



Fair Work
Commission

Discussion Paper

Work and Care

Modern Awards Review 2023–24

29 January 2024
Fair Work Commission



Fair Work
Commission

This paper has been prepared by staff of the Fair Work Commission to promote discussions in relation to work and care. It does not represent the concluded view of the Commission on any issue.



Contents

1	Introduction.....	8
1.1	The work and care consultation and research process	8
1.1.1	Literature review on work and care by the Western Sydney University	9
1.1.2	Survey of employers	10
1.1.3	Consultation conferences	10
1.1.4	Responses to the work and care discussion paper	11
2	Context of the Awards Review	12
2.1	Senate Select Committee on Work and Care.....	12
2.1.1	Recommendations from the Senate Select Committee on Work and Care	14
2.2	Other recent developments.....	18
2.3	The legislative framework	19
2.3.1	The Commission’s powers to vary modern awards.....	19
2.3.2	The National Employment Standards.....	22
2.3.3	Modern awards	23
2.4	Analysis of work and care provisions in 25 modern awards	25
3	Defining work and care.....	27
3.1	Carers and who they care for	27
3.1.1	Women who work and care	29
3.1.2	Young carers.....	31
3.1.3	First Nations Australians.....	33



3.1.4	Carers and people with disability	35
3.1.5	Migrant and culturally diverse carers	37
3.2	Working carers	38
4	Award clauses and other workplace relations settings that impact work and care	43
4.1	Types of employment	43
4.1.1	Definitions of part-time in the modern awards.....	49
4.1.2	Reasonably predictable hours.....	50
4.1.3	Guaranteed part-time hours and changes to part-time hours	51
4.2	Flexibility in the workplace and modern awards	52
4.2.1	Requests for flexible working arrangements under section 65 of the FW Act	56
4.2.2	Individual flexibility arrangements	59
4.2.3	Facilitative provisions	62
4.2.4	Working from home.....	66
4.2.5	A right to disconnect.....	68
4.2.6	Four-day working week	70
4.3	Rostering and hours of work	71
4.3.1	Hours of work	73
4.3.2	Consultation about changes to rosters	102
4.3.3	Roster notice provisions and variations to rosters	103
4.3.4	Overtime	111
4.3.5	Make-up time	123
4.3.6	On call	125



4.3.7	Travel time	126
4.3.8	Breaks	129
4.4	Leave arrangements	132
4.4.1	Annual leave	133
4.4.2	Personal/carer’s leave and compassionate leave.....	134
4.4.3	Definition of immediate family	138
4.4.4	Extended entitlements to unpaid carer’s leave	139
4.4.5	Separation of personal leave and carer’s leave	140
4.4.6	Compassionate leave	145
4.4.7	Other leave	146
5	Discussion questions	147



Glossary

ABS	Australian Bureau of Statistics
ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
ADE	Australian Disability Enterprise
Ai Group	Australian Industry Group
AHRC	Australian Human Rights Commission
AIHW	Australian Institute of Health and Welfare
AIRC	Australian Industrial Relations Commission
Awards Review	Modern Awards Review 2023-24
AWR	Annual Wage Review
CALD	Culturally and linguistically diverse
Carer Recognition Act	<i>Carer Recognition Act 2010 (Cth)</i>
Closing Loopholes Act	<i>Fair Work Legislation Amendment (Closing Loopholes) Act 2023 (Cth)</i>
Closing Loopholes No. 2 Bill	Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023
Commission or FWC	Fair Work Commission
EEH	ABS Survey of Employee Earnings and Hours
Employment White Paper	Working Future: The Australian Government's White Paper on Jobs and Opportunities



Glossary

FW Act	<i>Fair Work Act 2009 (Cth)</i>
ILO	International Labour Organization
NES	National Employment Standards
Productivity Commission Carer Leave Report	A case for an extended unpaid carer leave entitlement? – Productivity Commission Inquiry report
Profile of Employee Characteristics	Kelvin Yuen and Josh Tomlinson, 'A profile of employee characteristics across modern awards' (Research Report No 1, Fair Work Commission, March 2023)
SJBP Act	<i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth)</i>
Supported Employment Award	<i>Supported Employment Services Award 2020</i>
SWS	Supported Wage System
WGEA	Workplace Gender Equality Agency
Work and Care Final Report	The Senate Select Committee on Work and Care Final Report
Work and Care Interim Report	The Senate Select Committee on Work and Care Interim Report
Work and Care Senate Committee	The Senate Select Committee on Work and Care



1 Introduction

[1] On 12 September 2023, the President, Justice Hatcher received a letter from the Minister for Employment and Workplace Relations, the Hon Tony Burke, MP. The Minister expressed the Government's interest in:

'... the Fair Work Commission initiating a targeted review of modern awards. The desirability of a review and possible areas for focus arise from outcomes of the Jobs and Skills Summit, changes to the objects, objectives and gender equality provisions of the *Fair Work Act 2009* (FW Act) made by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (SJBPA Act), workplace recommendations of the National Cultural Policy, Revive, and the Final Report of the Senate Select Committee on Work and Care.¹

[2] The Minister suggested, as a key priority of such a review, the commencement of a consultation and research process considering the impact of workplace relations settings on work and care. Work and care was expressed to include early childhood education and care, having regard to relevant findings and recommendations in the Senate Select Committee on Work and Care Final Report (the Work and Care Final Report).²

1.1 The work and care consultation and research process

[3] In a statement issued on 15 September 2023, the President announced the commencement of a review of modern awards to be conducted on the Fair Work Commission's (Commission) own motion by a 5 Member Full Bench. The review is to be known as the Modern Awards Review 2023-24 (the Awards Review).³

¹ [Letter](#) from the Hon Tony Burke, Minister for Employment and Workplace Relations and Minister for the Arts to Hatcher J, President of the Fair Work Commission, 12 September 2023, 1.

² [President's Statement](#), Fair Work Commission, 15 September 2023, [3]; Senate Select Committee on Work and Care, [Final Report](#) (March 2023).

³ [President's Statement](#), Fair Work Commission, 15 September 2023.



- [4] The work and care discussion paper begins the work and care research and consultation process (work and care stream) of the Awards Review. This paper is intended to form the basis of a discussion with interested stakeholders on balancing work and care in the context of workplace relations settings in modern awards.



1.1.1 Literature review on work and care by the Western Sydney University

- [5] The next step in the research and consultation process involves the Commission publishing a literature review from the Western Sydney University by **8 March 2024**. Interested parties can make submissions on the literature review during the consultation window (discussed below at section 1.1.3). The aims of the literature review are to:

- Analyse existing literature on modern awards and the National Employment Standards (NES) framework, and their impact on employees' work and care responsibilities.
- Identify and synthesise the key findings, trends, and emerging themes in the field.
- Analyse existing literature to highlight various factors influencing the relationships between modern awards and employees' ability to balance their work and care responsibilities.



Fair Work
Commission



1.1.2 Survey of employers

- [6] During the work and care research and consultation process, the Commission will also conduct a survey of employers.⁴ The objective of the survey is to gather information about potential variations to modern award provisions to increase flexibility to employees balancing work and care responsibilities. The survey will include questions about working from home and other flexible workplace practices. The survey results will help inform the Commission's final report in the Awards Review.
- [7] Following consultation with the Commission's Small Business Reference Group, and mindful of literature highlighting increased participation rates for shorter surveys,⁵ the survey will ask employers only a handful of questions.⁶ Further consultation on the design of the survey will take place at a mention and directions hearing before the Commission.

1.1.3 Consultation conferences

- [8] As set out in the timetable for the Awards Review,⁷ the Commission will also convene consultation conferences to discuss the issues raised in this paper, research papers and submissions. The consultation window will be between **18 March 2024** and **12 April 2024**.⁸ In accordance with the Commission's normal practice for award-related matters, the conferences will be open to any interested parties and the conference transcripts will be published on the Commission's website.

⁴ [\[2023\] FWCFB 218](#) [8].

⁵ See Rhonda G. Kost and Joel Correa da Rosa, 'Impact of survey length and compensation on validity, reliability, and sample characteristics for Ultrashort-, Short-, and Long-Research Participant Perception Surveys (2018) *Journal of Clinical and Translational Science*.

⁶ See Rhonda G. Kost and Joel Correa da Rosa, 'Impact of survey length and compensation on validity, reliability, and sample characteristics for Ultrashort-, Short-, and Long-Research Participant Perception Surveys (2018) *Journal of Clinical and Translational Science*.

⁷ [\[2023\] FWCFB 179](#).

⁸ [President's Statement](#), Fair Work Commission, 15 September 2023.



Fair Work
Commission

1.1.4 Responses to the work and care discussion paper

- [9] Interested parties are invited to respond by **12 March 2024** to the discussion questions in this paper and to provide any other relevant responses addressing the issue of work and care.⁹ A [submission template](#) has been published on the Commission's website to assist parties prepare their responses. Responses can be sent to awards@fwc.gov.au and will be published on the Commission's website.
- [10] Responses received will inform the Commission's final report in the Awards Review, scheduled to be published in June 2024. The final report will conclude the Awards Review process.

⁹ Ibid.



2 Context of the Awards Review

This chapter sets out the context of the Awards Review work and care stream. It also sets out key aspects of the legislative framework relevant to the Awards Review, including the Commission's powers to vary or revoke modern awards and the terms modern awards are permitted or required to include. Finally, it identifies the modern awards that will be the focus of the work and care discussion paper.

2.1 Senate Select Committee on Work and Care

[11] This section provides a brief overview of the work of the Senate Select Committee on Work and Care (the Work and Care Senate Committee) and its recommendations relevant to the Commission and the Awards Review.

[12] The Work and Care Senate Committee was appointed by resolution of the Senate on 3 August 2022. The purpose of the Work and Care Senate Committee was to inquire into the 'impact that combining work and care responsibilities has on the wellbeing of workers, carers, and those they care for'.¹⁰ Relevant to this discussion paper, the Work and Care Senate Committee's Terms of Reference included inquiring and reporting on:

- The adequacy of workplace laws in relation to work and care and proposals for reform.
- The adequacy of current work and care supports, systems, legislation and other relevant policies across Australian workplaces and society.
- Consideration of the impact on work and care of different hours and conditions of work, job security, work flexibility and related workplace arrangements.
- Consideration of gendered, regional and socio-economic differences in experience and in potential responses including for First Nations working carers, and potential workers.

¹⁰ Senate Select Committee on Work and Care, [Final Report](#) (March 2023).



- Consideration of the policies, practices and support services that have been most effective in supporting the combination of work and care in Australia and overseas.¹¹

- [13] In October 2022, the Work and Care Senate Committee handed down an interim report, the Senate Select Committee on Work and Care Interim Report (the Work and Care Interim Report).¹² In March 2023, the Work and Care Senate Committee handed down the Work and Care Final Report.¹³ The Work and Care Final Report makes 33 recommendations for changes to workplace relations, early childhood education and care, disability and aged care, as well as financial support for carers. It recommends that the Australian Government take a comprehensive and integrated approach to address the challenges of work and care in Australia.
- [14] The recommendations aim to establish a new ‘work and care social contract’ appropriate for the 21st century. The Committee contends that simply providing a living income in exchange for work is no longer fit for a world where so many workers are required to combine their jobs with the care of others.
- [15] The Work and Care Interim and Final Reports identify several recommendations that are within the scope of the Awards Review. Of 33 recommendations identified in the Work and Care Final Report, 10 are potentially relevant to this discussion paper. Relevant recommendations are included in **Table 1**, including recommendations from the Work and Care Interim Report that may also be relevant.
- [16] As far as practicable, this discussion paper will refer to the recommendations in the context of the Awards Review and within the boundaries of the modern awards framework. Recommendations extending beyond this, such as the legislative change proposals, fall outside the Commission’s jurisdiction and have not been addressed in this discussion paper.

¹¹ Ibid 1.

¹² Senate Select Committee on Work and Care, [Interim Report](#) (October 2022).

¹³ Senate Select Committee on Work and Care, [Final Report](#) (March 2023).



2.1.1 Recommendations from the Senate Select Committee on Work and Care

[17] **Table 1** below sets out the potentially relevant recommendations from the Work and Care Interim and Final Reports, the recommendations are drawn upon where relevant throughout this discussion paper.

Table 1—Recommendations from the Senate Select Committee on Work and Care Interim and Final Reports relevant to the Commission

Senate Select Committee on Work and Care Recommendations likely relevant to the Commission	
Interim Report Recommendation	<p>Recommendation 4</p> <p>The committee recommends that the Department of Employment and Workplace Relations investigate legislative reforms to the <i>Fair Work Act 2009</i> and any other associated workplace laws, to enact a ‘right to disconnect’ from work. This right should:</p> <ul style="list-style-type: none"> • enable and support productive work from home and flexibility of work; • protect the right of workers to disconnect from their job outside of contracted hours and to enforce this right with their employer; • place a positive duty on employers to reasonably accommodate the right wherever possible; and <p>allow employees to appeal to the Fair Work Commission (FWC) where the right is not being enacted by employers.</p>
Interim Report Recommendation	<p>Recommendation 5</p> <p>The committee recommends that the Australian Government amend the <i>Fair Work Act 2009</i> to provide improved rostering rights for employees, and in particular working carers, by:</p> <ul style="list-style-type: none"> • ensuring employers implement rostering practices that are predictable, stable and focused on fixed shift scheduling (for example, fixed times and days); and • amending section 145A of the Act to require employers genuinely consider employee views about the impact of proposed roster changes, and take the views of the employee, including working carers, into consideration when changing rosters and other work arrangements.
Final Report Recommendation	<p>Recommendation 15—entitlements and remuneration for all care sector workers</p> <p>The committee recommends the Australian Government support workers and their representatives in the care sector to use the mechanisms available to them through the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> to achieve wage increases. This could include care sector workers and their representatives accessing the supported bargaining stream, initiating an application for an equal</p>



Senate Select Committee on Work and Care Recommendations likely relevant to the Commission

remuneration order, or a work value claim.

The committee further recommends the Australian Government support a priority application to the FWC through the newly established care and community sector expert panel, for award wage increases for all care sectors including early childhood education, disability care and aged care, and all sectors covered by the relevant childcare, and Social, Community Home Care and Disability Services Industry (SCHADS) Awards. In order to address pay equity and to stem the flow of workers out of the care sector, such a priority application should draw the FWC’s attention to:

- the need to reconsider and appropriately reward classifications, wage structures, conditions and entitlements across all care sectors and awards, and under the SCHADS Award. This consideration should include appropriate relative pay across the care sector reflecting the nature of work and qualifications, skills and experience. It should also recognise the impact of gender on caring roles and the unique skills, variability and value of care work;
- the appropriateness of care sector employees receiving payments for work-related travel time, administrative responsibilities and engagement with essential training; and
- the appropriateness of a minimum shift call-in time across the care sector (for example, a four-hour minimum or another identified suitable minimum period).

The Australian Government should consider mechanisms to fund and implement, in accordance with historical practice, any wage increases and improved conditions agreed to by the FWC.

Recommendation 17—leave arrangements—defining immediate family

The committee recommends that the definition of ‘immediate family’ in the *Fair Work Act 2009* be amended and broadened for the purposes of an employee accessing carer’s leave. In addition to the current definition, the following persons should be classified as ‘immediate family’:

- any person who is a member of an employee’s household, and has been for a continuous period of over 18 months;
- any of the employee’s children (including adopted, step and ex-nuptial children);
- any of the employee’s siblings (including a sibling of their spouse or de facto partner); and

any other person significant to the employee to whom the employee provides regular care.

**Final Report
Recommendation**

Recommendation 18—leave arrangements

The committee recommends the Australian Government consider the adequacy of existing leave arrangements and investigate potential improvements in leave arrangements in the *Fair Work Act 2009*, including separate carer’s leave and annual leave.

**Final Report
Recommendation**



Senate Select Committee on Work and Care Recommendations likely relevant to the Commission

<p>Final Report Recommendation</p>	<p>Recommendation 19—leave arrangements</p> <p>The committee recommends the Australian Government request the FWC to review access to and compensation for paid, sick and annual leave for casual and part-time workers.</p>
<p>Final Report Recommendation</p>	<p>Recommendation 21—rostering</p> <p>The committee recommends, alongside its Interim Report recommendations to ensure employees have predictable, stable rosters, the Australian Government supports a review by the FWC of current industrial awards, to require employers to give advance notice of at least two weeks of rosters and roster changes (except in exceptional circumstances) and genuinely consider employee views about the impact of proposed roster changes and to accommodate the needs of the employee. The committee further recommends the Australian Government support a review by the FWC into current industrial awards, to ensure employees have a ‘right to say no’ to extra hours with protection from negative consequences.</p>
<p>Final Report Recommendation</p>	<p>Recommendation 22—working week</p> <p>The committee recommends the Australian Government write to FWC suggesting a review of the operation of the 38-hour working week set in the National Employment Standards, the extent and consequences of longer hours of work.</p> <p>The review should also consider stronger penalties for long hours and other possible ways to reduce them, including through the work, health and safety system which requires employers to ensure safe working hours as a part of providing a safe workplace.</p>
<p>Final Report Recommendation</p>	<p>Recommendation 23—right to disconnect</p> <p>The committee recommends the Australian Government consider amending the <i>Fair Work Act 2009</i> to include an enforceable ‘right to disconnect’ under the National Employment Standards, giving all workers a right to disconnect once their contracted working hours have finished and restricting employers from communicating with workers outside of work hours, except in the event of an emergency or for welfare reasons.</p> <p>The committee further recommends the Australian Government increase penalties for employers who commit wage theft through, for example, unpaid additional hours of work and consider changes to law that make these cases subject to criminal charges.</p>
<p>Final Report Recommendation</p>	<p>Recommendation 24—rostering</p> <p>The committee recommends the mandatory annual reporting of companies with over 20,000 employees in Australia to the FWC on workplace practices to ensure roster justice and flexible working arrangements. The committee further recommends the mandatory collection of data by these companies of requests, including at store level, for roster changes and flexible working arrangements, and the percentage of changes to shifts that have been initiated by the employer within one week of the shift taking</p>



Senate Select Committee on Work and Care Recommendations likely relevant to the Commission

	<p>place. The data should:</p> <ul style="list-style-type: none"> include a collection of all requests, including those deemed 'informal', and detail whether these requests were approved, approved with modification, or denied; provide information on the length of employment (up until the date of reporting) for that employee after their request was initially made; and <p>be provided in full to the Workplace Gender Equality Agency and published on the respective company's website.</p>
<p>Final Report Recommendation</p>	<p>Recommendation 25—job security and penalty rates for additional hours</p> <p>The committee recommends the Australian Government respond to the recommendations of the Senate Select Committee on Job Security as a matter of priority. The committee reiterates those recommendations and calls on the Australian Government to:</p> <ul style="list-style-type: none"> develop a new statutory definition of casual employment that reflects the true nature of the employment relationship and is restricted to work that is genuinely intermittent, seasonal or unpredictable; and restrict the use of low base hour contracts, which can be 'flexed up' without incurring any pay penalty for additional hours worked beyond contract, and ensure permanent part-time employees have access to regular, predictable patterns and hours of work. This could include implementing penalty rates for any hours worked over the contracted amount. For example, if an employee is contracted for 15 hours and their employer rosters them for more, they should be paid a penalty rate for hours worked beyond the contracted amount. <p>The committee further recommends that the Australian Government develop clearly delineated statutory definitions of part-time and full-time employment and that these definitions, as well as a definition of casual employment, be inserted into the <i>Fair Work Act 2009</i>. These definitions should accurately reflect modern employment relationships and address employers' use of widely accepted legal loopholes, which can result in employment conditions that do not align with community expectations. In particular, the growing trend of part-time work to function as a form of casual employment without the benefit of casual loading.</p>
<p>Final Report Recommendation</p>	<p>Recommendation 27—shorter working week</p> <p>The committee recommends the Australian Government request the FWC undertake a review of standard working hours with a view to reducing the standard working week.</p>



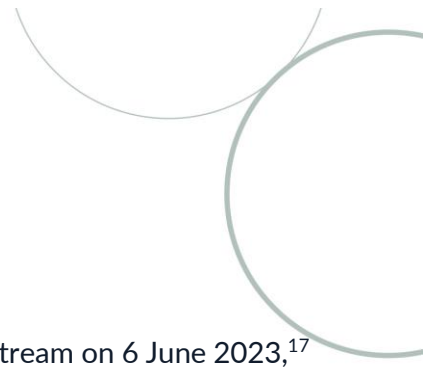
2.2 Other recent developments

- [18] Care and caring are the focus of a number of recent or current inquiries. For example, as recently as October 2023, the Commonwealth Government announced a Carer Inclusive Workplace Initiative to assist employers to develop and adopt practices that support working carers and make workplaces more inclusive for those with care responsibilities.¹⁴ Employers who participate can be recognised as committed to carer inclusivity and receive formal recognition. A National Carer Strategy is also due to be released in late 2024.¹⁵
- [19] A summary of inquiry reports and strategies is provided at [Annexure A—Inquiries and reports](#). The summary includes materials that examine care and support systems that, while having a material impact on carers, are largely beyond scope of this discussion paper. Parties may draw out relevant information and recommendations from the attached summary or from other relevant inquiries, where appropriate.
- [20] In developing this paper, regard has been had to the overlap and intersections with the themes explored in the Commission’s recently published discussion paper on job security (Job Security discussion paper).¹⁶ While there is convergence with issues of job security, particularly in terms of employment stability and predictability, the emphasis of this paper is on how current workplace relations settings in modern awards impact work and care.

¹⁴ The Hon Amanda Rishworth MP, [Investing in a National Strategy and increased supports for Australia’s carers](#) (Media Release, 19 October 2023).

¹⁵ The previous National Carer Strategy was launched by the Commonwealth Government in 2011.

¹⁶ Fair Work Commission, [Discussion Paper – Job Security](#) (December 2023) [19]–[24].



[21] Additionally, the Commission has introduced the supported bargaining stream on 6 June 2023,¹⁷ released a research report about occupational segregation and gender undervaluation on 15 November 2023¹⁸ and continues to run the Work value case in the Aged care industry.¹⁹ These initiatives deal with several elements of Recommendation 15 of the Work and Care Final Report.

2.3 The legislative framework

[22] Modern awards, together with the National Employment Standards (NES) and the minimum wage order, provide a minimum safety net of terms and conditions to employees in the national employment system.

2.3.1 The Commission's powers to vary modern awards

[23] Section 157 of the *Fair Work Act 2009* (Cth) (FW Act) empowers the Commission to make, vary, or revoke a modern award if it is satisfied that it is necessary to do so in order to achieve the modern awards objective and, where relevant, the minimum wages objective.²⁰

[24] The modern awards objective is set out in section 134 of the FW Act and is directed at ensuring that modern awards, together with the NES, provide a 'fair and relevant minimum safety net of terms and conditions'.²¹ The modern awards objective is broadly expressed, and requires the Commission to take into account the various social and economic factors set out at section 134(1)(a)–(h) of the FW Act, with no particular primacy being attached to any individual consideration.²² Section 134(1) provides:

¹⁷ Fair Work Commission, [New supported bargaining agreements | Fair Work Commission \(fwc.gov.au\)](#), n.d.

¹⁸ Fair Work Commission, [Gender pay equity research | Fair Work Commission \(fwc.gov.au\)](#), n.d.

¹⁹ Fair Work Commission, [Work value case – Aged care industry | Fair Work Commission \(fwc.gov.au\)](#), n.d.

²⁰ *Fair Work Act 2009* (Cth) s 157(1).

²¹ *Ibid* s 134(1).

²² *4 yearly review of modern awards – Preliminary Jurisdictional Issues [2014] FWCFB 1788* [31]–[32].



134 The modern awards objective

What is the modern awards objective?

- (1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:
 - (a) relative living standards and the needs of the low paid; and
 - (aa) the need to improve access to secure work across the economy; and
 - (ab) the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women's full economic participation; and
 - (b) the need to encourage collective bargaining; and
 - (c) the need to promote social inclusion through increased workforce participation; and
 - (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
 - (da) the need to provide additional remuneration for:
 - (i) employees working overtime; or
 - (ii) employees working unsocial, irregular or unpredictable hours; or
 - (iii) employees working on weekends or public holidays; or
 - (iv) employees working shifts; and
 - (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
 - (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
 - (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.



- [25] The principles concerning the construction and application of the modern awards objective were recently summarised in the Job Security discussion paper prepared by Commission staff.²³
- [26] The Commission may vary modern awards under section 157 of the FW Act on its own initiative or on application under section 158 if satisfied that varying the modern awards is necessary to achieve the modern awards objective.²⁴ Section 158 permits certain people or groups to make an application to the Commission to vary an award. This includes an employer, employee or organisation that is covered by the modern award.²⁵
- [27] The Commission is also empowered to review a modern award on referral by the President of the Australian Human Rights Commission (AHRC) under section 46PW of the *Australian Human Rights Commission Act 1986* (Cth).²⁶ If the Commission considers that the modern award under review requires a person to do an act that would be unlawful under the *Age Discrimination Act 2004* (Cth), the *Disability Discrimination Act 1992* (Cth) or the *Sex Discrimination Act 1984* (Cth), the Commission is required to vary the award so that it no longer does so.²⁷
- [28] Before 2018, the Commission was also required to review all modern awards every 4 years. The first 4 yearly review (the 4 Yearly Review) commenced in 2014 and included 3 stages, an initial stage, a common issues stage, and an award stage. It resulted in over 1300 days of hearings, conferences and mentions and over 700 Decisions and Statements being issued by the Commission.

²³ Fair Work Commission, [Discussion Paper – Job Security](#) (December 2023) [19]–[24].

²⁴ *Fair Work Act 2009* (Cth) s 157(1).

²⁵ *Ibid* s 158(1).

²⁶ *Fair Work Act 2009* (Cth) s 161.

²⁷ *Ibid* s 161(3).



2.3.2 The National Employment Standards

[29] As noted above, the modern awards objective requires the Commission to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions. Before turning to a discussion on modern awards, it is prudent to briefly set out the entitlements provided to employees under the NES.

[30] The NES is set out in Part 2-2 of the FW Act and includes 12 minimum standards of employment which must be provided to all employees:²⁸

- Maximum weekly hours (Division 3).
- Requests for flexible working arrangements (Division 4).
- Offers and requests to convert from casual to permanent employment (Division 4A).
- Parental leave and related entitlements (Division 5).
- Personal/carer's leave, compassionate leave and family and domestic violence leave (Division 7).
- Annual leave (Division 6).
- Community service leave (Division 8).
- Long service leave (Division 9).
- Public holidays (Division 10).
- Notice of termination and redundancy pay (Division 11).
- Provision of the Fair Work Information Statement, the Casual Employment Information Statement and/or Fixed Term Contract Information Statement (Division 12).
- Since 1 January 2024, a new enforceable right to superannuation contributions (Division 10A).

²⁸ Not all NES entitlements apply to casual employment.



- [31] Workplace instruments cannot provide for conditions that are less than the NES.²⁹ This includes modern awards, employment contracts, enterprise agreements or other registered agreements.
- [32] The Commission does not have the power to amend the NES. The Commission can however vary modern awards to include terms that are ancillary or incidental to the operation of an entitlement of an employee under the NES, or that supplement the NES.³⁰

2.3.3 Modern awards

- [33] Modern awards set out the minimum terms and conditions of employment for employees in particular industries and occupations. The FW Act sets out the sorts of terms that modern awards are permitted to include. These encompass:
- Minimum wages (including junior rates, rates for workers with disabilities and training rates) (section 139(1)(a)).
 - Types of employment (full-time, part-time, casual, shift work and facilitative provisions for flexible working arrangements) (section 139(1)(b)).
 - Arrangements for when work is performed, including hours of work, rostering, notice periods, rest breaks and variations to working hours (section 139(1)(c)).
 - Overtime rates (section 139(1)(d)).
 - Penalty rates (section 139(1)(e)).
 - Annualised wage arrangements (section 139(1)(f)).
 - Allowances (section 139(1)(g)).
 - Leave, leave loadings and arrangements for taking leave (section 139(1)(h)).
 - Superannuation (section 139(1)(i)).
 - Procedures for settling disputes, representation and consultation (section 139(1)(j)).
 - Provisions relating to outworkers and outwork entities (section 140).
 - Industry-specific redundancy schemes (section 141).
 - Incidental and machinery terms (section 142).
 - Provisions allowing for averaging of hours of work (section 63).

²⁹ *Fair Work Act 2009* (Cth) ss 44, 55(1), 61(1).

³⁰ *Ibid* s 55(4).



- Cashing out and taking paid annual leave and paid personal or carer's leave (sections 93 and 101).
- Evidence requirements in respect of leave entitlements (section 107(5)).
- Terms that are ancillary or incidental to the operation of an entitlement of an employee under the NES or that supplement the NES (section 55).

[34] The FW Act also requires modern awards to include certain types of terms, such as:

- Coverage terms (section 143).
- Flexibility terms (section 144).
- Consultation terms (section 145A).
- Terms about settling disputes (section 146).
- Ordinary hours of work (section 147).
- Default fund terms (section 149C).
- From 1 July 2024, workplace delegates' rights term (section 149E).³¹

[35] Under section 138 of the FW Act, modern awards may only include terms they are permitted to include to the extent necessary to achieve the modern awards objective and (to the extent applicable) the minimum wages objective. The Explanatory Memorandum to the Fair Work Bill 2008 described this requirement to mean that the scope and effect of permitted terms must be directed at achieving the modern awards objective of a fair and relevant safety net that accords with community standards and expectations.³²

[36] Award entitlements are provided on top of the NES, providing tailored conditions to specific industries or occupations. The range of provisions modern awards are permitted to include may provide scope for variations to modern awards that could enhance the ability for carers to balance work and caring responsibilities, provided the Commission is satisfied it is necessary to do so to achieve the modern awards objective.

³¹ See *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) pt 7.

³² [Explanatory Memorandum](#), Fair Work Bill 2008 (Cth) [527].



[37] There are currently 121 modern awards of general application. There are a smaller number of state reference and enterprise modern awards which apply to particular businesses or public sector bodies.

