

SUMMARY OF SUBMISSIONS – Children’s Services Award 2020

This submission summary document has been prepared by staff of the Fair Work Commission to assist with the Making Awards Easier to Use stream of the Modern Awards Review 2023-24.

Parties have been invited to advance any proposals to make modern awards easier to use while not reducing entitlements for award-covered employees.

This document been prepared to assist parties in consultation 6 dealing with the Children’s Services Award 2020.

The summary document does not represent the concluded view of the Commission on any issue.

Contents

| | |
|--|---|
| Glossary | 3 |
| Submissions in reply key | 3 |
| General - Multiple awards coverage - AWCC | 4 |
| General - Age groups and educational qualifications definitions - AWCC..... | 4 |
| General - Flexibility for split shifts - AWCC..... | 4 |
| Clause 3 - “Childcare” - AWCC..... | 4 |
| Clause 3 - “Children’s services and early childhood education industry” - AWCC | 4 |
| Clause 3 - “Regular casual employee” - AWCC..... | 4 |
| Clause 4.1-4.7 - Exclusion clarifications - AWCC..... | 4 |
| Clause 5 - Access to the award - AWCC | 4 |
| Clause 5 and 6 - Access to NES - AWCC..... | 5 |
| Clause 6 - Minimum conditions - AWCC..... | 5 |
| Clause 7 - Individual Flexibility Arrangements (IFA) - AWCC..... | 5 |
| Clause 7 - Language consideration -AWCC | 7 |
| Clause 7.1 - IFA variation - AWCC | 7 |
| Clause 7.2 - IFA genuine agreement - AWCC..... | 7 |
| Clause 7.3 - IFA commencement - AWCC | 7 |
| Clause 7.4 - IFA employee proposal - AWCC..... | 7 |
| Clause 7.5 - IFA BOOT requirement - AWCC | 7 |
| Clause 7.6 - IFA mandatory inclusions - AWCC | 8 |
| Clause 7.7 - IFA form requirements - AWCC | 8 |

| | |
|---|----|
| Clause 7.8 - IFA approval and consent - AWCC..... | 8 |
| Clause 7.9 - IFA record keeping: employer's responsibility - AWCC..... | 8 |
| Clause 7.10 - IFA genuine agreement - AWCC | 8 |
| Clause 7.11 - IFA mutual termination - AWCC..... | 8 |
| Clause 7.11 - IFA notice periods - AWCC..... | 8 |
| Clause 7.12 - IFA termination effect - AWCC..... | 9 |
| Clause 7.13 - IFA additional right - AWCC | 9 |
| Clause 8 - Consultation about Major Workplace Change (MWC) - AWCC | 9 |
| Clause 8.2 - MWC form requirements - AWCC | 9 |
| Clause 8.3 - MWC disclosure of confidential information - AWCC | 9 |
| Clause 8.4 - MWC prompt consideration of matters raised by employees - AWCC..... | 9 |
| Clause 8.5 - MWC definition of “significant effects” - AWCC | 9 |
| Clause 8.6 - MWC alterations - AWCC | 10 |
| Clause 8A - Consultation about changes to rosters or hours of work - AWCC..... | 10 |
| Clause 8A.2-8A.4 - Mandatory consultation about changes to rosters - AWCC..... | 10 |
| Clause 22.1(b) - Meal break interruptions - AWCC..... | 10 |
| Clause 22.1(c) - Paid meal breaks on premises - AWCC..... | 10 |
| Clause 22.2 - Rest pauses - AWCC | 10 |
| Clause 23.2(c) - Emergency overtime definition - AWCC..... | 10 |
| Clause 23.3 - Time off instead of payment for overtime - AWCC | 10 |
| Clause 23.4 – Shiftwork - AWCC | 11 |
| Clause 23.5 - Weekend and public holiday work - AWCC..... | 11 |
| Clause 23A - Flexible working arrangements - AWCC..... | 11 |
| Clause 24.9 - Cashing out of annual leave - AWCC..... | 11 |
| Clause 10.4 and 21.7 - Notice of roster changes for part-time employees - Ai Group..... | 13 |
| NEW - Roster changes due to client cancellations - Ai Group..... | 13 |
| Clause 10.4(e) and 10.5(c) - Minimum engagement periods - Ai Group | 14 |
| Clause 21.7(a) - Electronic rostering - Ai Group..... | 14 |
| NEW - Meal breaks out of school hours care - Ai Group..... | 14 |
| Clause 22.2 - Rest periods out of school hours care - Ai Group | 16 |
| Schedule A - Transitional provisions - Ai Group | 16 |

