



Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

Name

Fiona Macdonald

Organisation

Centre for Future Work at the Australia Institute

Contact details:

Street Address 1: L1 Endeavour House

Street Address 2: 1 Franklin St

Suburb/City: Manuka, ACT

Postcode: 2603

Email: fiona@australiainstitute.org.au

Telephone: 0437 301 065

Modern Award Review Stream:

Arts and Culture:

Job Security:

Work and Care:

Usability of awards:

About the Centre for Future Work

1. The Centre for Future Work is a research centre located at the Australia Institute, an independent research and policy think tank. We conduct and publish research into a range of labour market, employment, and related issues. We are independent and non-partisan. This submission draws primarily on our past research on employment and working arrangements. All research published by the Centre for Future Work can be found on our website at <http://www.futurework.org.au/>.

Introduction

2. We welcome the opportunity to make this submission to the Fair Work Commission's Work and Care stream of the Modern Awards Review 2023-24. We believe the recent gender equality amendments to the *Fair Work Act 2009* (Cth) (FW Act), and the findings of the Senate Select Committee on Work and Care provide an opportunity for critical changes to be made to ensure the impacts of workplace relations settings on work and care are positive impacts.¹
3. The modern awards objective [s134(1)(ab)] of the FW Act requires the Commission, in ensuring that modern awards provide a fair and relevant safety net, to take into account *'the need to achieve gender equity 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'*.
4. In identifying workplace conditions that facilitate women's full economic participation working carers should be taken to be the worker norm. In the Commission's discussion paper it is noted that '(c)aring is reasonably common' (para 42). All workers are potential carers. In the context of meeting all the gender equality changes to the FW Act, it must be assumed that *most* employees will, at some time, be combining employment with some care responsibilities. Good quality part-time and carer-friendly flexible work should be available to all workers. To meet the modern awards objective all awards must provide carer-friendly provisions and protections to ensure secure, decent work for all employees.
5. A modern award's provisions should not be deemed to be adequately supporting work and care if those provisions are less than those found in other awards. Such differences can

¹ The Centre for Future Work's submission to the Senate Select Committee on Work and Care canvasses many work and care issues relevant to this Review. The submission is available at <https://futurework.org.au/report/submission-to-the-senate-select-committee-on-work-and-care/>.

contribute to the persistence of lower pay and undervaluation of feminised work. For example, this appears to be the case in some feminised sectors, including care sectors, in which award provisions are poorer than in modern awards in many male-dominated areas.

6. A very large number of women in the Australian workforce are employed in the care sectors, and these workforces are expected to continue to experience strong growth. The quality of jobs in these highly feminised sectors is therefore critical for the future of secure, good quality work for women and to women's full employment participation.
7. Lack of flexible work arrangements can lead to underemployment as people settle for insecure casual jobs with fewer hours than they need so as to manage care, along with their own health and cultural responsibilities. Employees without flexible arrangements may use all their leave entitlements, including annual leave, which can lead to people leaving work altogether.²

Issues

Secure hours of work

Part-time work

8. Access to good quality, secure part-time jobs is critical to a more gender-equitable sharing of care through a shared work/shared care household model. Part-time work that supports employees to combine work and care responsibilities is work that provides adequate, regular and predictable working hours. Inadequate hours, highly variable hours and absence of control over working time can undermine a worker's ability to participate in employment, access formal care services, and manage their own health needs.
9. However, under some awards, including in the highly feminised award-reliant sectors, part-time employment is constructed as 'on-demand' employment with short guaranteed hours, well below employees' actual weekly hours, with additional highly variable hours offered or required at short notice.³ Employees report being simultaneously

² Macdonald, F (2023) Inclusive and sustainable employment for disadvantaged jobseekers: Workplace and employment barriers. *Centre for Future Work*. <https://futurework.org.au/report/inclusive-and-sustainable-employment-for-jobseekers-experiencing-disadvantage/>

³ Campbell, I., Macdonald, F. and Charlesworth, S. (2019) 'On-Demand Work in Australia' in

underemployed and under pressure to take on extra hours that disrupt their lives, including care and other family responsibilities.⁴ Common impacts of insecure and unpredictable part-time and casual work for workers, include insufficient income to meet family needs, inability to plan, inability to access suitable care, high stress levels and lack of time for life.⁵

10. The norm for part-time jobs should be regular, predictable and stable hours of work, with minimum weekly payment periods that reflect an employee's actual hours. As noted in the Discussion paper (para 165) matters relating to the scheduling of work have been considered to be interconnected. We urge the Commission to treat these matters, along with travel time, as interconnected in this review.

Minimum payment periods (discussion question 6)

11. Short engagement periods, such as the two-hour minimum engagement periods for disability support workers in the SCHADS, enable exploitation. Such arrangements generate unpaid overtime as work spills over from short shifts, and also leave workers with 'dead time' or periods of time when they are not in paid work but do not have enough time to engage in other activities. Combined with unpredictable working time and income, (including due to changing rosters, short notice of changes, poor compensation for cancelled shifts) such working arrangements leave workers with inadequate incomes yet unable to engage in additional work and little control over their time, undermining wellbeing, financial security and ability to balance work and care.