2.4 Analysis of work and care provisions in 25 modern awards

[38] In Chapter 4, this discussion paper sets out analysis undertaken by Commission staff of award provisions that likely impact on an employee's ability to balance work and care. Commission staff have conducted an audit of the following 25 modern awards:

- *Aged Care Award 2010* (Aged Care Award)
- *Building and Construction General On-site Award 2020* (Building On-site Award)
- *Children's Services Award 2010* (Children's Award)
- *Cleaning Services Award 2020* (Cleaning Award)
- *Clerks - Private Sector Award 2020* (Clerks Award)
- *Educational Services (Schools) General Staff Award 2020* (Schools General Staff Award)
- *Electrical, Electronic and Communications Contracting Award 2020* (Electrical Contracting Award)
- *Fast Food Industry Award 2020* (Fast Food Award)
- *Fitness Industry Award 2020* (Fitness Award)
- *General Retail Industry Award 2020* (Retail Award)
- *Hair and Beauty Industry Award 2020* (Hair and Beauty Award)
- *Health Professionals and Support Services Award 2020* (Health Professionals Award)
- *Higher Education Industry - General Staff - Award 2020* (Higher Education General Staff Award)
- *Hospitality Industry (General) Award 2020* (Hospitality Award)
- *Local Government Industry Award 2020* (Local Government Award)
- *Manufacturing and Associated Industries and Occupations Award 2020* (Manufacturing Award)
- *Miscellaneous Award 2020* (Miscellaneous Award)
- *Nurses Award 2020* (Nurses Award)
- *Pharmacy Industry Award 2020* (Pharmacy Award)
- *Plumbing and Fire Sprinklers Award 2020* (Plumbing Award)



Fair Work
Commission

- *Restaurant Industry Award 2020* (Restaurant Award)
- *Road Transport and Distribution Award 2020* (Road Transport and Distribution Award)
- *Social, Community, Home Care and Disability Services Industry Award 2010* (SCHADS Award)
- *Storage Services and Wholesale Award 2020* (Storage and Wholesale Award)
- *Vehicle Repair, Services and Retail Award 2020* (Vehicle Award)

[39] The above list includes the 7 most-commonly used modern awards identified in the [President's Statement](#) on 15 September 2023.³³ In addition, the list includes the modern awards referred to in the Work and Care Final Report.³⁴ A number of additional modern awards have also been included to capture a cross section of modern awards and a diverse range of industries and roles.

[40] In selecting the 25 modern awards, regard has been had to the data collected by the Commission for the Annual Wage Review (AWR) 2022-23, presented in A profile of employee characteristics across modern awards and published in March 2023 (Profile of Employee Characteristics).³⁵ The Profile of Employee Characteristics notes that in May 2021, the proportion of employees paid at the rate of pay specified in an award was 23.0 per cent (or 2.66 million employees). It is estimated that the 25 modern awards that form the focus of analysis in this discussion paper cover over 80 per cent of all modern awards covered employees in Australia.³⁶

[41] Expanding the scope of the work and care stream beyond the 7 most commonly used modern awards ensures the Awards Review's findings are relevant to a vast majority of the award-reliant workforce. Addressing a larger selection of modern awards allows for a more comprehensive understanding of work and care dynamics across various sectors. It also recognises that caregiving is not confined to specific sectors, employment types or groups of people.

³³ [President's Statement](#), Fair Work Commission, (15 September 2023).

³⁴ Senate Select Committee on Work and Care, [Final Report](#) (March 2023).

³⁵ Kelvin Yuen and Josh Tomlinson, '[A profile of employee characteristics across modern awards](#)', (Research Report No 1, Fair Work Commission, March 2023).

³⁶ This is drawn from the ABS Survey of Employee Earnings and Hours (EEH) microdata which, for the first time, enables analysis of employees across individual modern awards. Fair Work Commission, [A profile of employee characteristics across modern awards](#) (Research Report No 1, March 2023).



3 Defining work and care

This chapter provides an overview of workers with care responsibilities in Australia and the people they care for. It also highlights some of the challenges and impacts associated with caring. Sections of the chapter explore challenges faced by certain groups, including women, First Nations and culturally and linguistically diverse carers.

3.1 Carers and who they care for

[42] Caring is reasonably common. Data from the Australian Bureau of Statistics (ABS) indicates that there are 2.65 million carers, providing unpaid care to people with disability and older Australians, representing approximately 10.8 per cent of the broader population.³⁷ Carers can be split into two groups:

- Primary carer - a person aged 15 years and over who provides the most informal assistance to a person with disability for the core activities of mobility, self-care and communication.³⁸ Around 3.5 per cent of Australians, and 33 per cent of all carers, identify as *primary carers*.³⁹
- Other carer - a person of any age who provides unpaid care with one or more of the core activity tasks but is not the main provider of informal care (i.e. not a primary carer); or a person who only provides assistance with non-core activities.⁴⁰

[43] Parents and guardians of children and young people are also carers, although they may not be captured in formal metrics like the above ABS estimates. According to the ABS, at 30 June 2023, there were 4.8 million children aged between 0 and 14, and 3.3 million young people aged between 15 and 24.⁴¹ This discussion paper takes an intentionally broad view that incorporates

³⁷ ABS, [Disability, Ageing and Carers, Australia: Summary of Findings](#) (October 2019).

³⁸ AIHW, [Australia's welfare: Informal carers](#) (September 2023).

³⁹ Ibid.

⁴⁰ ABS, [Disability, Ageing and Carers, Australia: Summary of Findings](#) (October 2019).

⁴¹ ABS, [Table 6: Population, by age and sex – States and territories – at 30 June 2023](#) (December 2023).



intensive activities, associated with disability, caring for older people, and other tasks, like caring for children.

[44] While many carers remain ‘invisible’ in formal metrics or national datasets,⁴² their contributions are significant. By some estimates, primary carers alone provided an average of 35.2 hours of unpaid care per week in 2020, with the cost of replacing all informal care has been calculated at \$77.9 billion per annum.⁴³ The Workplace Gender Equality Agency (WGEA) has valued all unpaid care work in Australia at over \$650 billion per annum (or more than 50 per cent of GDP).⁴⁴

[45] The *Carer Recognition Act 2010* (Cth) (Carer Recognition Act) aims to increase recognition and awareness of the role of carers, complementing state and territory level legislation.⁴⁵ While not legally enforceable, the Carer Recognition Act outlines rights, duties and obligations for public service agencies and associated providers. In the Carer Recognition Act, ‘carer’ is defined as follows:

‘...a carer is an individual who provides personal care, support and assistance to another individual who needs is that other individual:

- (a) has a disability; or
- (b) has a medical condition (including a terminal or chronic illness); or
- (c) has a mental illness; or
- (d) is frail and aged.⁴⁶

⁴² An exception to the lack of data is the Disability, Ageing and Carers in Australia Survey. However, this survey focuses on carers of people with disability or age-related needs. The survey is also run periodically, with the last data collected between 29 July 2018 and 2 March 2019. Since then, the Australian Institute of Health and Welfare has released more contemporary analysis on informal carers as part of the biennial welfare report. Noting this, data and measurement issues persist. See Senate Select Committee on Work and Care, [Final Report](#) (2023) [2.14].

⁴³ Deloitte Access Economics, [The value of informal care in 2020](#) (Carers Australia, May 2020) 16.

⁴⁴ WGEA, [Unpaid care work and the labour market: Insight Paper](#) (9 November 2016) 3.

⁴⁵ See *Carers Recognition Act* (No. 37) 2004 (WA); *Carers Recognition Act* 2005 (SA); *Carers Recognition Act* 2006 (NT); *Carers (Recognition) Act* (No. 20) 2010 (NSW); *Carers (Recognition) Act* 2010 (QLD); *Carers Recognition Act* (No. 10) 2012 (VIC); *Carer Recognition Act* 2021 (ACT); *Carer Recognition Act* (No. 1) 2023 (TAS).

⁴⁶ *Carer Recognition Act* 2010 (Cth) s 5(1).



- [46] The Carer Recognition Act is referred to at section 65(1A) of the FW Act, which outlines relevant circumstances for approving requests for flexible working arrangements. Section 65(1A) provides that an employee who is a carer within the meaning of the Carer Recognition Act may request a change in working arrangements (along with parents, people with disability, people aged over 55 and anyone experiencing domestic or family violence). Flexible working provisions in modern awards are discussed in further detail at section 1.1 below.
- [47] Ultimately, carers have diverse cultural backgrounds, sexualities, ages and socio-economic statuses; they live in every community and work in all sectors. As outlined further in the sections below, certain demographics face greater challenges when caring, including women, young people, First Nations Australians, people with disability, and migrant and culturally and linguistically diverse (CALD) carers. These carers experience distinct challenges arising from interaction of employment, caring and care services.

3.1.1 Women who work and care

- [48] While women's workforce participation continues to improve,⁴⁷ evidence suggests that women are significantly more likely to perform unpaid care—whether at home, in workplaces, communities and/or social organisations.⁴⁸
- [49] Women make up 71.8 per cent of those who identify as primary carers.⁴⁹ 12.3 per cent of all women identify as informal carers, compared to 9.3 per cent of all men. Caring expectations can effectively impose a 'double day' or 'second shift' on top of existing paid work, with women bearing most of this additional labour.⁵⁰

⁴⁷ Note that women's labour market participation remains lower than men's (62.8 per cent compared with 71.3 per cent) and their underemployment rate higher (7.4 per cent compared with 5.3 per cent). These figures may reflect a higher share of involuntarily non-standard and/or lower paid work; ABS, [Labour Force, Australia](#) (16 November 2023).

⁴⁸ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 11.

⁴⁹ ABS, [Disability, Ageing and Carers, Australia – Summary of Findings](#) (October 2019).

⁵⁰ Laura Addati et al, [Care work and care jobs for the future of decent work](#) (International Labour Organization, 2018) 39.



- [50] Australian women spend 45 per cent less time in paid work than Australian men, but 80 per cent more time in unpaid care work.⁵¹ The WGEA highlights that women spend 64.4 per cent of their average weekly working time on unpaid work (in contrast to 36.1 per cent for men).⁵² This ‘gender time gap’ equates to over 2 hours per day.⁵³
- [51] As part of the Equal remuneration case for the *Educational Services (Teachers) Award 2010*, the Independent Education Union of Australia (IEU) made a relevant submission concerning gender-based dimensions of undervaluation.⁵⁴ The IEU claimed that the undervaluation of early childhood workers was consistent with social perceptions that this work involves ‘soft skills’ or is an extension of unpaid domestic and caring work (typically performed by women). Assumptions that these skills are ‘natural’ to women, rather than involving expertise and/or qualifications, may contribute to low value recognition.⁵⁵
- [52] Women are more likely than men to take time off work to care for children or parents or to work part-time or in less secure or lower paid jobs.⁵⁶ In families with a child aged between zero and 5, women’s workforce participation rates were found to be more than 28 per cent below those of men.⁵⁷
- [53] The most recent ABS release of workforce participation data highlights that caring for children is a key barrier to employment for 35.9 per cent of female respondents. The same data shows that there are 2 million parents aged 18 to 75 with children under 15 who are not working full-time. Of this cohort, flexibility (including the ability to work part-time hours or vary start/finish times) was highlighted as a major incentive to 68 per cent of mothers and 48 per cent of fathers.⁵⁸

⁵¹ WGEA, [‘Unpaid care work and the labour market: Insight Paper’](#) (November 2016) 5.

⁵² *Ibid*, 4.

⁵³ *Ibid*, 3.

⁵⁴ Independent Education Union of Australia, [Submission to the Equal Remuneration Case](#), 2017, 8.

⁵⁵ *Application to vary the Education Services (Teachers) Award 2020 [2021] FWCFB 2051* [82].

⁵⁶ See, e.g., Workplace Gender Equality Agency, [‘Unpaid care work and the labour market: Insight Paper’](#) (November 2016) 4.

⁵⁷ Equity Economics, [‘Back of the pack: How Australia’s parenting policies are failing women and our economy’](#) (December 2021) 22.

⁵⁸ ABS, [Barriers and Incentives to Labour Force Participation](#) (November 2023).



[54] The *Fair Work Amendment (Secure Jobs, Better Pay) Act 2022* (SJBPA Act) amended section 157 of the FW Act to include a new definition of ‘work value reasons’ as well as requiring that the Commission’s consideration of work value reasons must be free of assumptions based on gender; and include consideration of whether historically the work has been undervalued because of assumptions based on gender. The SJBPA Act also amended the FW Act to provide that the President must constitute an Expert Panel when considering changes to modern awards which relate to gender pay equity or the Care and Community Sector.⁵⁹ The Commission is currently reviewing the history of gender equity issues in modern awards as part of a gender pay equity research project.⁶⁰ Stages 1 and 2 of the research project will be considered as part of the AWR 2023-24.

3.1.2 Young carers

[55] Young carers are defined as young children, adolescents and young adults ‘up to 25 years old who provide informal care and support to family members or friends with disability, mental illness, chronic condition, an alcohol or other drug issue or who are frail aged.’⁶¹

[56] Carers Australia estimates over 235,000 people are young carers.⁶² The ABS estimates 59,100 individuals under 15 years of age are carers, as well as 272,000 young people aged 15 to 24 who provide informal care to someone needing assistance due to disability or old age.⁶³

[57] In their submission to the Work and Care Senate Committee, researchers from the Melbourne University School of Population and Global Health, Dr Tania King and Ms Ludmila Alfonzo, made the following observations:

⁵⁹ *Fair Work Act 2009* (Cth) ss 617(6)–(10), 620(1B)–(1D).

⁶⁰ President’s statement, [Gender pay equity research – Stage 2 research to be conducted](#), 5 December 2023; see also Natasha Cortis, Yuvisthi Naidoo, Melissa Wong and Bruce Bradbury, ‘Gender-based occupational segregation: a national data profile’ (Social Policy Research Centre, University of New South Wales, Sydney, 6 November 2023).

⁶¹ Carers Australia, Young carers, [Young Carers - Carers Australia Carers Australia](#), n.d.

⁶² *Ibid.*

⁶³ ABS, [Disability, Ageing and Carers, Australia – Summary of Findings](#) (October 2019).



Fair Work
Commission

'Young carers are one of the most under-recognised and under-served groups in society – current service systems and policies do not adequately recognise or serve them. A key reason for this is identification – identifying young carers is challenging and complicated. Young carers often do not consider themselves to be carers because they don't see their actions and responsibilities as atypical...

...Being a young carer is commonly associated with disadvantage; young carers are more likely to live in low income or disadvantaged households than other young people.⁶⁴

(citations omitted)

[58] Research demonstrates that impacts for young carers are significant. Long-term, young carers can face complex barriers to employment, education and training. Data collected during the Try, Test and Learn Fund program in 2017 found that more than 60 per cent of young carers had not studied beyond high school.⁶⁵ Domestic and international research also shows a strong correlation between young caring and poor mental health, including concentrated negative effects for those providing intensive care.⁶⁶ The most recent national carers survey, for example, found that 55.1 per cent of young carers reported 'high' or 'very high' psychological distress, 63.0 per cent were socially isolated and 82.1 per cent in financial stress.⁶⁷

⁶⁴ Tania King and Ludmila Alfonzo, Submission 60 to Senate Select Committee, *Work and Care*, September 2022, 3–4; see also Bettina Cass et al, [Young carers: Social policy impacts of the caring responsibilities of children and young adults](#) (Social Policy Research Centre, Sydney, October 2011); Ciara Smyth, Megan Blaxland and Bettina Cass, 'So that's how I found out I was a young carer' (2011) 14(2) *Journal of Youth Studies* 145–160.

⁶⁵ Department of Social Services, [Try, Test and Learn Fund: data driven job opportunities for young carers](#) (2017).

⁶⁶ Tania King et al, 'Associations between young informal caring and mental health: a prospective observational study using augmented inverse probability weighting' (2021) 15 *The Lancet Regional Health – Western Pacific* 100257; Fleitas Alfonzo et al, 'Mental health of young informal carers: a systematic review' (2022) 57 *Social Psychiatry and Psychiatric Epidemiology* 2345; Carers NSW, [Carers NSW 20222, National Carer Survey Report](#) (2023) 31.

⁶⁷ Carers NSW, [Carers NSW 20222, National Carer Survey Report](#) (2023) 31.



3.1.3 First Nations Australians

[59] For many First Nations Australians, caring for community members can fall within cultural expectations and traditional kinship responsibilities.⁶⁸ This offers many benefits, as in the case of kinship care, but also means that First Nations people, particularly women and girls, are more likely to be unpaid carers than non-Indigenous Australians.⁶⁹

[60] Research from the AHRC suggests that 14 per cent of Aboriginal and Torres Strait Islander peoples aged 15 years and over are providing unpaid care.⁷⁰ In relation to employment and care responsibilities for Aboriginal and Torres Strait Islander women, the report highlights that:

‘Women working in paid employment face a different, but equally as complex, set of challenges. This group of women are constantly having to balance their caregiving responsibilities with their careers and often feel that their employment is at risk.

[Being a carer] is so hard. What are you going to do as a single mum, who do you ring? How am I going to make it through the night? I jeopardise my job. Workplace tells me I have to get my act together. I’m constantly communicating and explaining again and again ... There is no understanding. They are sighing, ‘not again’. People can’t tell. [The] hurt isn’t on the outside it’s in here ... I feel it when I’m five minutes late because it took me longer to get my kid to take his medication in the morning. I feel like saying, ‘have your white job, I will go on [the] carers pension’, but we would struggle even more. We not well off but we got feed every night.’ Canberra women [sic]

Women expressed that many workplaces do not comprehend the magnitude of their caregiving roles and cultural obligations. Many find their leave entitlements are not adequate to cover the demands of

⁶⁸ AHRC, [Wiyi Yani U Thangani \(Women's Voices\): Securing our Rights, Securing our Future Report](#) (December 2020) 327.

⁶⁹ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 65–67; Australian Human Rights Commission, [Wiyi Yani U Thangani \(Women's Voices\): Securing our Rights, Securing our Future Report](#) (December 2020) 327–329; Carers NSW, [Carers NSW 20222, National Carer Survey Report](#) (2023) 28.

⁷⁰ See AHRC, [Wiyi Yani U Thangani \(Women's Voices\): Securing our Rights, Securing our Future Report](#) (December 2020) 327. Numbers are likely much higher, given many First Nations carers do not readily self-identify because it is a normal cultural expectation to provide care to family and/or community members. Similar motivations may also lower reporting rates for (new) migrants and culturally and linguistically diverse carers.



their daily lives as carers of a person with disability. Women in these situations are often forced to choose between work or caring responsibilities.⁷¹

- [61] First Nations Australians experience difficulties accessing care and support services, which directly impacts people's ability to care and work. People in regional, remote and very remote communities are significantly more likely to face barriers to accessing high-quality and culturally appropriate services, including early childhood education, personal and aged care. Lack of appropriate or accessible services may exacerbate negative outcomes and increases need for informal care.⁷²
- [62] Within the context of modern awards, some awards recognise the cultural rights and needs of Aboriginal and Torres Strait Islander employees through provision of cultural or ceremonial leave. The Full Bench first extended an entitlement to ceremonial leave to modern awards outside the health and community services sector as part of the *4 yearly review of modern awards – Group 2* decision, which also standardised clauses to include Torres Strait Islanders. The Full Bench were satisfied ceremonial leave was consistent with objectives at section 134(1)(c) of the FW Act.⁷³
- [63] Ceremonial leave provisions respect the distinct cultural and traditional practices of Aboriginal and Torres Strait Islander employees. Of the 25 modern awards examined in the Awards Review, only the Health Professionals Award, Nurses Award, Aged Care Award and SCHADS Award contained cultural leave provisions. An example can be seen in the Nurses Award (cl 23), which provides up to 10 working days' unpaid leave subject to employer approval. Given the potential overlap in caregiving and cultural responsibilities, lack of ceremonial leave entitlements across modern awards may represent a gap for First Nations employees' diverse responsibilities outside of work. This is explored further under leave arrangements at section 4.4.7.

⁷¹ AHRC, *Wiyi Yani U Thangani (Women's Voices): Securing our Rights, Securing our Future Report* (December 2020) 328.

⁷² *Ibid* 328.

⁷³ *4 yearly review of modern awards – Group 2* [2016] FWCFB 7254 [120]–[125].



3.1.4 Carers and people with disability

- [64] ABS data suggests that, in addition to receiving care from carers, over 30 per cent of primary carers live with disability themselves.⁷⁴ Carers with disability may face a ‘double disadvantage’ of employment barriers associated with their disability and care responsibilities.
- [65] While the Australian Institute of Health and Welfare (AIHW) estimates that 1 in 6 Australians live with disability, including incidence of age-related disability, just 53 per cent of people with disability aged between 15 and 64 are employed.⁷⁵ ABS data shows around 50 per cent of men with disability and 46 per cent of women with disability participate in paid employment.⁷⁶ These low participation rates stand in contrast with the prevalence of disability.
- [66] Where eligible, people with disability may also work in an Australian Disability Enterprise (ADE). According to the Department of Social Services, ADEs provide employment opportunities for people with high support needs (e.g., requiring substantial ongoing support to obtain or retain paid employment).⁷⁷ As of June 2023, there are approximately 160 ADEs across the country which employ approximately 16,000 people with disability.⁷⁸
- [67] The Commission has a role in determining wages and conditions for these employees through the *Supported Employment Services Award 2020* (Supported Employment Award). Pay rates under the Supported Employment Award are determined as ‘a percentage of the relevant minimum hourly rate of pay equal to the assessed productive capacity of the employee’.⁷⁹ First introduced in 1994, this Supported Wage System (SWS) involves assessing the work capacity of people with disability to support them obtain employment and ensure wages reflect their assessed

⁷⁴ ABS, *Disability, Ageing and Carers, Australia – Summary of Findings* (October 2019).

⁷⁵ AIHW, *People with disability in Australia* (July 2022).

⁷⁶ ABS, *Disability, Ageing and Carers, Australia – Summary of Findings* (October 2019).

⁷⁷ Department of Social Services, *Disability and carers: supported employment* (August 2023) (website, n.d.).

⁷⁸ Department of Social Services, *The Future of Supported Employment Discussion Paper* (June 2023).

⁷⁹ *Supported Employment Services Award 2020* clause D.4.1.



'productivity'.⁸⁰ All other Modern awards audited for the Awards Review—excluding the Building On-site Award, Teachers Award and Nurses Award—include a 'supported wage system' or schedule that similarly enables people with disability employed under the modern award to be paid less than the established hourly minimum in accordance with their assessed productivity.

[68] The Supported Employment Award has been the subject of numerous reviews. For instance, in a December 2019 decision, a Full Bench observed that the setting of minimum wages for employees with disability does not meet either the modern awards objective or the minimum wages objective, and is not fair.⁸¹ This decision also inserted a unique clause into the Supported Employment Award outlining rights for supported employees.⁸² During the 4 Yearly Review, the Full Bench made a number of determinations affecting the Supported Employment Award, including regularity of assessments and classifications.⁸³ New wage grades were also established for the Supported Employment Award, taking effect from 30 June 2023.⁸⁴ The rates were subsequently updated in the AWR 2022-23 where Schedule D was varied to set a new minimum wage of \$2.90 per hour.⁸⁵

[69] The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report - Volume 7 - Inclusive education, employment and housing*, was highly critical of supported employment as disguising 'subminimum wages' under the premise of caring for people with high support needs and their families.⁸⁶ The report reinforced the importance of fair wages to the rights of people with disability and their potential to participate as equal citizens in

⁸⁰ Disability Employment Services, [Supported Wage System in open employment handbook](#) (May 2021); see also [Supported Employment Services Award 2020](#) sch D.

⁸¹ *4 yearly review of modern awards - Supported Employment Services Award 2010* [2019] FWCFB 8179 [342]–[344]; see also *4 yearly review of modern awards - Supported Employment Services Award 2020* [2022] FWCFB 245 [47].

⁸² [Supported Employment Services Award 2020](#) clause 9A.

⁸³ *4 yearly review of modern awards - Supported Employment Services Award 2020* [2022] FWCFB 245.

⁸⁴ *Ibid.*

⁸⁵ *Annual wage review 2022-23 - Supported Employment Services Award 2020* [PR762212](#).

⁸⁶ Commonwealth of Australia, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, [Final Report - Volume 7: Inclusive education, employment and housing - Part B](#), (September 2023).



education, training or employment.⁸⁷ Four of the six commissioners also recommended phasing out supported employment entirely in favour of open, inclusive employment.⁸⁸ In response to the findings of the Royal Commission, the Australian Government initiated an engagement and consultation process through which interested parties could make submissions.⁸⁹ The consultation period closed on 19 January 2024.

3.1.5 Migrant and culturally diverse carers

[70] Carers Australia estimates that 25 to 30 per cent of all Australian carers (approximately 500,000 people) are from CALD backgrounds.⁹⁰ While individuals, families and communities are all different, Carers Australia notes the key challenges for these carers as:

- Cultural rules or obligations relating to how someone with disability or an older person is cared for, who performs the caring role, and what this should involve.
- Stigma associated with certain disabilities or health conditions.
- Concerns about the cultural appropriateness of formal services.
- Opposition to the idea of carer support groups and discussing 'family business'.
- Low awareness of, or hesitancy to engage with formal services.
- Inability to contact services due to limited English proficiency.
- Informational and educational materials not available in different languages.
- Lack of services for small or emerging communities in regional and remote areas.⁹¹

[71] Evidence submitted to the Work and Care Senate Committee reinforces the structural barriers faced by many migrant and CALD people who seek to combine work and care responsibilities. Challenges accessing formal and informal supports are pronounced for childcare, but present in complex ways.⁹² As highlighted in one submission, these challenges are intersectional:

⁸⁷ Ibid 375.

⁸⁸ Ibid 498.

⁸⁹ Department of Social Services, [Disability and Carers | Department of Social Services, Australian Government \(dss.gov.au\)](https://www.dss.gov.au/disability-and-carers).

⁹⁰ Carers Australia, [Culturally and linguistically diverse carers](#) (Web Page, n.d.).

⁹¹ Ibid; Carers NSW, [Carers NSW 20222, National Carer Survey Report](#) (2023) 29–30.

⁹² Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 80–81.



[...] for example, [women from CALD backgrounds] have low rates of reporting or [identifying] as carers, and therefore are underrepresented in carer support services. In addition, the systemic barriers, racism and attitudinal barriers made it difficult for CALD families to access [early childhood education and care], and migrant, refugee and multicultural women have experienced disproportionate social and economic impacts from the [COVID-19] pandemic.⁹³

(citations omitted)

[72] Migrants are at significant risk of general workforce exploitation and, despite being eligible, face barriers to accessing workplace entitlements.⁹⁴ Challenges may be exacerbated by low English-language proficiency and, for new migrants, limited recognition of their skills or qualifications. Lack of local work experience, references and/or networks further impact job opportunities for these workers, leading to a concentration of migrant and CALD workers in poorer quality jobs.⁹⁵

3.2 Working carers

[73] The most recent survey of Disability, Ageing and Carers in Australia found that 70.9 per cent of carers were in the workforce. However, workforce participation was lower for primary carers of working age, with 55.5 per cent of people participating in paid employment.⁹⁶ The most recent Carer Wellbeing Survey found that 62.4 per cent of carers aged between 15 and 64 were employed in 2023, an increase from 52.8 per cent in 2022 and 51.6 per cent in 2021.⁹⁷

⁹³ Ibid 75 [4.104].

⁹⁴ See, e.g., Senate Select Committee on Work and Care, [Final Report](#) (2023) 80–81; Commonwealth of Australia, *Report of the Migrant Workers' Taskforce* (Migrant Workers' Taskforce, 2019) 32.

⁹⁵ Senate Select Committee on Work and Care, [Final Report](#) (2023) 75–76, 81–82.

⁹⁶ ABS, [Disability, Ageing and Carers, Australia: Summary of Findings](#) (October 2019).

⁹⁷ Melinda Mylek and Jacki Schirmer, *Caring for others and yourself: The 2023 Carer Wellbeing Survey – Full data report* (Carers Australia and University of Canberra, 2023) 26.



[74] Working carers may experience issues arising from interactions between employment and their caring responsibilities. Evidence from Carers NSW and the ABS indicates that carers are:

- Less likely to be employed full-time.
- Less likely to work in industries or occupations with limited flexibility.
- More likely to experience workplace discrimination.
- Less likely to have professional development opportunities.
- More likely to reduce their working hours, with 57.7 per cent of carers using workplace flexibility to meet their caring requirements.
- More likely to change their job or stop working altogether.
- More likely to take leave in general, with 49.7 per cent of respondents to a 2022 Carers NSW survey reporting that they had insufficient leave to meet their caring requirements.⁹⁸

[75] The Work and Care Senate Committee in the Work and Care Interim Report observed that:

‘Millions of Australians balance work and care. They seek and need to maintain a job and income security, with adequate wages, active participation and flexibility in the workforce, access to appropriate leave entitlements, and a supportive care system for those who need it. This includes access to affordable and suitable respite and early childhood education and care (ECEC), as well as appropriate and targeted aged care, health care and disability support services along with employment opportunities.

However, the architecture of work and care is not adequate to our current challenges – let alone our future. It has not adapted adequately to our changing work and social system.

As a result, many of those with caring responsibilities who would like a job cannot work, while others work less hours than they would prefer or are subject to constant roster variations and the insecurity that brings to family life. For some, combining work and care creates stress, or puts pressure on grandparents or other unpaid carers, because work is inflexible, or the care system is inadequate or unaffordable.⁹⁹

⁹⁸ Carers NSW, [Carers NSW 2022, National Carer Survey Report](#) (2023) 20–21; ABS, *Disability, Ageing and Carers, Australia: Summary of findings* (October 2019).

⁹⁹ Senate Select Committee on Work and Care, [Final Report](#) (2023) xv.



[76] While any carer can experience negative outcomes, the impacts on work and care are typically heightened for those demographic groups discussed above at section 3.1.

[77] Providing care is often emotionally and physically intense, particularly for primary carers. Carers without support or respite can experience negative financial and personal impacts, including detrimental physical and mental health outcomes longer-term.¹⁰⁰ As noted by the CEO of Carers Australia, Ms Alison Brook, in her evidence to the Work and Care Senate Committee:

‘[...] all these people who are unpaid, who do it out of a sense of love – but there are such other costs to them: the emotional cost, the drudgery, the thanklessness, the embarrassment, whether you’re the carer or the person receiving the care. It’s hard to maintain that purity of good spiritedness in the everyday drudgery of providing the care – and doing it from a position of poor mental health yourself, social isolation, financial disadvantage. We’re really asking a lot. I think that **removing some [of the] barriers to employment and having a nuanced discussion about what that could look like is an important conversation to have right now.**’¹⁰¹

(emphasis added)

[78] There is significant evidence of the mental and physical health impacts of providing informal care. The 2023 Carer Wellbeing Survey found the wellbeing of Australian adult carers is in decline, with ‘low wellbeing’ increasing from 52.6 per cent in 2021 to 58.3 per cent in 2023.¹⁰² Poor physical health, loneliness and social isolation are also reported by carers at much higher rates.¹⁰³

¹⁰⁰ Ibid 99.

¹⁰¹ [Evidence to Senate Select Committee on Work and Care](#), Parliament of Australia, Canberra, 16 September 2022, 39 (Alison Brook, Carers Australia).

¹⁰² Melinda Mylek and Jacki Schirmer, *Caring for others and yourself: The 2023 Carer Wellbeing Survey – Full data report* (Carers Australia and University of Canberra, 2023) 5.