Glossary

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| ABI/BNSW | Australian Business Industrial (ABI) and Business NSW |
| ACCI | Australian Chamber of Commerce and Industry |
| ACTU | Australian Council of Trade Unions |
| AHA | Australian Hotels Association |
| Ai Group | Australian Industry Group |
| ARA | Australian Retailers Association |
| ASU | Australian Services Union |
| AWCC | Australian Workforce Compliance Council |
| BCA | Business Council of Australia |
| CCIWA | Chamber of Commerce and Industry WA |
| HSU | Health Services Union |
| MGA | Master Grocers Australia |
| NECA | National Electrical and Communications Association |
| NRA | National Retail Association |
| RAFFWU | Retail and Fast Food Workers Union |
| SDA | Shop, Distributive and Allied Employees' Association |
| UWU | United Workers Union |

Submissions in reply key

Proposal is agreed

Proposal is
somewhat agreed

Proposal is opposed

| Children’s Services Award 2020 | | | | | | |
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| Party | CLAUSE | REF | THEIR REF | Issue summary | Proposal Summary | Submission in reply |
| AWCC | General | 1. | 7.2(a)(x) p70 | General - Multiple awards coverage - AWCC Lack of guidance on determining the most appropriate award classification when covered by more than one award. | Proposal Summary: Offer guidance on determining the most appropriate award classification when an employer is covered by more than one award. | N/A |
| AWCC | General | 2. | 7.2(a)(xiv) p70 | General - Age groups and educational qualifications definitions - AWCC Ambiguities or lack of clarity in job classifications leading to disputes or misunderstandings. | Proposal Summary: Review changes that impact classifications in alignment with ABS/ANZSCO changes to skill levels. | N/A |
| AWCC | General | 3. | 7.2(a)(xv) p71 | General - Flexibility for split shifts - AWCC Lack of explicit clarification on the rules and conditions for split shifts. | Proposal Summary: Clarification on working hours, breaks, and overtime for employees involved in childcare services. | N/A |
| AWCC | 3 | 4. | 7.2(a)(vi) p69 | Clause 3 - “Childcare” - AWCC Lack of concise definition or clarification for "childcare." | Proposal Summary: Add a concise definition or clarification for "childcare" for better understanding. | N/A |
| AWCC | 3 | 5. | 7.2(a)(vii) p70 | Clause 3 - “Children’s services and early childhood education industry” - AWCC Insufficient clarity on the industry scope. | Proposal Summary: Elaborate on the scope of the industry to provide clarity on covered services. | N/A |
| AWCC | 3 | 6. | 7.2(a)(viii) p70 | Clause 3 - “Regular casual employee” - AWCC Lack of immediate clarification or reference for the term "regular casual employee." | Proposal Summary: Provide immediate clarification or reference for the term "regular casual employee" within clause 3. | N/A |
| AWCC | 4.1-4.7 | 7. | 7.2(a)(ix) p70 | Clause 4.1-4.7 - Exclusion clarifications - AWCC Unclear definition of exclusions and the rationale behind them. | Proposal Summary: Clarify exclusions and provide examples for better understanding. | N/A |
| AWCC | 5 | 8. | 7.2(a)(xi) p70 | Clause 5 - Access to the award - AWCC Lack of specification on electronic means of access and employee awareness of entitlement to a copy. | Proposal Summary: Specify details on electronic means of access and ensure employees are aware of their entitlement to a copy. | N/A |

| Children’s Services Award 2020 | | | | | | |
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| Party | CLAUSE | REF | THEIR REF | Issue summary | Proposal Summary | Submission in reply |
| AWCC | 5 and 6 | 9. | 7.2(a)(xii) p70 | Clause 5 and 6 - Access to NES - AWCC Unclear timeframe for making copies of the award and NES available, especially with electronic means. | Proposal Summary: Specify the timeframe for making copies of the award and NES available to employees, especially when using electronic means. | N/A |
| AWCC | 6 | 10. | 7.2(a)(xiii) p70 | Clause 6 - Minimum conditions - AWCC Need to emphasise that the NES and the award set the minimum employment conditions. | Proposal Summary: Emphasise that the NES and the award set the minimum employment conditions, and employers may provide better conditions if desired. | N/A |
| AWCC | 7 | 11. | 7.3 p75-p77 | Clause 7 - Individual Flexibility Arrangements (IFA) - AWCC The need for simplification of award language to ensure comprehensibility for a diverse audience, including those with limited English proficiency or literacy levels. There are concerns over the current complexity hindering the understanding of flexibility arrangements and the "better off overall" test, contributing to legal breaches and increasing the risk of exploitation among vulnerable groups, such as young refugees and migrant workers. See below for further explanation of changes to individual clauses 7.1-7.13. | Proposal Summary: Redraft clause 7 to make the clause easier to understand and use. Proposed Wording: 7.1 <i>Despite anything else in this award, both the an employer and an individual employee can may agree to vary the application of the adjust certain terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:</i> <ul style="list-style-type: none"> (a) arrangements for w when work is performed; or (b) overtime rates; or (c) penalty rates; or (d) allowances; or (e) annual leave loading. 7.2 An <i>The agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress pressure or threat.</i> 7.3 An <i>Such agreements may can only be made after the individual employee has commenced employment with the employer.</i> 7.4 An <i>If the employer who wishes wants to initiate propose the making of an agreement, they must:</i> <ul style="list-style-type: none"> (a) give Present the employee a written proposal to the employee; and (b) if the employer is aware that the employee has, or should reasonably be aware that the employee may have, <i>If the employee has limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal (including providing a translation in an appropriate language).</i> 7.5 An <i>The agreement must result in ensure that the employee is being better off overall compared to the standard terms of the award when the agreement is at the time the agreement is made than if the agreement had not been made.</i> 7.6 An <i>The agreement must include do all of the following:</i> <ul style="list-style-type: none"> (a) state the n <i>Names of the employer and the employee; and</i> (b) identify Tthe specific award term, or award terms, the application of which is to be varied being adjusted; and | Ai Group oppose - changes are not necessary (they do not clarify or simplify the existing clause) (para 256-268, p44) |

