

Overtime, TOIL, and make-up time (Q10)  
On-call and recall to duty (Q11)  
Travel time (Q12)  
Annual leave (Q13)  
Ceremonial leave (Q18)  
Other proposed leave (Q19)

## SUMMARY OF SUBMISSIONS

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

This document been prepared to assist parties in **Consultation Day 3** dealing with the following issues.

### **Morning Session: Hours of work**

- **Discuss question 10 - Overtime, TOIL, and make-up time** - 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?
- **Discussion question 11 - On-call and recall to duty** - 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?
- **Discussion question 12 - Travel time** - 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?

### **Afternoon Session: Leave Arrangements**

- **Discussion question 13 - Annual leave** - 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?
- **Discussion question 18 - Ceremonial leave** - 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?
- **Discussion question 19** - any other proposed leave

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

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### Overtime - Discussion Question 10

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

Party	REF	THEIR REF	Issue	Commentary	Proposal
ACTU	1.	106-108 p43-44	<b>Overtime paid on all additional hours - ACTU</b>	<p>ACTU submit that variation in overtime provisions across awards has a very gendered impact. ACTU provide for example, in road transport and manufacturing, requirement to pay overtime on any additional hours means there is a disincentive to employers offering low hour contracts that can be flexed up without penalty. ACTU submit that there is no such requirement in aged care, so an employer can offer a low hour contract and then offer more hours week to week paying ordinary hourly rates. This means that low hour contracts that can be flexed up and down are used in female dominated industries, rather than employers being incentivised to offer ongoing additional hours to avoid paying overtime rates.</p> <p>ACTU provide that in the Building On-Site Award and Electrical Contracting Award, both male dominated industries, all hours of work beyond ordinary hours are payable as overtime for all employees. By contrast, in the Aged Care Award, overtime is only payable for part-time or casual employees when they work in excess of 38 hours per week or 76 hours per fortnight.</p>	<p><b>Proposal Summary:</b> Awards should be varied to ensure that overtime is paid on all additional hours worked outside of ordinary hours for casual, part-time and full-time employees.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> </ul>
AHEIA	2.	10 p9-10	<b>No variations needed for overtime - AHEIA</b>	<p>AHEIA provide that overtime is payable in the General Staff Award when employees perform approved work beyond their regular or scheduled hours and no variations are necessary.</p> <p>AHEIA submit that academic staff average their 38 hours of work over 46 weeks of the year, as such, overtime and TOIUL are not relevant to these employees.</p>	<b>Proposal Summary:</b> No variation proposed.
AMWU	3.	Rec 2 p4	<b>Overtime rates - AMWU</b>	In addition to the ACTU's submission and recommendation, the AMWU recommends that the overtime penalty concerning the first three hours of overtime should be increased, in recognition that additional hours of work impacts work and care.	<p><b>Proposal Summary:</b> Vary awards to introduce a provision that provides that employees will be paid (where a more beneficial entitlement does not already exist):</p> <ul style="list-style-type: none"> <li>• 175% of the ordinary hourly rate for the first 3 hours and 200% thereafter for overtime performed Monday to Friday; and</li> </ul>

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Party	REF	THEIR REF	Issue	Commentary	Proposal
					<ul style="list-style-type: none"> <li>All weekend overtime is paid at 200%.</li> </ul>
ANMF	4.	69-74 p14	<b>Current overtime provisions incentivise low hour contracts - ANMF</b>	<p>ANMF submit that women with care responsibilities who also work in formal care face the compounding structural inequalities of gendered undervaluing and low remuneration, with limited access to overtime and slower and lower accrual of paid entitlements.</p> <p>ANMF provide that current clause 19.1(d) means that part-time employees only get overtime payments if they work beyond 8 (or 10) hours per day. They submit this encourages employers to engage part-timers on low-hour contracts, and employers gain added flexibility at no extra cost and that the current clause creates uncertainty.</p>	<p><b>Proposal Summary:</b> Vary clause 19.1(d) Nurses Award. Proposed variation relies on written agreements between parties to determine when overtime pay becomes due, incentivising employers to create agreements that reflect actual hours worked.</p> <p><b>Proposed Wording:</b> Clause 19.1(d) should be varied as follows: <i>All time worked by part-time employees in excess of the rostered daily full-time hours will be overtime and will be paid in as prescribed in clause 19.1(a).</i></p>
ANMF	5.	75-81 p14-15	<b>Overtime provisions not sufficient on weekend - ANMF</b>	<p>ANMF provide that current Nurses Award provisions for overtime pay treat first 2 hours of overtime on a Saturday and the applicable shift loading as the same. The result of this is to incentivise payment of additional hours as overtime rather than ordinary hours of work as overtime so as not to attract accrual of leave entitlements or payment of superannuation. The Sunday overtime rate is only 25 per cent higher than the Sunday penalty rate, which when leave entitlements and superannuation are factored in, incentivises the use of overtime ahead of ordinary hours.</p>	<p><b>Proposal Summary:</b> In Nurses Award Saturday rate for overtime should be set at 200 per cent for all overtime hours. The Sunday overtime rate should be increased to 250 per cent. Overtime rate for public holidays should also be reviewed if the proposed changes are made.</p> <p>The effect of the proposal is to promote access to predictable work by making engagement for work performed as ordinary hours on Saturday and Sunday more viable than ad hoc overtime hours.</p>
CFW	6.	18-19 p6	<b>Overtime and TOIL - CFW</b>	<p>CFW submit the capacity for employers to flex up hours of part-time work without paying overtime rates allows part-time employees to be treated as on-demand workers.</p>	<p><b>Proposal Summary:</b> All work in excess of agreed hours should be paid at overtime rates and that TOIL be equivalent to the overtime payment that would apply.</p>