¹⁰³ Ibid 11–12; Centre for Change Governance, National Centre for Social and Economic Modelling (NATSEM) and University of Canberra, *Caring for others and yourself: The 2021 Carer Wellbeing Survey* (Carers Australia, Canberra, 2021) 4.



- [79] High care hours, providing care long-term and/or to people with complex needs are risk factors for poor carer outcomes.¹⁰⁴ Nationally, over 50 per cent of carers report feeling 'socially isolated' or 'highly socially isolated'.¹⁰⁵ Carers are also significantly more likely to be in psychological distress.¹⁰⁶ Protective factors include employment and social connection.¹⁰⁷
- [80] Literature highlights several risks associated with informal care and work. For instance, research from the International Labour Organization (ILO) notes that carers can experience job quality issues because of diminished ability to work full-time or even part-time hours.¹⁰⁸ This may, in effect, concentrate carers among less secure types of employment. As discussed by the Commission in the Job Security discussion paper, less secure forms of work can have detrimental impacts on people's health, wellbeing, and future job opportunities.
- [81] Negative effects for carers can be further exacerbated (or triggered) by a carers' age, gender, socioeconomic status and/or the availability of supports like financial and interpersonal resources (e.g. friends and family).¹⁰⁹ Impacts are experienced disproportionately and inequitably, with young carers, migrant and CALD communities, and First Nations people particularly vulnerable due to the interaction between the demands of caring and pre-existing disadvantage.

¹⁰⁴ Centre for Change Governance, National Centre for Social and Economic Modelling (NATSEM) and University of Canberra, *Caring for others and yourself: The 2021 Carer Wellbeing Survey* (Carers Australia, Canberra, 2021) 8.

¹⁰⁵ Carers NSW, *Carers NSW 20222, National Carer Survey Report* (2023).

¹⁰⁶ Centre for Change Governance, National Centre for Social and Economic Modelling (NATSEM) and University of Canberra, *Caring for others and yourself: The 2021 Carer Wellbeing Survey* (Carers Australia, Canberra, 2021) 3.

¹⁰⁷ See, e.g., Emma George et al, 'Psychological distress among carers and the moderating effects of social support' (2020) 20 (154) *BMC Psychiatry*.

¹⁰⁸ International Labour Organisation, *Care work and care jobs for the future of decent work* (International Labour Office, Geneva, 2018) 38, 92–97.

¹⁰⁹ See, e.g., Itismita Mohanty and Theo Niyonsenga, 'A longitudinal analysis of mental and general health status of informal carers in Australia' (2019) 19 *BMC Public Health* 1436; Senate Select Committee on Work and Care, *Final Report* (2023) 177 [8.56].



Fair Work
Commission

[82] The 2022 National Carer Survey highlights that supporting carers to maintain connection in the paid workforce, not only benefits carers, but also the people they care for, employers and the economy more broadly.¹¹⁰

¹¹⁰ Carers NSW, [Carers NSW 2022, National Carer Survey Report](#) (2023) 20.



4 Award clauses and other workplace relations settings that impact work and care

This section looks at workplace relations settings that may impact an employee's ability to balance work and care, with a focus on relevant provisions in modern awards. Whilst enterprise agreements may also include terms and conditions that relate to work and care, the focus in this paper is on modern award terms and the Commission's powers to vary modern awards. It provides an overview of a range of modern award provisions and presents analysis undertaken by Commission staff on the 25 modern awards. It also looks at types of employment, flexibility in the workplace, rostering and hours of work and leave arrangements. Commission staff acknowledge that there may be other modern award provisions that impact work and care.

4.1 Types of employment

[83] As explored above, caring can have a significant impact on people's capacity to participate in paid work and, by extension, the types of employment they can be engaged in.¹¹¹ ABS data suggests that carers spend an average of 20 hours per week caring, with primary carers found to spend double this figure or more.¹¹² Accordingly, the way employees are engaged to work can affect their ability to balance work and caregiving.

¹¹¹ Centre for Change Governance, National Centre for Social and Economic Modelling (NATSEM) and University of Canberra, [Caring for others and yourself: The 2021 Carer Wellbeing Survey](#) (Carers Australia, Canberra, 2021) 43.

¹¹² ABS, [Disability, Ageing and Carers, Australia: Summary of Findings](#) (October 2019), Table 36.1. It should be noted that a 2022 national survey of 6,825 carers living in all Australian jurisdictions found respondents spent an average of 104 hours per week caring, but that this included the provision of 24/7 care (calculated as 168 hours per week): see Carers NSW, [Carers NSW 2022, National Carer Survey Report](#) (2023).



- [84] Many jobs, particularly senior and well-paid or ‘high-status’ jobs, now require employees to work beyond the standard 38 hours a week.¹¹³ According to one study, almost 50 per cent of fathers worked more than 44 hours per week, while 40 per cent regularly worked at night and on weekends.¹¹⁴ The Work and Care Senate Committee observed that, ‘Carers struggle to do jobs where long hours are regular, and this creates high bars that exclude women and carers. This [in turn] contributes to a gendered work-care system where men work more, while women do more unpaid domestic work.’¹¹⁵ Challenges balancing work and caring may lead to ‘occupational downgrading’, where women choose jobs below their skill level and with poorer conditions.¹¹⁶
- [85] Modern awards provide for 3 main types of employment: full-time, part-time and casual. Other employment types, such as shift work, labour hire arrangements and fixed term employment, are provided for in modern awards on an industry-by-industry basis.
- [86] The meaning of the expression ‘types of employment’ received comprehensive examination in *Re Metal, Engineering and Associated Industries Award, 1998 - Part 1* (*‘Metals Casuals Decision’*). There, the Full Bench of the Australian Industrial Relations Commission (AIRC) observed:

‘Types of employment provided for in an award are foundational to the award’s regime, and therefore to the award safety net. The expressions “categories of employment” and “types of employment” in industrial jargon refer to types of contract of employment. A type of employment specified in an award is the subject to which the terms and conditions for that type of employment are awarded. Usually an award applies to one or more main or primary types of employment; each other type, in concept at

¹¹³ See, e.g., Youbgjoo Cha and Kim Weeden, ‘Overwork and the slow convergence in the gender gap in wages’ (2014) 79(3) *American Sociological Review* 457–484. It should be observed that modern awards cannot apply to high-income employees under s 47(2) of the FW Act. High income employees are defined under s 329 as workers with guaranteed annual earnings in excess of the high-income threshold. This calculation outlined in the Fair Work Regulations 2009 (Cth). At 1 July 2022, the high-income threshold was \$162,00 per annum. A period of unpaid parental leave does not affect the annual rate of earnings.

¹¹⁴ See, e.g., Jennifer Baxter, Lyndall Strazdins and Jianghong Li, ‘Long hours and longings: Australian children’s views of fathers’ work and family time’ (2017) 79(4) *Journal of Marriage and Family* 965–982.

¹¹⁵ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) xxviii.

¹¹⁶ Ariane Hegewisch and Janet Gornick, ‘The impact of work-family policies on women’s employment: a review of research from OECD countries’ (2011) 14(2) *Community, Work and Family* 119–138.



least, is exempt from some or all of the conditions awarded to apply to the primary category or categories.¹¹⁷

[87] Broadly, within the modern awards system, ‘employment type’ determines whether particular terms and conditions apply to workers.¹¹⁸ For instance, casual workers are excluded from annual, personal/carer’s and compassionate leave entitlements and only some casual workers can make requests for flexible working arrangements. This is discussed further at section 1.1.1.¹¹⁹

[88] For full-time employees, the NES provides for a maximum 38 hours of work per week plus ‘reasonable additional hours’.¹²⁰ The ABS defines full-time employees as anyone working 35 hours or more a week, with hours-based metrics ensuring a consistent and comparable approach to classifying employed persons.¹²¹

[89] Of the 25 modern awards examined, **Table 2** below sets out the top 5 modern awards with the highest rates of employees working full-time hours and the proportion of male employees.

Table 2— Highest percentage of employees working full-time hours across the 25 modern awards¹²²

Award	Proportion working full-time and sex
Plumbing Award	100 per cent of employees are male and around 72 per cent work full-time hours
Building On-site Award	93.5 per cent of all employees are male and around 78 per cent of all employees work full-time hours
Manufacturing Award	Around 93 per cent of all employees are male and around 82.7 per cent of all employees work full-time hours

¹¹⁷ [2000] AIRC 722 at [9].

¹¹⁸ See, e.g., *Re Metal, Engineering and Associated Industries Award, 1998 - Part 1* [2000] AIRC 722 [9].

¹¹⁹ *Fair Work Act 2009* (Cth) ss 86, 95, 106.

¹²⁰ *Ibid* 62.

¹²¹ ABS, [Understanding full-time and part-time work](#), (February 2021).

¹²² Based on data from the Fair Work Commission Report by Kelvin Yuen and Josh Tomlinson, ‘[A profile of employee characteristics across modern awards](#)’ (Research Report No 1, Fair Work Commission, March 2023). Note that employees working full-time hours, may be employed on either a full-time, part-time or on a casual basis, see ABS (18 February 2021), [Understanding full-time and part-time work](#), ABS Website.



Award	Proportion working full-time and sex
Road Transport and Distribution Award	Around 87.5 per cent of all employees are male and around 70 per cent of all employees work full-time hours
Electrical Contracting Award	Around 86 per cent of all employees are male and around 86 per cent of all employees work full-time hours

[90] As part of the 4 Yearly Review, the Full Bench in the *Casual Employment and Part-time* case observed that ‘award provisions have not been constructed simply to allow any person to be employed on any number of hours below full-time hours.’¹²³ Rather, part-time and casual work retains distinctive features that reflect its original purpose to provide flexibility for certain workers, notably those with caring or study commitments.

[91] As discussed in the Job Security discussion paper, part-time employment has a gendered history.¹²⁴ Accommodation of caring responsibilities were historically addressed through provision of part-time employment, with access subject to gender-based restrictions.¹²⁵ Part-time work was further limited to women to prevent arrangements being used to reduce hours for existing full-time (male) employees.¹²⁶ Gender restrictions were only lifted in 1990 following the *Parental Leave Test Case*.¹²⁷ Further, in the 1995 *Personal Carer’s Leave Test Case – Stage 2* decision, the AIRC Full Bench noted that:

‘It is apparent from the evidence that part-time employees are an integral part of the labour force. Part-time employment is one of the ways in which families reconcile their work and family commitments. The evidence shows an employee preference for part-time work, particularly among women.’¹²⁸

¹²³4 yearly review of modern awards – *Casual employment and Part-time employment* [2017] FWCFB 3541 [97].

¹²⁴ See Fair Work Commission, *Discussion Paper – Job Security* (December 2023) 66.

¹²⁵ See, e.g., *Re Clerks (State) Award* [1953] AR (NSW) 199, 224; [1971] CAR 389.

¹²⁶ *Re Vehicle Industry – Repair, Services and Retail – Award 1980* [1983] 5 IR 100, 103–104; see also 4 yearly review of modern awards – *Casual employment and Part-time employment* [2017] FWCFB 3541 [89].

¹²⁷ *Parental Leave Test Case* [1990] 36 IR 1; [1990] AIRC 750 13–14.

¹²⁸ *Personal Carer’s Leave Test Case – Stage 2* [1995] 62 IR 48; [1995] AIRC 2396 [4.5.2]–[4.5.3].



[92] Australia reports a high share of part-time employment, with women more than twice as likely as men to be working part-time hours.¹²⁹ The definition of part-time employment in modern awards is explored further below at section 1.1.1. The ABS defines part-time employees as working less than 35 hours per week.¹³⁰

[93] Of the 25 modern awards examined, **Table 3** below sets out the top 5 modern awards with the highest rates of employees working part-time hours, including the proportion of female employees.

Table 3—Highest percentage of employees working part-time hours across the 25 modern awards¹³¹

Award	Proportion working part-time hours and sex
Nurses Award	Around 85 per cent of all employees are female and around 93 per cent of all employees work part-time hours
Schools General Staff Award	Over 70 per cent of all employees are female and around 90 per cent of all employees work part-time hours
Aged Care Award	Over 79.5 per cent of all employees are female and around 87 per cent of all employees work part-time hours
Fast Food Award	Around 61 per cent of all employees are female and 86 per cent of all employees work part-time hours
Fitness Award	66 per cent of all employees are female and around 85 per cent of all employees work part-time hours

¹²⁹ Fair Work Commission, [Discussion Paper – Job Security](#) (December 2023) 30–31.

¹³⁰ ABS, [Understanding full-time and part-time work](#), (February 2021), ABS Website.

¹³¹ Data is based on data from the Fair Work Commission Report by Kelvin Yuen and Josh Tomlinson, '[A profile of employee characteristics across modern awards](#)' (Research Report No 1, Fair Work Commission, March 2023). Note that employees working part-time hours, may be employed on a full-time or casual basis, see ABS, [Understanding full-time and part-time work](#), (February 2021), ABS Website.



Fair Work
Commission

- [94] Commission staff have previously found that within the modern award-reliant workforce, almost half of the workforce is made up of casual employees. This is significantly higher than for employees not on modern awards, where one in 7 employees are employed on a casual basis.¹³²
- [95] Of the 25 modern awards examined, **Table 4** below sets out the top 5 modern awards with the highest casualised workforces, including the proportion of female employees.

Table 4—Highest percentage of employees working casual hours across the 25 modern awards¹³³

Award	Proportion working casual hours and sex
Fitness Award	Around 66 per cent of all employees are female and around 83 per cent of all employees work casual hours
Miscellaneous Award	Around 50 per cent of all employees are female and around 74 per cent of all employees work casual hours
Schools General Staff Award	Around 70 per cent of all employees are female and around 73 per cent of all employees work casual hours
Hospitality Award	Around 66 per cent of all employees are female and around 70 per cent of all employees work casual hours
Fast Food Award	Around 61 per cent of all employees are female and around 69 per cent of all employees work casual hours

¹³² *Annual Wage Review Decision 2022-23* [2023] FWCFB 3500 at [145].

¹³³ Based on data from the Fair Work Commission Report by Kelvin Yuen and Josh Tomlinson, '[A profile of employee characteristics across modern awards](#)' (Research Report No 1, Fair Work Commission, March 2023).



4.1.1 Definitions of part-time in the modern awards

[96] Commission staff observed that all 25 modern awards set the ordinary hours of work for a part-time employee as less than 38 hours per week.¹³⁴ In addition, on commencement of part-time employment, modern awards require that the employee and employer agree on certain arrangements related to hours of work. Changes to the regular pattern of part-time hours are generally made by consent, however variations to hours are further discussed at section 4.3.3.

[97] Across the 25 modern awards, common arrangements that require agreement on commencement for part-time work include:

- Ordinary hours of work.
- Guaranteed hours per week or roster cycle.
- Employee's availability.
- Start and finish times.

[98] Less common arrangements include:

- Number of work weeks in a school year (one modern award).¹³⁵
- Mealtimes and duration (5 modern awards).
- Minimum number of hours per week for part-time employees, namely 8 hours (2 modern awards).¹³⁶

¹³⁴ Note, the ABS defines part-time employees as working less than 35 hours per week. See ABS, [Understanding full-time and part-time work](#), (February 2021), ABS Website.

¹³⁵ [Educational Services \(Schools\) General Staff Award 2020](#) clause 10.3.

¹³⁶ [Hospitality Industry \(General\) Award 2020](#) clause 10.2(a); [Restaurant Industry Award 2020](#) clause 10.2(a).



4.1.2 Reasonably predictable hours

[99] Across the 25 modern awards, 20 provide that part-time employees have ‘reasonably predictable’ hours of work. The 5 modern awards that use different terminology are set out below in **Table 5**. Of these awards, the Road Transport and Distribution Award does not refer to the regularity of a part-time employee’s hours.¹³⁷

Table 5—Different terminology to ‘reasonably predictable’ in part-time provisions across the 25 modern awards

Award	Different terminology used
Electrical Contracting Award	A part-time employee is an employee who is engaged to work on a part-time basis work for a constant number of hours for less than 38 hours per week (clause 10.1)
Higher Education General Staff Award	Part-time employment means employment for less than the normal weekly ordinary hours specified for a full-time employee , for which all award entitlements are paid on a pro rata basis calculated by reference to the time worked (clause 10)
Manufacturing Award	Employees are engaged to work on a part-time basis involving a regular pattern of hours which average less than 38 ordinary hours per week (clause 10.1)
Miscellaneous Award	A part-time employee: (a) is engaged to work less than full-time hours of 38 per week; (b) has predictable hours of work... (clause 10.1)
Road Transport and Distribution Award	A part-time employee is engaged to work less than 38 ordinary hours per week (clause 10.1)

¹³⁷ The Road Transport and Distribution Award nonetheless requires agreement prior to commencement of employment as to the hours and days a part-time employee will work. See [Road Transport and Distribution Award 2020](#) clause 10.2.



4.1.3 Guaranteed part-time hours and changes to part-time hours

- [100] Most of the 25 awards contain guaranteed hours provisions for part-time employees, requiring the employer and employee to agree in writing on a guaranteed number of hours provided to the employee each week. In the Hospitality Award and Restaurant Award guaranteed hours for a part time employee must be at least 8 hours each week.¹³⁸
- [101] Across the 25 modern awards, the agreed regular pattern of work does not necessarily have to provide the same guaranteed hours each week.¹³⁹
- [102] Each modern award allows for the regular pattern of work and guaranteed hours to be altered by written agreement. In some modern awards, the pattern of work may also be altered by the employer without agreement, for example in the Clerks Award and the Children’s Award, by giving 7 days’ notice.¹⁴⁰ Further, the Building On-site Award and Electrical Contracting Award enable an employer to ‘inform’ a part-time employee what their ordinary hours of work and starting and finishing times will be.¹⁴¹ Further discussion on changes to working hours, including notice of rosters and notice of changes to rosters, is discussed at section 4.3.3.

1. Part-time - discussion question

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?

¹³⁸ [Hospitality Industry \(General\) Award 2020](#) clause 10.2(a); [Restaurant Industry Award 2020](#) clause 10.2(a).

¹³⁹ For example, see [Social, Community, Home Care and Disability Services Industry Award 2010](#) clause 10.3(d).

¹⁴⁰ See [Clerks – Private Sector Award 2020](#) clause 10.4; [Children’s Services Award 2010](#) clause 10.4(d).

¹⁴¹ See [Building and Construction General On-site Award 2020](#) clause 11.3; [Electrical, Electronic and Communications Contracting Award 2020](#) clause 10.4.



4.2 Flexibility in the workplace and modern awards

[103] A key strategy for addressing challenges faced by working carers is implementing flexibility in the workplace. Flexibility in the workplace allows employers and employees to agree on changes to working arrangements to better suit their needs. The workplace relations framework includes several mechanisms that may assist modern award covered employees to access flexibility:

- Requests for flexible working arrangements under section 65 of the FW Act.
- Flexibility terms in modern awards which enable an employer and an employee to agree to an individual flexibility arrangement (IFA) changing the effect of award clauses concerning certain matters.
- Modern award facilitative provisions which enable an employer and an employee, or a majority of employees, to agree to vary particular modern award provisions by agreement.

[104] This section will also canvas specific types of flexible working arrangements, such as a right to disconnect, working from home and the 4-day work week.

[105] Flexibility in working arrangements, including modified hours, working from home or job sharing, can assist carers to balance care responsibilities with paid work. Australia has witnessed a significant shift towards more flexible working arrangements. This has enabled more people, particularly women, to balance work and caring responsibilities throughout key life stages.¹⁴² In 2021, around 60 per cent of all employees had flexible start and finish times, and around half could work from home.¹⁴³ Similarly, the 2022 National Carer Survey found that:

- 57.7 per cent of carers had access to flexible working arrangements.
- 51 per cent varied their work start and finish times.
- 33 per cent worked from home to accommodate their caring role.¹⁴⁴

¹⁴² Australian Government, [Working Future: The Australian Government's White Paper on Jobs and Opportunities](#) (September 2023) 11.

¹⁴³ Treasury (Commonwealth of Australia) analysis of 2021 HILDA data. Referred to in the Australian Government, [Working Future: The Australian Government's White Paper on Jobs and Opportunities](#) (September 2023) 50.

¹⁴⁴ Carers NSW, [Carers NSW 2022, National Carer Survey Report](#) (2023) 21.



- [106] Research indicates that flexible work can ease time pressures and enable workers to better meet personal and family responsibilities.¹⁴⁵ Women who have greater access to flexible start and finish times before having children appear more likely to remain employed after having children.¹⁴⁶ When flexible work is not available, people providing care to older people or people with disability are more likely to leave the workforce altogether.¹⁴⁷ Evidence also indicates that men are more reluctant than women to request flexible working arrangements and are less likely to be granted such requests.¹⁴⁸
- [107] Recent research from the Productivity Commission on working from home suggests that flexible working arrangements may reduce perceived employment costs and barriers for people with care responsibilities.¹⁴⁹ Benefits for employers include greater retention of staff, improved productivity and performance.¹⁵⁰
- [108] Employers have been encouraged to consider re-designing jobs to accommodate employees' caring responsibilities since at least 2013, with the AHRC releasing reports highlighting how such initiatives can support workforce participation by carers.¹⁵¹ The concept of job re-design involves tailoring a role or set of duties to create the ability to work flexibly. The idea that flexible work is

¹⁴⁵ Tapas Ray and Regina Pana-Cryan, '[Work flexibility and work-related well-being](#)' (2021) 18(6) *International Journal of Environmental Research and Public Health* 3254.

¹⁴⁶ Bahar, E., Bradshaw, N., Deutscher, N., & Montaigne, M, [Children and the gender earnings gap: Evidence for Australia](#). (Treasury 2023).

¹⁴⁷ Australian Government, [Working Future: The Australian Government's White Paper on Jobs and Opportunities](#) (September 2023) 155.

¹⁴⁸ AHRC, [Supporting Working Parents: Pregnancy and Return to Work National Review – Report](#), (July 2014); Skinner, N., Cathcart, A., & Pocock, B. 'To ask or not to ask? Investigating workers' flexibility requests and the phenomenon of discontented non-requesters', (2016) *Labour and Industry* 103–119.

¹⁴⁹ Productivity Commission, [Working from home](#) (September 2021) 82–83.

¹⁵⁰ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 127.

¹⁵¹ See Australian Human Rights Commission, [National Enquiry into Employment Discrimination Against Older Australians and Australians with Disability, Good practice examples: A resource for employers](#) (July 2016); Australian Human Rights Commission, [Investing in care: recognising and valuing those who care](#) (January 2013); Australian Human Rights Commission, [Supporting carers in the workplace: A toolkit](#) (January 2013).



only for office workers has been challenged, for example by WGEA, noting the potential to combine and/or share roles.¹⁵²

[109] While flexible work is essential to ‘carer-friendly workplaces’, arrangements can be ineffective in isolation.¹⁵³ The positive outcomes associated with flexible employment may also depend on whether workers voluntarily choose these arrangements.

[110] As canvassed in the Job Security discussion paper, the shift towards more flexibility in the workplace has introduced new challenges associated with non-standard working arrangements such as career progression, professional development opportunities and lower pay.¹⁵⁴ The WGEA calls this the ‘part-time promotion cliff’, finding that the share of managers working part-time diminishes with seniority and identifying a large gap in promotional opportunities for employees who do not work full-time.¹⁵⁵

[111] Further, there are competing perspectives on the issue, with some groups highlighting the negative aspects of flexible engagement of workers, such as increased rates of casualisation or the use of insecure labour hire workers to perform jobs that could otherwise go to permanent employees. Other highlight that flexibility is a reality of modern workplaces and is required to meet worker expectations and work-life balance considerations.¹⁵⁶

[112] The interaction between job security and flexibility was also noted in the Work and Care Final Report, which highlighted that:

- For many working carers, a lack of flexibility drives them into insecure forms of work with job insecurity further limiting their ability to access flexible arrangements. This correlation means that genuine workplace flexibilities can result in insecure work.

¹⁵² Workplace Gender Equality Agency, [Flexibly working is good for business](#) (February 2019).

¹⁵³ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 127 [6.86].

¹⁵⁴ Fair Work Commission, [Discussion Paper – Job Security](#) (December 2023) 19–20; See also, International Labour Organisation, [Non-standard employment around the world: Understanding challenges, shaping prospects](#) (International Labour Office, Geneva, 2016) 138.

¹⁵⁵ Workplace Gender Equality Agency, [MEDIA RELEASE: New data shows Australian workers face a ‘part-time promotion cliff’ | WGEA](#) (15 November 2023).

¹⁵⁶ See, Fair Work Commission, [Discussion Paper – Job Security](#) (December 2023) 26.



- Some employers may misuse the term 'flexible' to describe insecure, unpredictable and ad hoc employment arrangements.¹⁵⁷

[113] The Work and Care Final Report nonetheless concluded that flexible work does not need to be insecure, highlighting that the Work and Care Senate Committee heard from many employers as to ways they offer flexibility alongside secure, ongoing work.¹⁵⁸ The WGEA drew the Committee's attention to the achievements of 'leading practice organisations' in the private sector, who seek a citation as an 'Employer of Choice for Gender Equality'.¹⁵⁹ The WGEA noted that to earn this citation, employers need to have:

'... a formal policy and strategy supporting those with family or caring responsibilities which covers return to work from parental leave; parents at all stages of children's lives; employees with eldercare responsibilities; and employees with caring responsibilities for people with disability. In addition, the citation requires organisations to have **no eligibility** period for access to employer-funded parental leave. It also expects organisations to actively encourage men to take parental leave and, if applicable, set targets for men's engagement in flexible working arrangements.

Leading practice organisations in the private sector aim to address barriers to carers' engagement in the workforce through robust flexible work arrangements and policies, carers leave, parental leave and childcare supports. In addition, leading practice organisations encourage women and men to utilise flexible work arrangements and parental leave and have moved toward gender neutral language in policies and strategies. When workplaces support both women and men in their roles as workers and carers, they disrupt gender norms and assumptions about the division of work and care.¹⁶⁰

¹⁵⁷ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) [6.59]–[6.60].

¹⁵⁸ *Ibid* [6.61].

¹⁵⁹ *Ibid* [6.63].

¹⁶⁰ Workplace Gender Equality Agency, *Submission 17*, 11–12. Emphasis in original. In Senate Select Committee on Work and Care, [Final Report](#) (March 2023).



4.2.1 Requests for flexible working arrangements under section 65 of the FW Act

[114] Under section 65 of the FW Act, the following employees have a legal entitlement to make a request to their employer for a change in working arrangements, if they are:

- Pregnant.
- The parent, or have responsibility for the care, of a child who is of school age or younger.
- A carer within the meaning of the Carer Recognition Act.
- A person with disability.
- Aged 55 or older.
- Experiencing family or domestic violence.
- Caring for or supporting an immediate family or household member who requires care or support because they are experiencing family and domestic violence.¹⁶¹

[115] Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.¹⁶²

[116] Employees are only entitled to make this request if they are permanent employees who have worked with the employer for at least 12 months, or if they are regular casual employees who have worked with the employer regularly and systematically for at least 12 months and have a reasonable expectation of continuing to do so.¹⁶³

[117] The General Manager of the Commission is required to report on the operation of the provisions of the NES relating to requests for flexible working arrangements every 3 years.¹⁶⁴ The Report found that between 2019 and 2021, there were a total of 113 applications to the Commission to deal with a dispute relating to a request for flexible working arrangements and 125 applications

¹⁶¹ *Fair Work Act 2009* (Cth), s 65(1A).

¹⁶² *Ibid* s 65(1).

¹⁶³ *Ibid* s 65(2).

¹⁶⁴ *Ibid* s 653.



Fair Work
Commission

in the previous reporting period.¹⁶⁵ One of these disputes resulted in a decision of the Commission.¹⁶⁶

Table 3.1: Number of applications to deal with a dispute in relation to requests for flexible working arrangements made under s.739 of the Fair Work Act

Financial year	Number of applications
1 July 2018–30 June 2019	35
1 July 2019–30 June 2020	29
1 July 2020–30 June 2021	49

Source: Fair Work Commission.

[118] In 2021, the General Manager’s report found that over the reporting period 1 July 2018 to 30 June 2021:

- Most applications to deal with a dispute in relation to requests for flexible working arrangements made under section 739 of the FW Act were lodged by individuals (91 applications), while 20 applications were lodged by an employee organisation on behalf of an individual and 2 applications were lodged by an employer.
- Of the 91 individual applications, 52 applications for flexible working arrangements were lodged by women compared to 39 applications lodged by men.
- The health and welfare services industry had the highest number of applications at 13 applications.
- A number of additional forms of flexibility were introduced into modern awards. These likely impacted the numbers of requests and disputes received by the Commission during the reporting period. This included the redrafting of the model term for requests for flexible working arrangements into all modern awards as part of the 4 Yearly Review¹⁶⁷

¹⁶⁵ Fair Work Commission, [General Manager's report into the operation of the provisions of the National Employment Standards relating to requests for flexible working arrangements and extensions of unpaid parental leave under s.653 of the Fair Work Act 2009 \(Cth\): 2018–21](#) (2021).

¹⁶⁶ *The Police Federation of Australia (Victoria Police Branch) T/A The Police Association of Victoria v Victoria Police* [2018] FWC 5695.

¹⁶⁷ 4 yearly review of modern awards – Plain language – standard clauses [\[2017\] FWCFB 4419](#) at [12].



and insertion of Schedule X – Additional measures during the COVID-19 pandemic into 99 modern awards.¹⁶⁸

- Research by the University of Sydney found that requests for flexible working arrangements were mainly made by employees who were parents or carers of a child of school age or younger. The most common type of request referred to by interviewees in the research was a reduction in work hours, changes to pattern of hours or days worked and changes to roster arrangements.

[119] The provisions concerning flexible working arrangements were recently amended by the SJBPA Act. These amendments commenced operation on 6 June 2023 and can be summarised as follows:

- The circumstances in which employees can make a request were expanded to include where the employee is pregnant, experiencing family and domestic violence, or providing care to a member of their immediate family or household who is experiencing family or domestic violence.¹⁶⁹
- A new provision (section 65A) was inserted setting out various obligations for employers when responding to a request, including that the employer can only refuse the request on reasonable business grounds, if it has first genuinely tried to reach agreement with the employee and has had regard to the consequences of refusing the request for the employee.¹⁷⁰ The new section 65A was based on the model award term developed by the Commission and inserted into modern awards during the 4 Yearly Review.¹⁷¹
- A new provision (section 65B) was inserted dealing with disputes about flexible working arrangements. Section 65B requires parties to first attempt to resolve the dispute at the workplace level and, where this does not resolve the dispute, allows the dispute to be referred to the Commission.

¹⁶⁸ COVID-19 Award Flexibility – Schedule X and award-specific schedules [\[2022\] FWC 1531](#).