| Children’s Services Award 2020 | | | | | | |
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| | | | | | <p>(c) set out how the application of the award term, or each award term, is varied How the specific award terms and/or their application is being adjusted; and</p> <p>(d) set out how How the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and</p> <p>(e) The state the date when the agreement is to start.</p> <p>(f) The employer is to ensure a conversation to determine if an employee is “better off overall” under the agreement, including expected hours of work and span of hours, overtime hours, reasonable expectation of overtime hours and conditions both before and after the agreement. The employer and employee should assess if the changes improve the employee’s situation overall, taking into account factors such as financial benefits, work-life balance, and job security.</p> <p>(g) The classification is to be agreed upon, specifically part time, full time or casual. For part time, hours are to be both written and agreed upon in the agreement. With casual, anticipated or expected hours to work acknowledging the nature of casual employment.</p> <p>(h) The determination for the financial component including salaries is also to comply with other legal instruments outside of this award including taxation and superannuation act.</p> <p>(i) If there is any uncertainty from the employer and/or employee, the employer should seek advice or clarification to ensure fairness and compliance.</p> <p>7.7 An agreement must be:</p> <p>(a) in writing; and</p> <p>(b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee’s parent or guardian <i>must also sign</i>.</p> <p>7.8 Except as provided for (b) in clause 7.7(b), an the agreement <i>must does</i> not require the <i>need</i> approval or consent of a person other than the employer and the employee <i>anyone else</i>.</p> <p>7.9 The employer must keep the agreement as a time and wages record and <i>provide give</i> a copy to the employee.</p> <p>7.10 The employer and the employee Both parties must genuinely agree to any changes, without duress or coercion <i>feeling forced or threatened</i> to any variation of an award provided for by an agreement.</p> <p>7.11 An agreement may be terminated:</p> <p>(a) at any time, by written agreement between the employer and the employee; or</p> <p>(b) by the employer or employee giving 13 weeks’ written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).</p> | |

| Children’s Services Award 2020 | | | | | | |
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| Party | CLAUSE | REF | THEIR REF | Issue summary | Proposal Summary | Submission in reply |
| | | | | | <p><i>NOTE: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in section 144 of the Act then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see section 145 of the Act).</i></p> <p>7.12 An agreement terminated as mentioned in clause 7.11(b) ceases to have effect at the end of the period of notice required under that clause.</p> <p>7.13 The right to make an agreement under clause 7 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.</p> | |
| AWCC | 7 | 12. | 7.2(a)(xxviii) p72 | Clause 7 - Language consideration -AWCC Emphasise the need for language accessibility, especially for employees with limited understanding of written English. | Proposal Summary: Use plain English language and provide interpretations for minors and non-English speaking backgrounds. | N/A |
| AWCC | 7.1 | 13. | 7.2(a)(xxiv) p72 | Clause 7.1 - IFA variation - AWCC Lack of clear boundaries for what individual flexibility arrangements cannot vary. | Proposal Summary: Create clear boundaries of what individual flexibility arrangements cannot vary. | N/A |
| AWCC | 7.2 | 14. | 7.2(a)(xxv) p72 | Clause 7.2 - IFA genuine agreement - AWCC Need to emphasise that agreements must be genuinely made without coercion or duress. | Proposal Summary: Emphasise that agreements must be genuinely made without coercion or duress. Provide clear context of what coercion or duress would look like. | N/A |
| AWCC | 7.3 | 15. | 7.2(a)(xxvi) p72 | Clause 7.3 - IFA commencement - AWCC Unclear timing for making agreements after the individual employee has commenced employment. | Proposal Summary: Specify that agreements may only be made after the individual employee has commenced employment. A decision tree/question set to determine whether criteria have been met would be helpful in guiding employers. | N/A |
| AWCC | 7.4 | 16. | 7.2(a)(xxvii) p72 | Clause 7.4 - IFA employee proposal - AWCC Lack of clarification that the employer initiating the agreement must provide a written proposal to the employee. | Proposal Summary: Clarify that the employer initiating the agreement must provide a written proposal to the employee. | N/A |
| AWCC | 7.5 | 17. | 7.2(a)(xxix) p72 | Clause 7.5 - IFA BOOT requirement - AWCC Lack of emphasis on the requirement that the agreement must result in the employee being better off overall at the time of making the agreement. | Proposal Summary: Highlight that the agreement must result in the employee being better off overall at the time of making the agreement | N/A |