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Party	REF	THEIR REF	Issue	Commentary	Proposal
FAAA	7.	123-127 p30-31	<b>Overtime for duty hours above planned duty up to maximum unplanned duty - FAAA</b>	<p>FAAA's proposed clause ensures there is appropriate penalty for overtime worked for each day, consistent with characteristics of secure work having appropriate remuneration for time worked beyond rostered hours or spread of ordinary hours.</p> <p>Daily overtime payments are paid in occupational enterprise agreements. Daily overtime was included in pre-modern occupational and enterprise awards. Current clause enables extensions beyond the unplanned limit. This is inconsistent with facilitative provisions which should contain a safety net floor. This clause operates in an environment where cabin crew may have been working 15-16 hours or up to 26 hours when they commence negotiating with management about working additional unplanned hours. In these circumstances, an appropriate floor is necessary to protect Cabin Crew with caring responsibilities where overtime, TOIL or make-up time provisions are triggered.</p>	<p><b>Proposal Summary:</b> Vary clauses A.6.1 and C.6.1 in the ACCA to include:</p> <ul style="list-style-type: none"> <li>Overtime penalties for daily duty hours above the planned duty for that day up to the unplanned maximum.</li> <li>Minimum floor overtime payment for daily duty hours above unplanned duty for that day.</li> </ul> <p><b>Proposed Wording:</b></p> <p>X.6.1 (c) <i>Where unplanned extensions exceed the daily limit, the affected cabin crew member may agree to a further extension. Agreement will also include agreement on an appropriate payment <b>subject to a minimum of an additional 200% of the minimum hourly 31 rate for all hours exceeding the unplanned limit.</b> Such agreement will be made in accordance with clause 7 – Facilitative provisions of the award.</i></p> <p>(d) <i>For each hour worked above the planned duty hours for that day the cabin crew member will be paid 150% of their minimum hourly rate for the first 2 hours and 200% for each hour above that (up to the maximum number of unplanned duty hours).</i></p>
FAAA	8.	128-129 p31-32	<b>Overtime penalty to Regional Flying Schedule 'B' - FAAA</b>	<p>FAAA submits presently no overtime provisions. Current provisions enable planned daily limits to be exceeded where duty has commenced. Schedule B crew are limited to a maximum tour of duty of 11 hours but it can be extended to 12 hours where duty has commenced. Planned Flight time is restricted to 8 hours flying, extending to 9 hours where duty has already commenced. Daily tours of duty can and do extend beyond planned upper limits due to operational reasons. FAAA submit that extensions may be unavoidable but overtime payment for extensions beyond daily duty hours is appropriate.</p>	<p><b>Proposal Summary:</b> Vary ACCA to insert overtime provisions into Schedule B, applying to regional flying crew.</p> <p><b>Proposed Wording:</b> Insert new clause (e) at B.2.4: (e) <i>Where a tour of duty extends beyond the limits described in B.2.4(a) or(c) a cabin crew member will be paid an additional 150% for the additional hours provided at B.2.4(b) and (d)</i></p>

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Party	REF	THEIR REF	Issue	Commentary	Proposal
HSU	9.	50 p12	Overtime - HSU	HSU has already proposed with respect to SCHADS variations to provisions concerning the payment of overtime to part-time employees.	<b>Proposal Summary:</b> No variation proposed.
NECA	10.	p3	Consistent approach to triggering overtime - NECA	NECA submit that a consistent approach would give employees, including carers, and employers more flexibility to work hours that may change from week to week depending on their short-term caring requirements.	<b>Proposal Summary:</b> A consistent approach as to when overtime is triggered i.e. after 38 hours per week rather than 7.6 hours per day.
SDA	11.	233-234 p40	Overtime - SDA	SDA submit that overtime should be reviewed in line with a review of the Span of Hours. The payment of overtime should be reviewed in relation to additional hours for part-time employees as discussed in response to Question 1.	<b>Proposal Summary:</b> No variation proposed.

### TOIL - Discussion Question 10

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

Party	REF	THEIR REF	Issue	Commentary	Proposal
ACCI	12.	174-175 p33	Variation to TOIL provisions - ACCI	<p>ACCI's TOIL proposal was advanced in the Making Awards Easier to Use stream but in relation to the context of the Work and Care stream make additional suggestions.</p> <p>ACCI submit that in the context of workers with caring responsibilities, time off may be of greater value than monetary compensation for overtime work.</p>	<p><b>Proposal Summary:</b> An increase in the use of formalised TOIL arrangements is likely to give rise to greater and more useful flexibility for workers with caring responsibilities given TOIL can be used to undertake caring responsibilities as they arise.</p> <p><b>Proposed Wording:</b> As advanced in the Making Awards Easier to Use stream, TOIL clauses in the Clerks, Children's, Hospitality and SCHADS Awards should be replaced with a new clause as follows:</p> <p><i><b>X.X Time off instead of payment for overtime</b></i></p>

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### TOIL - Discussion Question 10

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

Party	REF	THEIR REF	Issue	Commentary	Proposal
					<p>(a) An employer and employee may agree in writing to the employee taking an equivalent amount of time off instead of being paid for a particular amount of overtime worked by the employee, provided that no undue influence or undue pressure is exerted on either party.</p> <p>(b) The time off must be taken at a time or times agreed by the employer and employee.</p> <p>(c) The employer must pay the employee as soon as practicable for any overtime hours that were subject to an agreement under subclause (a) and have not been taken off where:</p> <ul style="list-style-type: none"> <li>(i) the employee decides to cancel the agreement;</li> <li>(ii) the employee does not take the agreed time off within 12 months of the overtime hours being worked; or</li> <li>(iii) the employment is terminated.</li> </ul> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• NECA (p1)</li> <li>• Clubs Australia (p1)</li> </ul>
ACTU	13.	109-110 p44	<b>TOIL should be equivalent to the overtime payment - ACTU</b>	ACTU provide that TOIL entitlements are provided for in all modern awards by written agreement between employer and employee but are calculated differently in different awards: in 16 of the 25 awards examined, TOIL is equivalent to the overtime payment that would have been made while in 9 awards, TOIL is equivalent to actual time worked. ACTU submit the latter is detrimental and unfair to employees as they receive a lesser entitlement and can be pressured and exploited to take TOIL rather than be paid overtime.	<p><b>Proposal Summary:</b> Awards should be varied so that TOIL provisions provide that an employee's entitlement to time off in lieu is equivalent to the overtime payment that would have been paid, rather than the actual time worked.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> </ul>
Ai Group	14.	198-201 p69	<b>Time off in lieu of overtime - Ai Group</b>	Ai Group's proposal is to allow for an employer and employee to reach a standing agreement for multiple instances of overtime to be taken as time off in lieu across more than one pay period, stating would ease the regulatory burden on both the employers and employees and provide more certainty to employees by knowing that the employer has agreed to the accrual of TOIL over the specified period of time.	<p><b>Proposal Summary:</b> All awards should be varied to allow for an employer and employee to reach a standing agreement for multiple instances of overtime to be taken as time off in lieu, across more than one pay period. Vary the model TOIL clause to permit an employer and employee to extend the period over which accrued TOIL must be taken, by agreement.</p>

