

**IN THE FAIR WORK COMMISSION**

**Matter No: AM2023/21**

**Modern Awards Review 2023-2024 – Job Security Stream**

**On behalf of the UNITED WORKERS UNION**

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**SUBMISSIONS IN REPLY**

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**Introduction**

1. The United Workers Union (**UWU**) makes these submissions pursuant to directions issued on 7 February 2024 inviting interested parties to file submissions in reply as part of the Modern Awards Review 2023-2024 – Job Security Stream.
2. As outlined in previous submissions, UWU has an interest in relation to four out of the seven identified Awards, as follows:
  - a. The Children’s Services Award 2010;
  - b. The Hospitality Industry (General) Award 2020;
  - c. The Restaurant Industry Award 2020; and
  - d. The Social, Community, Home Care and Disability Services Industry Award 2010.
3. UWU notes the Statement of the Fair Work Commission issued on 9 February 2024, indicating that the Job Security stream of the Modern Award Review 2023-2024 would not be confined to matters relating only to the seven identified awards and that parties may raise industry specific matters in their submissions and consultation.

4. UWU members work in various industries throughout Australia, including but not limited to hospitality, casinos, restaurants, early childhood education and care, aged care, home care, disability, ambulance and paramedics, cleaning, security, farms, logistics and supermarket supply chains, warehouse and distribution, food and beverage manufacturing, dairy, poultry, laundries and dry cleaning. UWU will respond to submissions and proposals made in relation to any of the industries in which it has an interest throughout the foreshadowed consultation process, as they arise.
5. These submissions are made in reply to submissions filed by Australian Industry Group (**Ai Group**), Australian Business Industrial and Business New South Wales (**ABI & Business NSW**), Australian Chamber of Commerce and Industry (**ACCI**) and other employer groups on 5 February 2024.

### **Scope of Review**

6. Ai Group, ABI & Business NSW and ACCI have put forward submissions in respect of the scope of this review and in particular, the interpretation of the objective of “job security” under s 3 and the modern awards objective of promoting “secure work” under s 134(aa) of the *Fair Work Act 2009* (Cth) (**the Act**).
7. The concept of “job security” and “secure work” in the award context has already been the subject of consideration by the Fair Work Commission, most recently in the Annual Wage Review 2022-23<sup>1</sup> and the Aged Care Work Value Case.<sup>2</sup>
8. UWU supports the submissions of the ACTU filed in this matter in respect of the scope of the review and the proper construction of the relevant legislative provisions.
9. In particular, UWU notes the views of the Annual Wage Review Expert Panel that job security “*is a concept which is usually regarded as relevant to award terms which*

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<sup>1</sup> [2023] FWCFB 3500

<sup>2</sup> Reasons for decision [2023] FWCFB 93 at [76]-[183].

*promote regularity and predictability in hours of work and income and restrict the capacity of employers to terminate employment at will.”*<sup>3</sup>

10. In this respect, the award provisions that will be the most pertinent will be those relating to:<sup>4</sup>
  - a. The type of employment (full-time, part-time, casual or other);
  - b. Rostering arrangements;
  - c. Minimum hours of work per day and per week;
  - d. The payment of weekly or monthly rather than hourly wages;
  - e. Notice of termination of employment; and
  - f. Redundancy pay.
  
11. The concept of “secure work” under s 134(aa) was also considered by the Full Bench in the Aged Care Work Value Case.<sup>5</sup> The Full Bench made the following observations:
  - a. ‘Secure work’ is undefined in the Act, but is directed at a similar purpose to the reference to ‘job security’ in the objects of the Act.<sup>6</sup>
  - b. Secure work is concerned with the security of a person’s position while employed and is directly engaged in relation to considering terms such as those relating to:<sup>7</sup>
    - i. Forms of employment;

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<sup>3</sup> [2023] FWCFB 3500 at [28].

<sup>4</sup> Ibid.