¹⁶⁹ Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth) ss 466–447 and 469A.

¹⁷⁰ Ibid s 459.

¹⁷¹ Revised Explanatory Memorandum to the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 [618].



[120] Given the recency of the amendments commencing operation, the impact of the new amendments are not yet known. However, early cases include, *Quirke v BSR Australia Ltd*, where the Full Bench established that the request for flexible arrangements, which carry an evidentiary onus under sections 65A(1)–(3) of the FW Act, and had not been met.¹⁷² Further, in *Gregory v Maxxia Pty Ltd*, the Commission held that an employer is ‘within its rights to require its employees to return to the office in accordance with their contracts of employment’.¹⁷³ In both cases the employees were unsuccessful in disputing the employers’ refusal of flexible working arrangements.

4.2.2 Individual flexibility arrangements

[121] An IFA is a written agreement used by an employer and employee to change the effect of a modern award or registered agreement. The FW Act requires all modern awards, enterprise agreements and other registered agreements to include a flexibility term enabling an employer and employee to agree on an IFA.¹⁷⁴ These flexibility terms must require the employer and employee to genuinely agree to any IFA and employers must ensure employees are better off overall under IFAs.¹⁷⁵

[122] The explanatory memorandum to the Fair Work Bill 2008 stated the requirement for modern awards to include flexibility terms would ‘ensure the needs of employers and employees are met’ and ‘assist employees in balancing their work and family responsibilities and improve retention and participation of employees in the workforce’. Additional information about the history of the provision is set out in the Job Security discussion paper.¹⁷⁶

¹⁷² [\[2023\] FWCFB 209](#) [38], [45]–[46].

¹⁷³ [\[2023\] FWC 2768](#) [10].

¹⁷⁴ *Fair Work Act 2009* (Cth) s 144(1).

¹⁷⁵ *Ibid* s 144(4)(b)–(c).

¹⁷⁶ Fair Work Commission, [Discussion Paper – Job Security](#) (December 2023) 92–93.



[123] All modern awards include a model flexibility term titled individual flexibility arrangements (model flexibility term). The model flexibility term provides that an employer and employee may agree to vary the operation of award terms concerning:

- Arrangements for when work is performed.
- Overtime rates.
- Penalty rates.
- Allowances.
- Annual leave loading.

[124] The model term clause sets out a range of procedural requirements before an IFA can be implemented, including that:

- An IFA may only be made after an employee that has commenced employment with the employer.
- An employer wishing to initiate the making of an IFA must give the employee a written proposal.
- An IFA must result in an employee being better off overall.
- The employer and the employee must genuinely agree, without duress or coercion, to any IFA.

[125] The General Manager of the Commission is also required to report on the use of IFAs in Australia every 3 years.¹⁷⁷ In 2015, the General Manager's report indicated that only around 2 per cent of employees were considered to have made an IFA since 1 July 2012.¹⁷⁸ While in 2021, the General Manager's report found that:

- The prevalence of IFAs was low but spread across a number of industries.
- IFAs were more frequently initiated by employees than employers, with smaller proportions responding that an IFA had been initiated by an employer or jointly made by both employers and employees.

¹⁷⁷ *Fair Work Act 2009* (Cth) s 653.

¹⁷⁸ Fair Work Commission, [General Manager's report into individual flexibility arrangements under s.653 of the Fair Work Act 2009 \(Cth\) 2012-2015](#) (November 2015) viii, 26.



- Whether IFAs are made to vary awards or enterprise agreements is dependent on the industry it operates in, with the instrument being varied dependent on the predominant instrument used in that industry.
- Variations requested by employers were changes to start/finish times; changes in shifts and changes in the days worked. For employees, it was also changes to start/finish times; changes in days worked; and also, reduction in number of days worked.
- The most common reasons for initiating an IFA are to change an employee's hours of work and to address issues with overtime and penalties that result from the change.
- Variations requested in IFAs and refused included working from home.
- A survey conducted by the Commission (Australian Workplace Relations Study) indicated that IFAs were mostly signed by women, although a similar proportion also indicated no discernible difference between men and women.
- The use of IFAs for regulating working from home during COVID-19 was uncommon.
- There was one dispute referred to the Commission during the reporting period that resulted in a decision.¹⁷⁹

[126] The General Manager's reports have collated information about IFAs from survey data. For the 2012 and 2015 General Manager reports, the Commission conducted surveys to obtain data relating to the extent and content of IFAs. Reports have also drawn from quantitative data collected by the Department of Jobs and Small Businesses in a Survey of Employer's Recruitment Experiences.¹⁸⁰ The Commission has also contracted EY Sweeney to conduct qualitative research on IFAs¹⁸¹ and sponsored research on IFAs by the University of Sydney.¹⁸²

¹⁷⁹ [\[2015\] FWC 4408](#).

¹⁸⁰ See Fair Work Commission, [General Manager's report into individual flexibility arrangements under s.653 of the Fair Work Act 2009 2015-2018](#) 4.1.

¹⁸¹ See EY Sweeney, *Qualitative research for s.653 reports on individual flexibility arrangements and National Employment Standards rights to request provisions under the Fair Work Act 2009 (Cth), Final report*, (October 2018).

¹⁸² See Fair Work Commission, [General Manager's report into individual flexibility arrangements under s.653 of the Fair Work Act 2009 2018-2021](#) 4.1.



[127] The General Manager's reports have noted that, given IFAs are not lodged with or assessed by the Commission or any agency, there are challenges to accurately assessing the extent and terms of IFAs. For example, the latest report notes that:

'...there are no sources of administrative data in relation to IFAs. Although IFAs have been part of the Australian industrial landscape since 2009, they remain a small part of the overall mix of industrial instruments in Australia. This makes the research in this area both difficult to conduct and difficult to extrapolate from.'¹⁸³

2. Individual flexibility agreement – discussion question

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?

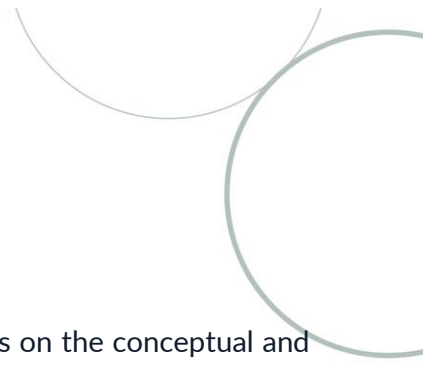
4.2.3 Facilitative provisions

[128] Facilitative provisions in modern awards allow the standard approach of an award provision to be departed from. This must be either by agreement between an employer and an individual employee, or an employer and the majority of employees in the enterprise or part of the enterprise concerned.

[129] Unlike the IFA model clause, which allows an employer or employee to agree to vary the operation of any award provision so long as it concerns the matters specified, facilitative provisions deal with the facilitation of agreements in relation to particular award provisions. For example, clause 16.5 of the Building On-site Award is a facilitative provision which allows an employee and their employer to agree to allow the employee to bank a rostered day off (RDO) which would otherwise be taken in accordance with clause 16.4(a). While facilitative provisions may encompass safeguards or impose restrictions in relation to the agreement, such as a cap on the number of RDOs which can be banked,¹⁸⁴ the procedural requirements required for forming an IFA under the model clause, such as that employees must be better off overall, do not apply.

¹⁸³ Ibid.

¹⁸⁴ See, e.g., the [Building and Construction General On-site Award 2020](#) clause 16.5(a).



[130] During the 4 Yearly Review, a Full Bench made the following comments on the conceptual and practical differences between the model flexibility term and facilitative provisions:

[138] It is important to appreciate that there are significant conceptual and practical differences between the model flexibility term and facilitative provisions of the type proposed by Ai Group. As we have mentioned, an IFA entered into pursuant to the flexibility term has effect in relation to the employee and employer concerned as if it were a variation to the modern award. Indeed, the IFA is taken, for the purposes of the Act, to be a term of the modern award. Facilitative provisions operate in quite a different way.

[139] A 'facilitative provision' was described by a Full Bench of the AIRC, in the September 1994 Safety Net Adjustments and Review decision, as:

'... that part of an award clause which enables agreement at enterprise level to determine the way that clause is applied at the enterprise. A facilitative provision normally provides that the standard approach in an award provision may be departed from by agreement between an individual employer and an employee or the majority of employees in the enterprise or part of the enterprise concerned. Where an award clause contains a facilitative provision, it establishes both the standard award condition and the framework within which agreement can be reached as to how the particular clause should be applied in practice.'

[140] The above definition was subsequently adopted in the Family Leave Test Case (Stage 1 decision), which introduced a number of facilitative provisions, including in respect of make-up time and TOIL.

[141] The substantive difference between an IFA and a facilitative provision is that a facilitative provision is an award term which prescribes the extent to which an employee and employer may depart from the usual method of implementing an award entitlement. Hence, in relation to overtime, a TOIL facilitative provision permits an agreement between an employee and employer to take time off in place of the overtime payment that would otherwise have been payable for working the overtime. An IFA, on the other hand, is not so limited. Subject to meeting the BOOT, an IFA may vary any substantive award entitlement within the scope of the model flexibility term."¹⁸⁵

¹⁸⁵ [2015] FWCFB 4466.



[131] All 25 modern awards examined include a range of facilitative provisions. In modern awards restructured during the 4 Yearly Review (119 of 121 modern awards), a clause identifying all facilitative provisions in each modern award is included in 'Part 1—Application and Operation of this Award'. The clause also identifies whether agreement under the facilitative provision can be reached between an employer and an individual employee or an employer and the majority of employees, or both.

[132] The types of facilitative provisions included in modern awards are wide ranging. Common facilitative provisions include agreement for time off instead of payment for overtime, make-up time, payment of wages, taking annual leave in advance and substitution of public holidays. Facilitative provisions may also concern RDOs, rostering, allowances, rest breaks, averaging of hours, call-backs and more.

[133] Principles related to the nature and extent of facilitative provisions in modern awards have been set out in a number of decisions.¹⁸⁶ For example, during the award modernisation process, the Hospitality Industry Full Bench outlined five principles to be considered in respect of facilitative provisions in modern awards:

'We think that the approach adopted by the Commission to the insertion of facilitative provisions into awards should reflect the fact that changes made through such clauses are not subject to Commission scrutiny. The nature and extent of the facilitative provisions in a particular award should take into account the circumstances in the industry covered by the award and the history of any existing facilitative provisions. For example, in an industry in which employees have little or no bargaining capacity a more cautious approach may be warranted.

We wish to make five general points to assist the parties in the award review process:

1. Facilitative provisions should not be a device to avoid award obligations, nor should they result in unfairness to the employees covered by the award.
2. Facilitative provisions provide for agreement at the workplace level about the manner in which a particular award provision is to be applied. Such agreements may be between:
 - the employer and an employee; or

¹⁸⁶ See, e.g., *4 yearly review of modern awards—Common issue—Award Flexibility* [2015] FWCFB 4466 [29]–[42].



- the employer and a majority of employees at the workplace. Once such an agreement has been reached, the particular form of flexibility agreed may be utilised by agreement between the employer and an individual employee.
3. To ensure that a facilitative provision operates fairly, the Commission may prescribe safeguards including provisions:
 - which require that the implementation of facilitative arrangements be recorded in the time and wages records kept by the employer pursuant to Division 1 of Part 9A of the Workplace Relations Regulations;
 - for the notification of unions party to the relevant award who have members employed at the particular enterprise of the intention to utilise the facilitative provision and providing such unions with a reasonable opportunity to participate in negotiations regarding its use. Union involvement in this process does not mean that the consent of the union is required prior to the introduction of agreed facilitative arrangements at the enterprise;
 - for a monitoring process under which a particular facilitative provision is reviewed, after a reasonable period, to consider its impact in practice.
 4. The safeguards, if any, provided in respect of a particular facilitative provision will depend on the nature of the provisions sought and the circumstances of the particular industry.
 5. Facilitative provisions should be used to promote the efficient performance of work at the enterprise level and to avoid the prescription of matters in unnecessary detail.¹⁸⁷

3. Facilitative provisions - discussion question:

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?

¹⁸⁷ (1999) AIRC P7500.



4.2.4 Working from home

- [134] Technological changes have enabled people in many occupations to work from home. This was accelerated by the COVID-19 pandemic, which resulted in over 40 per cent of workers reporting they regularly worked from home in 2022, up from 20-30 per cent of workers pre-pandemic.¹⁸⁸ Research suggests a hybrid work model encompassing 2 or 3 days working from home does not reduce productivity and is now the preference of most office workers.¹⁸⁹
- [135] For some, the increase in opportunities to work remotely has expanded employment opportunities, reduced time spent commuting and provided more flexibility to balance work and caring responsibilities.¹⁹⁰ Recent data from the ABS indicates that, as of August 2023, 36.9 per cent of employed people regularly worked from home, dropped slightly from 2022 levels.¹⁹¹
- [136] Hybrid or remote work can also encompass challenges for employers and employees. For example, it can make it more difficult to facilitate spontaneous collaboration and support workers to build skills through on-the-job mentoring. Improved flexibility as to when and where people work may also create ambiguity as to when workers can disconnect from work, which can impact on wellbeing.¹⁹²
- [137] Working from home provisions are not currently a feature of modern awards. During the COVID-19 pandemic, provisions providing flexibilities in relation to employees working from home were inserted into the Clerks Award on a temporary basis.¹⁹³ The schedule commenced operation on 28 March 2020 and was subsequently granted several applications to extend and vary its operation.

¹⁸⁸ABS, [Working arrangements](#), (December 2023); Australian Government, [Working Future: The Australian Government's White Paper on Jobs and Opportunities](#), (September 2023) 9.

¹⁸⁹ See Productivity Commission, [Working from home](#), (September 2021) 4, 21–22.

¹⁹⁰ Productivity Commission, [Working from home](#), (September 2021) 5.

¹⁹¹ ABS, [Working arrangements](#), (December 2023).

¹⁹² Productivity Commission, [Working from home](#), (September 2021) 27, 34–35, 61.

¹⁹³ [\[2020\] FWCFB 1690](#).



[138] In a decision issued on 6 October 2020, a Full Bench of the Commission observed that:

‘...the terms of Schedule I reflect the extraordinary circumstances arising from the restrictions imposed to contain the COVID-19 virus. The restrictions are now easing but the direct economic and social impacts of the pandemic will be felt for some time to come. It also seems likely that there will be a continuing need for flexible work arrangements to assist employers and employees in adapting to the changed conditions and to support the recovery. The facilitation of agreed working from home arrangements looms large in this context...

These circumstances suggest that there is a need to consider whether it is necessary to vary the Clerks Award to provide more enduring means of facilitating agreed working from home arrangements. The extension of Schedule I provides the parties with an opportunity to consider whether a more enduring solution is necessary and if so, the form of that solution’

[139] On 22 December 2020, the Full Bench issued a further decision granting an application to vary Schedule I and again extended its operation until 30 June 2021.¹⁹⁴ The version of the schedule following this decision included:

- A definition of remote work.
- An extended span of hours for employees working remotely.
- A provision allowing employees to elect to work their hours in a non-continuous manner while undertaking remote work.
- A provision allowing part-time employees to select their own starting and finishing times when undertaking remote work, with agreement from their employer.
- Flexibility in relation to the taking of meal or rest breaks by employees undertaking remote work, subject to agreement with the employer.

[140] Parties were directed to confer in respect of the variations to the Clerks Award (if any) which are necessary to facilitate agreed working from home arrangements.¹⁹⁵ On 11 April 2021, the Australian Council of Trade Unions (ACTU) wrote to the Commission on behalf of the Australian Services Union (ASU), Australian Chamber of Commerce and Industry (ACCI) and Australian Industry Group (Ai Group) asking the Commission to discontinue the matter. Parties noted that

¹⁹⁴ [2020] FWCFB 6985.

¹⁹⁵ [2020] FWCFB 5199 [101].



they intend to continue to monitor relevant developments with a view to potentially engaging in further discussions or seeking the further assistances of the Commission through a relevant application if a further change to the Clerks Award is necessary.

[141] On 29 April 2021 the Commission issued a Statement expressing the provisional view Schedule I should not be further extended and should cease operation on 30 June 2021.¹⁹⁶ On 24 June 2021, the Commission issued a decision confirming this provisional view and the Schedule ceased operation on 30 June 2021.¹⁹⁷

4. Working from home - discussion question:

Are there any specific variations needed in modern awards regarding working from home arrangements that are necessary to ensure they continue to meet the modern awards objective?

4.2.5 A right to disconnect

[142] Recent changes to how and when work is performed by employees has led to a phenomenon described as ‘availability creep’—where employees feel the need to always be available to answer emails, calls or simply deal with their workload.¹⁹⁸ The Work and Care Interim Report identified availability creep as having negative consequences for the productivity and wellbeing of workers, and noted that it is especially burdensome for working carers who already juggle competing demands on their time.¹⁹⁹ The report also found that availability creep can impact mental health, exacerbate work-life stress, impact on productivity and ‘take workers away from a fair day’s work for a fair day’s pay’.²⁰⁰

[143] For some workers, availability creep is a direct consequence of insecurity and rostering practices, whereby workers are expected to remain on call and available for extended time periods in order

¹⁹⁶ [2021] FWCFB 2326 [9]

¹⁹⁷ [2021] FWCFB 3653 [12]

¹⁹⁸ Senate Select Committee on Work and Care, *Interim Report*, (October 2022) 108.

¹⁹⁹ Senate Select Committee on Work and Care, *Final Report* (March 2023) [6.44].

²⁰⁰ Senate Select Committee on Work and Care, *Interim Report* (October, 2022) 108.



to secure sufficient paid work.²⁰¹ For other workers, availability creep has been driven by changes in technology allowing them to undertake work tasks outside the workplace at any time, and exacerbated by the COVID-19 pandemic.²⁰² The Work and Care Final Report notes that the occurrence of availability creep blurs the line between flexibility and unreasonable expectations between employees and employers.²⁰³

[144] The Minister for Employment and Workplace Relations has announced that the Government is constructively working with the crossbench to deliver an agreed amendment to the Fair Work Legislation Amendment (Closing Loopholes No. 2) Bill 2023 which would provide Australian workers with a legislative right to disconnect from unreasonable contact from their employer outside of work hours.²⁰⁴

[145] Modern awards contain a range of provisions which impact on when an employee performs work, for example:

- minimum payment periods (see section 4.3.1.1).
- broken shifts (see section 4.3.1.3).
- span of hours and maximum ordinary hours (see section 4.3.1.4).
- averaging of hours (see section 1.1.1.1).
- overtime and make-up time (see sections 4.3.4 and 4.3.5).
- on call allowances (see section 1.1.1).

5. A right to disconnect - discussion question:

Are there any specific variations needed in modern awards regarding a right to disconnect that are necessary to ensure they continue to meet the modern awards objective?

²⁰¹ See Professor Sara Charlesworth, Co-convenor, Work + Family Policy Roundtable, Committee Hansard, (20 September 2022), 54.

²⁰² Senate Select Committee on Work and Care, [Interim Report](#) (October, 2022) 108.

²⁰³ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) [6.43].

²⁰⁴ The Hon Tony Burke MP, [Closing Loopholes | Ministers' Media Centre \(dewr.gov.au\)](#) (December 2023).



4.2.6 Four-day working week

- [146] The Work and Care Senate Committee discussed global and domestic trials reducing the number of hours employees worked each week. Evidence received by the Committee included that shorter working hours reduce the scope for work-life conflict by providing more scope to manage family and other personal responsibilities outside work hours,²⁰⁵ support greater gender equality in employment participation, improve health and wellbeing, normalise care as part of work, improve productivity, and produce environmental and cost savings gains.²⁰⁶
- [147] The Work and Care Final Report noted that while a 4-day work week may not be practical for all industries, the rationale underpinning the model can be adapted to create a more sustainable, flexible approach to work. Further, a reduced working week may trigger a redistribution of paid and unpaid work between genders.²⁰⁷
- [148] The Commission has previously published a draft flexibility schedule for modern awards which included a model term for a compressed working week.²⁰⁸ The schedule was drafted in the context of assisting industries impacted by the COVID-19 pandemic and also addressed other flexibility provisions including working from home, taking annual leave at half pay, purchased leave and agreement to change the span of hours in a workplace.

²⁰⁵ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 129–133.

²⁰⁶ Ibid 134–138.

²⁰⁷ Ibid 129–133.

²⁰⁸ President's Statement, [The Fair Work Commission's Coronavirus \(COVID-19\) update – Draft Award Flexibility Schedule](#) (31 August 2020).



4.3 Rostering and hours of work

[149] Hours of work are the regular days and/or times employees have agreed to work, which may be set periodically or when commencing a new role. A roster is a timetable that shows the hours, days and times employees are required to work. Rostering and hours of work provisions in the modern awards framework include interrelated clauses that work together to set the rosters of employees.²⁰⁹

[150] The Work and Care Final Report found that workers, particularly in the care sector, can experience unfair roosting practices.²¹⁰ Evidence submitted to Committee highlighted that:

‘besides the direct impact on workers’ schedules, roosting practices can entrench the existing power imbalance between employee and employer. [...] employees reliant on roosted work may find it difficult to raise disputes or access their existing workplace entitlements’.²¹¹

[151] Variable hours, unexpected schedule changes, disruptive roosting and lack of genuine consultation with staff were highlighted as creating disputes with employers and negatively affecting employees’ caring responsibilities. The Work and Care Final Report identified that in many instances, people do not have capacity to reject changes to working hours, placing stress on workers and their families.²¹²

²⁰⁹ Productivity Commission, [Inquiry report - Workplace Relations Framework](#), Volume 1, (November 2015) 367–368; [\[2021\] FWCFB 2383](#) [472–473].

²¹⁰ Senate Select Committee on Work and Care, [Final Report](#) (2023) 112–117.

²¹¹ *Ibid* 114 [6.23].

²¹² *Ibid* 112–113.



[152] The Work and Care Final Report also noted that inflexible scheduling and low pay together have a detrimental impact on time, financial and personal resources for care.²¹³ The Report cited a survey which showed that 45% of disability support workers said their shifts change unexpectedly, and 29% said they were often called in to work at inconvenient times.²¹⁴ Further, recent evidence suggests linkages between poor job satisfaction and inflexibility of rostering systems.²¹⁵

[153] The Work and Care Interim Report suggested that rostering practices should give employees consistent and predictable working schedules, genuine consultation on when and how they work, and the ability to turn down extra hours without reprimand.²¹⁶ The Work and Care Final Report reiterated that roster justice could be strengthened to ensure:

‘employers genuinely consider the views of employees when considering changes to their rosters—especially those changes made at short notice, and which have the capacity to severely and adversely impact on working carers and their right to fair working conditions.’²¹⁷

²¹³ Natasha Cortis, Megan Blaxland and Sara Charlesworth, 'Care theft: Family impacts of employer control in Australia's retail industry' (2023) *Critical Social Policy* doi.org/10.1177/02610183231185766.

²¹⁴ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 94; Associate Professor Natasha Cortis and Dr Megan Blaxland, Social Policy Research Centre, University of NSW, Submission 19, 6; Natasha Cortis and Georgia van Toorn, 'Working in new disability markets: A survey of Australia's disability workforce' (2020) (University of New South Wales, Social Policy Research Centre) 29-30, 33.

²¹⁵ Konstantinos Mavromaras, Genevieve Knight, Linda Isherwood, Angela Crettenden, Joanne Flavel, Tom Karmel, Megan Moskos, Llaine Smith, Helen Walton, Zhang Wei [The 2016 National Aged Care Workforce Census and Survey - The Aged Care Workforce](#) (Report 2017), Dr Annabel Sheehy, Ms Rachel Smith, Professor Joanne Gray, Professor Caroline Homer, 'Understanding workforce experiences in the early career period of Australian midwives: insights into factors which strengthen job satisfaction' (2021) *Midwifery* 93; Denise Mary Jepsen, Robyn Toni Barker, 'Single-site employment (multiple jobholding) in residential aged care: A response to COVID-19 with wider workforce lessons' (2022) *Australasian Journal of Ageing*.

²¹⁶ Senate Select Committee on Work and Care, [Interim Report](#) (October 2023), 110.

²¹⁷ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 187 [8.122].



[154] To promote discussion on rostering practices in the modern awards framework, Commission staff have conducted an audit of provisions relating to rostering across the 25 modern awards. The audit identifies the following rostering provisions in the 25 modern awards:

- **Hours of work:** Section 4.3.1 explores rostering provisions related to minimum payment periods, recall to duty, broken shifts, span of hours and maximum hours and averaging of hours.
- **Consultation about changes to rosters:** Section 4.3.2 provides an overview of the model consultation clause.
- **Rostering notice:** Section 4.3.3 includes notice of rosters and changes to roster provisions.
- **Breaks:** Section 4.3.8 provides a brief overview of break provisions.
- **Overtime and makeup time:** Section 4.3.4 outlines when overtime is payable for additional hours worked and section 4.3.5 gives an overview of make-up provisions.
- **On call and travel time:** Section 1.1.1 provides an overview of on call provisions and section 4.3.7 provide an overview of travel time provisions.

4.3.1 Hours of work

[155] As explored above in types of employment at section 4.1, rostering requirements vary across the modern awards for full-time, part-time and casual employees. Ordinary hours in rosters are generally the regular hours worked by an employee that do not attract overtime penalties. The NES provides for a maximum 38 hours of work per week plus 'reasonable additional hours'.²¹⁸ Overtime and reasonable additional hours is discussed further at section 4.3.4 below.

4.3.1.1 Minimum payment periods

[156] Minimum payment terms (also referred to as minimum engagement terms) may be prescribed to particular employees. Minimum payment periods vary according to employment type, role or assignment and specify the minimum period of time employees can work and the minimum

²¹⁸ *Fair Work Act 2009 (Cth)* s 62.



payments to which they are entitled.²¹⁹ Minimum payment periods sometimes also apply to recall to duty, which is discussed at section 4.3.1.2 below.

[157] In the formative *Metal Casuals Decision*, the Full Bench observed that ‘a minimum engagement period may appropriately be conceived to be a necessary component of the award safety net for [casual and part-time employees]’.²²⁰ Specific minimum payments periods may also be prescribed for overtime, weekend or public holiday work, call-backs, split or broken shifts, or for certain groups of employees such as apprentices.

[158] The rationale for minimum payment periods was explained in *Re Victorian Employers’ Chamber of Commerce and Industry* as follows:

‘The rationale for minimum periods of engagement is one of protecting employees from unfair prejudice or exploitation. Given the time and monetary cost typically involved in an employee getting to and from work, it has long been recognised that employees, especially casual employees, can be significantly prejudiced if a shift is truncated by the employer on short notice (as would otherwise be lawful in a typical casual engagement) or the employee can be pressured into accepting unviable short shifts in order to retain access to longer shifts.’²²¹

[159] The Commission considered modern award terms for minimum payment periods for part-time and casual employees as part of the 4 Yearly Review.²²² The Full Bench explained the rationale for minimum engagement periods as follows:

‘[399] Minimum engagement periods in awards have developed in an ad hoc fashion rather than having any clear founding in a set of general principles. However, their fundamental rationale has essentially been to ensure that the employee receives a sufficient amount of work, and income, for each attendance at the workplace to justify the expense and inconvenience associated with that attendance by way of transport time and cost, work clothing expenses, childcare expenses and the like. An employment arrangement may become exploitative if the income provided for the employee’s labour

²¹⁹ The Commission also discussed minimum payment terms in the, [Discussion Paper – Job Security](#) (December 2023), 79-80.

²²⁰ *Metal, Engineering and Associated Industries Award 1998 = Part I* [2000] 110 IR 247; Print T4991 [126]–[133]; see also *4 yearly review of modern awards – Casual employment and part-time employment* [2017] FWCFB 3541 [400].

²²¹ *Victorian Employers’ Chamber of Commerce and Industry* [2012] FWAFB 6913 [12].

²²² See *part-time employees* ([AM2014/196](#)) and *casual employees* ([AM2014/197](#)).



is, because of very short engagement periods, rendered negligible by the time and cost required to attend the employment. Minimum engagement periods are also important in respect of the incentives for persons to enter the labour market to take advantage of casual and part-time employment opportunities (and thus engage the consideration in paragraph (c) of the modern awards objective in s.134).²²³

[160] As further outlined by the Full Bench during the 4 Yearly Review, ‘minimum engagement terms protect employees from exploitation by ensuring that they receive a minimum payment for each attendance at their workplace to justify the cost and inconvenience of each such attendance.’²²⁴

[161] A rationale for minimum payment periods for casual and part-time employees was canvassed during the 4 Yearly Review, which noted that: ‘In particular modern awards, it is clear that that the minimum engagement periods were intended to meet the peculiar circumstances of special types of work or workers.’²²⁵ The Full Bench emphasised that it was ‘necessary for modern awards to contain some form of minimum engagement period for casual employees in order to avoid their exploitation in order to meet the modern awards objective.’²²⁶ Following this, the Full Bench in 2016, issued a provisional view that the Hospitality Award should be varied to ensure a minimum 8-hour engagement period for part-time employees per week, with reasonably predictable hours and pro rata conditions to full-time employees performing similar work.²²⁷ This is discussed further in section 1.1.1.1.

[162] Commission staff examined minimum payment periods for ordinary hours and overtime across the 25 awards. The findings are summarised in **Table 6**. Notably, Commission staff observe the following:

- Minimum payment periods range from one hour up to 4 hours.
- For minimum payment periods of one hour, restrictions generally apply. For example, in the Fitness Award, one hour minimum payment periods only apply to certain casual

²²³ 4 yearly review of modern awards – Casual employment and part-time employment [2017] FWCFB 3541 [399].

²²⁴ [2021] FWCFB 5244.

²²⁵ 4 yearly review of modern awards – Casual and Part-time employment [2017] FWCFB 3541 [404].

²²⁶ Ibid [408].

²²⁷ Ibid [529].



employees such as instructors, trainers or tennis coaches classified at level 2 and above.²²⁸ In the Local Government Award, the one hour minimum payment period only applies to part-time employees.²²⁹

- Minimum payment periods vary depending on employment type or on the type of work performed. For example, in the Cleaning Award, minimum payment periods of one, 2, 3 or 4 hours apply, depending on the size of areas to be cleaned, reflecting specific industry requirements.²³⁰
- All modern awards provided for minimum payment periods for casual workers.
- The following awards do not include minimum payment periods for part-time employees working ordinary hours:²³¹
 - Building On-site Award
 - Schools General Staff Award
 - Electrical Contracting Award
 - Health Professionals Award
 - Higher Education General Staff Award
 - Miscellaneous Award
 - Nurses Award
 - Plumbing Award
 - Vehicle Award

²²⁸ See [Fitness Industry Award 2020](#), clause 12.3(b); other casual employees and all part-time employees must be engaged and paid for a minimum of 3 hours' work in accordance with clauses 12.3(a) and 11.4.