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Party	REF	THEIR REF	Issue	Commentary	Proposal
				Ai Group further submit that awards impose limits within which TOIL must be used. For example, the 25 awards contain time limits between 4 weeks and 6 months. Ai Group submit that awards should be varied to permit an employer and employee to agree that their TOIL will be banked for a longer time period, which would facilitate an employee taking the time off at a time that best suits them rather than within a limited window set by the award. This would benefit employees with caring responsibilities who may wish to take an extended period of time off over school holiday periods. It would also enable them to preserve accrued leave entitlements.	
CFW	15.	18-19 p6	Overtime and TOIL - CFW	CFW submit that the capacity for employers to flex up hours of part-time work without paying overtime rates allows part-time employees to be treated as on-demand workers.	<b>Proposal Summary:</b> All work in excess of agreed hours should be paid at overtime rates and that TOIL be equivalent to the overtime payment that would apply.
HSU	16.	51-54 p12	TOIL and overtime - HSU	<p>HSU submit that in Aged Care, SCHADS, and HPSS contrary to majority of 25 modern awards considered in the Discussion Paper – employees’ entitlement to time off in lieu of overtime (TOIL) is equivalent not to the overtime payment that would have been paid (e.g. 60 minutes of overtime worked at 150 percent of the hourly rate equating to 90 minutes of time off), but is equivalent to actual time worked (e.g. 60 minutes of overtime worked at 150 percent of the hourly rate, but equating only to 60 minutes off).</p> <p>HSU submits that there does not appear to be any justifiable reason why employees covered by Aged Care, SCHADS and HPSS should receive a lesser TOIL entitlement compared to the majority of other modern awards. They are aware of employers who exploit inequity by imposing on workers a policy of taking TOIL instead of making overtime payments so as to avoid having to make overtime payments.</p>	<p><b>Proposal Summary:</b> Aged Care, SCHADS and HPSS should be varied to ensure that employees’ entitlement to time off in lieu of overtime is equivalent to the overtime payment that would have been paid.</p> <p><b>Proposed Wording:</b> Clause 25.2(d) Aged Care Award, clause 28.2(c) SCHADS, and clause 25.5(d) HPSS be varied to provide that the period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made.</p>

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### Make-up time - Discussion Question 10

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

Party	REF	THEIR REF	Issue	Commentary	Proposal
AHEIA	17.	p10	Make-up pay provision not needed - AHEIA	AHEIA submit there is no need for a make-up pay provision to be introduced into higher education sector awards. Note that the Full Bench declined to insert such a provision during the 4 Yearly Review of Modern Awards.	<b>Proposal Summary:</b> No variation proposed.
Ai Group	18.	193-197 p67-68	Make-up time - Ai Group	<p>Ai Group provide that some, but not all modern awards, provide for make-up time and that the ability to take time off during ordinary hours and make up that time at a later stage provides obvious flexibility for employees who have caring responsibilities and provides a mechanism for employees to take time off without using their accrued leave entitlements. It can permit employees to attend to caring responsibilities during ordinary hours, such as after school activities or attending medical appointments, and work those hours at a later stage.</p> <p>Ai Group addressed similar issues in discussion question 4, stating make-up time is particularly relevant in the context of employees who work from home. Ai Group state there is no evidence of employers who may encourage employees to work extra hours without appropriate compensation.</p> <p>Ai Group submit that as to the use of the model flexibility term to enter into make-up time arrangements, implementing IFAs with individual employees has numerous limitations. For example, it may be necessary to enter into a separate IFA each time an employee seeks to access make-up time and as a consequence, the regulatory burden associated with the arrangement would be far greater than conforming with an award clause.</p>	<p><b>Proposal Summary:</b> Awards should be varied to include a provision allowing for make-up time in awards which do not currently include such a provision.</p> <p><b>Proposed Wording:</b> The relevant provision in the Manufacturing Award may be an appropriate form of words for other awards, provided that subclause (b) would not be relevant in the context of awards that do not provide for shiftwork:</p> <p><b>17.7 Make up time</b>  <i>(a) An employee may elect, with the consent of the employer, to work make up time under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in this award.</i></p> <p><i>(b) An employee on shiftwork may elect, with the consent of their employer, to work make up time under which the employee takes time off during ordinary hours and works those hours at a later time, at the rate which would have been applicable to the hours taken off.</i></p>

Overtime, TOIL, and make-up time (Q10)  
On-call and recall to duty (Q11)  
Travel time (Q12)  
Annual leave (Q13)  
Ceremonial leave (Q18)  
Other proposed leave (Q19)

### Make-up time - Discussion Question 10

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

Party	REF	THEIR REF	Issue	Commentary	Proposal
ANMF	19.	82-83 p15	<b>Make-up time provisions for Nurses Award - ANMF</b>	ANMF state the Nurses Award has no provision for make-up time. ANMF submit that nurses, midwives, and carers work long shifts and night shifts that conflict with ordinary business hours of care and health facilities and that employees commonly use paid leave entitlements when conflicts arise with care-related appointments. ANMF submit this practice disadvantages part-time and casual employees as they have lower or no access to paid leave.	<b>Proposal Summary:</b> Introduce provisions in the Nurses Award that allow for make-up time, where an employee may start early or finish late to accommodate appointments.
HSU	20.	55-56 p12-13	<b>Make-up time vs equivalent payment - HSU</b>	<p>HSU state clause 25.5(f) of SCHADS provides that if a client cancels a scheduled home care/disability service within 7 days, and where employee rostered to perform service is notified within 12 hours prior to the scheduled commencement, employer can elect to either pay the employee the amount they would have received or provide the employee make-up time.</p> <p>HSU submit that if service is cancelled on weekend or public holidays, employers tend to elect to provide make-up time rather than paying employee amount they would have received (which would include public holiday or weekend penalties or shift allowances). State has obvious implications for the low-paid, highly part-time, feminised workforces covered by SCHADS.</p>	<b>Proposal Summary:</b> Clause 25.5(f) SCHADS should be varied to ensure employees do not lose out on penalties and allowances they would otherwise have been due by the employer simply choosing to provide make-up time instead of paying the employee the amount they would have received had the service not been cancelled.
MTO	21.	20 p6	<b>TOIL provision may adversely impact flexible working arrangements - MTO</b>	MTO note that the TOIL provision may act as a disincentive to employers agreeing to an employee's TOIL request, which may adversely impact flexible working arrangements. MTO state however, this risk is mitigated by other facilitative arrangements such as make-up time provided for in the Award.	<b>Proposal Summary:</b> No variation proposed.