<sup>5</sup> Reasons for decision [2023] FWCFB 93 at [76]-[183]

<sup>6</sup> Ibid, at [171].

<sup>7</sup> Ibid.

- ii. Conditions of engagement;
- iii. Termination of employment; and
- iv. Terms relating to levels of certainty and predictability of when work is performed.

c. The Full Bench noted that the above considerations are relevantly looked at from the perspective of an employee.<sup>8</sup>

12. UWU supports the ACTU's submission that the promotion of secure work will necessarily be intrinsically linked to the modern award system and in particular, consideration of the matters listed in paragraph [10] above will need to involve recognition of the intersectional factors that increase the risk of exposure to insecure work for award-reliant employees, who are on average more likely to be female, young, engaged in casual work or part-time work and earning lower wages compared non-award reliant employees.

### **Response to Employer Groups' Submissions**

13. The nature of this stream of the Award review is such that parties have largely advanced concepts that are general in nature, not specific variation proposals. UWU has attempted to reply to the submissions that have been filed in the same way, particularly by indicating where in the consultation process of the review we intend to take issue with some of the concepts that have been advanced, in the event they are pressed.

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<sup>8</sup> Ibid.

**Table A – UWU response to employer group proposals**

Item	Proposed Variation	UWU Response
1	Provisions in HIGA and Restaurant Awards allowing part-time employees to be rostered based on their agreed “available hours” rather than pursuant to a regular pattern of work should be included in other awards. (ABI & Business NSW)	<p>Regular and predictable hours of work have been recognised as central the question of job security and the promotion of secure work.<sup>9</sup> The issue of irregular or unpredictable hours of work is eminently relevant to casual and part-time employees, who frequently work varying hours in a roster cycle and are predominantly women with additional caring responsibilities.<sup>10</sup></p> <p>Clauses within the HIGA and Restaurant Award which allow a part-time employee to be rostered across a variable roster according to their “available hours” effectively amount to the casualisation of part-time employment and undermine the consistency and predictability of hours usually properly afforded to part-time employees in other industries.</p> <p>UWU opposes any variation to other awards to include “available hours” provisions as contained within the HIGA and Restaurant Award. UWU submits that these provisions should be removed from the HIGA and Restaurant Award, and from</p>

<sup>9</sup> Annual Wage Review Expert Panel [2023] FWCFB 3500 at [28].

<sup>10</sup> See: Fair Work Commission, Discussion paper – job security, Modern Awards Review 2023-2024 (18 December 2023) at [110]-[114].

		any other modern awards in which they may appear.
2	Provisions in the Retail Award allowing a reduction in the minimum engagement (from 3 hours to 1.5 hours) for full-time students should be incorporated into other awards and in particular into the Fast Food Award. (ABI & Business NSW)	UWU opposes the reduction in minimum engagement terms for any employees, including young workers.
3	Provisions allowing for the agreed reduction of minimum engagement periods should be introduced to some awards (unspecified). (ABI & Business NSW)	UWU opposes any change to minimum engagement terms that allow for the reduction of the minimum engagement by agreement or otherwise.
4	Facilitative provisions allowing for departure from award conditions by agreement should be broadened in scope and use. (ABI & Business NSW)	UWU opposes broadening the scope of use of facilitative provisions.  UWU will address any specific proposals raised during consultation.
5	Proposal to vary SCHADS Award to contain provision that employees can be engaged across multiple classification streams of the Award (akin to similar arrangements in the HIGA and Restaurant Award). (ABI & Business NSW)	UWU will respond to any specific proposals raised during consultation in respect of this proposal.  UWU notes that workers employed under the SCHADS are often skilled workers with relevant certificate IIIs or diplomas. Their experience and qualifications will be utilised throughout their work and as such it is generally appropriate for workers to

