b>	<p>Ai Group provide that a number of modern awards do not permit a facilitative agreement to be reached in respect of varying the span of hours. Of the 25 modern awards, 11 fall into this category: Aged Care, Children’s, Fitness, Retail, Hair and Beauty, Health Professionals, Higher Education General Staff, Local Government, Nurses, Pharmacy and SCHADS.</p>	<p><b>Proposal Summary:</b> All modern awards, which contain a prescribed span of hours and do not currently contain a facilitative provision to alter the span, should be varied to permit that to occur by agreement between employer and employee. Such provisions should permit both ends of the span to be expanded.</p>

<b>Facilitative Provisions - Discussion Question 3</b>					
Are there any specific variations to the facilitative provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?					
Party	REF	THEIR REF	Issue	Commentary	Proposal
Ai Group	72.	128-129 p47	<b>Expand span of hours by agreement with individual employee - Ai Group</b>	Ai Group provide that some modern awards permit a facilitative arrangement to vary the prescribed span of hours with multiple employees, but do not permit such arrangements to be made with an individual employee only.	<b>Proposal Summary:</b> All awards should permit an expansion to the span of hours by agreement with an individual employee.
MTO	73.	12-13 p4	<b>Mutual agreement provides best outcome for employers and employees - MTO</b>	<p>MTO submit that the best outcomes are achieved through mutual agreement between employer and employee facilitated through flexibility and common sense. In practice, the modern award facilitative provisions are currently the most effective mechanism enabling this flexibility to be achieved.</p> <p>MTO provide that any consideration of a variation should first look at whether all facilitative provisions should be able to be utilised by agreement between employer and employee, rather than in some instances requiring majority agreement. It should also look at whether the current list should be expanded to facilitate flexible working arrangements.</p>	<b>Proposal Summary:</b> No variation proposed.
NECA	74.	p2	<b>Include working from home in facilitative provisions - NECA</b>	NECA objects to including working from home entitlements in modern awards. However, if FWC determines to include working from home entitlements in modern awards, NECA submits that working from home should be included in the facilitative provisions.	<b>Proposal Summary:</b> Consider including work from home in the facilitative provision.

Other Workplace Flexibilities					
Party	REF	THEIR REF	Issue	Commentary	Proposal
ACTU	75.	56-63 p27-29	<b>Access to flexible working should be accessible with no waiting period - ACTU</b>	<p>ACTU provides that flexible working arrangements are only available to certain cohorts of employees rather than to all employees. Additionally, the definition of “carer” per s 65 FW Act is limited to carers recognised under the Carers Recognition Act, excluding many employees with caring responsibilities.</p> <p>ACTU submits that it is arbitrary and unfair for employee to wait 12 months before being able to request flexible working arrangements. This acts as disincentive for employees to change jobs and for women returning to the workforce. Removing eligibility based on length of service would help women return to the workforce and increase female workforce participation. ACTU suggests in the alternative that flexible working arrangements should be available to more employees, including employees with caring responsibilities beyond those within the meaning of the Carer Recognition Act.</p> <p>ACTU submits should also be available to employees for reasons relating to their reproductive health. Many employees, disproportionately women, require changes to working arrangements for reasons related to their reproductive health e.g. women experiencing menopause have severe symptoms ranging from extreme fatigue, recurrent migraines and anxiety. Menopausal employees can feel forced to leave work due to their symptoms despite them being effectively managed through reasonable adjustments and access to flexible working arrangements. This contributes to lower rates of workforce participation for women.</p> <p>Employees should also have the right to bring collective requests and disputes in relation to flexible work.</p>	<p><b>Proposal Summary:</b> Modern awards should be varied to make the right to request flexible work available to all workers, regardless of length of service or reason. There should also be a collective right for groups of employees to request flexible work and to bring collective disputes regarding flexible work.</p> <p>In the alternative, variations should be made to ensure that flexible work arrangements are available to more employees as follows:</p> <ul style="list-style-type: none"> <li>Expand definition of carer to include all workers with caring responsibilities, not just those within the meaning of the Carer Recognition Act.</li> <li>Allow employees to request flexible working arrangements for reasons relating to their reproductive health.</li> </ul> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>MEU (3, p2)</li> <li>CEPU (6, p3)</li> </ul>

Other Workplace Flexibilities					
Party	REF	THEIR REF	Issue	Commentary	Proposal
ACTU	76.	64-66 p29-30	<b>Reasonable business grounds are too broad - ACTU</b>	<p>ACTU submits that the “reasonable business grounds” on which employers can refuse requests for flexible working arrangements are far too broad and give employers too many opportunities to refuse requests.</p> <p>ACTU submits that the continued availability of these grounds undermines the intent and impact of recent changes to flexible work brought about by the Secure Jobs Better Pay Act. ACTU states that in industries like healthcare, it can be almost impossible for employees to get flexible working arrangements due to the employer’s claims regarding the impact on service delivery.</p> <p>ACTU propose that employers should only be able to refuse flexible working request on the basis of “unjustifiable hardship” rather than on “reasonable business grounds” as this is an objective and more rigorous test which is better understood. The proposal also brings the provision in line with concepts under anti-discrimination law. Proposal is consistent with Recommendation 3 of the Interim Report of the Senate Select Committee.</p>	<p><b>Proposal Summary:</b> FWC should apply an objective and narrower test within modern awards. Modern awards should be varied so that employers are required to reasonably accommodate flexible working arrangements unless it causes unjustifiable hardship.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> </ul>
NTEU	77.	35-36 p8	<b>Right to flexible work - NTEU</b>	<p>NTEU submits that granting all employees the right to request flexible work arrangements, as is the case in the United Kingdom and the Netherlands, could help to normalise such requests. Suggests would also help to challenge gender-based stereotypes that are related to the concept of an ideal worker.</p>	<p><b>Proposal Summary:</b> Vary higher education sector awards to provide a right to request flexible work, both individually and collectively. These provisions should include the right of an employee(s) to request moving between permanent part-time and permanent full-time work, to change work locations, to change starting and finishing times, and other forms of flexible work arrangements. The request should not be refused unless it is unreasonable and would place an unjustifiable hardship on the employer to accommodate.</p>