12. We propose that minimum engagement periods in all awards be 4 hours.

Span of hours (discussion question 7)

13. Different span of hours provisions in awards reflect the needs of different industries. However, there are also inequities between awards in the compensation employees receive for working hours that are disruptive of family and care responsibilities. The

M. O'Sullivan et al. (eds), *Zero Hours and On-Call Work in Anglo-Saxon Countries*, Singapore: Springer 67-90.

⁴ Macdonald, F. 2021. *Individualising Risk: Paid Care Work in the New Gig Economy*, Cham: Palgrave Macmillan, Chapter 8. <https://www.palgrave.com/gp/book/9789813363656>. Macdonald, F., Bentham, E., & Malone, J. (2018). Wage theft, underpayment and unpaid work in marketised social care. *The Economic and Labour Relations Review*, 29(1), 80-96.

⁵ Ibid, no 3 and 4.

Commission should review the provisions in awards identify inequities across industries, including to ensure that employees in the female-dominated industries have reasonable protections and compensation. This should include increased equitable compensation for workers covered by awards where the span of hours is comparatively long.

Notice of rosters (discussion question 8)

14. Certainty and stability in rosters are essential for working time predictability and to allow workers to meet caring responsibilities. For scheduled hours to be the norm there must be limits on the capacity of employers to provide rosters with little notice, to change rosters with little notice, and to roster workers without genuinely taking account of workers' preferences and needs. The circumstances under which rosters can be changed must be exceptional circumstances only, not regular occurrences such as worker illness.
15. Employees report that refusal to take on extra hours on request can lead to negative consequences such as subsequent loss of work hours. This fear leads employees to take on hours that are unsuitable.⁶ Employees must be freely able to decline extra hours of work. Rostering employees at times outside their availability should be prohibited
16. We propose that at a minimum all employees must be provided with rosters at least two weeks in advance as recommended by the Senate Work and Care Committee interim report Recommendation 5. Employers should be expressly prohibited from rostering employees outside their agreed availability without consultation.

Availability and guaranteed regular hours (discussion question 9)

17. The norm for part-time jobs should be regular, predictable and stable hours of work, with minimum weekly guaranteed hours that reflect an employee's actual hours. It should not be possible for guaranteed work hours to be set low such that a large proportion of an employee's working time from week to week is flexible and insecure.

⁶ Macdonald, Bentham & Malone, J. (2018). Wage theft. n.4

Overtime, TOIL, and make-up time (discussion question 10)

18. Overtime rates should be paid for any time worked in excess of the agreed hours. The capacity for employers to flex up hours of part-time works without paying overtime rates allows part-time employees to be treated as on-demand workers with insecure variable working time and incomes.
19. We propose that all work in excess of agreed hours be paid at overtime rates and that TOIL be equivalent to the overtime payment that would apply.

On-call and recall to duty - discussion question 11

20. On-call and recall to duty and sleepover provisions require employees to be ready and available to work at the direction of the employers. Compensation in some feminised sectors including the care sector under the SCHADS award is poor in comparison to some other awards.
21. On-call, recall and sleepover provisions should be reviewed to ensure they provide reasonable and equitable value compensation and value work properly

Travel time - discussion question 12

22. All employees should be paid for time spent travelling between work locations. The absence of payment for travel leads to exploitation of workers, for example, care and support workers employed under the SCHADS award, who bear costs that should be met by employers.⁷

Leave arrangements

23. Leave provisions are particularly important for workers with care responsibilities. Worker-carers require rights to adequate paid parental leave, annual leave, and personal and carer's leave. Leave provisions should be flexible enough to support people combining work and care responsibilities throughout their working lives, and they should be

⁷ Macdonald, F., Bentham, E., & Malone, J. (2018). Wage theft, underpayment and unpaid work in marketised social care. *The Economic and Labour Relations Review*, 29(1), 80-96. Available at [https://researchrepository.rmit.edu.au/esploro/outputs/journalArticle/Wage-theft-underpayment-and-unpaid-work/9921863059501341#files_and_links_\(2\)](https://researchrepository.rmit.edu.au/esploro/outputs/journalArticle/Wage-theft-underpayment-and-unpaid-work/9921863059501341#files_and_links_(2))

appropriate to the needs of diverse family and household situations and different cultural practices.

Annual leave (discussion question 13)

24. Annual leave provisions should be more flexible and consideration should be given to increasing entitlements to enable employees to access enough leave to meet care and family responsibilities.

25. We propose that all modern awards contain provisions for employees to take annual leave at half pay and provide for employees' rights to annualised purchased leave schemes.