| Children’s Services Award 2020 | | | | | | |
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| Party | CLAUSE | REF | THEIR REF | Issue summary | Proposal Summary | Submission in reply |
| AWCC | 7.6 | 18. | 7.2(a)(xxx) p72 | Clause 7.6 - IFA mandatory inclusions - AWCC Lack of clarity on mandatory inclusions that provide required context. | Proposal Summary: Specify the required elements of the agreement, including the names of the parties, the award terms being varied, details of variations, and the commencement date. | N/A |
| AWCC | 7.7 | 19. | 7.2(a)(xxxi) p72 | Clause 7.7 - IFA form requirements - AWCC Lack of clarity, particularly for minors, on the expected level of comprehension. | Proposal Summary: Clearly state that agreements must be in writing, signed by both parties and, if applicable, by the parent or guardian if the employee is under 18. | N/A |
| AWCC | 7.8 | 20. | 7.2(a)(xxxii) p73 | Clause 7.8 - IFA approval and consent - AWCC Unclear limitations on approval or consent requirements, especially for employees under age 18. | Proposal Summary: Clarify that an agreement must not require approval or consent from a third party, except for the signatures of the parties involved. Clarify how this would apply to employees under age 18. | N/A |
| AWCC | 7.9 | 21. | 7.2(a)(xxxiii) p73 | Clause 7.9 - IFA record keeping: employer's responsibility - AWCC Lack of emphasis on the employer's responsibility to maintain the agreement as a time and wages record and provide a copy to the employee. | Proposal Summary: Highlight that the employer must maintain the agreement as a time and wages record and provide a copy to the employee. | N/A |
| AWCC | 7.10 | 22. | 7.2(a)(xxxiv) p73 | Clause 7.10 - IFA genuine agreement - AWCC Lack of emphasis on the requirement that both parties must genuinely agree without duress or coercion. | Proposal Summary: Reinforce that both parties must genuinely agree without duress or coercion to any variation. | N/A |
| AWCC | 7.11 | 23. | 7.2(a)(xxxv) p73 | Clause 7.11 - IFA mutual termination - AWCC Lack of clarification that agreements can be terminated by mutual agreement or with notice. | Proposal Summary: Clarify that agreements can be terminated by mutual agreement or with notice. | N/A |
| AWCC | 7.11 | 24. | 7.2(a)(xxxvi) p73 | Clause 7.11 - IFA notice periods - AWCC Lack of clarity on notice periods for termination and any reduction based on the agreement's commencement date. | Proposal Summary: Clearly state the notice periods for termination and any reduction based on the agreement's commencement date. | N/A |