## Other Issues - Discussion Question 10

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

Party	REF	THEIR REF	Issue	Commentary	Proposal
ACCI	22.	167-169 p32	<b>Vary span of hours and minimum engagement provisions when WFH - ACCI</b>	<p>ACCI refer FWC to ACCI proposals at Question 4 to vary or remove application of span of hours and minimum engagement provisions when working from home to allow a pattern of work that is mutually beneficial, and which does not trigger award entitlements that would otherwise render the arrangement unworkable.</p> <p>ACCI submit the potential operation of penalty provisions in modern awards should not provide a restriction on employees and employers engaging in genuinely consensual work arrangements which benefit both employers and employees.</p>	<p><b>Proposal Summary:</b> By written agreement between an employer and employee, when working from home, the following award provisions should be able to be varied or not apply:</p> <ul style="list-style-type: none"> <li>Span of hours.</li> <li>Minimum engagement clauses.</li> </ul>
ACCI	23.	170-173 p32-33	<b>Uncertainty in IFAs created by overtime, TOIL or makeup time - ACCI</b>	<p>ACCI submit that IFAs have historically proved an ineffective mechanism for establishing flexibilities in the modern awards system. They state in theory, an employer and employee may consider an IFA to create a work pattern that suits the employee but it is often the potential of overtime, TOIL or make up time that creates uncertainty as to whether the employee will be better off overall.</p>	<p><b>Proposal Summary:</b> No variation proposed.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>NECA (p1)</li> <li>Clubs Australia (p1)</li> </ul>
CPSU-SPSF	24.	64 p10	<b>See response to Discussion Question 6 - CPSU-SPSF</b>	<p>See response to Discussion Question 6.</p>	<p><b>Proposal Summary:</b> No variation proposed.</p>
FAAA	25.	130-132 p32-33	<b>Missed meal allowance and missed rest break penalty - FAAA</b>	<p>FAAA submit that where meal breaks are missed or not completely taken, crew should be compensated for that working condition. As service and safety tasks are required to be prioritised by Cabin Crew, they are often having their meals standing up in the galley, without a proper rest break of 20 minutes. FAAA members advise there is often no time for a rest break. Helicopter Pilots under the Pilots Award receive \$24.49 for each meal missed. Pilots receive a paid 30-minute break or reimbursement for a meal or a meal. FAAA state the payment</p>	<p><b>Proposal Summary:</b> Insert and vary clause A.3.6 and C.3.5 to provide for a missed meal allowance. Current clauses imply meal breaks take second order priority to service and operations. While meal breaks may not seem relevant to the characteristics of secure work, having a lunch break is a feature of permanent secure work that many workers take for granted. Modest allowance will provide financial penalty for programming tours of duty which do not provide adequate time for crew to take a meal break. Proposal will assist roster stability regarding rest breaks.</p>

Overtime, TOIL, and make-up time (Q10)  
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Other proposed leave (Q19)

## Other Issues - Discussion Question 10

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

Party	REF	THEIR REF	Issue	Commentary	Proposal
				of overtime until a break is provided is a common modern award standard.	<b>Proposed Wording:</b> Insert clause A.3.6 and C.3.5 as follows: <i>(b) Where a meal break cannot be taken the cabin crew member must be paid an allowance equivalent to the employee's minimum hourly rate prorated for the period of the break.</i>
FAAA	26.	133-135 p33	<b>RDO: accruing substitute day off - FAAA</b>	FAAA state clause B.2.9 provides an entitlement to accrue up to 6 substitute days off (SDO). FAAA note that currently, clause stipulates that the substitute day off does not accrue beyond the next roster period. Members regularly contact the FAAA's Help Line regarding the inability to obtain agreement for taking their day in lieu. FAAA's proposed clause supports the secure work objective and provide greater certainty to Cabin Crew with caring responsibilities.	<b>Proposal Summary:</b> Vary clause to replace paragraph (b) with an option for employee to convert accrued days to annual leave or be paid out after 6 months of SDO's not being used. Variation ensures that the overtime value of working on a rostered day off, which accrues as a substitute roster day off, does not have its value diluted by current clause. Also propose this entitlement to accrue untaken SDOs is provided to Domestic and International Crew.  <b>Proposed Wording: Vary B.2.9 as follows:</b> <i>(b) Where there is no agreement reached under B.2.9(a) substitute days may accrue up to a maximum of 6. If not taken with 6 months of accruing the day an employee can choose to be paid out or have each day substitute for allocated leave.</i>
FAAA	27.	136-139 p33-34	<b>Paid allowance for working on RDO - FAAA</b>	FAAA submit that Rostered Days Off are an important feature of secure work, particularly for an occupation which does not operate under traditional weekend arrangements. Rostered days off are an essential component of fatigue management and critical to protecting Cabin Crew with caring responsibilities. FAAA submit that additional payment and a substitute day off is a community standard within the occupation.  FAAA state that the premodern Domestic Award provided a Cabin Crew drafted to duty on a designated/substitute day off to be paid at double time for 8 hours or, if more than 8 hours is worked, double time for the working period in addition to a substitute day off. The QANTAS short Haul, QANTAS Domestic and Virgin EBAs provide for additional payment for working on a day off. Pilots who agree to work on a day off receive a substitute day and an additional payment of \$123.44 per day worked.	<b>Proposal Summary:</b> Vary A.4 and C.4 to include an entitlement to be paid an allowance when an employee works on a rostered day off which is equivalent to the allowance currently provided to Regional Cabin Crew of \$136.10 for each day.  Allowance is a disincentive for calling Cabin Crew out to work on what is effectively their weekend when they are resting. Allowance also compensates Cabin Crew for the additional cost of attending for work on a day they would otherwise not be in attendance or have any work-related expenses.



### Other Issues - Discussion Question 10

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

Party	REF	THEIR REF	Issue	Commentary	Proposal
WFPR	28.	20-23 p8-9	<b>Maximum weekly hours of work require review - WFPR</b>	<p>WFPR submit that large amounts of unpaid overtime are performed in Australia, including in feminised industries. WFPR provide for example, a survey of 1828 social and community service workers showed that in the previous week, 55 per cent had performed at least one hour of unpaid work in addition to their paid working time.</p> <p>WFPR submit that long and excessive working hours are incompatible with informal care responsibility and reinforce gender inequality and are also costly to worker health.</p> <p>WFPR propose that a stricter application of the NES on maximum hours of work and better enforcement of this NES are needed to curb expectations employees should work more than 38 hours a week in order to better promote gender equality by increasing men's opportunities for shared care and to reduce the prevalence of excessive working hours.</p>	<p><b>Proposal Summary:</b> WFPR supports the Senate Select Committee's recommendation that there be a review into the operation of the 38-hour working week. WFPR proposes:</p> <ul style="list-style-type: none"> <li>The Federal government review and strengthen the NES on maximum weekly hours of work to ensure it operates as an enforceable cap on long hours.</li> <li>Governments providing funding for the social and community services sector to ensure funding levels are sufficient to pay employees for all time worked, so workers are not required to donate additional, unpaid hours.</li> </ul>

### On-call and Recall - Discussion Question 11

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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
ACCI	29.	176-179 p33	<b>No specific proposals - ACCI</b>	<p>ACCI submit that these provisions are increasingly dealt with in enterprise agreements and the individual workplace is the appropriate forum to come to such arrangements and the compensation arising from those arrangements.</p> <p>ACCI submit the legislative introduction of the "right to disconnect" is likely to affect this subject matter and that it is premature to consider</p>	<p><b>Proposal Summary:</b> No variation proposed.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>NECA (p1)</li> <li>Clubs Australia (p1)</li> </ul>

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### On-call and Recall - Discussion Question 11