²²⁹ [Local Government Industry Award 2020](#) clause 10.6; casual employees must be engaged and paid for two consecutive hours in accordance with clause 11.3.

²³⁰ [Cleaning Services Award 2020](#), clause 13.5.

²³¹ However, the majority of these awards do provide minimum payment periods for recall to duty for part-time employees, this is discussed further at section 4.3.1.2.



Table 6—Minimum payment periods for ordinary hours and overtime across the 25 modern awards

Award	Hours	Minimum payment periods		
		Full-time employees	Part-time employees	Casual employees
Aged Care Award	Ordinary	4 hours (clause 22.7(a))	2 hours (clause 22.7(b))	2 hours (clause 22.7(b))
Building On-site Award	Ordinary	x N/A	x N/A	4 hours (clause 12.3)
	Overtime – Saturdays	3 hours (clause 30.2(a))	3 hours (clause 30.2(a))	3 hours (clause 30.2(a))
	Overtime - Saturdays following Good Friday/ Sundays/ public holidays	4 hours (clause 30.2(b), (c), (d))	4 hours (clause 30.2(b), (c), (d))	4 hours (clause 30.2(b), (c), (d))
Children's Award	Ordinary	x N/A	2 hours (clause 10.4(e))	2 hours (clause 10.5(c))
	Overtime – weekends/ public holidays	4 hours (clause 23.5(e))	4 hours (clause 23.5(e))	4 hours (clause 23.5(e))
Cleaning Award	Ordinary – sole employee at small stand-alone location with cleaning area not more than 300 square metres	x N/A	1 hour (clause 13.5(c)(i))	1 hour (clause 13.5(c)(i))
	Ordinary – sole employee at small stand-alone location with cleaning area of up to 2000 square metres	x N/A	2 hours (clause 13.5(c)(ii))	2 hours (clause 13.5(c)(ii))
	Ordinary – sole employee at small stand-alone location with cleaning area of 2000 or more square metres up to 5000 square metres	x N/A	3 hours (clause 13.5(c)(iii))	3 hours (clause 13.5(c)(iii))
	Ordinary – sole employee at small stand-alone location with cleaning area of 5000 or more square metres.	x N/A	4 hours (clause 13.5(c)(iv))	4 hours (clause 13.5(c)(iv))
Clerks Award	Ordinary – Monday to Saturday	x N/A	3 hours (clause 10.5)	3 hours (clause 11.4)



Award	Hours	Minimum payment periods		
		Full-time employees	Part-time employees	Casual employees
	Overtime – Saturday if employee has worked 38 hours or more over Monday to Friday	3 hours (clause 21.4(b))	3 hours (clause 21.4(b))	3 hours (clause 21.4(b))
	Public holidays/overtime – Sundays	4 hours (clause 21.4(c), 24.4(e))	4 hours (clause 21.4(c), 24.4(e))	4 hours (clause 21.4(c), 24.4(e))
Schools General Staff Award	Ordinary – general	x N/A	x N/A	2 hours (clause 11.4(a))
	Ordinary – Preschool/ childcare services employees in an out of school hours care program	x N/A	x N/A	2 hours – may be worked one hour before and after school on the same day (clause 11.4(b))
Electrical Contracting Award	Ordinary	x N/A	x N/A	2 hours (clause 11.6)
	Overtime – weekends/ rostered day off/public holidays	4 hours (clause 20.3(a))	4 hours (clause 20.3(a))	4 hours (clause 20.3(a))
Fast Food Award	Ordinary	x N/A	3 hours (clause 10.2)	3 hours (clause 11.3)
	Overtime – Sunday, if overtime is not immediately before or after ordinary hours	4 hours (clause 20.5)	4 hours (clause 20.5)	4 hours (clause 20.5)
Fitness Award	Ordinary	x N/A	3 hours (clause 11.4)	3 hours (clause 12.3(a))
	Ordinary – Level 2, 3, 3A, 4, 4A or 5 instructor, trainer or tennis coach or trainee undertaking practical work involvement	x N/A	x N/A	1 hour (12.3(b))
	Public holidays	4 hours (clause 26.3(a))	4 hours (clause 26.3(a))	x N/A



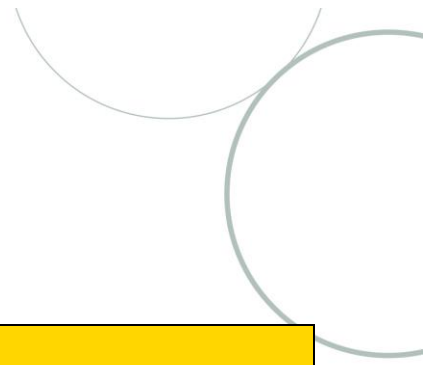
Award	Hours	Minimum payment periods		
		Full-time employees	Part-time employees	Casual employees
Retail Award	Ordinary	x N/A	3 hours (clause 10.9)	3 hours (clause 11.2)
	Ordinary – School student meeting specific criteria	x N/A	x N/A	1.5 hours (clause 11.2, 11.3)
Hair and Beauty Award	Ordinary	x N/A	3 hours (clause 10.2)	3 hours (clause 11.5)
	Rostered day off	4 hours (clause 23.3(c))	4 hours (clause 23.3(c))	x N/A
Health Professionals Award	Ordinary – general	x N/A	x N/A	3 hours (clause 11.2)
	Ordinary - Cleaners in private medical practices	x N/A	x N/A	2 hours (clause 11.3)
Higher Education General Staff Award	Ordinary – employees who are students expected to attend university on that day in capacity as students and employees with a primary occupation elsewhere (or with the employer)	x N/A	x N/A	1 hour (clause 12.2(a), 12.2(c))
	Ordinary – all other employees	x N/A	x N/A	3 hours (clause 12.2(d))
Hospitality Award	Ordinary	6 hours (clause 15.1(c)(i))	3 hours (clause 15.2(a))	2 hours (clause 11.3)
	Overtime -rostered or accrued day off (unless continuous from previous day's duty)	4 hours (clause 28.2(e))	4 hours (clause 28.2(e))	x N/A
	Public holidays	4 hours (clause 29.4(a))	4 hours (clause 29.4(a))	2 hours (clause 29.4(b))
Local Government Award	Ordinary	x N/A	1 hour (clause 10.5)	2 hours (clause 11.3)



Award	Hours	Minimum payment periods		
		Full-time employees	Part-time employees	Casual employees
Manufacturing Award	Ordinary	x N/A	4 hours (clause 10.2)	4 hours (clause 11.2)
	Overtime – day workers – Saturdays	4 hours (clause 32.5)	x N/A	x N/A
	Overtime – Sundays/public holidays/penalty rates	3 hours (clause 17.2(h), 32.6, 32.7, 33.1(b)(ii))	3 hours (clause 17.2(h), 32.6, 32.7, 33.1(b)(ii))	3 hours (clause 17.2(h), 32.6, 32.7, 33.1(b)(ii))
Miscellaneous Award	Ordinary	x N/A	x N/A	2 hours (clause 11.2)
Nurses Award	Ordinary	x N/A	x N/A	2 hours (clause 11.3)
Pharmacy Award	Ordinary	x N/A	3 hours (clause 10.7)	3 hours (clause 11.1)
	School student meeting certain criteria	x N/A	2 hours (clause 10.14)	2 hours (clause 11.5)
Plumbing Award	Ordinary	x N/A	x N/A	3 hours (clause 12.2)
	Overtime – Saturdays for all employees	3 hours (clause 22.1(b))	3 hours (clause 22.1(b))	3 hours (clause 22.1(b))
	Overtime – Sundays and public holidays for all employees	4 hours (clause 22.1(c), 22.2(a))	4 hours (clause 22.1(c), 22.2(a))	4 hours (clause 22.1(c), 22.2(a))
Restaurant Award	Ordinary	6 hours (clause 15.1(a))	3 hours (clause 10.7(b))	2 hours (clause 11.3)
	Rostered day off	4 hours (clause 23.1(e))	4 hours (clause 23.1(e))	4 hours (clause 23.1(e))
	Public holidays	4 hours (clause 24.4(a))	4 hours (clause 24.4(a))	4 hours (clause 24.4(b))
Road Transport and Distribution Award	Ordinary	x N/A	4 hours (clause 10.7)	4 hours (clause 11.4)



Award	Hours	Minimum payment periods		
		Full-time employees	Part-time employees	Casual employees
	Weekends/public holidays	4 hours (clause 23.1(c), 23.2(a))	4 hours (clause 23.1(c), 23.2(a))	4 hours (clause 23.1(c), 23.2(a))
SCHADS Award	Ordinary hours– for certain employees, including social and community services employees (except when undertaking disability services work)	x N/A	3 hours– (clause 10.5, 25.6(c))	3 hours– (clause 10.5, 25.6(c))
	Ordinary hours – all other employees	x N/A	2 hours (clause 10.5, 25.6(c))	2 hours (clause 10.5, 25.6(c))
	Remote work	15/30 mins or 1 hour (clause 25.10(c))	15/30 mins or 1 hour (clause 25.10(c))	15/30 mins or 1 hour (clause 25.10(c))
Storage and Wholesale Award	Ordinary	x N/A	3 hours (clause 10.5)	4 hours (clause 11.1)
	Overtime – Saturdays	3 hours (clause 22.1(b))	3 hours (clause 22.1(b))	3 hours (clause 22.1(b))
	Overtime – Sundays/all hours on public holidays	4 hours (clause 22.2(b), 22.3(b))	4 hours (clause 22.2(b), 22.3(b))	4 hours (clause 22.2(b), 22.3(b))
Vehicle Award	Ordinary	x N/A	x N/A	2 hours (clause 11.2)
	Overtime – Sunday or public holiday	1 hour– maintaining continuity of electrical light or power (clause 24.5(a))	1 hour– maintaining continuity of electrical light or power (clause 24.5(a))	1 hour– maintaining continuity of electrical light or power (clause 24.5(a))
		4 hours – all other work (clause 24.5(b))	4 hours – all other work (clause 24.5(b))	4 hours – all other work (clause 24.5(b))
	Overtime – driveway attendant, console operator, roadhouse attendant – Sundays/public holidays	3 hours (clause 27.5(c))	3 hours (clause 27.5(c))	x N/A



6. Minimum payment periods - discussion question:

Are there any specific variations to the minimum payment periods for part-time employees in modern awards that are necessary to ensure they continue to meet the modern awards objective?

4.3.1.2 Minimum payment periods for recall to duty

[163] When recalled to duty, workers are generally entitled to overtime rates or minimum payment periods. Some awards refer to this as call-outs, return to duty or call-back arrangements. Recall to duty in the 25 modern awards is examined in **Table 7**, Commission staff observed:

- Recall to duty is found in 17 of the 25 awards.
- Compensation for being recalled to duty includes minimum payment periods ranging from 2 hours to 4 hours work.
- For remote work, minimum payment periods are between 15 minutes and 1 hour.
- In addition to minimum payments periods, overtime rates are also generally payable when an employee is recalled to duty.

Table 7—Minimum payment periods for recall to duty across the 25 modern awards

Award	Minimum payment period for recall to duty	
Aged Care Award	Recalled to work overtime after leaving the employer’s premises (clause 25.1(e))	4 hours
Building On-site Award	Recalled to work overtime after leaving the employer’s business premises (clause 29.5)	3 hours
Children’s Award	x N/A	x N/A
Cleaning Award	Recalled to work overtime after leaving the employer’s premises (clause 19.6)	2 hours
	Call back for non-cleaning purposes, for example to perform administrative duties or for purposes of disciplinary or counselling interview (clause 19.7)	Monday to Friday: 2 hours Saturday: 3 hours Sunday: 4 hours
Clerks Award	Required to return to duty after the usual finishing hour of work for that day (clause 21.5)	3 hours



Award	Minimum payment period for recall to duty	
Schools General Staff Award	Recalled to duty at the workplace where that duty is not continuous with their ordinary hours of duty (clause 19.2)	2 hours
Electrical Contracting Award	Recalled to work overtime after leaving the employer's business premises (clause 20.5)	4 hours
Fast Food Award	x N/A	x N/A
Fitness Award	x N/A	x N/A
Retail Award	Recalled to work by the employer to perform specific duties on a day on which they have completed their normal roster or did not work (clause 19.11)	3 hours
Hair and Beauty Award	x N/A	N/A
Health Professionals Award	Recalled to work overtime after leaving the employer's premises (clause 25.6)	2 hours
Higher Education General Staff Award	Recalled to work overtime which is not continuous with their ordinary hours of duty (clause 22.3)	2 hours
Hospitality Award	x N/A	x N/A
Local Government Award	Recalled to work overtime after leaving the employer's premises or worksite (clause 21.5)	3 hours
Manufacturing Award	Recalled to work overtime after leaving the enterprise (clause 32.13(b))	4 hours
	Where an employee is required to regularly hold themselves in readiness for a callback (clause 32.13(c))	3 hours
	Vehicle manufacturing employees: recalled to work overtime after leaving the employer's business premises (clause 57.6(a))	3 hours
Miscellaneous Award	x N/A	x N/A
Nurses Award	On-call (clause 19.6(b)) or not on-call (clause 19.7(b)) and required to perform work via telephone or other electronic communication away from the workplace	1 hour
	On-call and recalled to work at the workplace (clause 19.6(a)) or not required to be on-call and is recalled to	3 hours



Award	Minimum payment period for recall to duty	
	work at the workplace after leaving the employer's premises (clause 19.7(a))	
Pharmacy Award	x N/A	x N/A
Plumbing Award	Plumbing & mechanical services employees recalled to work overtime after leaving their employer's business premises (clause 22.2(a)(i))	3 hours
	Sprinkler fitter employees recalled to work overtime after leaving their employer's business premises (clause 22.2(a)(ii))	4 hours
Restaurant Award	x N/A	x N/A
Road Transport and Distribution Award	Recalled to work overtime after leaving the workplace (clause 21.6)	4 hours
SCHADS Award	Recalled to work overtime after leaving the workplace and requested by the employer to attend a workplace (clause 28.4)	2 hours
	Where employee is on call between 6:00am and 10:00pm to perform remote work (clause 25.10(c)(i)(A))	15 minutes
	Where employee is on call between 10:00pm and 6:00am to perform remote work (clause 25.10(c)(i)(B))	30 mins
	Where employee is not on call and is required to perform remote work (clause 25.10(c)(i)(A))	1 hour
Storage and Wholesale Award	Called back to work after employee has left work for the day on Mondays to Fridays (clause 23.1)	4 hours
	Called back to work after employee has left work for the day after 12:00pm on a Saturday (clause 23.2)	4 hours
	Called back to work after employee has left work for the day on a Sunday (clause 23.3)	4 hours
Vehicle Award	Breakdown call-backs for a breakdown, accident, or emergency work (clause 24.9)	2 hours
	General call-backs to work overtime after leaving the employer's business premises (clause 24.8)	3 hours



4.3.1.3 Broken shifts

[164] Broken shifts or split shifts refer to a shift that is broken into multiple parts by an unpaid break. Broken shifts can generally be worked over a maximum span of hours and sometimes only apply to certain employees.²³²

[165] During the 4 Yearly Review, the issue of broken shifts in the SCHADS Award was considered alongside other provisions, such as minimum payment periods and payment for travel time work. The Full Bench determined that these matters relate to scheduling of work and are interconnected.²³³

[166] Broken shifts in the 25 modern awards are examined in **Table 8**. Commission staff observed:

- 10 modern awards include provisions for broken shifts.
- Of the 10 modern awards, 5 appear to restrict broken shifts to 2 periods of work (i.e. one 'break', excluding meal breaks). While one modern award provides for up to 3 periods of work (i.e., 2 'breaks', excluding meal breaks).²³⁴
- 10 modern awards require employees to work their ordinary hours continuously; that is, in unbroken periods.
- 5 modern awards do not include specific provisions for broken shifts.
- The span of hours that a broken shift can be worked varies across modern awards from 12 hours in the Aged Care Award and up to 13 hours in the Cleaning Award. Some modern awards appear to prohibit work outside the maximum spread of hours for

²³² For example in the [Aged Care Award 2010](#) clause 22.8 provides that 'Broken shift for the purposes of this clause means a shift worked by a casual or permanent part-time employee that includes breaks (other than a meal break) totalling not more than four hours and where the span of hours is not more than 12 hours.'

²³³ [\[2021\] FWCFB 5244](#).

²³⁴ [Social, Community, Home Care and Disability Services Industry Award 2010](#), clause 20.12.



broken shifts.²³⁵ While other modern awards provide for penalty rates payable for work in excess of the maximum spread of hours for broken shifts.²³⁶

Table 8—Broken shifts across the 25 modern awards

Award	Broken shift	Conditions, allowance or payment
Aged Care Award	✓ Broken shift rate payable, (clause 22.8)	<ol style="list-style-type: none"> 1. Applies to casual and part-time workers only 2. Broken shift can only be worked by mutual agreement between employee and employer 3. Each portion of the shift must meet minimum engagement requirements 4. 12-hour maximum spread (or double time rates apply), maximum of 4 hours break 5. Ordinary pay with penalty rates and shift allowances
Building On-site Award	✓ Broken shift penalty is payable (clause 17.1)	Defined as less than 38 ordinary hours worked over 5 consecutive shifts Monday to Friday paid at 150% for the first 2 hours and 200% thereafter (clause 17.1(d))
Children’s Award ²³⁷	✓ Broken shift allowance is payable (clause 15.1, 21.3)	<ol style="list-style-type: none"> A. Two separate shifts per day B. Allowance of 1.91% of the standard rate per day for each day on which a broken shift is worked C. 12-hour maximum spread of hours
Cleaning Award	✓ Broken shift allowance is payable (clause 17.2)	<ul style="list-style-type: none"> • \$4.19 for the day or a maximum of \$20.95 per week • 2 periods of duty with a break between of longer than one hour • 13-hour maximum spread of hours

²³⁵ For example, [Children’s Services Award 2010](#) clause 21.3; [Cleaning Services Award 2020](#) (clause 17.2); [Restaurant Industry Award 2020](#), clause 15.1(g); [Hospitality Industry \(General\) Award 2020](#), for full-time and part-time employees (clause 15.1(c)(v), 15.2(e)).

²³⁶ For example, [Aged Care Award 2010](#) (clause 22.8(d)) and the [Educational Services \(Schools\) General Staff Award](#), clause 22.4(d).

²³⁷ Note: [Children’s Services Award 2010](#), clause 21.2. provides that ‘Ordinary hours will be worked in periods not exceeding eight hours, in unbroken periods save for meal breaks, between Monday and Friday’.



Award	Broken shift	Conditions, allowance or payment
Clerks Award	✗ Ordinary hours of work are to be worked continuously (clause 13.6)	✗ N/A
Schools General Staff Award	✓ Broken shift penalty is payable (clause 15.2, 22.4)	<ul style="list-style-type: none"> • Additional allowance of 15% of the minimum hourly rate (except for casuals) • Minimum payment of 2 hours for each period of duty (except for casuals) • 2 periods of duty, exclusive of breaks per day • 12-hour maximum spread of hours • Minimum rest periods do not apply to those working broken shifts (clause 16.3(c)(iv))
Electrical Contracting Award	<p>✗ Ordinary hours of work to be worked continuously for shiftworkers working on other than continuous shiftwork. (clause 13.11)</p> <p>No provision for ordinary hours to be worked continuously for day workers or continuous shiftworkers</p>	✗ N/A
Fast Food Award	✗ Ordinary hours of work on any day are continuous (clause 13.6)	✗ N/A
Fitness Award	✓ Broken shift allowance is payable (clause 13.4, 17.2)	<ul style="list-style-type: none"> • \$16.07 per day and for excess fares an extra \$2.05 per day • Shift can be broken into 2 parts maximum • Total shift length no less than 3 hours with a 12-hour maximum spread of hours
Retail Award	✗ Ordinary hours of work on any day or shift are continuous (clause 15.3, 24.4)	✗ N/A
Hair and Beauty Award	✗ Ordinary hours of work are continuous (clause 14.6)	✗ N/A
Health Professionals Award	✗ N/A	✗ N/A
Higher Education General Staff Award	✓ Broken shifts are prohibited except for catering, retail and security staff (Schedule C1.3)	<ul style="list-style-type: none"> • Broken shift allowance of \$2.80 per day or a maximum of \$13.79 per week • Applies for work in 2 periods of duty • Maximum spread of hours for catering and retail staff—6:00am to 7:30pm Mon–Sun



Award	Broken shift	Conditions, allowance or payment
		<ul style="list-style-type: none"> Maximum spread of hours for security staff—6:00am to 6:00pm, Mon–Sun
Hospitality Award	✓ Broken (split) shift allowance is payable (clause 15.1, 15.2, 26.14)	<ul style="list-style-type: none"> Split shift allowance for full-time and part-time employees \$3.28 per day where the period between shifts is between 2 and 3 hours; and \$4.98 per day where the period between shifts is more than 3 hours 12-hour maximum spread of hours
Local Government Award	✗ N/A	✗ N/A
Manufacturing Award	✗ Ordinary hours of work are to be worked continuously (clause 17)	✗ N/A
Miscellaneous Award	✗ N/A	✗ N/A
Nurses Award	✗ The hours of work will be continuous (clause 13.1)	✗ N/A
Pharmacy Award	✗ Ordinary hours of work are continuous (clause 13.2)	✗ N/A
Plumbing Award	✗ N/A	✗ N/A
Restaurant Award	✓ Broken (split) shift allowance is payable (clause 21.3)	<ul style="list-style-type: none"> Split shift allowance payable for full-time and part-time employees \$4.98 for each separate work period of 2 hours or more 12-hour maximum spread of hours for full-time and part time employees (clause 15.1(g))
Road Transport and Distribution Award	✗ Ordinary hours of work must not exceed 8 hours per day and must be worked continuously (clause 13.5)	✗ N/A
SCHADS Award	✓ Broken shift allowance is payable (clause 20.12, 25.6)	<ul style="list-style-type: none"> Broken shift allowance for 2 periods of work: \$19.39 per broken shift with one unpaid break Broken shift allowance for 3 periods of work: or \$25.67 per broken shift (by mutual agreement) with 2 unpaid breaks per broken shift 2 or 3 hours minimum engagement for part-time and casual employees, depending on type of work



Award	Broken shift	Conditions, allowance or payment
		<ul style="list-style-type: none"> For social and community services employees when undertaking disability services work and home care employees only, shift allowances also apply to work performed on a broken shift (clause 25.6(e)). Span of hours for a broken shift is up to 12 hours with work performed beyond this span to be paid at double time
Storage and Wholesale Award	x Ordinary hours will be worked on 4 or 5 days of not more than 8 hours (Monday to Friday inclusive) each continuously (clause 13.1, 20.3)	x N/A
Vehicle Award	x N/A	x N/A

4.3.1.4 Span of hours and maximum hours of work

[167] Span of hours or spread of hours refers to the time of day when employees can be rostered to work their ordinary hours, generally without attracting additional penalty rates or overtime. For example, the SCHADS Award identifies that, for day workers, ordinary hours may be worked between 6:00am and 8:00pm from Monday to Sunday with a maximum of 8 hours per day.²³⁸

[168] The span of hours in the 25 modern awards differ based on industry requirements or the historical development of awards. However, most distinguish between work performed on weekdays and weekends. Work performed outside of the span of hours is usually treated as overtime (discussed at section 4.3.4) however, in some awards work performed outside the span of hours attracts a penalty rate, rather than an overtime rate.

[169] The span of hours across the 25 modern awards is summarised in **Table 9** below. Commission staff observed the following:

- The following 9 modern awards specify spans of hours between Monday to Friday only:
 - o Aged Care Award.
 - o Building On-site Award.

²³⁸ [Social, Community, Home Care and Disability Services Industry Award 2010](#) clause 25.2.



- Children's Award.
- Electrical Contracting Award.
- Manufacturing Award.
- Nurses Award.
- Plumbing Award.
- Road Transport and Distribution Award.
- Storage and Wholesale Award.
- The largest spans of hours include:
 - 18 ordinary hours on Monday to Friday in the Fitness Award.²³⁹
 - 17 hours across 7 days a week in the Pharmacy Award.²⁴⁰
 - 17 hours for certain employees in the Local Government Award.²⁴¹
- The following 6 modern awards do not specify a span or spread of hours:
 - The Cleaning Award specifies that ordinary hours may be performed on any day of the week but does not specify within what timeframe these hours may be worked.²⁴²
 - The Fast Food Award and the Vehicle Award prescribe penalty rates for ordinary hours worked during certain times but otherwise, does not specify a span of hours.
 - The Miscellaneous Award does not specify a span of hours but does prescribe a maximum daily hour's cap of 10, or 12 by agreement. Penalty rates are awarded for all work performed outside of ordinary hours and are not paid at overtime rates.²⁴³
 - The Restaurant Award and Hospitality Award outline a maximum spread of hours for split shifts, but no timeframe. Rather, as set out under clause 15(1) of

²³⁹ [Fitness Industry Award 2020](#), clause 13.1.

²⁴⁰ [Pharmacy Industry Award 2020](#), clause 13.1.

²⁴¹ [Local Government Industry Award 2020](#), clause 13.1(e).

²⁴² [Cleaning Services Award 2020](#), clause 13.1.(a).

²⁴³ [Miscellaneous Award 2020](#), clause 13.5.



the Restaurant Award, ordinary hours are subject to limitations on the maximum number of days employees can be rostered to work. Employees may also be eligible for RDOs and/or make-up time provisions where they have worked the maximum number of hours in a previous shift (this is discussed further at section 4.3.5).

Table 9—Spans of hours in the 25 modern awards

Award	Employee type	Span of hours	Total span of hours
Aged Care Award	Day workers (clause 22.2)	Monday to Friday, 6:00am to 6:00pm	12 hours
Building On-site Award	Except shiftworkers (clause 16.1)	Monday to Friday, 7:00am to 6:00pm	11 hours
Children's Award	All employees (clause 21.3)	Monday to Friday, 6:00am to 6:30pm (broken shift span can be no longer than 12 hours per day)	12.5 hours
Cleaning Award	All employees (clause 13.1)	Any day of the week	N/A
Clerks Award	Employees other than shiftworkers (clause 13.3)	Monday to Friday, 7:00am to 7:00pm	12 hours
		Saturday, 7:00am to 12:30pm	5.5 hours
Schools General Staff Award	Clause 14.6(a) employees (e.g. classroom support services, wellbeing services)	Monday to Friday, 7:00am to 6:00pm	11 hours
	Clause 14.6(b) employees (school operational services employees)	Monday to Friday, 6:00am to 6:00pm	12 hours
	Clause 14.6(c) employees	Monday to Friday, 6:30am to 6:30pm	12 hours
	Clause 14.6(d) employees (school operational services employees)	Monday to Friday, 6:00am to 6:00pm	12 hours
		Saturday, 6:00am to 12:00pm	6 hours



Award	Employee type	Span of hours	Total span of hours
	Clause 14.6(e) employees (curriculum/resources services— outdoor education only, instructional services)	Monday to Saturday, 6:00am to 6:00pm	12 hours
	Clause 14.6(f) employees (boarding supervision services, school operational services)	Monday to Sunday, 6:00am to 6:00pm	12 hours
Electrical Contracting Award	Day workers (clause 13.3)	Monday to Friday, 6:00am to 6:00pm	12 hours
Fast Food Award	All employees (clause 13.5, 21)	No span of hours specified but maximum daily ordinary hours is 11 hours and penalty rates are awarded for ordinary hours worked during specific times	N/A
Fitness Award	All employees	Monday to Friday, 5:00am to 11:00pm (clause 13.1)	18 hours
		Saturday and Sunday, 6:00am to 9:00pm (clause 13.1)	15 hours
		Broken shift (clause 13.4)	12 hours
Retail Award	All employees (clause 15.1) with some exceptions: from 5:00am in a newsagency; until midnight in a video shop; until 11:00pm if the trading hours of the establishment extend beyond 9:00pm on a Monday to Friday or 6:00pm on a Saturday or Sunday (clause 15.2)	Monday to Friday, 7:00am to 9:00pm	14 hours
		Saturday, 7:00am to 6:00pm	11 hours
		Sunday, 9:00am to 6:00pm	9 hours
Hair and Beauty Award	Full-time and part-time employees (clause 14.4)	Monday to Friday, 7:00am to 9:00pm	14 hours
		Saturday, 7:00am to 6:00pm	11 hours



Fair Work
Commission

Award	Employee type	Span of hours	Total span of hours
		Sunday, 10:00am to 5:00pm	7 hours
Health Professionals Award	Day workers (clause 13.2(a))	Monday to Friday, 6:00am to 6:00pm	12 hours
	Clause 13.2(b) employees (private medical, dental, pathology, physiotherapy, chiropractic and osteopathic practices)	Monday to Friday, 7:30am to 9:00pm	13.5 hours
		Saturday, 8:00am to 4:30pm	8.5 hours
	Clause 13.2(c) employees (private medical imaging practices, 5 and a half day practices)	Monday to Friday, 7:00am to 9:00pm	14 hours
		Saturday, 8:00am to 1:00pm	5 hours
	Clause 13.2(d) employees (private medical imaging practices, 7 day practices)	Monday to Sunday, 7:00am to 9:00pm	14 hours
Higher Education General Staff Award	Building services staff, Building and maintenance staff, Trades staff, including plumbers	Monday to Friday, 6:00am to 6:00pm (clause 15.1)	12 hours
	Catering and retail staff	Monday to Sunday, 6:00am to 7:30pm (clause 15.1)	13.5 hours
	Security staff	Monday to Sunday, 6:00am to 6:00pm (clause 15.1)	12 hours
	Children's services staff	Monday to Friday, 6:30am to 6:30pm (clause 15.1)	12 hours
	Storage services staff	Monday to Friday, 7:00am to 5:30pm (clause 15.1)	10.5 hours
	Professional, administrative, clerical, computing and technical (PACCT) staff	Monday to Friday, 8:00am to 6:00pm (clause 15.1)	10 hours



Award	Employee type	Span of hours	Total span of hours
Hospitality Award	All employees	No span of hours specified but maximum daily ordinary hours is 11.5 hours and penalty rates are awarded for ordinary hours worked during specific times (clause 15.1(c))	N/A
Local Government Award	All employees (clause 13.1(d))	Monday to Friday, 6:00am to 6:00pm	12 hours
	Clause 13.1(e) 11 types of employees specified	Monday to Sunday, 5:00am to 10:00pm	17 hours
	Clause 13.1(f) employees working in libraries	Monday to Sunday, 8:00am to 9:00pm	13 hours
	Clause 13.1(g) employees working in customer services centres	Monday to Sunday, 6:00am to 6:00pm	12 hours
	Clause 13.1(h) childcare service employees	Monday to Friday, 6:00am to 7:00pm	13 hours
Manufacturing Award	Day workers (clause 17.2)	Monday to Friday, 6:00am to 6:00pm (with certain exceptions)	12 hours
Miscellaneous Award	All employees (clause 13.5, 20)	No span of hours specified but maximum hours is 10 hours or 12 by agreement and penalty rates are awarded for all work performed outside of ordinary hours not paid at overtime rates	N/A
Nurses Award	Day worker (clause 13.1)	Monday to Friday, 6:00am to 6:00pm	12 hours
Pharmacy Award	All employees (clause 13.1)	Any day, 7:00am and midnight	17 hours
Plumbing Award	All employees (clause 15.2)	Monday to Friday, 7:00am to 6:00pm (with exceptions)	11 hours
Restaurant Award	All employees (clause 15.1, 24)	No span of hours specified but penalty rates are awarded for ordinary hours worked during specific times (split shift span can be no longer than 12 hours per day)	N/A



Award	Employee type	Span of hours	Total span of hours
Road Transport and Distribution Award	All employees (clause 13.4, 13.6)	Monday to Friday, 5:30am to 6:30pm (variations by agreement)	13 hours
SCHADS Award	Day workers	Monday to Sunday, 6:00am to 8:00pm (clause 25.2)	14 hours
		Broken shift (clause 25.6)	12 hours
Storage and Wholesale Award	Day workers (clause 13.1)	Monday to Friday, 7:00am to 5:30pm	10.5 hours
Vehicle Award	All employees	No span of hours specified but casual loading rates are impacted by particular times worked per clause 11.3(a) and shift penalty rates apply for particular times worked per clause 25	N/A

[170] Each modern award also includes maximum daily hours, as depicted in **Table 10**. Maximum daily hours across the 25 modern awards range from 7.6 hours up to 12 hours. The span of hours and maximum daily hours may interact with and affect overtime rates and other clauses relating to work, remuneration and penalties.