| Children’s Services Award 2020 | | | | | | |
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| Party | CLAUSE | REF | THEIR REF | Issue summary | Proposal Summary | Submission in reply |
| AWCC | 7.12 | 25. | 7.2(a)(xxxvii) p73 | Clause 7.12 - IFA termination effect - AWCC Lack of explanation that a terminated agreement ceases to have effect at the end of the specified notice period. | Proposal Summary: Explain that a terminated agreement ceases to have effect at the end of the specified notice period. | N/A |
| AWCC | 7.13 | 26. | 7.2(a) (xxxviii) p73 | Clause 7.13 - IFA additional right - AWCC Lack of clarification that the right to make an agreement under Clause 7 is additional and does not affect other terms of the award. | Proposal Summary: Clarify that the right to make an agreement under Clause 7 is additional and does not affect other terms of the award related to agreements between employers and individual employees. | N/A |
| AWCC | 8 | 27. | 7.2(a)(xxxix) p74 | Clause 8 - Consultation about Major Workplace Change (MWC) - AWCC Lack of guidance on discussion topics during major workplace changes. | Proposal Summary: Guidance on discussion topics: Discuss changes, their likely effects, and measures to mitigate adverse impacts as soon as practicable. | N/A |
| AWCC | 8.2 | 28. | 7.2(a)(xl) p74 | Clause 8.2 - MWC form requirements - AWCC Unclear requirements for providing written information during major workplace changes. | Proposal Summary: Provide clear guidance on written information to be provided to employees about workplace changes, including timelines for transparency. | N/A |
| AWCC | 8.3 | 29. | 7.2(a)(xli) p74 | Clause 8.3 - MWC disclosure of confidential information - AWCC Lack of context on when employers are not required to disclose confidential information during major workplace changes. | Proposal Summary: Context example should be provided on when it is acceptable not to disclose on the basis of interests and what constitutes inappropriate non-disclosure/refusal. | N/A |
| AWCC | 8.4 | 30. | 7.2(a)(xlii) p74 | Clause 8.4 - MWC prompt consideration of matters raised by employees - AWCC Lack of emphasis on promptly considering and addressing matters raised by employees during discussions. | Proposal Summary: Employers must promptly consider and address matters raised by employees or their representatives during discussions. | N/A |
| AWCC | 8.5 | 31. | 7.2(a)(xlili) p74 | Clause 8.5 - MWC definition of “significant effects” - AWCC Undefined terms related to significant effects of major workplace changes. | Proposal Summary: Define "significant effects" to include termination, workforce changes, job opportunities, job tenure, altered work hours, retraining, and job restructuring. | N/A |

| Children’s Services Award 2020 | | | | | | |
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| Party | CLAUSE | REF | THEIR REF | Issue summary | Proposal Summary | Submission in reply |
| AWCC | 8.6 | 32. | 7.2(a)(xlv) p74 | Clause 8.6 - MWC alterations - AWCC Lack of clarification that alterations covered by the award do not have a "significant effect." | Proposal Summary: Clarify that alterations covered by the award do not have a "significant effect." | N/A |
| AWCC | 8A | 33. | 7.2(a)(xlv) p74 | Clause 8A - Consultation about changes to rosters or hours of work - AWCC Lack of clarity on scope, applying when changing regular rosters or ordinary hours. | Proposal Summary: Scope: This applies when changing regular rosters or ordinary hours, excluding irregular, sporadic, or unpredictable work. | N/A |
| AWCC | 8A.2- 8A.4 | 34. | 7.2(a)(xlv) p74 | Clause 8A.2-8A.4 - Mandatory consultation about changes to rosters - AWCC Lack of guidance on mandatory consultation requirements. | Proposal Summary: Employers must consult with affected employees and their representatives. | N/A |
| AWCC | 22.1(b) | 35. | 7.2(a)(xvi) p71 | Clause 22.1(b) - Meal break interruptions - AWCC Need for additional context, including example scenarios for guidance. | Proposal Summary: Additional context, including example scenarios, should be provided for guidance. | N/A |
| AWCC | 22.1(c) | 36. | 7.2(a)(xvii) p71 | Clause 22.1(c) - Paid meal breaks on premises - AWCC Lack of clarity on situations necessitating paid meal breaks on premises. | Proposal Summary: Clarify what constitutes a meal as part of the definition. | N/A |
| AWCC | 22.2 | 37. | 7.2(a)(xviii) p71 | Clause 22.2 - Rest pauses - AWCC Mention of paid rest periods without specifying situations. | Proposal Summary: Provide scenarios that offer clear context examples for rest pauses in a childcare setting. | N/A |
| AWCC | 23.2(c) | 38. | 7.2(a)(xix) p71 | Clause 23.2(c) - Emergency overtime definition - AWCC Lack of explicit definition for "emergency" concerning overtime. | Proposal Summary: Define what constitutes an emergency and set boundaries for reasonable employer requests and employee responses for emergency overtime. | N/A |
| AWCC | 23.3 | 39. | 7.2(a)(xx) p71 | Clause 23.3 - Time off instead of payment for overtime - AWCC Lack of standard form or template for agreements on time off instead of payment for overtime. | Proposal Summary: Provide a standardised form or template for Time Off Instead of Payment for Overtime agreements. | N/A |