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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
				changes to modern awards in the absence of any data regarding a legislative change introduced to address the precise issue.	
ACTU	30.	115-p46-	<b>Higher valuation of on-call, recall to work and sleepover provisions - ACTU</b>	<p>ACTU agrees with the findings of the Senate Work and Care Report that the expectation to remain on-call and available for extended periods of time, including on sleepover shifts, in order to secure sufficient paid work can have a profound impact on the ability to manage work and care effectively and to be able to disconnect from the workplace.</p> <p>ACTU provide that being on call is compensated in 5 of the 25 modern awards examined in the discussion paper. ACTU submit that awards covering male dominated industries, such as the Road Transport and Distribution Award and the Vehicle Award, require that ordinary rates are payable for employees required to standby for duty while awards covering female dominated industries, such as the Nurses Award and the SCHADS Award, only provide for a daily or weekly allowance for being on call.</p> <p>ACTU submit that sleepover work is also poorly valued. Most awards providing for sleepover work provide a mixed payment type, generally a monetary allowance for the sleepover that includes payment for any necessary work up to 1-2 hours and any work performed excess to this is generally paid at overtime. Some awards pay a higher sleepover allowance for weekend work.</p> <p>ACTU submit that the SCHADS Award, Aged Care Award, Schools General Staff Award and Higher Education General Staff Award have the lowest sleepover allowances – these all cover female dominated industries.</p>	<p><b>Proposal Summary:</b> Awards should be varied to rectify the differences in payment for on-call and recall to work provisions. Ordinary rates for employees required to standby for duty should be paid across the board, or at the very least, allowances should be significantly increased. Consideration should also be given to the proper valuing of sleepover work and its interaction with overtime and on-call rates.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> <li>• SDA (235, p40)</li> </ul>

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### On-call and Recall - Discussion Question 11

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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
AHEIA	31.	p10-11	<b>No variations necessary for higher education sector awards - AHEIA</b>	AHEIA submit that the General Staff Award contains a provision for overtime for employees recalled to duty, at clause 22.3.	<b>Proposal Summary:</b> No variation proposed.
AMWU	32.	Rec 3, 21-23	<b>Call backs - AMWU</b>	AMWU has an interest in the Manufacturing Award, Vehicle Awards, Graphic, Arts, printing and Publishing Award. AMWU recommends that general recall/call back entitlements contained in clause 29 of the Print Award are inserted into modern awards.	<b>Proposal summary:</b> Call back provisions include: <ul style="list-style-type: none"> <li>• Call-back applies when an employee is required to return to work outside their regular schedule, without prior notice at the end of their shift.</li> <li>• 1 hour ordinary pay for the call back in addition to, all work paid at double ordinary hours, with a minimum 4 hours payment.</li> </ul>
ANMF	33.	84-91 p16-17	<b>FWC should take previous Nurses Award variation into consideration - ANMF</b>	ANMF submit that changes were made to the Nurses Award in the course of the 4 yearly review of modern awards with respect to work required when on call and when not on call. They state FWC should take the findings of that decision into consideration. For the purposes of this review, no further variations are contemplated with respect to the Nurses Award.	<b>Proposal Summary:</b> No variation proposed.
ASU	34.	31-32 'p9	<b>Low compensation for on-call, recall and sleepover - ASU</b>	ASU states SCHADS allows workers to sleep at their employer's premises and care for a vulnerable person under clause 25.7. The allowance for this is \$55.89. ASU submit that while overtime pay is available, workers may be pressured not to claim it.  In male-dominated industries, employees are paid at ordinary rates when they are required to standby for duty, such as manufacturing.	<b>Proposal Summary:</b> FWC should consider if current stand by, sleepover and on-call arrangements meet the new gender equity objective of FW Act.
CPSU-SPSF	35.	65-69 p10	<b>Broken shifts - SCHADS</b>	CPSU-SPSF submit that on-call provisions are avoided by the use of casuals and the 2-hour minimum roster. CPSU-SPSF submit that the use of split shifts or broken shifts is of increasing concern. In group homes, disability support workers are often expected to be available if a client is absent from day programs but is generally not paid for being available, and only if they are required to attend a shift.	<b>Proposal Summary:</b> Remove SCHADS clause 25.6 regarding Broken Shifts. In the alternative, include an allowance to ensure that the worker is not financially disadvantaged for being available.

Overtime, TOIL, and make-up time (Q10)  
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## On-call and Recall - Discussion Question 11

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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
CFW	36.	20-21 p6	Low compensation for on-call, recall and sleepover - CFW	CFW submit that compensation in some feminised sectors including the care sector under SCHADS is poor in comparison to some other awards.	<b>Proposal Summary:</b> On-call and sleepover provisions should be review to ensure they provide reasonable and equitable value compensation and value work properly.
HSU	37.	57-61 p13-14	Low compensation for on-call, recall and sleepover - HSU	<p>HSU submit that compensation for employees on-call, when recalled to work, and when rostered on sleepovers under HPSS and SCHADS is very low particularly when compared to similar clauses in more masculinised modern awards. Expectation to remain on-call and available for extended periods of time (including on sleepover shifts) in order to secure sufficient paid work can have a profound impact on the ability to manage work and care effectively and to be able to disconnect from the workplace. HSU provide that there is no restriction in Award on how often employees can be rostered on-call.</p> <p>HSU provides under HPSS Award this particularly impacts: medical scientists, senior dieticians, senior pharmacists, medical physicists, clinical perfusionists, and psychologists. Under SCHADS this particularly impacts disability support workers and in-home aged care workers.</p>	<p><b>Proposal Summary:</b> On-call and recall to duty provisions of HPSS and SCHADS and sleepover provisions in SCHADS should be re-examined having regard to sub-s 134(1)(ab) to ensure compensation payable to employees properly values that work.</p> <p>Awards should also be reviewed to ensure employees have minimum periods free from being on-call, to increase the minimum payment for workers required to be on-call and when recalled to work overtime, and to provide for recall not requiring a physical return to the workplace (as it is common for health professionals to give advice via the phone when on-call, which should be treated, in the HSU's view, as recall).</p> <p>Telephone allowance at clause 23.3(f) should also be contemporised to reflect modern communication methods.</p>
FAAA	38.	142-144 p34-35	Change value of reserve conditions when called out - FAAA	<p>FAAA submit that reserve duties can introduce uncertainty and can restrict the availability of Cabin Crew with respect to caring and other personal responsibilities. FAAA states their proposal more appropriately reflects the value of the reserve at home duty.</p> <p>FAAA state an employee on reserve is not able to partake in any activities which might result in them being not "fit for duty". This</p>	<p><b>Proposal Summary:</b> Vary clause A.9.5, Schedule B and C.7.5 so that permanent employees on reserve duty at home before a call out are credited on a 1:3 basis instead of the current 1:4. Proposal ensures that casual cabin crew receive the minimum period of engagement.</p> <p><b>Proposed Wording:</b> A.9.5</p>