Personal/carer's leave (discussion question 14)

26. As outlined above, to meet the modern awards objective personal and carer's; leave should be provided to casual employees,

27. The exclusion of casual employees from access to paid annual and personal/carer's leave provisions in the NES is highly problematic for worker-carers. It is also highly problematic for ensuring the safety of vulnerable people requiring care in the large and growing formal care and support sectors in which many thousands of casual employees work as direct care and support workers, as was demonstrated during the COVID-19 pandemic.⁸ This, in turn, impacts negatively on the ability of working carers to rely on formal care to enable their own economic participation.

Definition of immediate family (discussion question 15)

28. For the purpose of access to carer's leave, the definition of immediate family in the FW Act is too narrow to provide for the diversity of circumstances and relationships in which people provide necessary care to others in their families, kinship groups, and communities.

⁸ Stanford, J. (2021) Shock Troops of the Pandemic: Casual and Insecure Work in COVID and Beyond, Centre for Future Work, <https://futurework.org.au/report/shock-troops-of-the-pandemic/>; Foley, M., & Cooper, R. (2021). Workplace gender equality in the post-pandemic era: Where to next?. *Journal of Industrial Relations*, 63(4), 463-476. <https://journals.sagepub.com/doi/full/10.1177/00221856211035173>.

29. In line with the Senate Work and Care Committee's Final Report Recommendation 17, to meet the modern awards objective, we propose the expansion of access to carer's leave to any worker providing care to any person significant to them who requires care .

30. We propose that all modern awards contain a provision for access to carer's leave for any employee providing care for any person significant to the employee to whom the employee provides regular care.

Unpaid carer's leave (discussion question 16)

31. Extended periods of unpaid carer's leave can potentially leave a worker without income and separated from their workplace. Increased access to flexible work arrangements through modern award provisions that enable workers to continue to earn income and maintain connection to the workplace is preferable and necessary to ensure they continue to meet the modern awards objective.

Personal/carer's leave (discussion question 17)

32. Combined personal/carer's leave can leave carers without any leave to provide for their own health needs.⁹

33. The NES entitlement to 10 days of paid personal/carer's leave per year does not provide equitable provision to leave for employees requiring time away from work to care. Working carers should not have to choose between caring for others and taking necessary time away from work when they are ill or need to attend their own health needs.

34. All modern awards should contain provisions for separate entitlements of 10 days paid personal leave and 10 days paid carer's leave

Ceremonial leave (discussion question 18)

35. As noted in the FWC discussion paper, the majority of modern awards do not provide for ceremonial leave for First Nations employees. Cultural or ceremonial leave has been shown to assist Aboriginal and Torres Strait Islander employees remain in employment

⁹ Australian Human Rights Commission. (2013). *Investing in care: Recognising and valuing those who care*. <https://humanrights.gov.au/our-work/sex-discrimination/publications/investing-care-recognising-and-valuing-those-who-care>. Colussi,

while meeting their family, community and cultural obligations.¹⁰ To meet the modern awards objective, all modern awards should include provisions for ceremonial or cultural leave.

Proposals

36. We propose that, to meet the modern awards objective,

- minimum engagement periods in all awards be 4 hours;
- in feminised industries hours compensation for work outside regular span of hours must be comparable to compensation provided in other industries.
- Modern awards must provide for all employees to be provided with rosters at a minimum two weeks in advance as recommended by the Senate Work and Care Committee interim report Recommendation 5.
- Modern awards should include an express prohibition on employers from rostering employees outside their agreed availability without agreement.
- All work in excess of agreed hours should be paid at overtime rates and TOIL should be equivalent to the overtime payment that would apply. All modern award should contain provisions for employees to be paid for time spent travelling between work locations.
- all modern awards should contain provisions for employees to take annual leave at half pay and provide for employees' rights to annualised purchased leave schemes.
- All modern awards should contain provisions for personal and carer's; leave to be provided to casual employees
- all modern awards contain a provision for access to carer's leave for any employee providing care for any person significant to the employee to whom the employee provides regular care.
- all modern awards should contain provisions for separate entitlements of 10 days' paid personal leave and 10 days' paid carer's leave.
- all modern awards should include provisions for ceremonial or cultural leave.

¹⁰ Bankwest Curtin Economics Centre and Murawin. (2022). *Woort Koorliny Australian Indigenous Employment Index 2022*, Broadway Nedlands: Mindaroo Foundation. Deroy, S., & Schütze, H. 2019. Factors supporting retention of aboriginal health and wellbeing staff in Aboriginal health services: a comprehensive review of the literature. *International Journal for Equity in Health*, 18(1), 1-11. Gwynne, K., & Lincoln, M. (2016). Developing the rural health workforce to improve Australian Aboriginal and Torres Strait Islander health outcomes: a systematic review. *Australian Health Review*, 41(2), 234-238. Parmenter, J., & Barnes, R. (2021). Factors supporting indigenous employee retention in the Australian mining industry: A case study of the Pilbara region. *The Extractive Industries and Society*, 8(1), 423-433.

Signature:

F. Macdonald.

Name:

Fiona Macdonald

Date:

12 March 2024