| Children’s Services Award 2020 | | | | | | |
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| Party | CLAUSE | REF | THEIR REF | Issue summary | Proposal Summary | Submission in reply |
| AWCC | 23.4 | 40. | 7.2(a)(xxi) p71 | Clause 23.4 – Shiftwork - AWCC Lack of clarification on how shiftwork arrangements are made, especially in the childcare sector. | Proposal Summary: Clarify reasonability boundaries regarding how shiftwork arrangements are made, especially in a sector like childcare with flexible working hours. | N/A |
| AWCC | 23.5 | 41. | 7.2(a)(xxii) p71 | Clause 23.5 - Weekend and public holiday work - AWCC Rules for weekend and public holiday work lack sufficient context for practical guidance. | Proposal Summary: Include examples or scenarios to illustrate how these provisions apply in practice. | N/A |
| AWCC | 23A | 42. | 7.2(a)(xxiii) p71 | Clause 23A - Flexible working arrangements - AWCC Mention of NES provisions without a brief summary or reference for clarity. | Proposal Summary: Instead of a reference, provide a brief summary or reference to the specific NES provisions for clarity. | N/A |
| AWCC | 24.9 | 43. | 7.4 p78 | Clause 24.9 - Cashing out of annual leave - AWCC Current clause permits cashing out of annual leave yet lacks explicit guidance on the frequency and conditions governing this practice. Deficiency could potentially lead to misunderstandings between employers and employees regarding the process and limitations of cashing out annual leave. There is also inconsistency with the interpretation of Time Off In Lieu (TOIL) as a cashable leave type given the definition provided for in clause 23.11. | Proposal Summary: Provide guidance on limitations on cashing out of annual leave. Provide clarity on rate of payment for accrued time off for overtime rate cashed out at overtime rate as differentiated from annual leave. Proposed Wording: 24.9 Cashing out of annual leave (a) <i>Paid annual leave must not be cashed out except in accordance with an agreement under clause 24.9.</i> (b) <i>Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 24.9.</i> (c) <i>An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.</i> (d) <i>An agreement under clause 24.9 must state:</i> i <i>the amount of leave to be cashed out and the payment to be made to the employee for it; and</i> ii <i>the date on which the payment is to be made, ensuring clarity on the timeline for the transaction.</i> (e) <i>An agreement under clause 24.9 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee’s parent or guardian.</i> (f) <i>The payment for cashed-out leave must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.</i> (g) <i>An agreement must not result in the employee’s remaining accrued entitlement to paid annual leave being less than 4 weeks.</i> (h) <i>The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.</i> | ABI/BNSW oppose - duplication and over-complication (para 3.36-3.37, p13) Ai Group oppose - duplication of matters and “Note 4” confuses cashing-out annual leave with TOIL; and unclear why the remaining changes are necessary (para 270-272, p46-47) |

| Children’s Services Award 2020 | | | | | | |
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| | | | | | <p>(i) The employer must keep a copy of any agreement under clause 24.9 as an employee record.</p> <p>(j) <i>Guidance:</i></p> <ul style="list-style-type: none"> i Frequency and Conditions: Cashing out of annual leave should only occur through a formal written agreement between the employer and the employee. Each instance of cashing out must be documented separately. ii Agreement Details: The agreement must specify the amount of leave being cashed out and the corresponding payment, along with the date of payment. This ensures transparency and clarity for both parties. iii Minimum Payment: The payment for cashed-out leave should be at least equivalent to what the employee would have received if they had taken the leave instead. iv Minimum Accrued Leave: Employees must retain a minimum accrued entitlement to paid annual leave, ensuring they have at least 4 weeks of leave remaining after cashing out. v Maximum Amount: There is a cap on the amount of annual leave that can be cashed out in a 12-month period, set at 2 weeks. vi Record-Keeping: Employers are responsible for maintaining records of all agreements regarding cashing out of annual leave. <p>Note 1: Under section 344 of the Fair Work Act, an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 24.9.</p> <p>Note 2: Under section 345(1) of the Fair Work Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 24.9.</p> <p>Note 3: An example of the type of agreement required by clause 24.9 is set out at Schedule G. There is no requirement to use the form of agreement set out at Schedule G.</p> <p>NOTE 4: As outlined in 23.3(k), upon termination of employment, time off for overtime worked by the employee to which clause 23 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.</p> | |