		be classified based on their skills and experience.
6	Variation to modern awards “to ensure there is adequate flexibility for employers to make roster changes in an efficient and effective manner to improve access to secure work across the economy” which may include the ability to make roster changes unilaterally without the need to make overtime payments for time worked outside of agreed hours for part-time employees. (ABI & Business NSW)	Provisions allowing employees to agree to vary the hours and receive ordinary rates of pay already address this issue. Where the employer unilaterally changes a roster without agreement or adequate notice it is appropriate to pay overtime.  UWU notes most awards already allow for a unilateral change to rosters provided a certain period of notice is complied with.
7	Proposal to vary the SCHADS to introduce a mechanism that allows an employer to change the regular pattern of work for part time employees without the employees’ consent. Suggests replicating the provisions within the Children’s Services Award that allow the employer to alter the employees agreement by giving 7 days’ notice or otherwise to introduce the available hours terms of the HIGA. (ABI & Business NSW)	UWU opposes any variation that makes it easier for an employer to alter an employee’s regular pattern of work without the employee’s consent.
8	General suggestion for a new category of employment of a flexible part time category that provides secure employment through permanency, provides leave	UWU is opposed to this proposal.

	entitlements on a pro-rata basis, and a minimum guarantee of hours of work, but includes an additional margin or loading to compensate for increased flexibility to roster workers according to operational requirements. (ABI & Business NSW at [227]).	
9	Introduction of greater flexibility as to how ordinary hours of work may be arranged, including provisions concerning minimum engagement and payment periods (Ai Group at [131](a)).	No specific proposal is advanced. UWU will respond to any specific proposals during consultation. UWU notes it will oppose any proposal to reduce the minimum engagement provisions or that results in the diminution of the consistency and predictability of hours of work for part-time employees.
10	Revising extant rostering provisions to remove unnecessary requirements and limitations (Ai Group at [131(b)]).	No specific proposal is advanced. UWU will respond to any specific proposals during consultation. UWU notes that important limitations and requirements exist within modern awards that promote regularity and predictability of rosters, the erosion of which would undermine access to secure work.
11	Removing barriers to the engagement of employees on a part-time basis, including:	UWU opposes any variation to modern awards that reduces the regularity and predictability of part-time rosters and hours of work, especially where such a



	<p>(i) Greater flexibility as to the fixation of their ordinary hours of work;</p> <p>(ii) Greater scope to vary their hours of work; and</p> <p>(iii) The option to agree that the employee will work additional hours at ordinary rates.</p> <p>(Ai Group at [131](c)).</p>	<p>variation does not provide for compensation for increased flexibility through penalty rates or overtime payments. UWU submits such a variation would be contrary to the modern award objective of promoting secure work.</p>
12	<p>Requirement under the HIGA and Restaurant Award that part-time employees receive 2 days off per week should be reviewed (Australian Hotels Association at [17(a)]).</p>	<p>UWU would oppose any proposal that undermines the consistency and predictability of shifts for part-time employees, including by way of increased span of averaging hours. UWU will respond to this proposal during consultation if it is pressed.</p>
13	<p>Proposal to review clause 15.1(b) of the HIGA (Australian Hotels Association at [17(b)]).</p>	<p>UWU will respond to any specific proposals raised during consultation in respect of this proposal, however notes the AHA's inclusion of this proposal is based on an assertion that it would not negatively impact job security, which is not the relevant test.</p>

14. UWU notes that many of the above matters will be discussed further in consultation sessions currently listed on 27 February 2024, 4 March 2024, 14 March 2024 and 18 March 2024. UWU reserves the right to add to or vary its submissions in relation to proposals during the consultation period, including adding to or varying its own submissions as filed on 5 February 2024.
  
15. UWU further notes that Ai Group have advanced submissions in the Modern Awards Review 2023-2024 “making awards easier to use” stream which were restated in its submissions in the job security stream. UWU will respond to those matters within the relevant stream, being the “making awards easier to use” stream.

**Filed by United Workers Union**

**21 February 2024**