Table 10—Maximum daily hours of work across the 25 modern awards

Award	Conditions	Maximum hours per day
Aged Care Award	Day shift (clause 22.1(c))	8 hours
	Night shift (clause 22.1(c))	10 hours
Building On-site Award	All employees (clause 16.2)	8 hours
Children’s Award	All employees (clause 21.2)	8 hours
	By agreement (clause 21.2)	10 hours
Cleaning Award	All employees—up to 5 days of 7.6 hours each per week (clause 13.1(b)(i))	7.6 hours
	Full-time employees 19 days of 8 hours each per month (clause 13.1(b)(iii))	8 hours



Award	Conditions	Maximum hours per day
	Full-time employees up to 10 hours on any day or days by agreement (clause 13.1(b)(iv))	10 hours
Clerks Award	All employees (clauses 13.7, 26.2)	10 hours
Schools General Staff Award	All employees (clause 15.1(b))	10 hours
Electrical Contracting Award	By agreement with the majority of employees (clause 13.5)	12 hours
Fast Food Award	All employees (clause 13.5)	11 hours
Fitness Award	All employees (clause 13.3)	10 hours
Retail Award	All employees (clause 15.4)	9 hours
	One day per week for all employees (clause 15.5)	11 hours
Hair and Beauty Award	All employees (clause 14.7)	9 hours
	One day per week for all employees or by agreement, a second day of the week (clauses 14.8, 14.9)	10.5 hours
Health Professionals Award	All employees (clause 13.1)	10 hours
Higher Education General Staff Award	Shiftworkers (clause 15.2(a)(ii))	10 hours
Hospitality Award	Full-time/part-time (clause 15.1(c)(ii))	11.5 hours
	Casual and split shift workers (clauses 11.2(a), 15.1(c)(v))	12 hours
Local Government Award	All employees (clause 13.1(k))	10 hours
	All employees by agreement (clause 13.1(k))	12 hours
Manufacturing Award	Day workers, continuous shiftworkers and non-continuous shift workers (clause 17.2(b), 17.3(d), 17.4(c))	8 hours
	By agreement with the majority of employees (clause 17.5(c))	12 hours
Miscellaneous Award	All employees (clause 13.5)	10 hours



Award	Conditions	Maximum hours per day
	By agreement (clause 13.5)	12 hours
Nurses Award	All employees (clause 13.1(d))	10 hours
Pharmacy Award	All employees (clause 13.3)	12 hours
Plumbing Award	All employees (clause 15.2(b))	19 days of 8 hours
Restaurant Award	Full-time and part-time employees (clauses 15.1(b), 15.1(d))	11.5 hours
	Casual employees (clause 11.2(a))	12 hours
Road Transport and Distribution Award	In certain circumstances, for example where an employee has less than 20 employees and operates less than 15 vehicles (clause 13.7(b))	7.6 hours
	All employees (clause 13.5 other than oil distribution workers; clause 14.4 oil distribution workers; clause 22.2 shift workers)	8 hours
SCHADS Award	All employees (clause 25.1(a))	8 hours
	By agreement with an employee (clause 25.1(b))	10 hours
Storage and Wholesale Award	All employees (clause 13.1(c) day workers and 20.3(b)(i) shiftworkers)	8 hours
	By agreement with the majority of employees (clause 13.1(d))	10 hours
Vehicle Award	All employees (clause 22.3)	10 hours
	By agreement with the majority of employees or where 12-hour days or shifts were rostered on a regular basis prior to 29 May 2020 (clause 22.5(b))	Up to 12 hours



4.3.1.5 Averaging of hours

[171] While all modern awards provide for some flexibility with mutual agreement, some awards permit standard ordinary hours to be worked over an extended period as an alternative to working a set number of hours each week. This arrangement is called averaging of hours and is provided for under section 63 of the FW Act.

[172] **Table 11** below sets out the averaging of hours provisions across the 25 modern awards. The majority of the modern awards provide at least one period in which ordinary hours can be averaged; these include:

- A period of 2 weeks or 14 days in 14 of the 25 modern awards.
- A period of 3 weeks or 21 days in 9 of the 25 modern awards.
- A period of 4 weeks or 28 days in 22 of the 25 modern awards.
- The option to average ordinary hours across a monthly basis in 2 modern awards (Cleaning Award and Hospitality Award).
- The option to average ordinary hours over a period of up to 4 weeks in 2 modern awards (Clerks Award and Restaurant Award).
- Over a period of 12 months in the Schools General Staff Award for curriculum/resources services employees employed in outdoor education or a boarding supervision services employee employed.
- Across a period longer than 4 weeks as mutually agreed with their employer in the Retail Award.
- The Miscellaneous Award is the only award examined that does not specify options to average ordinary hours. Clause 13.2 provides that full-time and part-time employees are to work their ordinary hours on a regular basis with fixed starting and finishing times over a maximum of 6 days per week and clause 13.3 provides that ordinary hours must not be worked on more than 20 days in any 28 day period.

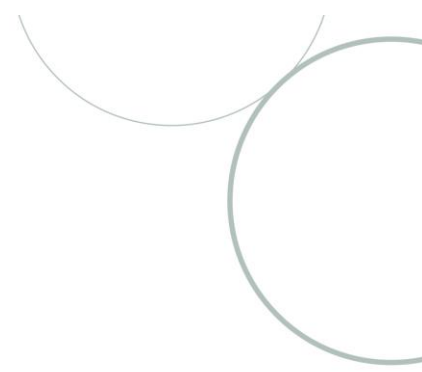


Table 11—Averaging of hours across the 25 modern awards

Award	Options to average weekly hours
Aged Care Award	38 hours per week 76 hours per 14 days 114 hours per 21 days 152 hours per 28 days (clause 22.1)
Building On-site Award	Averaged over 20-day 4-week cycle to allow for accrual and taking of RDOs (clause 16.1)
Children's Award	Averaged over a one, 2 or 4 week cycle (clause 21.1)
Cleaning Award	5 days of 7.6 hours each per week 152 hours per 4-week cycle in workplaces where employees work on a RDO basis 19 days of 8 hours each per month (clause 13.1)
Clerks Award	Maximum number of ordinary hours worked may be averaged over a period of up to 4 weeks or an agreed roster period (clause 13.2)
Schools General Staff Award	For curriculum/resources services employees employed in outdoor education, or a boarding supervision services employee: up to 12 months (clause 14.4.(a))
	For all other employees: 2 weeks or 4 weeks (clause 14.4.(b))
Electrical Contracting Award	38 hours per 7 days 76 hours per 14 days 114 hours per 21 days 152 hours per 28 days (clause 13.4)
Fast Food Award	38 ordinary hours per week 76 ordinary hours over 2 weeks 114 ordinary hours over 3 weeks 152 ordinary hours over 4 weeks (clause 13.2)
	For casual employees: averaged over the course of the roster cycle (clause 11.1(b))
Fitness Award	Averaged over period of 4 weeks (clause 13.2)
Retail Award	38 hours per week 76 ordinary hours in 2 weeks 114 ordinary hours in 3 weeks



Award	Options to average weekly hours
	<p>152 ordinary hours in 4 weeks</p> <p>Average of 38 hours per week over a longer period as agreed between employer and employee (clause 15.6(g))</p> <p>In an establishment at which at least 15 employees are employed per week on a regular basis, the employer must not roster an employee to work ordinary hours on more than 19 days per 4 week cycle (clause 15.6(i))</p>
Hair and Beauty Award	<p>For full-time employees, averaged over a period of no more than 4 weeks in one of the following ways:</p> <p>38 ordinary hours in one week</p> <p>76 ordinary hours in 2 consecutive weeks</p> <p>114 ordinary hours in 3 consecutive weeks</p> <p>152 ordinary hours in 4 consecutive weeks (clause 14.5)</p> <p>Casual employees: averaged over the course of the roster cycle (clause 11.1(b))</p>
Health Professionals Award	<p>Full-time employees: averaged over a fortnight or 4-week period (clause 13.1)</p>
Higher Education General Staff Award	<p>Ordinary hours may be worked in a manner agreed over a 4-week cycle (clause 15.1).</p>
Hospitality Award	<p>19 day month of 8 hours per day</p> <p>4 days of 8 hours and one day of 6 hours</p> <p>4 days of 9.5 hours per day</p> <p>5 days of 7 hours and 36 minutes per day</p> <p>76 hours over 2-week period with minimum 4 days off</p> <p>152 hours over 4-week period with minimum 8 days off</p> <p>160 hours over 4-week period with minimum 8 days off plus ADO</p> <p>Combination of the above</p> <p>(clause 15.1(b))</p> <p>Casual employees: if working in accordance with a roster, average over roster cycle which may not exceed 4 weeks (clause 11.2(b))</p>
Local Government Award	<p>Averaged over a period of 28 days (clause 13.1(b))</p>



Award	Options to average weekly hours
Manufacturing Award	All employees: average of 38 hours per week but not exceeding 152 hours in 28 days, see clause 17.1(a) for continuous shift workers clause 17.3(c) for non-continuous shiftworkers (clause 17.4(b))
Miscellaneous Award	No averaging of hours specified but clause 13.3 specifies that on average, an employee must not be required to work ordinary hours on more than 20 days in any 28-day period (clause 13.3)
Nurses Award	38 hours per week 76 hours per fortnight 152 hours over 28 days (clause 13.1(c))
Pharmacy Award	38 ordinary hours per week or 76 ordinary hours over 2 consecutive weeks (clause 13.4)
Plumbing Award	Averaged over a 4-week work cycle where the roster will comprise 19 days of 8 hours with 0.4 of one hour each day worked accruing to be paid as a RDO, OR an alternative method as agreed between employer and majority of its employees (clause 15.1-15.2)
Restaurant Award	Averaged over a period of a roster cycle which may not exceed 4 weeks (clause 15)
Road Transport and Distribution Award	38 hours per week; 76 hours within a work cycle not exceeding 14 days 114 hours within a work cycle not exceeding 21 days 152 hours within a work cycle not exceeding 28 days (clause 13.1)
SCHADS Award	In a week of 5 days in shifts not exceeding 8 hours each In a fortnight of 76 hours in 10 shifts not exceeding 8 hours each In a 4-week period of 152 hours in 19 shifts of 8 hours each (clause 25.1)
Storage and Wholesale Award	Full-time employees averaged over 4 weeks (clause 13.1).
	For shiftworkers (clause 20.3) 38 hours in any 1 week 76 hours within a work cycle not exceeding 14 consecutive days 114 hours within a work cycle not exceeding 21 consecutive days



Award	Options to average weekly hours
	152 hours within a work cycle not exceeding 28 consecutive days
Vehicle Award	38 hours per week 76 hours within a work cycle not exceeding 14 consecutive days 114 hours within a work cycle not exceeding 21 consecutive days 152 hours within a work cycle not exceeding 28 consecutive days (clause 22.2)

7. Span of hours - discussion question

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

4.3.2 Consultation about changes to rosters

[173] All modern awards include a model consultation clause about changes to rosters or hours of work per section 145A of the FW Act. The model clause requires employers to consult on proposed changes to the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic, or unpredictable.

[174] The consultation requirements include consulting with affected employees and their representatives by providing them with information about the proposed change and inviting employees to provide their views about the impact of the proposed change. The employer must then consider any views about the proposed change. Provisions do not require parties to reach a mutually agreed position before the change is made.

[175] The Job Security discussion paper includes further discussion on the standard consultation about changes to rosters or hours of work clause.²⁴⁴ It highlights that recommendation 5 of the Work and Care Interim Report recommends ‘amending section 145A of the FW Act to require employers genuinely consider employee views about the impact of proposed roster changes, and

²⁴⁴ Fair Work Commission, [Discussion Paper – Job Security](#) (December 2023) 98–100.



take the views of the employee, including working carers, into consideration when changing rosters and other work arrangements'.²⁴⁵

4.3.3 Roster notice provisions and variations to rosters

[176] Notice of rosters, or notification periods for rosters, refer to the advanced notice provided to employees on upcoming work schedules. Variations to rosters are changes made to the original roster, which can impact employees by adjusting the timing, duration and/or days of work. Variations to rosters may occur for several reasons, such as operational needs of the employer, staff availability or unforeseen circumstances.

[177] According to the Work and Care Final Report and the Employment White Paper, notice periods for rosters can play a crucial role in work and care planning, with a regular schedule the most common working arrangement change sought by new parents.²⁴⁶

[178] Notice of rosters, changes to rosters and notice to changes to RDOs/ADOs in the 25 modern awards is examined in **Table 12**. A list of exceptions for employers to give notice is set out in **Table 13**. Commission staff observed:

- There is a broad range of roster notification periods in the modern awards, ranging from 48 hours up to 14 days:
 - 6 modern awards require an employer to give 48 hours' notice for shift rosters.
 - 3 modern awards require an employer to give 7 days' notice for rosters.
 - 5 modern awards require an employer to give 14 days' notice for rosters.
 - 11 modern awards do not specify a notice period for the issuing of rosters.

²⁴⁵ Senate Select Committee on Work and Care, [Interim Report](#) (October 2022) 110 [6.51]–[6.54].

²⁴⁶ Australian Government, [Working Future: The Australian Government's White Paper on Jobs and Opportunities](#), (September 2023) 155; Ciasullo, Ludovica, Uccioli, Martina, 'What Works for Working Mothers? A Regular Schedule Lowers the Child Penalty' (2022) Labour Market Paper; Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 94–95.



- Some modern awards rostering requirements only apply to full-time and part-time employees.²⁴⁷
- Provisions for making changes to rosters are similarly varied across the modern awards and range from a requirement to give 24 hours' notice to 7 days' notice.
 - While 11 modern awards do not specify any notice period for issuing rosters, 9 out of 11 do require notice to make changes to rosters, signaling that there may be minimum roster notification requirements.
 - The Pharmacy Award requires 7 days' notice for changes to a part time employee's rosters only (clause 10.9).
 - The Retail Award requires 7 days' notice for changes to regular patterns of work for part-time employees or to make permanent roster changes for other employees (clause 15.9(e)).
- The Fast Food Award and the Vehicle Award do not appear to include provisions requiring employers to give notice of rosters, notice of changes to rosters or notice of changes to ADOs/RDOs.
- A roster can generally be altered by agreement between an employee and employer.
- Some modern awards also provide for notice or notice of changes to ADOs/RDOs.
- Employer exceptions to provide notice of rosters or notice of changes to rosters were found in 14 modern awards. The exceptions range from covering an emergency, to covering other employees' absences due to illness or injury. The list of exceptions is set out in **Table 13**.

8. Notice of rosters - discussion question

Noting the Work and Care Senate Committee Recommendation 21 that all employees should have at least 2 weeks' notice of their roster except in exceptional circumstances, are there any specific variations to rostering provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

²⁴⁷ For example, in the [Aged Care Award 2010](#) clause 22.6(b) provides that 'It is not obligatory for the employer to display any roster of the ordinary hours of work of casual or relieving staff.'; See also: [Cleaning Services Award 2020](#); [Hair and Beauty Industry Award 2020](#); [Hospitality Industry \(General\) Award 2020](#); [Pharmacy Industry Award 2020](#).



Table 12—Notice periods for rosters and changes to rosters across the 25 modern awards

Award	Notice for rosters	Notice of changes to rosters	Notice of changes to RDOs/ADOs
Aged Care Award	2 weeks' notice (clause 22.6(a))	7 days' notice (clause 22.6(c)(g))	x N/A
Building On-site Award	48 hours' notice for shiftwork (clause 17.1(f), 17.2(b))	48 hours' notice (clause 16.6)	7 days' notice for RDOs (clause 16.4)
Children's Award	x N/A	7 days' notice (clause 21.7(b)(i))	x N/A
Cleaning Award	x N/A	7 days' notice applies to full-time and part-time employees (clause 13.3, 13.6)	x N/A
Clerks Award	x N/A	7 days' notice (clause 13)	4 weeks' notice for a RDO (clause 14.4)
Schools General Staff Award	7 days' notice for shiftwork (clause 15.2)	7 days' notice for shiftwork (clause 15.2(c))	By consent only (clause 15.2(c)(iii))
Electrical Contracting Award	48 hours' notice (clause 2)	x N/A	4 weeks' notice is required for an RDO (clause 13.8(b))
Fast Food Award	x N/A	x N/A	x N/A
Fitness Award	x N/A	7 days' notice (clause 13.5)	x N/A
Retail Award	x N/A	7 days' notice for employees other than part-time employees, for permanent roster changes. If the employee disagrees, the period of notice required is extended to at least 14 days in total (clause 15.9(e)) 7 days' notice for part-time employee, to change a regular pattern of work, or if the employee disagrees, 14 days' notice (clause 10.10)	N/A, for full-time employees, a rostered day off may be changed by the employer and an employee by mutual agreement (clause 15.6(l)(ii))



Award	Notice for rosters	Notice of changes to rosters	Notice of changes to RDOs/ADOs
Hair and Beauty Award	14 days' notice for full-time and part-time employees (clauses 15.2(a) and 15.3(a))	7 days' notice for part-time employees (clause 15.3(d)(i)) 48 hours' notice for full-time and part-time employees in emergencies (clauses 15.2(c)(ii) and 15.3(d)(ii))	N/A, a rostered day off may be worked by agreement
Health Professionals Award	2 weeks' notice (clause 14.1(a)).	7 days' notice (clause 14.1(b))	x N/A
Higher Education General Staff Award	7 days' notice for shiftworkers (clause 15.2(b)(i))	72 hours' notice for shiftworkers (clause 15.2(b)(iii))	x N/A
Hospitality Award	x N/A	7 days' notice for full-time and part-time employees (clause 15.5.(d))	2 weeks' notice where practicable (clause 15.6(b))
Local Government Award	2 weeks' notice where practicable (clause 14.1.(c))	7 days' notice (clause 14.1.(b))	2 weeks' notice where practicable (clause 14.1.(c))
Manufacturing Award	48 hours' notice for shift workers (clause 2, 33.2(a)(iv))	x N/A	x N/A
Miscellaneous Award	x N/A	7 days' notice of changes to start and finishing times (clause 13.4)	x N/A
Nurses Award	7 days' notice (clause 13.2.(c))	7 days' notice (clause 13.2(e))	x N/A
Pharmacy Award	x N/A	7 days' notice for part-time employees or 48 hours', notice in an emergency (clause 10.9)	x N/A
Plumbing Award	48 hours' notice for certain shiftwork (clause 23.1(a)(i))	x N/A	5 days' notice for an employer of 10 or fewer employees (clause 15.5(d)(ii) or employee working alongside other



Award	Notice for rosters	Notice of changes to rosters	Notice of changes to RDOs/ADOs
			building and construction workers (clause 15.5(f)(ii))
Restaurant Award	x N/A	7 days (clause 15.3(d))	2 weeks' notice (clause 15.4)
Road Transport and Distribution Award	48 hours' notice for shift rosters (clause 22.1(d))	48 hours' notice for shift rosters or transfer to shift rosters (clauses 22.2(d), 22.6, 22.7) and 7 days' notice to variations to regular start times (clause 15.2)	48 hours' notice for changes to RDOs in absence of mutual agreement (clause 13.7(a)(i))
SCHADS Award	2 weeks' notice, not obligatory to display rosters of causal or relieving staff (clause 25.5(a))	7 days' notice (clause 25.5(d)(i))	N/A where practicable, ADOs will be displayed on the roster (clause 25.5(e))
Storage and Wholesale Award	48 hours' notice for shiftwork (clause 20.5)	24 hours' notice in cases of changes necessitated by circumstances outside the control of the employer (clause 20.5(b))	4 weeks' notice required for changes to an RDO (clause 13.4)
Vehicle Award	x N/A	x N/A	x N/A

Table 13—Exceptions to notice of rosters or changes to rosters across the 25 modern awards

Award	Exception for employers for giving notice for changes to rosters
Aged Care Award	A roster may be altered at any time to enable the service of the organisation to be carried on where another employee is absent from duty on account of illness or in an emergency (clause 22.6(c))
Building On-site Award	The hours for shiftworkers, when fixed, must not be altered except for breakdowns or other causes beyond the control of the employer, provided that notice of such alteration must be given to the employee not later than the ceasing time of their previous shift (clause 17.1(g))



Award	Exception for employers for giving notice for changes to rosters
Children’s Award	The employer is also not required to provide the full 7 days’ notice where the employer makes the change as a result of an emergency outside of the employer’s control (clause 21.7(b)(ii))
Cleaning Award	Except in an emergency and subject to clause 27.1 (Consultation about changes to rosters or hours of work), an arrangement agreed by the employer and employee under clause 13.1(b) may only be changed on giving a minimum of one week’s notice (clause 13.3)
Schools General Staff Award	A roster may be altered at any time to enable the functions of the employer to be carried out where another employee is absent from work due to illness or in an emergency and the employee must be given 48 hours’ notice of a change to a rostered shift (clause 15.2(c)(ii))
Fitness Award	Due to an emergency (clause 13.5)
Retail Award	Clause 15.9(h) (overtime is payable) applies to an employee other than a part-time employee whose roster is changed in a particular week for a one-off event that does not constitute an emergency and then reverts to the previous roster in the following week (clause 15.9(h))
Hair and Beauty Award	An employer may change a (part-time) employee’s roster in an emergency, by giving the employee 48 hours’ notice of the change (clause 15.3(d)(ii))
Health Professionals Award	A roster may be altered at any time to enable the functions of the hospital, facility or organisation to be carried on where another employee is absent from duty pursuant to clauses 28–Personal/carer’s leave and compassionate leave; 31–Ceremonial leave and 32–Family and domestic violence leave, or in an emergency (clause 14.1.(b))
Higher Education General Staff Award	A shift or roster may be changed at any time to enable the functions of the employer to be carried out where an employee is absent due to illness or on account of a contingency which the employer could not have reasonably



Award	Exception for employers for giving notice for changes to rosters
	foreseen. The employee must be notified of the changed shift as soon as possible (clause 15.2(b)(ii))
Nurses Award	The employer may alter a roster at any time to enable the functions of the hospital or facility to be carried out where another employee is absent from work pursuant to clauses 23—Ceremonial leave; 25—Personal/carer’s leave and compassionate leave, and 27—Family and domestic violence leave, or in an emergency. Where any such alteration requires an employee working on a day which would otherwise have been the employee’s day off, an alternative day off will be taken at an agreed time (clause 13.2(f))
Pharmacy Award	The roster of a part-time employee, but not the number of hours agreed under clause 10.4, may be changed by the employer giving the employee 7 days’, or in an emergency 48 hours’, written notice of the change (clause 10.9)
SCHADS Award	<p>A roster may be changed at any time to enable the service of the organisation to be carried on where another employee is absent from duty on account of illness, or in an emergency (clause 25.5(ii)(B))</p> <p>In circumstances where a client cancels, where at least 12 hours’ notice is provided to an employee, a rostered shift may be cancelled, and the employees may be required to undertake makeup time (clause 25.5(f))</p>
Vehicle Award	The commencing time of any permanent employee’s daily hours once fixed may vary from day to day in a week but not by more than 2 hours (clause 22.4)



4.3.3.1 Rostering outside availability or in excess of guaranteed regular hours

[179] Commission staff observed that 2 of the 25 modern awards examined specifically prohibit employers rostering an employee to work outside their nominated available hours. The Hospitality Award and Restaurant Award 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 the employee is available to work the guaranteed hours.²⁴⁸ While employers may roster a part-time employee to work in excess of their guaranteed hours under these awards, they cannot roster the employee to work outside the employee's nominated availability.²⁴⁹

[180] Some awards also impose restrictions on employers requiring part-time employees to perform work in excess of their guaranteed hours or outside of their agreed ordinary hours, for example:

- The SCHADS Award provides that an employer must not require a part-time employee to work additional hours in excess of their guaranteed hours, however an employee may agree to work hours that are additional hours.²⁵⁰
- The Electrical Contracting Award provides that a part-time employee must not be required to work outside of the agreed ordinary hours of work and starting and finishing times unless there are urgent and/or unforeseen circumstances. In such a case, the overtime provisions of the award will apply.²⁵¹

²⁴⁸ [Hospitality Industry \(General\) Award 2020](#) clause 10.4; [Restaurant Industry Award 2020](#) clause 10.4.

²⁴⁹ [Hospitality Industry \(General\) Award 2020](#) clause 10.7(a); [Restaurant Industry Award 2020](#) clause 10.7(a).

²⁵⁰ [Social, Community, Home Care and Disability Services Industry Award 2010](#) clause 10.3(f).

²⁵¹ [Electrical, Electronic and Communications Contracting Award 2020](#) clause 10.6.



Fair Work
Commission



4.3.3.2 Right to review guaranteed hours

[181] In the Hospitality Award, Restaurant Award and the SCHADS Award, a part-time employee that has regularly worked in excess of their guaranteed hours for a period of at least 12 months, may request that the employer increase their guaranteed hours to match their regular work pattern. The employer may only refuse the request on reasonable business grounds.²⁵²

[182] In the Restaurant Award a part-time employee may also alter the times they are available, by giving their employer at least 14 days' notice, where there is a genuine and ongoing change in the part-time employee's personal circumstances. Where an employer cannot reasonably accommodate this change in employee availability, the part-time employees guaranteed hours cease to apply and new guaranteed hours must be agreed.²⁵³

9. Availability and guaranteed regular hours - discussion question:

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?

4.3.4 Overtime

[183] Overtime provisions have been a fixture of Australian workplace relations systems for many years and form part of the modern awards objective.²⁵⁴ Overtime provisions are designed to compensate employees who perform work outside their ordinary or rostered hours.

[184] For those with caregiving responsibilities, overtime can have a range of impacts; some carers may find the additional income welcome, while overtime may conflict with the caregiving responsibilities of others. For example, submissions of Ms Louise de Plater of the Health Services Union to the Work and Care Senate Committee highlighted that:

²⁵² [Hospitality Industry \(General\) Award 2020](#) clause 10.8; [Restaurant Industry Award 2020](#) clause 10.8; [Social, Community, Home Care and Disability Services Industry Award 2010](#) clause 10.3(g).

²⁵³ [Restaurant Industry Award 2020](#) clause 10.11.

²⁵⁴ *Ibid* s 134(1)(da).



'In road transport and manufacturing, there's a real disincentive for employers to offer low hour contracts because, if they have to flex that worker up and offer additional hours, they have to pay a penalty - pay them at the overtime rate. The lack of that requirement in the aged-care award just means there's no disincentive. Why would an employer bother offering more hours if there's no disincentive there for them to simply offer a low-hour contract and then just offer employees more hours week to week? They just pay ordinary hour rates. There's no disincentive there for them to do that.'²⁵⁵

[185] The payment of overtime ultimately depends on unique interactions between ordinary or guaranteed hours, the span of hours, days worked, type of employment and other award provisions.

[186] There is a varied approach to the calculation of and interaction between overtime rates and the casual loading across modern awards.²⁵⁶ Overtime for casual employees may attract higher rates of pay, owing to the additional 25 per cent loading. This interaction between casual employment and overtime loadings was considered as part of a review of overtime for casual employees (Overtime for casuals review). The Commission confirmed that the casual loading is not added to overtime rates in the Hospitality Award and Restaurant Award for casual employees.²⁵⁷

[187] In subsequent Overtime for casuals review decisions the Full Bench determined overtime rates in certain modern awards and whether they would be paid on a cumulative or compounding basis.²⁵⁸

[188] Further, during the 4 Yearly Review, as part of a review of common issues relating to casual employment, the Commission considered when overtime becomes payable for casual employees.²⁵⁹ In relation to the Hospitality Award and the Restaurant Award, the Full Bench determined that:

²⁵⁵ Senate Select Committee on Work and Care, [Final Report](#) (March 2023), 89–90.

²⁵⁶ 4 yearly review of modern awards – Overtime for casuals [\[2020\] FWCFB 4350](#); [\[2020\] FWCFB 5636](#).

²⁵⁷ 4 yearly review of modern awards – Overtime for casuals [\[2019\] FWCFB 6953](#) [11].

²⁵⁸ 4 yearly review of modern awards – Overtime for casuals [\[2019\] FWCFB 6953](#), [\[2020\] FWCFB 4350](#), [\[2020\] FWCFB 5636](#), [\[2021\] FWCFB 1121](#), [\[2021\] FWCFB 4656](#), [\[2021\] FWCFB 5236](#), [\[2021\] FWCFB 6071](#), [\[2022\] FWC 758](#), [\[2022\] FWC 1202](#).

²⁵⁹ See 4 yearly review of modern awards – Part-time and casual employment [\[2017\] FWCFB 3541](#) [550].