| Children’s Services Award 2020 | | | | | | |
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| Ai Group | 10.4 and 21.7 | 44. | 16.A p160 | <p>Clause 10.4 and 21.7 - Notice of roster changes for part-time employees - Ai Group</p> <p>Award mandates that any changes in part-time employees' rosters, including days worked or start and finish times, require mutual agreement or a 7-day notice. The only exception for less notice involves emergencies that pose immediate risks or necessitate lockdowns. Given the operational realities of early childhood education and care, including compliance with the National Quality Framework’s child-to-educator ratios, this restriction is seen as overly rigid.</p> | <p>Proposal Summary: Broaden circumstances under which employers can change part-time employees' rosters with less than 7 days' notice. Suggested amendment would allow changes without the full 7-day notice due to another employee’s unexpected absence, in addition to the current provision for emergencies. Aims to address situations where sudden staff shortages might affect compliance with regulatory ratios, without necessitating overtime pay or the hiring of casual staff at higher costs.</p> <p>Proposed Wording: clause 10.4(d)(iii) be deleted and replaced with: <i>(iii) The employer is not required to provide the full 7 days' notice of change of the days an employee is to work where the employer makes the change as a result of:</i> <i>(A) an emergency outside of the employer’s control; or</i> <i>(B) another employee’s unexpected absence from work.</i></p> <p>Proposed Wording: clause 21.7(b)(ii) is deleted and replaced with: <i>(ii) The employer is also not required to provide the full 7 days' notice where the employer makes the change as a result of:</i> <i>(A) an emergency outside of the employer’s control; or</i> <i>(B) another employee’s unexpected absence</i></p> <p>Consequential amendments: clauses 10.4(d)(iv), 10.4(d)(v), 21.7(b)(iii), 21.7(b)(iv) and 21.7(b)(v).</p> | <p>ACTU oppose - reduction in entitlements and beyond “ease of use” scope of review (p11)</p> |
| | | | | | | <p>UWU oppose - unnecessary (p8)</p> |
| | | | | | | <p>ABI/BNSW agree - observe to be consistent with equivalent exceptions in SCHADS (para 5.2-5.3, p19)</p> |
| Ai Group | NEW | 45. | 15.B p162 | <p>NEW - Roster changes due to client cancellations - Ai Group</p> <p>National Quality Framework dictates strict child-to-educator ratios that guide employer rostering practices. When unexpected cancellations occur, such as multiple children being absent due to illness, this can leave services with more staff rostered than required. Similar flexibility mechanism exists within SCHADS award, suggesting a precedent for such flexibility in comparable sectors.</p> | <p>Proposal Summary: Award could benefit from clause offering employers greater flexibility in managing staff rosters in response to client (children's) cancellations. Before advancing a specific proposal, Ai Group proposes discussions with the Commission and industry stakeholders to thoroughly understand the potential impacts across different service types within the sector.</p> | <p>UWU oppose - no specific proposal (p8)</p> |
| | | | | | | <p>ABI/BNSW agree to discuss (para 5.4-5.5, p19)</p> |
| Ai Group | 10.4(e) and 10.5(c) | 46. | 15.C p163 | | <p>Proposal Summary: Amend clauses to allow for less than two hours of engagement for part-time and casual employees attending meetings or training remotely. Adjustment aims to align award with contemporary work practices, including the increased prevalence of online engagement.</p> | <p>ACTU oppose - reduction in entitlements and beyond “ease of use” scope of review (p9)</p> |

| Children’s Services Award 2020 | | | | | | |
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| | | | | <p>Clause 10.4(e) and 10.5(c) - Minimum engagement periods - Ai Group Current provisions in award mandate minimum rostering and payment for two consecutive hours for both part-time and casual employees. Standard does not account for remote work scenarios, such as online meetings or training, which may not necessitate a two-hour commitment.</p> | <p>Proposed Wording:</p> <p>Part-time employees: 10.4(e) An employer is required to roster a part-time employee for a minimum of two consecutive hours on any shift, except where the employee is required by the employer to attend a meeting or participate in training, however the employee is not required to attend a designated workplace for this purpose.</p> <p>Casual employees: 10.5(c) A casual employee will be paid a minimum of two hours pay for each engagement, except where the employee is required by the employer to attend a meeting or participate in training, however the employee is not required to attend a designated workplace for this purpose.</p> | <p>UWU oppose - proposal ignores power imbalance (p7)</p> |
| Ai Group | 21.7(a) | 47. | 15.D p165 | <p>Clause 21.7(a) - Electronic rostering - Ai Group Award’s current language in clause 21.7(a) mandates that employers post a legible roster at the workplace. Requirement does not explicitly accommodate increasing use of digital communication tools for rostering, potentially causing ambiguity regarding compliance with modern practices.</p> | <p>Proposal Summary: Revise clause 21.7(a) to explicitly allow for rosters to be made available through electronic means, aligning the award with the prevalent use of digital communication in the workplace.</p> <p>Proposed Wording: clause 21.7(a) be deleted and replaced with the following:</p> <p><i>(a) An employer must ensure that the work roster is available to all employees, either exhibited on a notice board which is conveniently located at or near the workplace or through accessible electronic means.</i></p> | <p>UWU agree to discuss (p11)</p> <p>ABI/BNSW disagree that current clause is unclear, suggest alternative wording: “An employer will post a legible roster at a place readily accessible to employees (which may include electronic distribution) indicating the rostered hours of work” (para 5.6-5.9, p20)</p> |
| Ai Group | 22.2 NEW | 48. | 15.E p165 | <p>NEW - Meal breaks out of school hours care - Ai Group Existing meal break rules under clause 22.1 of award do not cater effectively to the unique operational circumstances of out-of-school hours care programs, for example during school vacation periods involving off-premises activities such as excursions.</p> | <p>Proposal Summary: Introduce new clause 22.2 specifically addressing meal breaks for employees working in out-of-school hours care during school vacations, providing flexibility for meal breaks during excursions and acknowledging meal supervision as work time.</p> <p>Proposed Wording:</p> <p>22.2 Meal breaks (out-of-school hours care during school vacations)</p> <p>(a) Clause 22.2 applies to employees whilst engaged in providing out-of-school hours care during school vacation periods, away from the employer’s premises.</p> <p>(b) An employee will not be required to work in excess of five hours without an unpaid meal break of not less than 30 minutes and not</p> | <p>ACTU oppose - reduction in entitlements and beyond “ease of use” scope of review (p12)</p> <p>UWU oppose - increases complexity and ambiguity. Proposed clauses contradict each other. Reduces entitlements and beyond scope of review (p11)</p> |