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## On-call and Recall - Discussion Question 11

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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
				impacts both their ability to engage in intensive caring responsibilities and social recreational activities. The only difference between reserve duty at home and reserve duty at the airport (which is paid hour for hour) is the commute to sign on and the requirement to be dressed in uniform. FAAA note crew with caring responsibilities must have care arrangements in place while on reserve duty, cannot commit to medical appointments, education, or leisure. Crew on home reserve are on a duty as defined in Clause 2. FAAA provide crew may be required to complete online training modules, cannot go anywhere that would prevent them from signing on in 90 minutes after being called in. Casual employees on reserve lose hour for hour pay if they were working somewhere else.	<p>(a) If an employee commences a planned stand-by period without having been assigned a duty and is subsequently called in, the hours elapsed between the commencement of the stand-by duty and the sign-on for the duty must be credited on a 1:3 basis. Such credited hours will count toward the roster period hourly total but will not be included in any duty period limitation for the purposes of Clause A.5.1.</p> <p>(b) for casual employees this provision operates subject to clause 11.2.</p> <p>Example of how the reserve period ratio in clause C.7.5 works: If an employee is rostered to commence reserve duty at home at 0900 hours, and they are called in to work to sign-on at 12.00 hours, with respect to the 3 hours elapsed on stand-by the employee will be credited with 60 minutes towards the roster period hourly total (and zero minutes for the purposes of duty period limitation calculations).</p>
FAAA	39.	152-153 p37	Clarify definition of "duty" - FAAA	FAAA states there is no current reference to reserve Duty in Schedule B and Schedule C replicates the provisions of Schedule A. FAAA states amendment proposed clarifies that Regional and International Cabin crew have their reserve at home duty also count towards their duty hours.	<p><b>Proposal Summary:</b> To vary the definition in clause 2 for "duty" at (e) and (j) to clarify that the circumstance of reserve duty at home applies to all three schedules.</p> <p><b>Proposed Wording:</b></p> <p>(e) time spent on reserve duty at home as specified in Schedules A, B and C</p> <p>(j) time spent as assignable in accordance with being on reserve as specified in Schedules A, B and C.</p>
FAAA	40.	150-151 p37	Limit total time between reserve sign on and allocated duty sign off - FAAA	FAAA submit an employee should not have hours on reserve duty be disregarded in respect to daily duty limits. For example, cabin crew could be 6 hours into a 12-hour reserve duty and then be called out to a duty for the maximum planned duty of 18 hours, which would mean they were awake for a minimum of 24 hours. FAAA state the response times for Cabin Crew in an emergency mean that they should not be fatigued if they are reporting for duty. Secure work should include work which is safe for the worker and ensures the safety of the public.	<p><b>Proposal Summary:</b> Vary clause A.9, Schedule B and C.7 so that maximum hours between reserve sign on and sign off for an allocated duty is 18 hours. 18-hour maximum ensures roster stability and predictability as crew. Proposal recognises an employee will be fatigued as if they had been working, being awake during the reserve duty.</p> <p><b>Proposed Wording:</b></p> <p>(xxx) the maximum number of hours between reserve duty sign on and sign off for an allocated tour of duty is 18 hours.</p>



## Travel time - Discussion Question 12

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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
ACTU	41.	120-126 p47-48	<b>Payment for all hours worked - ACTU</b>	<p>ACTU state payment for travel time while at work varies across awards and not all awards provide for paid travel time to different locations or work sites. Seven of the 25 awards examined do not contain provisions specifying that travel is paid at ordinary hours, most of these covering female dominated industries. ACTU provide if working in regional and remote areas, some distances travelled are greater such that fuel costs and wear and tear on employee vehicles is increased. There are also increased WHS and fatigue management issues and greater risks of accidents.</p> <p>ACTU submit low remuneration in the care economy 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. ACTU provide one study found that 15 per cent of total hours worked by community sector workers are unpaid.</p>	<p><b>Proposal Summary:</b> Vary awards to ensure they provide appropriate compensation for all hours worked relating to travel, training, administrative responsibilities and handover.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> <li>• AMWU (para 24)</li> </ul>
AHEIA	42.	p11	<b>No variations needed to higher education sector awards - AHEIA</b>	<p>AHEIA submit no variations are necessary to include a travel time provision in the higher education sector awards. Travelling between campuses is already compensated as paid work time.</p>	<p><b>Proposal Summary:</b> No variation proposed.</p>
Ai Group	43.	204-209 p71-72	<b>No new entitlements to payment for travel - Ai Group</b>	<p>Ai Group state many awards do not contain any travel time provisions and amongst those that do, there are significant variances between them and that the development of award terms concerning payment of travel is an inherently complex task. For example, it involves various difficulties associated with developing a method of calculating distance travelled and/or time spent travelling, as well as providing for various factors that can impact the time or distance such as the route taken and traffic.</p>	<p><b>Proposal Summary:</b> Any proposal to introduce new entitlements in respect of payment for travel would be strongly opposed. It is not appropriate for the issue of travel in the SCHADS Award to be dealt with in this Review due to it being dealt with in another proceeding.</p>

## Travel time - Discussion Question 12

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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
				Ai Group submit SCHADS does not entitle employees to payment for time spent travelling. This issue was the subject of major proceedings during the 4 yearly review of modern awards. Ai Group state a number of union claims were dismissed by the Commission, which highlighted the extent to which the availability and quantum of payments associated with travel are interrelated with other award entitlements such as broken shift allowances.	
ANMF	44.	92-94 p17-18	Travel allowance in Nurses Award not sufficient - ANMF	ANMF submit current allowance in the Nurses Award does not fairly compensate employees for their time. It does not consider the increasing cost of petrol, vehicle-related emergencies, or maintaining a safe vehicle.	<b>Proposal Summary:</b> All travel time connected work, for nurses, midwives, and carers working in the home and community care sector, should be paid and payment should commence from the time an employee must depart from the first job of their shift.
CFW	45.	22 p6	Paid travel time - CFW	CFW submit employees should be paid for time spent travelling between work locations. The absence of payment leads to exploitation of workers, for examples, care and support workers under SCHADS who bear the costs of travel.	<b>Proposal Summary:</b> No variation proposed.
CPSU-SPSF	46.	70-73 p10-11	Paid travel time - CPSU-SPSF	CPSU-SPSF submit the combination of broken shifts and the 2-hour minimum for shifts means that workers are spending more when traveling to and from work. This issue is significant in regional areas.	<b>Proposal Summary:</b> Vary SCHADS to ensure that travel time for work is paid in all circumstances. Two separate allowances should be included for: a) Any worker required to work less than 4 hours. b) Any worker required to work a broken shift.
FAAA	47.	153-155 p38	Time taken to sign-on - FAAA	FAAA submit requirement for an employee to be at sign-on within 90 minutes does not consider that employees live varying distances from their airport home base and does not consider the time periods for crew to get to sign-on airside (which is beyond security). The 120 minutes to sign on from call out is an occupational and industry standard. Pilots under the Pilots Award are provided with 120 minutes. QANTAS Short Haul, Virgin and Rex Cabin Crew EBAs provide for 120 minutes.	<b>Proposal Summary:</b> Vary clause A.9 and C.7 to change the 90 minutes from contact to sign-on to 120 minutes and to include a transport entitlement from A.1.6(c) and C.1.6 for call outs within 120 minutes of sign on time.  <b>Proposed Wording:</b> <i>C.7.3 If employees are on reserve duty (other than an airport stand-by) employees must be contactable and ready to perform duties within 120 minutes of contact. This time limit may be extended in particular circumstances and employees will be advised of any such</i>