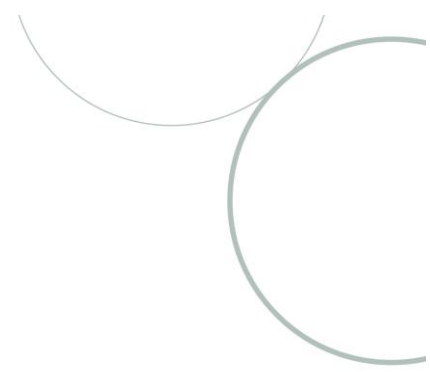


‘in respect of each award, we determine that overtime penalty rates should be payable to casual employees for all time worked in excess of 12 hours in a day or 38 hours per week. Where a casual employee works in accordance with a roster, the 38 hours may, for the purpose of overtime calculations, be averaged over the length of the roster cycle (which may not exceed 4 weeks). The rate of the overtime penalty will in the case of each award be the same as for full-time employees. It shall not however compound upon the casual loading.’²⁶⁰

[189] Overtime provisions and rest periods after overtime in the 25 modern awards is set out in **Table 14. Commission staff observed:**

- Overtime penalty rates are relatively consistent at 150 per cent or 200 per cent of the ordinary hourly rate provided for within the relevant modern award, depending on time and number of hours worked.
- Overtime rates are often applied differently to full-time, part-time and casual employees.
 - For example, in the Building On-site Award and the Electrical Contracting Award, all hours of work beyond ordinary hours are payable as overtime for all employees (clause 29 and clause 20).
 - 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 (clause 25).
 - In the Miscellaneous Award overtime is defined as all work in excess of an average of 38 hours per week for both full-time and casual employees. While for part-time employees’ overtime is payable for work in excess of the agreed number of hours per week (clause 19.1).
 - In the Cleaning Award, a part-time allowance of 15 per cent in addition to the minimum hourly rate, is payable so as to allow the employer to roster a part-time employee to work up to 7.6 hours per day, 5 days per week or 38 ordinary hours per week without the payment of overtime (clause 10.2). Overtime is payable for work in excess these hours (clause 19.2(b)).
 - 3 modern awards do not include provisions for rest periods after overtime.

²⁶⁰ Ibid.



4.3.4.1 Time off instead of payment for overtime

[190] Time off instead of payment for overtime (TOIL) provisions are provided for in all modern awards by written agreement between an employer and an employee.

[191] TOIL provisions in the 25 modern awards are also summarised in **Table 14**. Commission staff observed:

- In 16 of the modern awards, an employee’s entitlement to time off is equivalent to the overtime payment that would have been made (e.g. 60 minutes of overtime is worked at 150 per cent of the minimum hourly rate, this would result in 90 minutes of time off).
- In 9 of the modern awards, an employee’s entitlement to time off is equivalent to actual time worked (e.g., 2 hours of overtime worked equals 2 hours’ time off).
- TOIL must usually be taken within 6 months or, if not, paid out at the applicable overtime rate.²⁶¹

Table 14—Overtime and TOIL provisions across the 25 modern awards

Award	When overtime is payable	Rest period (after overtime)	Time off in lieu
Aged Care Award	Full time: all work done in addition to their rostered ordinary hours on any day (clause 25.1(a)(i))	Yes (clause 25.1(d))	Yes (clause 25.2) – same as number of overtime hours worked
	Part-time: hours in excess of 38 hours per week or 76 per fortnight (clause 25.1(b)(i))		
	Casual: hours in excess of 38 hours per week or 76 per fortnight. (clause 25.1(c)(i))		
Building On-site Award	All employees: for all work done outside ordinary hours for all employees. (clause 29.4(a))	Yes (clause 29.8)	Yes (clause 29.13) – same as number of overtime hours worked

²⁶¹ In the [Social, Community, Home Care and Disability Services Industry Award 2010](#), TOIL must be taken within 3 months (clause 28.2) and within 4 weeks in the [Vehicle Repair, Services and Retail Award 2020](#) (clause 24.6) or if not paid out at the applicable overtime rate.



Award	When overtime is payable	Rest period (after overtime)	Time off in lieu
Children's Award	Full time: for any work performed outside of their ordinary hours of work (clause 23.1(a))	Yes (clause 22.3)	Yes (clause 23.3) – same as number of overtime hours worked
	Part-time: for work more than 8 hours per day (clause 10 (f))		
	Casual: for work in excess of 8 hours on any one day or shift or 38 hours in any one week (clause 10.5(e))		
Cleaning Award	Full time: any time worked in excess of their ordinary hours	Yes (clause 14.4)	Yes (clause 19.5) – same as number of overtime hours worked
	Part-time: All time worked in excess of 7.6 hours per day, five days per week or 38 hours in any (clause 19.2(b)). An employer must pay a part-time employee for each ordinary hour worked an allowance of 15%. NOTE: The part-time allowance is payable so as to allow the employer to roster a part-time employee to work up to 7.6 hours per day, 5 days per week or 38 ordinary hours per week without the payment of overtime (clause 10.2)		
	Casual: All time worked in excess of 7.6 hours per day, five days per week or 38 hours in any (clause 19.2(b))		
Clerks Award	Full-time: for hours in excess of the ordinary weekly hours; in excess of 10 ordinary hours in any one day or outside the ordinary spread of hours, or for work on an RDO (clause 21.1.(a),(b),(c),(d))	Yes (clauses 22, 30)	Yes (clauses 23, 29) – same as number of overtime hours worked
	Part-time: excess of the number of ordinary hours that the employee has agreed to work under clause 10.2 or as varied under clause 10.3 (clause 21.2(e))		
	Casuals: N/A		
Schools General Staff Award	Full-time: Overtime is any authorised work performed outside of or in excess of the ordinary or rostered hours (clause 21.1)	Yes (clause 16.3)	Yes (clause 21.4) – same as number of overtime hours worked
	Part-time: Reasonable additional hours apply to part-time workers, and are paid at casual rates or overtime rates (clause 21.3)		



Award	When overtime is payable	Rest period (after overtime)	Time off in lieu
	Casuals: N/A		
Electrical Contracting Award	All employees: For all work done outside ordinary hours for all employees (clause 20)	Yes (clause 14.4)	Yes (clause 20.7) – same as number of overtime hours worked
Fast Food Award	Full-time: All time worked in excess of, for example: 38 hours per week averaged over a 4 week period; 11 ordinary hours on any one day; 5 days in one week (or 6 days in one week if, in the following week, ordinary hours are worked on not more than 4 days); before and after the employee’s rostered start time on any one day; outside the ordinary hours of work (clause 20.2)	x N/A	Yes (clause 20.7) - equivalent to overtime payment that would have been made
	Part-time: All time worked in excess of, for example: 38 hours per week averaged over a 4 week period; 11 ordinary hours on any one day; 5 days in one week (or 6 days in one week if, in the following week, ordinary hours are worked on not more than 4 days); before and after the employee’s rostered start time on any one day; outside the ordinary hours of work (clause 20.3)		
	Casual: For casual employee, 38 ordinary hours per week or 11 ordinary hours on any one day (clause 20.4)		
Fitness Award	Full time: all time worked, outside spread of hours; in excess of 38 hours per week over a 4-week period; in excess of 10 hours on any day (clause 19.1)	Yes (clause 19.3)	Yes (clause 19.4) – same as number of overtime hours worked
	Part-time: All time worked in excess of the hours as agreed under clause 11.2 or varied under clause 11.3 will be overtime (clause 19.1(b))		
	Casual: N/A		
Retail Award	Full time: for all hours in excess of the ordinary hours of work or outside the span of hours (excluding shiftwork) or outside the roster conditions (clause 21.2(a))	Yes (clause 16.6)	Yes (clause 21.3) – equivalent to overtime payment



Award	When overtime is payable	Rest period (after overtime)	Time off in lieu
	<p>Part-time: An employer must pay a part-time employee for hours worked in excess of their guaranteed hours as agreed or varied (clause 21.2(b))</p> <p>Casual: for all hours in excess of: the ordinary hours of 38 hours per week, or if works a roster, 38 hours per week averaged over the roster cycle; outside the span of ordinary hours; in excess of 11 hours in any one day and in excess of 9 on any other day of the week</p>		that would have been made
Hair and Beauty Award	<p>Full time: any hours: in excess of an average of 38 ordinary hours per week; outside the span of ordinary hours; or in excess of the maximum daily ordinary hours (clause 22.2)</p> <p>Part-time: any hours in excess of ordinary hours agreed or varied; outside the span of hours; in excess of maximum daily hours (clause 22.3)</p> <p>Casual: any hours in excess of 38 hours per week, and if worked a roster, averaged over that roster cycle; in excess of 10.5 hours per day (clause 22.4)</p>	Yes (clause 16.2)	Yes (clause 22.6) – equivalent to overtime payment that would have been made
Health Professionals Award	<p>Full time: for work in excess of ordinary hours; or 10 hours per shift (clause 25.1(a))</p> <p>Part-time: for work in excess of ordinary hours, except by agreement; in excess of 10 hours per shift; in excess of an average of 38 hours per week in a fortnight or a 4-week period (clause 25.1(b))</p> <p>Casual: for work in excess 10 hours per shift and/or works in excess of 38 hours per week in 76 hours in a fortnight (clause 25.1(c))</p>	Yes (clause 25.4)	Yes (clause 25.5) – same as number of overtime hours worked
Higher Education General Staff Award	<p>All employees: for all authorised work performed outside of, or in excess of, the employee’s ordinary or rostered hours (clause 22.1)</p>	Yes (clause 22.4)	Yes (clause 22.5) – HEW6 or below – equivalent to overtime payment that would have been made HEW7 or 8 – may take time off at a



Award	When overtime is payable	Rest period (after overtime)	Time off in lieu
			mutually agreed time at relevant overtime rate HEW9 – by mutual agreement
Hospitality Award	Full time: for any time worked in excess of their ordinary hours (clause 28.2(a))	Yes (clause 15.5(e))	Yes (clause 28.5) – same as number of overtime hours worked
	Part-time: for time worked in excess of 38 hours per week, or if worked a roster, an average of 38 hours per week over that roster cycle; in excess of maximum daily hours, or in excess of the employees rostered hours (clause 10.13(b))		
	Casual: In excess of 12 hours per day or 38 hours per week, or an average of 38 hours per week over the roster cycle (clause 11.4)		
Local Government Award	Full time: all worked performed at direction of employer in excess of ordinary weekly hours, on days other than ordinary working days or in excess of maximum ordinary hours on any day (clause 21.1)	Yes (clause 21.4)	Yes (clause 21.4) – same as number of overtime hours worked
	Part-time: when directed to work hours in excess of hours agreed in regular pattern of work (clause 10.8)		
	Casual: N/A		
Manufacturing Award	Full time: any work performed outside spread of hours (clause 17.2(f)) or ordinary hours on any day or shift (clause 32.1(a))	Yes (clauses 32.12, 57.5)	Yes (clause 32.8 – same as number of overtime hours worked); (clause 57.1 – must equate to the overtime rate)
	Part-time: when required to work in excess of agreed part-time hours (clause 10.8, clause 32.1(c))		
	Casual: N/A		
Miscellaneous Award	Full time: all time worked in excess of an average of 38 hours per week or maximum daily hours in clause 13.5 (clause 19.1(a))	x N/A	Yes (clause 19.2) – same as number of overtime hours worked
	Part-time: time worked in excess of agreed number of hours per week or the daily maximum daily hours in clause 13.5 (clause 19.1(b))		



Award	When overtime is payable	Rest period (after overtime)	Time off in lieu
	Casual: same as full-time (clause 19.1(b))		
Nurses Award	Full time: hours worked in excess of ordinary hours on any day or shift (clause 19.1)	Yes (clause 19.4)	Yes (clause 19.3) – equivalent to overtime payment that would have been made
	Part-time: all time worked in excess of rostered daily ordinary full-time hours (clause 19.1(d))		
	Casual: hours worked in excess of ordinary hours on any day or shift (clause 19.2)		
Pharmacy Award	Full time: for any hours worked at the direction of the employer in excess of 38 hours per week, 12 hours on any day, that are not continuous, between midnight and 7:00am or outside rostering arrangements (clause 21.2)	x N/A	Yes (clause 21.5) – equivalent to overtime payment that would have been made
	Part-time: for each hour worked in excess of the number of ordinary hours agreed (clause 10.6)		
	Casual: N/A		
Plumbing Award	All employees: In excess of ordinary hours	Yes (clause 16.5)	Yes (clause 22.6) – same as number of overtime hours worked
Restaurant Award	Full time: for any work done outside spread of hours or rostered hours (clause 23.1(a))	Yes (clause 23.2)	Yes (clause 23.5) – equivalent to overtime payment that would have been made
	Part-time: for all time worked in excess of 38 hours per week, maximum daily hours, or the employee’s rostered hours (clause 10.13(b))		
	Casual: all time worked in excess of 12 hours per day or per shift, or 38 hours per week (clauses 11.5, 11.2)		
Road Transport and Distribution Award	Full time: for all work done outside ordinary hours (clause 21.1) where each day’s work will stand alone in computing overtime (clause 21.2). For shiftworkers, overtime is payable for all time worked outside or in excess of the ordinary shift hours or on a shift other than a rostered shift (clause 22.5)	Yes (clause 21.4)	Yes (clause 21.5) – equivalent to overtime payment that would have been made



Award	When overtime is payable	Rest period (after overtime)	Time off in lieu
	<p>Part-time: all time worked in excess of agreed hours (clause 10.8)</p> <p>Casual: same as full-time (clause 11.4)</p>		
SCHADS Award	<p>Full time: for all work done in addition to their rostered ordinary hours on any day and for day workers, for work done outside the span of hours (clause 28.1(a))</p>	Yes (clause 25.4)	Yes (clause 28.2) – same as number of overtime hours worked, must be taken within 3 months
	<p>Part-time: all time worked in excess of 38 hours per week or 76 hours per fortnight or all time worked which exceeds 10 hours per day or all time worked outside the span of hours (clause 28.1(b))</p>		
	<p>Casual: same as part-time (clause 28.1(b))</p>		
Storage and Wholesale Award	<p>Full-time: for all time worked by an employee in excess of or outside the ordinary hours of work (clause 21.1(a)) and each day or shift worked will stand alone (clause 21.2(a))</p>	Yes (clause 21.4)	Yes (clause 21.3) – same as number of overtime hours worked
	<p>Part-time: all time worked in excess of hours as mutually arranged (clause 10.6)</p>		
	<p>Casual: N/A</p>		
Vehicle Award	<p>Full-time: any time worked outside the ordinary hours (clause 24.2(a))</p>	Yes (clause 24.12)	Yes (clause 24.6) – equivalent to overtime payment that would have been made, must be taken within 4 weeks
	<p>Part-time: hours worked in excess of the employee's ordinary hours (clause 24.2(b))</p>		
	<p>Casual: any hours worked in excess of 10 hours on any day or an average of 38 hours per week (clause 11.3)</p>		



4.3.4.2 Reasonable additional hours

[192] The FW Act prohibits an employer from requiring or requesting an employee to work unreasonable additional hours.²⁶² As summarised by the Federal Court in *Sagona v R & C Piccoli Investments*:

‘Section 62(1) of the Act provides that an employer must not request or require an employee to work more than, for a full-time employee, 38 hours per week, unless the additional hours are reasonable. Section 62(3) of the Act sets out that the matters to be taken into account in determining whether additional hours are reasonable or unreasonable and s 62(2) of the Act provides that an employee may refuse to work additional hours if they are unreasonable.’²⁶³

[193] Of the modern awards analysed, the following 9 include provisions relating to ‘reasonable overtime’, with terms parallel to section 62(3) of the FW Act:

- Building On-Site Award (clause 29.1)
- Cleaning Award (clause 19.1)
- Electrical Contracting Award (clause 20.2)
- Fast Food Award (clause 20.1)
- Retail Award (clause 21.1)
- Hair and Beauty Award (clause 22.1)
- Hospitality Award (clause 28.1)
- Manufacturing Award (clause 32.9)
- Pharmacy Award (clause 21.1)

[194] The Schools General Staff Award includes a reasonable additional hour’s clause that applies to part-time employees only (clause 21.3). For reasonable additional hours, part-time employees are paid the applicable casual hourly rate or overtime rates.

[195] Whether additional hours are reasonable is determined on a case-by-case basis, with reference to the employee’s circumstances and the legitimate business needs of the employer.²⁶⁴ Any

²⁶² Fair Work Act 2009 (Cth) s 62.

²⁶³ *Sagona v R & C Piccoli Investments Pty Ltd* [2014] FCCA 875 [238].

²⁶⁴ *Construction, Forestry, Mining and Energy Union v BHP Coal Pty Ltd* [2015] FCAFC 25 [173].



averaging of hours (see section 1.1.1.1) may also be relevant.²⁶⁵ Various cases suggest that employers cannot unilaterally require additional hours to be worked without considering employees' circumstances.²⁶⁶ However, the Federal Magistrates Court has observed that:

'The number of hours may be reasonable or unreasonable depending upon the way in which they interplay with the other factors. What might be a reasonable number of additional hours in some circumstances may not be in others. If, after this analysis, the situation is neutral then it would be appropriate to take into account the ACTU's submission that unreasonable hours commenced at 44 and the funding in the *Working Hours Case* at [73] that standard hours were between 35 and 44 hours a week and that extended hours were more than 44 hours a week.'²⁶⁷

[196] Evidence presented to the Work and Care Senate Committee suggests many employees, particularly those working in the care sector, do not have the option to decline shifts, even at very short notice. Some employees are pressured into taking on additional hours to meet service and operational gaps.²⁶⁸ This has been observed by the Commission and its predecessors. For instance, the *Award Modernisation* decision observed that:

'the nature of the employer-employee relationship is such that if a supervisor asks an employee to change rosters within the 7 day period before the commencement of the roster period the employee's decision making may be compromised by fear (even if unwarranted) of repercussions if the request is declined.'²⁶⁹

[197] Similar sentiments were expressed by the Full Bench in the *Part-time and Casual Employment* matter when rejecting a proposal to vary the Fast Food Award to allow for employers and employees to agree to less than the 3 hour minimum payment period provided in the award.²⁷⁰

²⁶⁵ *Fair Work Act 2009* (Cth) s 62(3); see also *Construction, Forestry, Mining and Energy Union v Asurco Contracting Pty Ltd* [2012] FWA 6512 [34]. The Australian Industrial Relations Commission also considered whether hours were reasonable in *MacPherson v Coal & Allied Mining Services Pty Ltd (No 2)* [2009] 198 IR 50; [2009] FMCA 881; BC200908245 [41].

²⁶⁶ See, e.g., *ALDI Foods Pty Ltd v TWU* (2012) 277 IR 120; *Premier Pet Pty Ltd t/a Bay Fish v Brown (No. 2)* [2013] FCA; *Sagona v R & C Piccoli Investments Pty Ltd* [2014] FCCA 875.

²⁶⁷ *MacPherson v Coal & Allied Mining Services Pty Ltd (No.2)* [2009] FMCA 881 [41].

²⁶⁸ Senate Select Committee on Work and Care, *Final Report* (March 2023) 94–95.

²⁶⁹ [2009] 181 IR [148].

²⁷⁰ 4 yearly review of modern awards – *Casual employment and Part-time employment* [2017] FWCFB 3541 [686].



Fair Work
Commission

[198] When considering the SCHADS Award during the 4 Yearly Review, the Full Bench permitted variation of a roster by mutual agreement in circumstances where the variation was proposed by an employee to accommodate an agreed shift swap. However, the Full Bench also noted:

‘The proposal that rosters may be varied by agreement is inconsistent with the observation in the *Nurses Decision* and in the *Part-time and Casual Employment Case*. Further, there is evidence in the present proceedings of employee concerns that a capacity to vary rosters by agreement may lead to employees feeling pressured to change their shifts to accommodate a request by their employer.²⁷¹

[199] Recommendation 21 of the Work and Care Final Report recommended a review into current industrial awards, to ensure employees have a ‘right to say no’ to extra hours with protection from negative consequences. Further, the Work and Care Senate Committee highlighted that existing protections in the awards framework and the FW Act may not adequately protect employees from negative consequences where they decline to work additional hours.²⁷²

4.3.5 Make-up time

[200] Make-up time provisions allow employees to take time off during their scheduled working hours and ‘make up’ that time by working additional hours at a later stage, typically during the spread of ordinary hours (unless otherwise agreed). Make-up time arrangements can be valuable for workers with caring responsibilities, as they offer flexibility to attend to personal matters without losing pay or having to use formal leave arrangements. However, there is potential for employers who may encourage employees to work extra hours without appropriate compensation.

²⁷¹ 4 yearly review of modern awards – SCHADS – *Substantive claims* [2021] FWCFB 2383 [639].

²⁷² Senate Select Committee on Work and Care, *Final Report* (March 2023) 187 [8.124].



[201] In the *Personal/Carer's Leave Test Case*, the Full Bench determined that the model clause for make-up time should also be made subject to the agreement of the employer and the majority of employees at the enterprise.²⁷³ Later, during the 4 Yearly Review, a Full Bench of the Commission declined to insert a make-up time provision, as proposed by the Ai Group, into 51 of the 84 modern awards which do not contain one. In reaching this decision, the Full Bench noted that make-up time arrangements could be entered into under the model flexibility term in modern awards and no evidence was adduced to the effect that the procedural requirements for the model flexibility term created a practical barrier to employees and employers entering into make-up time arrangements.²⁷⁴

[202] Across the 25 modern awards, the following 11 provide for make-up provisions:

- Childrens Award (clause 21.8)
- Clerks Award (see clause 7 for facilitative provisions including make-up time)
- Schools General Staff Award (clause 21.5)
- Fitness Award (clause 13.7)
- Hospitality Award (clause 15.4)
- Local Government Award (see clause 14.2)
- Manufacturing Award (see clause 7.2 for facilitative provisions including make-up time)
- Restaurant Award (clause 15.2)
- SCHADS Award (see clause 25.2(f) client cancellation)
- Storage and Wholesale Award (clause 13.5)
- Vehicle Award (clause 17.4)

10. Overtime, TOIL, and make-up time – discussion question:

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?

²⁷³ [1996] 66 IR 138 [168]–[169].

²⁷⁴ [2015] FWCFB 4466 [294].



4.3.6 On call

- [203] According to ABS data, around 1.9 million employees in Australia are usually required to be on call or on standby in their main job.²⁷⁵
- [204] Some modern awards make specific provision for employees to be on call and where this happens, employees are generally paid for being ready to work during times outside their usual shifts, often at short notice. Some modern awards refer to this as availability for duty or being on standby. These provisions can include the times when an employee must be reachable by phone or able to come into work.
- [205] The Work and Care Senate Report found that, for caregivers, availability creep, where workers are expected to remain on call and available for extended periods of time in order to secure sufficient paid work, can have a profound impact on the ability to manage work and care effectively.²⁷⁶ The Report also noted that technological advancements, working from home habits and expectations to work longer hours have impacted workers ability to disconnect from the workplace.²⁷⁷ The Report found that expectations to work outside days off can interrupt availability to provide care.²⁷⁸
- [206] Across the 25 modern awards, being on call is compensated in 5 of the awards. The Road Transport and Distribution Award and Vehicle Award require that ordinary rates are payable for employees required to standby for duty,²⁷⁹ while the Nurses Award, the Plumbing Award and the SCHADS Award prescribe a daily or weekly allowance for being on call.

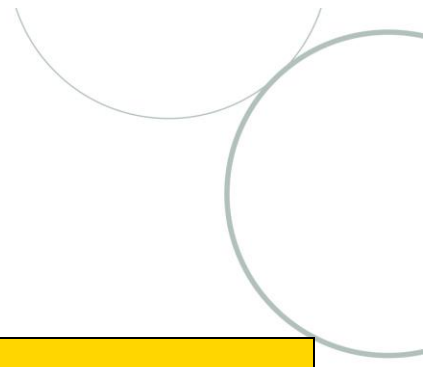
²⁷⁵ ABS, [Characteristics of Employment, Australia Table 1a. Working arrangements and Job flexibility](#) (August 2023).

²⁷⁶ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 119.

²⁷⁷ Ibid.

²⁷⁸ Ibid; Professor Sara Charlesworth, Co-convenor, Work + Family Policy Roundtable, Committee Hansard, 20 September 2022, 54.

²⁷⁹ See [Road Transport and Distribution Award 2020](#) clause 21.7; [Vehicle Repair, Services and Retail Award 2020](#) clause 24.7.



11. On-call and recall to duty - discussion question

Are there any specific variations to on-call or recall to duty provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

4.3.7 Travel time

[207] Payment for travel time while at work also varies across the modern awards, this includes payment for travelling between different places of work or jobsites. The Work and Care Final Report noted that not all modern awards provide for paid travel time to different locations or work sites. It found that this means that caregivers may be giving up personal time without additional pay.²⁸⁰

[208] Of the 25 awards considered, 23 provide travel allowances for an employee using their own vehicle while at work²⁸¹ and 18 provide for payment for travel time from one workplace to another, generally paid as ordinary time worked. For example, the Cleaning Award provides:

‘17.12 Travel time and travel allowance

- (a) Clause 17.12 applies to an employee who is required by the employer to travel from one workplace to another.
- (b) The employer must pay the employee, for the time spent travelling between workplaces, at the rate applicable at the time as if they were working.
- (c) The employer is responsible for, and must pay, all fares associated with travelling between workplaces.²⁸²

²⁸⁰ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 92–94.

²⁸¹ The [Storage Services and Wholesale Award 2020](#) and [Restaurant Industry Award 2020](#) do not include provisions related to an employee using their own motor vehicle.

²⁸² [Cleaning Services Award 2020](#), clause 17.2.



[209] The following 7 awards do not contain provisions specifying that travel is paid at ordinary hours:

- Aged Care Award
- Schools General Staff Award
- Health Professionals Award
- Local Government Award
- Miscellaneous Award
- Pharmacy Award
- SCHADS Award²⁸³

4.3.7.1 Pay for all hours worked

[210] Compensation for all hours worked, including on-call provisions, paid travel time, and paid training, varies across modern awards. The Work and Care Final Report found that low remuneration across some sectors, such as the aged and disability care sectors is often compounded by the fact that many care workers are not paid for time spent travelling, being on call, completing administrative tasks or undertaking training.²⁸⁴

[211] The Work and Care Final Report found that where employees are not compensated for all hours worked, it can lead to financial stress, making it difficult to afford necessary care services, further complicating the work-care dynamic.²⁸⁵ A study cited in the Work and Care Final Report by the Social Policy Research Centre found that approximately 15 per cent of the total hours worked by community sector workers were unpaid.²⁸⁶

²⁸³ During the 4 yearly review of modern awards, the Commission declined to consider provision for paid travel time in the *Social, Community, Home Care and Disability Services Industry Award 2010* until variations dealing with minimum engagement and broken shifts had been in operation for 12 months (not before 1 July 2023): [\[2021\] FWCFB 5244](#) [230]; [\[2021\] FWCFB 2383](#).

²⁸⁴ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 92–94.

²⁸⁵ *Ibid.*

²⁸⁶ Social Policy Research Centre, Submission 19, 5. The submission cites research conducted in 2018 by Cortis and Blaxand, in Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 92.



Fair Work
Commission

[212] Submissions to the Work and Care Senate Committee noted that the absence of award provisions relating to call-back or on-call may mean that employees who are called back to work outside of their regular hours, may not receive overtime or minimum shift payments.²⁸⁷ This means they may be compensated at their regular hourly rate, regardless of any inconvenience to caring arrangements or additional time spent working outside of their scheduled hours.²⁸⁸

[213] The issue of paid travel time was considered as part of the 4 yearly review of modern awards. During the 4 yearly review, the Commission declined to include provision for paid travel time in the SCHADS Award. The Full Bench found that the issues of minimum engagement, travel time and broken shifts were interrelated, and treated them as so in its decisions dealing with minimum engagement and broken shifts.²⁸⁹

12. Travel time - discussion question:

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

²⁸⁷ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 89–90.

²⁸⁸ Ibid 92–94.

²⁸⁹ [\[2021\] FWCFB 2383](#) [559]–[564], [574].



4.3.8 Breaks

[214] Breaks play a crucial role in providing relief during work hours. All modern awards contain provisions that entitle employees to breaks in specified circumstances.

[215] Typically, for employees other than shiftworkers, meal breaks are unpaid breaks and rest breaks are paid breaks. Typically for shiftworkers, both meal and rest breaks are paid breaks.²⁹⁰ The amount and timing of breaks varies across modern awards and often depends on the number of hours an employee is required to work, the time of day or the type of shift worked. Some modern awards provide for additional rest breaks in specified circumstances.²⁹¹

[216] For those with caregiving responsibilities, breaks can offer a chance to check in on dependents, make necessary arrangements, or simply mentally refresh. Insufficient or inflexible break times may add to the stress of balancing work and care.

4.3.8.1 Nursing breaks

[217] Nursing breaks for breastfeeding parents have been a longstanding feature of maternity protection.²⁹² Article 10(1) of the Maternity Protection Convention provides that ‘A woman shall be provided with the right to one or more daily breaks or a daily reduction in hours of work to breastfeed her child.’²⁹³ The accompanying Maternity Protection Recommendation allows for flexibility in the use of nursing breaks to meet personal needs.²⁹⁴

²⁹⁰ An exception is the [Aged Care Award 2010](#), for example, where shiftworkers’ meal breaks are not paid breaks (clause 42.1(a)).

²⁹¹ For example, the [Building and Construction General On-site Award 2020](#) provides breaks for shaft or trench sinkers, hot work, cold work, working with toxic materials (clause 18).

²⁹² International Labour Organisation, *Maternity at work: A review of national legislation – Findings from the ILO Database of Conditions of Work and Employment Laws* (International Labour Office, Geneva, 2012) 80.

²⁹³ International Labour Organisation, *Maternity Protection Convention*, R183, 88th sess, (15 June 2000).

²⁹⁴ International Labour Organisation, *Maternity Protection Recommendation*, R191, 88th sess, (15 June 2000).



Fair Work
Commission

[218] Australia has a national breastfeeding strategy: the *Australian National Breastfeeding Strategy: 2019 and beyond*.²⁹⁵ These strategies operate alongside other health and care frameworks to support breastfeeding parents and reduce barriers to breastfeeding.

[219] However, as observed by the Work and Care Senate Committee, Australia is an outlier in comparison with international standards for working conditions that assist working carers, including with recovery from birth, caring for infants and breastfeeding.²⁹⁶ According to the ILO, as of 2021, 142 countries provided nursing breaks, 138 provided paid breaks, including 130 with a duration of at least an hour, 80 with 2 daily breaks and 42 with a statutory right to workplace nursing facilities.²⁹⁷ Australia is among the few countries without statutory entitlements to breastfeeding breaks at work or facilities.²⁹⁸

[220] As summarised by the ILO:

‘The available provisions on the frequency and duration of nursing breaks and on the entitlement to these breaks point to the need of improving the suitability and flexibility of these arrangements so they can meet women’s needs and preferences and turn into effective enablers of breastfeeding at work. The current laws also highlight the importance of ensuring that the right to nursing breaks meets international recommendations on the duration of breastfeeding and that breastfeeding-friendly workplaces are promoted.’²⁹⁹

[221] Nursing breaks or working time reductions remain unpaid in four high-income countries: Canada, Japan, New Zealand and the United States.³⁰⁰ In New Zealand, there are also no requirements on the number or duration of nursing breaks. The absence of a clear entitlement, as in Australia, may deter parents from taking these breaks, particularly where they are unpaid.³⁰¹

²⁹⁵ Commonwealth of Australia, [Australian National Breastfeeding Strategy: 2019 and beyond](#) (Strategy 2019).