| Children’s Services Award 2020 | | | | | | |
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| | | | | | <p>more than one hour. Provided that employees who are engaged for not more than six hours continuously per shift may elect to forego a meal break.</p> <p>(c) A meal break must be uninterrupted. Where there is an interruption to the meal break and this is occasioned by the employer, overtime will be paid until an uninterrupted break is taken. The minimum overtime payment will be as for 15 minutes with any time in excess of 15 minutes being paid in minimum blocks of 15 minutes.</p> <p>(d) Where an employee is required by the employer to have a meal while actively supervising children as part of the normal work routine or program, this will be treated as time worked and paid as such. In addition, clauses 22.2(b) and (c) do not apply.</p> <p>Related amendments: heading to clause 22.1, and clause 22.1(a), together with associated renumbering of clauses.</p> <p>ABI/BNSW Submission in Reply alternative proposal: 22.1 Meal breaks (a) An employee will not be required to work in excess of five hours without an unpaid meal break of not less than 30 minutes and not more than one hour. Provided that employees who are engaged for not more than six hours continuously per shift may elect to forego a meal break. (b) A meal break must be uninterrupted. Where there is an interruption to the meal break and this is occasioned by the employer, overtime will be paid until an uninterrupted break is taken. The minimum overtime payment will be as for 15 minutes with any time in excess of 15 minutes being paid in minimum blocks of 15 minutes. (c) Notwithstanding clause 22.1(a): 21 i Where an employee is required to remain on the employer’s premises, the employee will be entitled to a paid meal break of not less than 20 minutes or more than 30 minutes. This paid meal break is to be counted as time worked. By agreement with the employer an employee may leave the premises during the meal break, however, such time away from the premises will not be counted as time worked and nor will any payment be made for such time. ii <u>Where an employee is required by the employer to have a meal while actively supervising children as part of the normal work routine or program, this will be treated as time worked and paid as such. In addition, clauses 22.2(a) and (b) do not apply.</u></p> | <p>ABI/BNSW propose an alternative - see table (para 5.10, p20-21)</p> |

| Children’s Services Award 2020 | | | | | | |
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| Ai Group | 22.2 | 49. | 15.F p167 | <p>Clause 22.2 - Rest periods out of school hours care - Ai Group Rest period requirements under clause 22.2 of award are impractical for employees engaged in supervising children during excursions in out-of-school hours care programs, especially during school vacations.</p> | <p>Proposal Summary: Amend clause 22.2(c) to allow flexibility for paid rest periods during excursions, permitting active supervision of children as part of these breaks. Ai Group does not propose removal of the paid meal break. An employee, whilst continuing to actively supervise children, may still (for example) consume food or a drink or be seated by way of rest during the period.</p> <p>Proposed Wording:</p> <p><i>(c) All rest periods must be uninterrupted, except for employees engaged in providing out of school hours care during school vacation periods away from the employer's premises, who may be required to take a paid break while actively supervising children as part of the normal work routine or program.</i></p> | <p>ACTU oppose - reduction in entitlements and beyond “ease of use” scope of review (p12)</p> |
| | | | | | | <p>UWU oppose - reduction in entitlements and is beyond scope of review. Proposal is in effect a proposal to remove rest breaks (p12)</p> |
| | | | | | | <p>ABI/BNSW do not oppose - suggest further discussion (5.14, p21)</p> |
| Ai Group | Schedule A | 50. | 15.G p168 | <p>Schedule A - Transitional provisions - Ai Group Schedule A includes transitional provisions that dictated the application of the award to certain employers transitioning from previous wage instruments before 1 January 2010. All operative clauses within this schedule have ceased to apply, with the latest provisions expiring on 31 December 2014.</p> | <p>Proposal Summary: Delete Schedule A. Consequential amendments and proposed to renumber remaining Schedules B to H (inclusive) as Schedules A to G, respectively</p> | <p>UWU agree - practical amendment to enhance usability (p13)</p> |
| | | | | | | <p>ABI/BNSW agree (para 5.15, p21)</p> |