## Travel time - Discussion Question 12

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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
					<i>extensions. Where an employee is provided with less than 120 minutes notice of the sign-on time of a duty, the employee on request will be provided with the cost of direct transport.</i>
HSU	48.	62-66 p14-15	<b>Paid travel time - HSU</b>	<p>HSU submit low remuneration across aged and disability sectors often compounded by workers not being paid for time spent travelling. Issue was considered in the 4 Yearly Review of SCHADS and Full Bench declined to include provision for paid travel time, preferring to make changes to minimum engagement and broken shifts provisions and allowing period of time after changes in which to assess whether issues persisted.</p> <p>HSU submit approximately 15% of total hours worked by community sector workers is unpaid and fact that travelling time is unpaid results in financial stress for employees.</p> <p><u>Example:</u> Phlebotomists might be allocated to a specific area within a 10-20km radius, in others they may be rostered anywhere in the metropolitan area. One member advised was on way to originally rostered work location around 4km from home. On the way, received a call advising was needed in location almost 50km away. Had to re-route and drive (in own vehicle and in own unpaid time) to a collection centre 46km away from original rostered place of work. Is a common experience.</p>	<b>Proposal Summary:</b> Given that almost 2 years have passed since the minimum engagement and broken shift changes to SCHADS, and having regard to Senate Report and new sub-s 134(1)(ab), the issue of unpaid travel time in both SCHADS and HPSS warrants reconsideration.
SDA	49.	236-238 p40-41	<b>Allowances for travel time between sites - SDA</b>	SDA submit employers are increasingly requesting employees in retail and fast food to work across multiple sites. Awards do not specify a payment for travel time and costs if travelling between sites.	<b>Proposal Summary:</b> Allowances relating to travel time and costs in Awards should extend to travel between work sites.



Overtime, TOIL, and make-up time (Q10)  
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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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
UWU	50.	32-42 p10-12	<b>Travel time - UWU</b>	UWU raises concerns regarding unpaid travel, administrative, and training time in sectors such as aged care, disability support, home care, and ECEC. These unpaid hours impact the time workers can dedicate to caring responsibilities and contribute to workforce shortages by making working conditions less favourable.	<p><b>Proposal Summary:</b> Mandate payment for all travel time incurred during duties. Ensure training, administrative tasks, and handover periods are compensated as paid work time.</p> <p><b>Award specific: SCHADS</b> SCHADS Award should be revised to ensure all work-related travel is paid based on actual time taken, addressing discrepancies between employer estimations and actual travel requirements. Address unpaid training and handover times across relevant sectors, ensuring these critical activities are included in paid working hours to support high-quality care provision and worker well-being.</p>
WFPR	51.	24-27 p9-10	<b>Paid travel time between clients or work sites - WFPR</b>	<p>WFPR submit awards are inconsistent with their application of paid travel time, meaning that some employees may be required to undertake periods of work without being paid. WFPR state there is a large regulatory gap in the awards system covering care workers because some of these awards do not require care workers to be paid their ordinary hours for travel between sites e.g. in the Aged Care Award, Local Government Award and the SCHADS Award.</p> <p>WFPR submit in context of disability support work, paid work periods are typically short with non-payment for travel further devolving risk to workers and compounding the undervaluation of care work. amendments to the SCHADS Award for a 2-hour minimum engagement have been ineffective in ensuring employees are paid for some of their travel time between clients.</p>	<p><b>Proposal Summary:</b> That modern awards be varied to require that the time taken to travel between clients or work sites in care work is recognised and paid as work time.</p>

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### Annual Leave at Half-Pay - Discussion Question 13

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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
ABI/ BNSW	52.	88-93 p19	<b>Open to annual leave at half pay - ABI/BNSW</b>	<p>ABI/BNSW submit any clause giving rise to annual leave at half pay would be significant as it would effectively double an employee's accrued NES entitlement to take time off work. Any ability to take annual leave at half pay must be by genuine employee and employer agreement.</p> <p>ABI/BNSW state care would need to be taken to separate the ability to agree or not agree to take annual leave at half pay and the existing NES entitlement to annual leave allowing employers to "reasonably refuse" a request to take annual leave. ABI/BNSW submit would not be appropriate to apply a "reasonableness standard" to the ability of an employer to refuse leave at half pay. Such a decision should be by genuine agreement between employer and employee.</p> <p>ABI/BNSW submit it is not apparent why a NES entitlement would need to be specifically varied for award-covered employees, entitlements directed at addressing "universal" employee needs are more appropriately addressed within the NES. Modern awards more readily lend themselves to addressing industry specific matters or matters that apply more specifically to award-covered workers. ABI/BNSW submit the creation of an enhanced set of NES standards solely for award-covered workers is not conducive to a simple and easy to understand award system, nor does it seem fair.</p>	<p><b>Proposal Summary:</b> No variations proposed. ABI/BNSW open to considering the introduction of annual leave at half pay.</p>
ACCI	53.	182-187 p34	<b>Open to annual leave at half pay - ACCI</b>	<p>ACCI submit any clause giving rise to the introduction of annual leave at half pay would be significant as it would effectively "double" an employee's accrued NES entitlement to take time off work. ACCI submit care would need to be taken to separate the ability to agree, or not agree, to take annual leave at half pay and the existing NES entitlement to annual leave which allows employers to reasonably refuse a request to take annual leave. ACCI state it would not be appropriate to apply a reasonableness standard to the ability of an employer to refuse leave at half pay.</p>	<p><b>Proposal Summary:</b> No variation proposed but is open to considering the introduction of annual leave at half pay. Any ability to take annual leave at half pay must be by genuine employee and employer agreement.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• NECA (p1)</li> <li>• Clubs Australia (p1)</li> </ul>

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### Annual Leave at Half-Pay - Discussion Question 13