²⁹⁶ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) xxiv, xxvii.

²⁹⁷ Laura Addati et al, *Care at work: Investing in care leave and services for a more gender equal world of work* (International Labour Office, Geneva, 2022) 194.

²⁹⁸ Ibid 207.

²⁹⁹ Ibid 209.

³⁰⁰ Ibid 196.

³⁰¹ Ibid 202.



Fair Work
Commission

[222] However, Australia does have other protections for breastfeeding parents under both the FW Act and Sex Discrimination Act. For example, treating someone less favourably because they need to breastfeed and having any policies, requirements or practices that disadvantage breastfeeding parents may be discrimination under the *Sex Discrimination Act 1984* (Cth) (Sex Discrimination Act). The objectives of the Sex Discrimination Act are:

- (ba) to eliminate, so far as possible, discrimination on the ground of family responsibilities in the area of work; [...]
- (ca) to eliminate, so far as is possible, discrimination involving subjecting persons to workplace environments that are hostile on the ground of sex³⁰²

[223] Further, the SJPB Act amended the FW Act to include breastfeeding as a protected attribute under section 351 and to prohibit the inclusion of terms in modern awards that discriminate against an employee because of, or for reasons including breastfeeding.³⁰³ The FW Act further affirms the central role of federal, state and territory anti-discrimination laws, which all outline breastfeeding as a protected attribute.³⁰⁴

³⁰² *Sex Discrimination Act (No. 4) 1984* (Cth) s 3.

³⁰³ *Fair Work Act 2009* (Cth) s 351(1) and s 153.

³⁰⁴ *Ibid* s 351(3).



4.4 Leave arrangements

[224] Access to various leave arrangements can provide relief and support for employees balancing work and care. In the modern awards framework, leave entitlements are generally derived from the NES, with all modern awards containing provisions referring the reader to the NES to access their entitlements.³⁰⁵ Commission staff have identified the following leave arrangements in modern awards as relevant to employees balancing work and care:

- Annual leave
- Personal/carer's and compassionate leave
- Parental leave³⁰⁶
- Community service leave
- Ceremonial leave
- Family and domestic violence leave³⁰⁷
- Make-up time (which is discussed at section 4.3.5)³⁰⁸

[225] The Work and Care Senate Committee considered the adequacies of paid and unpaid carer's leave. The Committee suggested a re-evaluation of leave entitlements to ensure they align effectively with contemporary work practices and support a more flexible approach to workforce participation.³⁰⁹ Further, evidence to the Productivity Commission Inquiry into extended unpaid carer's leave (Productivity Commission Carer Leave Report) also highlighted mixed views on the

³⁰⁵ [\[2014\] FWCFB 9412](#) [35]–[36].

³⁰⁶ Discussion on parental leave is outside the scope of the Awards Review; however, it is worth noting that paid parental leave is a key tool in lowering the barriers for women to return to work and improving gender equality in the way work and care responsibilities are shared in society, see Australian Government, [Working Future: The Australian Government's White Paper on Jobs and Opportunities](#), (September 2023) 163.

³⁰⁷ Family and domestic violence leave provisions were varied in all modern awards to ensure they reflect the entitlement of 10 days' paid family and domestic violence leave, which was inserted into the FW Act in November 2022, see [Family and domestic violence leave review 2021 | Fair Work Commission \(fwc.gov.au\)](#).

³⁰⁸ Make-up time can also be considered a type of leave arrangement and facilitative provisions have been inserted into some modern awards. Make-up time provisions generally give the employee the opportunity to take time off during ordinary hours and make that time up at another time during ordinary hours.

³⁰⁹ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 139–167.



adequacy of existing leave arrangements under the NES for supporting employees with caring responsibilities.³¹⁰

4.4.1 Annual leave

- [226] Under the NES, full-time and part-time employees (excluding periods of casual employment) are entitled to 4 weeks of paid annual leave per year of service with an employer (generally pro rated for part-time employees). For employees classified as shift workers in their applicable modern award, this entitlement increases to 5 weeks. The entitlement to annual leave typically does not extend to casual employees, with few exceptions. For example, in the Manufacturing Award, casual vehicle manufacturing employees engaged in the technical field are entitled to a casual loading of 17.5 per cent along with annual leave and annual leave loading on a pro rata basis.³¹¹
- [227] The Work and Care Senate Committee heard evidence suggesting that many casual and insecure workers do not receive a casual loading but that, where it is paid, it does not fully compensate for conditions lost, such as paid leave.³¹² Further discussion on this is in the Job Security discussion paper.³¹³
- [228] Of the 25 modern awards examined, 24 provide for the NES entitlement of 4 weeks annual leave. The Nurses Award provides for an additional week of leave, that is, 5 weeks of annual leave and 6 weeks of annual leave for employees described or defined as shiftworkers.³¹⁴
- [229] In March 2020, the Commission granted an urgent application to vary the Hospitality Award to insert a new Schedule L to provide for award flexibility on a temporary basis, as result of the COVID-19 pandemic. This schedule enabled employees to take twice as much annual leave at

³¹⁰ Productivity Commission, [A Case for an extended unpaid carer leave entitlement Inquiry Report](#) (2023) Report no. 101, 26.

³¹¹ [Manufacturing and Associated Industries and Occupations Award 2020](#), clause 48, an employee and employer will agree on engagement if the 25 per cent casual loading or the 17.5 per cent casual loading and annual leave entitlements apply.

³¹² Senate Select Committee on Work and Care, [Final Report](#) (March 2023) 186.

³¹³ Fair Work Commission, [Discussion Paper – Job Security](#) (December 2023) 61–62.

³¹⁴ [Nurses Award 2020](#) clause 22.2.



half the ordinary rate of pay, with agreement.³¹⁵ A Full Bench of the Commission, acting on its own initiative, subsequently varied 99 modern awards to insert a new *Schedule X—Additional measures during the COVID-19 pandemic*.³¹⁶ As with the Hospitality Award, this variation provided an entitlement to unpaid ‘pandemic leave’ and flexibility to take twice as much annual leave at half pay. Schedule X operated until 30 June 2022.³¹⁷

13. Annual leave - discussion question:

Are there specific variations to annual leave provisions in modern awards, for example annual leave at half pay, that are necessary to ensure they continue to meet the modern awards objective?

4.4.2 Personal/carer’s leave and compassionate leave

[230] Personal/carer’s leave was introduced as part of a package of measures designed to assist workers in reconciling their employment and family responsibilities, introduced by a Full Bench of the former AIRC in the 1994 *Family Leave Test Case*, which was determined in two stages:

- *Family Leave Test Case – Stage 1 – November 1994 decision (the Stage 1 decision)*.³¹⁸
- *Personal/Carer’s Leave Test Case – Stage 2 – November 1995 decision (the Stage 2 decision)*.³¹⁹

[231] In the Stage 1 decision, the Full Bench extended existing access to paid sick leave (which, at the time, was generally restricted to personal illness) so that employees could use their sick leave entitlement to provide care and support to ill family members. The Full Bench also introduced a

³¹⁵ *Application to vary an award – Hospitality Industry (General) Award 2010– Award flexibility during the COVID-19 Pandemic* [2020] FWCFB 1574 at sch L.2.3.

³¹⁶ *Variation of awards on the initiative of the Commission* [2020] FWCFB 1837; *Variation of awards on the initiative of the Commission* [2020] FWCFB 3281.

³¹⁷ *COVID-19 Award Flexibility – Schedule X and award-specific schedules* [2022] FWC 1531.

³¹⁸ (1994) 57 IR 121.

³¹⁹ (1995) 62 IR 48.



range of facilitative provisions, including allowing an employer and an employee to agree to provide unpaid leave to provide care and support to ill family members.³²⁰

[232] In the Stage 2 decision, the Full Bench decided to aggregate sick leave and bereavement leave into a combined entitlement to personal/carer's leave. Access to the entitlement was also allowed for specified family leave purposes to assist employees reconcile their work and family responsibilities.³²¹

[233] In the *Parental Leave Test Case 2005*, a Full Bench of the AIRC revisited paid personal/carer's leave and bereavement leave provisions. Personal/carer's leave provisions were expanded to include care for an immediate family or household member, and bereavement leave became a stand-alone entitlement, available on each occasion.³²² These provisions formed the basis of the minimum entitlements that are now reflected in the NES.

[234] The Work and Care Senate Committee raised several concerns regarding personal/carer's leave entitlements in the modern awards framework, including:

- The FW Act does not provide paid carer's leave to casual employees.³²³
- The leave entitlements are narrow in scope, lack flexibility and provide insufficient time for leave.³²⁴
- The definition of 'carer' and its limited applicability to 'immediate family' and 'household members' are narrowly defined.³²⁵

³²⁰ (1994) 57 IR 121, 146-147.

³²¹ (1995) 62 IR 48, 53-54.

³²² (2005) 143 IR 245, 335, 337, 343.

³²³ During the COVID-19 pandemic various health sector awards, including the *Aged Care Award 2010*, were varied to provide paid pandemic leave, which extended 2 weeks of paid personal/carer's leave to all employees, including casual employees, [2020] FWCFB 3940, An exception to this rule occurred during the COVID-19 pandemic, where During the COVID-19 pandemic various health sector awards, including the *Aged Care Award 2010*, were varied to provide paid pandemic leave, which extended 2 weeks of paid personal/carer's leave to all employees, including casual employees: *Health Sector Awards—Pandemic Leave* [2020] FWCFB 3940 [54]-[56].

³²⁴ Senate Select Committee on Work and Care, *Final Report* (March 2023) 145-149.

³²⁵ *Ibid* 145, 149-150.



- Working carers lose access to leave entitlements when taking personal leave to care for others, as personal/carer's leave is offered as a single entitlement.³²⁶

[235] The recent Productivity Commission Carer Leave Report also raised the following concerns around leave entitlements:

- The situations in which an employee can access personal/carer's leave may not allow carers to undertake other caring activities, such as organising formal care. This is because the entitlement is limited to situations where there is an illness, injury or unexpected emergency.³²⁷
- People whose care relationships are broader than their immediate family or household (such as nieces, nephews or families of choice) also may need leave to provide care.³²⁸
- The design of personal/carer's leave (including the amount of leave and the aggregation of leave) may prevent carers from being able to access sufficient leave to provide care and look after their own health and wellbeing.³²⁹

[236] The current framework in the FW Act for personal/carer's leave sets out that:

- An employee other than a casual employee is entitled to 10 days of paid personal/carer's leave for each year of service with an employer, accruing progressively each year (other than periods of employment as a casual employee for the employer).³³⁰

³²⁶ Ibid 145, 150-151.

³²⁷ Productivity Commission, [A case for an extended unpaid carer leave entitlement? Inquiry report](#) (September 2023) 5.

³²⁸ Ibid.

³²⁹ Ibid.

³³⁰ Ibid s 96.



- An employee is entitled to 2 days of unpaid carer's leave for each occasion that a member of the employee's immediate family or household who requires care or support because of illness, injury,³³¹ or unexpected emergency.³³²
- Unpaid carer's leave applies to all employees including casual employees.³³³
- An employee other than a casual employee can only take unpaid carer's leave if the employee has exhausted their paid personal/carer's leave entitlement.³³⁴
- Although the FW Act limits the number of days an employee can take unpaid carer's leave, it does not limit the number of occasions an employee can take unpaid carer's leave.

[237] Personal/carer's leave can be taken in the following circumstances:

- (a) because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee; or
- (b) to provide care or support to a member of the employee's immediate family, or to a member of the employee's household, who requires care or support because of:
 - (i) a personal illness, or personal injury, affecting the member; or
 - (ii) an unexpected emergency affecting the member.³³⁵

[238] All 25 modern awards examined refer to the NES personal/carer's leave entitlement. Some awards, for example in the Clerks Award, Fast Food Award and Retail Award, set out the NES entitlement applying to casual employees.³³⁶

³³¹ Note that the Full Court of Federal Court considered the meaning of personal illness in *Re Federal Firefighters' Union v the Minister of the Capital Territory* (1982) 44 ALR 311; 62 FLR 341; 3 IR 236 239; [1982] FCA 125 establishing that 'the word 'injury' [essentially] means a wrong or damage to [someone's] person or goods. It means a hurt or loss cause to or sustained by a person or thing and an injury to a person may result in the injury of that person.'

³³² *Ibid.*

³³³ *Ibid* s 102.

³³⁴ *Ibid* s 103.

³³⁵ *Fair Work Act 2009* (Cth) s 97.

³³⁶ [Clerks – Private Sector Award 2020](#), clause 33; [Fast Food Industry Award 2020](#), clause 23; [General Retail Industry Award 2020](#), clause 29.



14. Personal/carer's leave - discussion question

Are there any specific variations to personal/carer's leave provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

4.4.3 Definition of immediate family

[239] For the purposes of accessing personal/carer's leave, a 'household member' is defined as any person living with the employee. 'Immediate family' is defined as:

- (a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the person; or
- (b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the person' (or former spouse or former de facto partner).³³⁷

[240] In relation to the current definitions of immediate family or household member for the purposes of personal/carer's leave, the Work and Care Final Report noted that:

- 8.102 The current definitions of 'immediate family or household member', which apply to accessing existing carer's sick leave, have been shown to be inadequate. A variety of stakeholders and communities expressed to the committee their concerns about the current definitions, and how they were limiting working carers access to leave entitlements to care for friends, neighbours and members of their community.
- 8.103 The committee heard that this particularly affects First Nations and CALD communities, where informal care is often provided to those considered extended family, despite perhaps not being directly related. Similarly, other diverse carer cohorts, such as the lesbian, gay, bisexual, transgender, intersex, queer, asexual and other sexually or gender diverse (LGBTIQA+) community, may not have their families of choice recognised by employers.
- 8.104 The current definitions around 'carer's leave' do not reflect the experience of the family, friends and community groups of working carers, and should be amended to better reflect the diversity of the work and care experience."

³³⁷ *Fair Work Act 2009* (Cth), s 12.



[241] The Work and Care Senate Committee recommended that the definition of 'immediate family' in the FW Act be amended and broadened for the purposes of an employee accessing personal/carer's leave. In addition to the current definition, the Committee recommended that the following persons should be classified as 'immediate family':

- Any person who is a member of an employee's household and has been for a continuous period of over 18 months.
- Any of the employee's children (including adopted, step and ex-nuptial children).
- Any of the employee's siblings (including a sibling of their spouse or de facto partner).
- Any other person significant to the employee to whom the employee provides regular care.

[242] Further, the Productivity Commission Carer Leave Report also noted that people whose care relationships are broader than their immediate family or household (such as nieces, nephews or families of choice) also may need leave to provide care.³³⁸

15. Definition of immediate family – discussion question:

Noting the Work and Care Final Report Recommendation 17, that the definition of immediate family should be expanded, are there any specific variations in modern awards that are necessary to ensure they continue to meet the modern awards objective?

4.4.4 Extended entitlements to unpaid carer's leave

[243] Recently, the Productivity Commission considered whether an entitlement to extended unpaid carer's leave should be available to employees.³³⁹ The Productivity Commission found that while adding an entitlement for 1–12 months extended unpaid carer's leave may help support carers, the amendment was not appropriate, due to:

- The impact on household income and the episodic nature of some caring roles would render the entitlement unsuitable or inaccessible for many carers.
- The entitlement would not improve equity across caring situations.

³³⁸ Ibid.

³³⁹ Productivity Commission, [A case for an extended unpaid carer leave entitlement? Inquiry report](#), (September 2023).



- It was likely not the lowest cost way for employers to accommodate working carers.

[244] The Productivity Commission Carer Leave Report suggested that flexible working arrangements, agreed between working carers and their employers, can be a better alternative to extended unpaid leave.³⁴⁰

[245] The issue of extended unpaid leave was also considered during the 4 Yearly Review, in the context of shut down provisions. The majority Full Bench stated that there is no general entitlement to take leave without pay under either the NES or any modern award and the establishment of an undefined entitlement to take such leave in a clause concerned with the taking of annual leave would not be appropriate.³⁴¹

16. Unpaid carer's leave – discussion question:

Having regard to the Productivity Commission's suggestion for more flexible working arrangements as an alternative to extended unpaid carer's leave, are there any specific variations in the modern awards that are necessary to ensure they continue to meet the modern awards objective?

4.4.5 Separation of personal leave and carer's leave

[246] As set out above, the NES entitles employees to 10 days of paid personal/carer's leave per year. It allows for a further 2 days' unpaid personal/carer's leave on each occasion it is needed for casual employees, or when an employee has exhausted their paid leave entitlement.

[247] The Productivity Commission Carer Leave Report found that the combined nature of the entitlement to carer's leave and personal leave can mean that carers have insufficient leave balances to access time-off when they are unwell, and this makes it more difficult for carers to manage their own health and wellbeing.³⁴² It recommended, amongst other measures, that the

³⁴⁰ Ibid, 71–74.

³⁴¹ [2022] FWCFB 246 [64]; [2022] FWCFB 161 [149].

³⁴² Productivity Commission, [A Case for an extended unpaid carer leave entitlement Inquiry Report](#) (September 2023) 10.



Australian Government review whether paid sick leave and carer's leave should be included in the same entitlement and the appropriate quantum.³⁴³

[248] The Work and Care Senate Committee made a similar recommendation, noting evidence that Australia's approach of combining the two types of leave diverges from 14 comparable OECD countries.³⁴⁴

Case study - comparison of employer paid carer leave entitlements in select OECD countries³⁴⁵

Country	Duration	Level of payment	Payer	Purpose	Conditions
Australia	10 days annually	100%	Employer	Care for a family or household member with an illness, injury or unexpected emergency or personal sick leave	<ul style="list-style-type: none"> • Combined with employees' sick leave • Only for full-time employees and part-time employees get pro-rated leave • Accrues when unused
Austria ³⁴⁶	1 week annually	100%	Employer	Care for family member with an illness	
Netherlands	10 days annually	70%	Employer	Care for dependent with illness	<ul style="list-style-type: none"> • Only for full-time employees • Can be taken in several periods • Employers can refuse on serious business grounds
New Zealand	10 days annually	100%	Employer	Care for dependent with illness or personal sick leave	<ul style="list-style-type: none"> • Combined with employees' sick leave • Employee must have worked 6 months prior • Accrues when unused

³⁴³ Productivity Commission, [A Case for an extended unpaid carer leave entitlement Inquiry Report](#) (September 2023) 10.

³⁴⁴ Senate Select Committee on Work and Care, [Final Report](#) (March 2023), 150–151, 185–186.

³⁴⁵ Table is based on table B.2 in the Productivity Commission, [A Case for an extended unpaid carer leave entitlement Inquiry Report](#) (September 2023), however countries where party other than the employer covers the cost of leave has been excluded.

³⁴⁶ Austria additionally has insurance scheme entitlements for paid leave.



Country	Duration	Level of payment	Payer	Purpose	Conditions
Norway ³⁴⁷	10 days annually	100%	Employer	Care for sick parents or spouses	
Spain	2 days per occasion	100%	Employer	Care for family (up to the 2nd degree) with illness or other serious family reasons	<ul style="list-style-type: none">• Can be extended to 4 days if travel is required
Switzerland	10 days annually	100%	Employer	Care for a family member	<ul style="list-style-type: none">• Employees can take 3 days of leave per occasion with a maximum of 10 days per year• Can require a medical certificate

Case study 2 – Switzerland in detail – legislative scheme with separated entitlements for paid personal leave and paid carer leave³⁴⁸

The Swiss legislative scheme establishes separate entitlements for paid personal leave and paid carer leave, including:

Carer's leave

As set out in the table above, employees in Switzerland are entitled to leave on full pay to care for a family member. Employees can take 3 days of leave per occasion to a maximum of 10 days per year.

Sick leave

Sick leave entitlements for employees in Switzerland vary according to whether their employer has insurance. Employers without insurance must continue to pay an employee who is off work due to personal illness their full salary for a certain period. The precise period of sick leave entitlement varies from region to region within Switzerland. Broadly, employees are entitled to 3 weeks sick leave in their first year of employment and this period increases every additional year of employment to a maximum of 4 months.

³⁴⁷ Norway additionally has insurance scheme entitlements for paid leave.

³⁴⁸ Family and Work in Switzerland, [Absences from work due to illness or accident; Arranging childcare](#), (Web Page, n.d.).



Leave to care for seriously sick child

Subject to certain conditions, parents of a seriously ill or injured child (aged under 18), for example cancer, are entitled to a total of 14 weeks' paid leave to care for their child over a period of 18 months. The payment equivalent to 80% of their salary. Leave can be taken in blocks or individual days and parents can decide how to allocate the 14 weeks' leave between each other, including taking leave concurrently. The payment is part of an income compensation scheme that is funded by multiple stakeholders.

Case study 3 – Carers Victoria - Enterprise Agreement³⁴⁹ with separated entitlements for paid personal leave and paid carer leave exceeding NES

The following clause sets out separate entitlements to personal leave and carers' leave which has long been a feature of Carers Victoria enterprise agreements.

40. PERSONAL LEAVE

40.1 Paid personal leave is available to an employee for an absence due to:

40.1.1 Personal illness or injury (sick leave) which includes medical appointments; or

40.1.2 For the purposes of caring for an immediate family or household member who is sick or injured or to help during an unexpected family emergency where they require the employee's care and support.

40.2 The amount of paid personal leave to which an employee is entitled is set out below in Clause 40.5. If an employee has not accumulated sufficient personal leave to meet their needs, they may apply to their line Manager for approval of other arrangements to cover the leave required.

40.3 An employee's entitlement to paid personal leave accrues progressively during a year of service according to the number of ordinary hours worked and will accumulate from year to year.

40.5 ENTITLEMENT

The Employee's entitlement to personal leave is as follows:

³⁴⁹ [Carers Victoria Agreement 2021](#) (Enterprise Agreement).



40. PERSONAL LEAVE

- (i) during the first year of service, 1 working day (7.6 hours) for each month of service; and
- (ii) during the second, third and fourth years of service, 14 working days (106.4 hours) in each year; and
- (iii) thereafter 21 working days (159.6 hours) in each year.

40.6 To be entitled to personal leave on full pay an employee shall produce a certificate from a legally qualified medical or other registered (or licensed) health practitioner immediately on return to work or alternatively a statutory declaration or other evidence satisfactory to the employer. Full time employees may take up to a maximum of 5 single days, or 5 consecutive days in any one calendar year without the production of a medical certificate or statutory declaration or other evidence satisfactory to the employer. Part-time employees may take the pro rata amount of single days or consecutive days based on hours worked.

40.7 All employees, including casual employees, are required to give notice to the employer of their intention to take personal, including the expected period of leave, as soon as is reasonably practicable (which may be after the leave has started).

40.8 Absences on personal leave either side of a public holiday shall not be paid unless a medical certificate, statutory declaration or other evidence satisfactory to the employer is provided within seven days of return to work.

40.9 If the full period of personal leave as described above is not taken in any year, such portion as is not taken shall be cumulative from year to year.

43. CARERS VICTORIA LEAVE

43.1 The employer seeks to be a leader in employment practices that assist employees to balance their working and caring responsibilities. A carer is someone who provides unpaid care and support to family members and/or friends who have a disability, mental illness, chronic condition, terminal illness or who are frail aged.



40. PERSONAL LEAVE

43.2 Upon approval by the employer of Carers Victoria leave and at each anniversary of approval, an approved employee is entitled to a maximum of ten days (or twenty half days) paid and ten days unpaid of leave per year to meet their carer obligations. A pro rata entitlement of Carers Victoria Leave applies to part time employees.

43.3 This leave is non-cumulative and at each anniversary of approval of Carers Victoria Leave, an employee will become unable to access any unused Carers Victoria Leave which has accrued in the previous year.

43.4 Applications for Carers Victoria Leave taken under this clause must be by request to the line manager. Any application/requests in excess of this provision will be referred to the line manager for decision.

43.5 Employees who are carers are also entitled to access Personal Leave in Clause 41.

17. Personal/carer's leave - discussion question:

Noting Senate Committee Recommendation 18, to consider separating personal/carer's leave entitlement, are there any specific variations in modern awards that are necessary to ensure they continue to meet the modern awards objective?

4.4.6 Compassionate leave

[249] Compassionate leave, also known as bereavement leave, became a stand-alone entitlement as a result of the *Parental Leave Test Case 2005*.³⁵⁰

[250] The NES provides that an employee, including a casual employee, is entitled to 2 days of compassionate leave for the following reasons:

- To spend time with a member of their immediate family or household who has contracted or developed a personal injury or illness that poses a serious threat to their life.

³⁵⁰ *Parental Leave Test Case* [1990] 36 IR 1.



Fair Work
Commission

- After the death of a member of the employee's immediate family or household, or if a child who would have been part of the employee's immediate family or household, is stillborn.
- If the employee, or the employee's current spouse or de facto partner, has a miscarriage.³⁵¹

[251] An employee may take compassionate leave for each occasion as:

- A single continuous 2-day period.
 - 2 separate periods of one day each.
 - Any separate periods to which the employee and their employer agree.
- Of the 25 modern awards examined, 24 modern awards refer to the NES compassionate leave entitlement. The Higher Education General Staff Award provides for 3 days of compassionate leave per occasion.³⁵²
 - Compassionate leave, on each occasion it is taken, is paid leave for all employees, other than casual employees.

4.4.7 Other leave

- As discussed above at 1.1.1, the majority of modern awards do not provide for ceremonial leave for First Nations employees.

18. Ceremonial leave – discussion question:

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

³⁵¹ *Fair Work Act 2009* (Cth) s 104.

³⁵² [Higher Education Industry – General Staff – Award 2020](#) clause 25.



5 Discussion questions

This chapter contains a list of questions for the purposes of framing and focusing submissions in response to the work and care discussion paper.

1. Part-time - discussion question

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?

2. Individual flexibility agreement – discussion question

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?

3. Facilitative provisions - discussion question:

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?

4. Working from home - discussion question:

Are there any specific variations needed in modern awards regarding working from home arrangements that are necessary to ensure they continue to meet the modern awards objective?

5. A right to disconnect - discussion question:

Are there any specific variations needed in modern awards regarding a right to disconnect that are necessary to ensure they continue to meet the modern awards objective?

6. Minimum payment periods - discussion question:

Are there any specific variations to the minimum payment periods for part-time employees in modern awards that are necessary to ensure they continue to meet the modern awards objective?



7. Span of hours - discussion question

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

8. Notice of rosters - discussion question

Noting the Work and Care Senate Committee Recommendation 21 that all employees should have at least 2 weeks' notice of their roster except in exceptional circumstances, are there any specific variations to rostering provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

9. Availability and guaranteed regular hours - discussion question:

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?

10. Overtime, TOIL, and make-up time – discussion question:

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?

11. On-call and recall to duty - discussion question

Are there any specific variations to on-call or recall to duty provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

12. Travel time - discussion question:

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

13. Annual leave - discussion question:

Are there specific variations to annual leave provisions in modern awards, for example annual leave at half pay, that are necessary to ensure they continue to meet the modern awards objective?

14. Personal/carer's leave - discussion question

Are there any specific variations to personal/carer's leave provisions in modern awards that are necessary to ensure they continue to meet the modern awards objective?

15. Definition of immediate family – discussion question:



Fair Work
Commission

Noting the Work and Care Final Report Recommendation 17, that the definition of immediate family should be expanded, are there any specific variations in modern awards that are necessary to ensure they continue to meet the modern awards objective?

16. Unpaid carer's leave – discussion question:

Having regard to the Productivity Commission's suggestion for more flexible working arrangements as an alternative to extended unpaid carer's leave, are there any specific variations in the modern awards that are necessary to ensure they continue to meet the modern awards objective?

17. Personal/carer's leave - discussion question:

Noting Senate Committee Recommendation 18, to consider separating personal/carer's leave entitlement, are there any specific variations in modern awards that are necessary to ensure they continue to meet the modern awards objective?

18. Ceremonial leave – discussion question:

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

19. Other variations to modern awards?

Are there any other specific variations to modern award provisions that would assist employees meet their caring responsibilities and are necessary to meet the modern awards objective?



List of tables

Table No.	Table name
Table 1	Recommendations from the Senate Report on Work and Care relevant to the Commission
Table 2	Highest percentage of employees working full-time hours across the 25 modern awards
Table 3	Highest percentage of employees working part-time hours across the 25 modern awards
Table 4	Highest percentage of employees working casual hours across the 25 modern awards
Table 5	Different terminology to 'reasonably predictable' in part-time provisions across the 25 modern awards
Table 6	Minimum payment periods across the 25 modern awards
Table 7	Minimum payment periods for recall to duty across the 25 modern awards
Table 8	Broken shifts across the 25 modern awards
Table 9	Spans of hours across the 25 modern awards
Table 10	Maximum daily hours of work across the 25 modern awards
Table 11	Averaging of hours across the 25 modern awards
Table 12	Notice periods for rosters and changes to rosters across the 25 modern awards
Table 13	Exceptions to notice of rosters or changes to rosters across the 25 modern awards
Table 14	Overtime and TOIL provisions across the 25 modern awards



Annexure A – Inquiries and reports

Jurisdiction	Source
Commonwealth	Department of Social Services, <i>National Carer Strategy</i> (forthcoming)
Commonwealth	Productivity Commission, <i>Early Childhood Education and Care: Draft Report</i> (February 2024)
Commonwealth	National Disability Insurance Agency, <i>Final Report: Working Together to Deliver the NDIS</i> (December 2023)
Commonwealth	Productivity Commission, <i>A Case for an Extended Unpaid Carer Leave Entitlement: Final Inquiry Report</i> (September 2023)
Commonwealth	Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, <i>Final Report</i> (September 2023)
Queensland	Department of Child Safety, Seniors and Disability Services, <i>Carers Action Plan 2023–24</i> (August 2023)
Commonwealth	Department of Education, <i>National Teacher Workforce Action Plan</i> (December 2022)
Commonwealth	Senate Select Committee into Job Security, <i>The job insecurity report</i> (February 2022)
New South Wales	Department of Communities and Justice, <i>NSW Carers Strategy: Caring in New South Wales 2020–2030</i>
Australian Capital Territory	Department of Community Services, <i>ACT Carers Strategy 2018–2028</i>
Victoria	Victorian Department of Families, Fairness and Housing, <i>Victorian Carer Strategy 2018–22</i> (July 2018, extended late-2023)
Commonwealth	Australian Human Rights Commission, <i>Investing in Care: Recognising and valuing those who care</i> (2009)