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Party	REF	THEIR REF	Issue	Commentary	Proposal
				While ACCI is open to consideration on this point, it is not apparent why a NES entitlement would need to be specifically varied for award-covered employees. the creation of an “enhanced” set of NES standards solely for award-covered workers is not conducive to a simple and easy to understand award system, nor does it seem fair. The entitlements directed at addressing this and other “universal” employee needs are more appropriately addressed within the NES.	
ACTU	54.	127-131 p48-49	<b>Annual leave at half pay - ACTU</b>	<p>ACTU state annual leave is necessarily entwined with caring responsibilities, with employees taking annual leave to manage care arrangements, especially school aged children or younger. Annual leave is important for managing care during school holidays and public holidays as well as to support other forms of leave such as personal/carer’s leave when it is exhausted.</p> <p>ACTU state taking leave can negatively impact regular income when it is paid at base rates that may be less than what the employee would have earned had they worked the period of leave taken. Employees who work hours or rosters that attract penalty rates and allowances will experience a reduction in pay when taking leave. This can be a disincentive to taking leave and also devalues time taken away from work.</p> <p>ACTU submit Payment during paid leave should not fall below reasonable expectations of take-home pay over the same period.</p>	<p><b>Proposal Summary:</b> Awards should be varied so that when employees take annual leave they get their ordinary hourly rate (including any penalties) plus a 17.6 per cent annual leave loading. FWC should also consider variations responding to specific affiliate submissions including:</p> <ul style="list-style-type: none"> <li>Increasing annual leave to 5 weeks, 6 weeks for shift workers.</li> <li>Flexibility in how annual leave is taken e.g. flexibility to take annual leave at half pay at the request of the employee.</li> </ul> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>MEU (3, p2)</li> <li>CEPU (6, p3)</li> </ul>

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### Annual Leave at Half-Pay - Discussion Question 13

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Party	REF	THEIR REF	Issue	Commentary	Proposal
AHEIA	55.	p11-12	No variations needed for the higher education sector awards - AHEIA	AHEIA submit no variations to the higher education sector awards are necessary. Purchased leave schemes already prevalent in universities. General Staff Award contained an annual leave in advance provision at clause 24.5.	<b>Proposal Summary:</b> No variation proposed.
Ai Group	56.	210-219 p73-75	Taking annual leave at half pay - Ai Group	Ai Group state most modern awards provide for the NES entitlement to 4 weeks' annual leave, or 5 weeks for shiftworkers, for employees who are not casual employees. Ai Group state the Commission varied a number of awards on its own motion and on application of interested parties to provide flexibility on a temporary basis in response to the COVID-19 pandemic, the most significant example being the insertion of Schedule X into 99 modern awards. Relevantly, Schedule X provided for annual leave at half pay. Ai Group submit the annual leave provisions in the NES do not contemplate an employee taking a longer period of annual leave at a proportionately reduced rate of pay. Rather, the employer is required to pay an employee the applicable base rate of pay for their ordinary hours of work in the period of annual leave. Although unpaid leave may be available to employees in these circumstances, it would not provide continuity of earnings throughout the period of leave. There is also no entitlement to take unpaid leave.	<p><b>Proposal Summary:</b> Awards should be varied to permit an employer and an employer to agree to the employee taking up to twice as much annual leave at a proportionately reduced rate of pay. Proposed variation would benefit worker-carers in facilitating a longer period of approved absence in circumstances where the employee may have insufficient accrued annual leave.</p> <p>Ai Group state their proposal would enable employees to use annual leave to supplement other leave types, such as caring for a child or relative experiencing an extended illness. Proposal to provide an entitlement for an employee to take up to twice as much leave is intended to provide as much flexibility as possible.</p> <p>If position is adopted, Commission will also need to carefully consider and address any unintended, unjustifiable or otherwise problematic consequences such as employees being able to progressively accrue other types of leave on the basis of their normal ordinary hours during a period of annual leave at reduced pay. Ai Group submit such employees should instead be deemed to have proportionately reduced ordinary hours during the relevant period to ensure other types of leave accrue at a proportionate rate.</p>
ANMF	57.	103-105 p19-20	Annual leave at half pay for the Nurses Award - ANMF	ANMF submit annual leave at half pay allows employees an opportunity to provide care at times they otherwise are not able to which promotes their wellbeing.	<p><b>Proposal Summary:</b> Vary Nurses Award to include a provision for employees to take annual leave at half pay.</p> <p><b>Proposed Wording:</b> Should reflect model clause used in modern awards in relation to pandemic leave, as follows:  <b>X.2.2 Annual leave at half pay</b>  <i>(a) Instead of an employee taking paid annual leave at full pay, at the employee's request, the employee and their employer may agree to the employee taking twice as much leave on half pay.</i></p>

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### Annual Leave at Half-Pay - Discussion Question 13

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Party	REF	THEIR REF	Issue	Commentary	Proposal
					<i>(b) Any agreement to take twice as much annual leave at half pay must be recorded in writing and retained as an employee record.</i>
CFW	58.	24-25 p7	Annual leave at half pay and annualised purchased leave - CFW	CFW submit annual leave provisions should be more flexible and entitlements should be increased to enable employees to access leave to meet care and family responsibilities.	<b>Proposal Summary:</b> All awards should contain provisions for employees to take annual leave at half pay and provide for employees' rights to annualised purchased leave schemes.
MTO	59.	30-31 p8	Annual leave at half pay - MTO	MTO submit annual leave at half pay appears to be the most appropriate way to balance work and care, as opposed to extending unpaid carer's leave. A facilitative provision was included in Schedule I of the Vehicle Award during the COVID-19 pandemic. MTO states the continuing relevance of COVID-19 pandemic provisions in the context of the current review concerns the MTO.	<b>Proposal Summary:</b> No variation proposed.
CLC Group	60.	p7	Annual leave at half pay - CLC Group	CLC Group submit carers, especially those with children, face significant challenges during school holidays due to the lack of support and the high cost of care programs. The current options often lead to financial strain, as carers have to choose between expensive care or taking unpaid leave.	<b>Proposal Summary:</b> Vary awards to include the option for employees to take annual leave at half pay.
WFPR	61.	28-33 p10-12	Annual leave at half pay - WFPR	WFPR submit annual leave at half pay could provide flexibility to workers, which can be used to help balance work and family, such as helping cover school holiday periods.	<b>Proposal Summary:</b> Provide that annual leave can be taken at half pay if employees require this to assist them have the necessary flexibility to balance work and care.

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### Annual leave loading - Discussion Question 13

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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
ACTU	62.	127-131 p48-49	Annual leave loading - ACTU	<p>ACTU state annual leave is necessarily entwined with caring responsibilities, with employees taking annual leave to manage care arrangements, especially school aged children or younger. Annual leave is important for managing care during school holidays and public holidays as well as to support other forms of leave such as personal/carer's leave when it is exhausted.</p> <p>ACTU state taking leave can negatively impact regular income when it is paid at base rates that may be less than what the employee would have earned had they worked the period of leave taken. Employees who work hours or rosters that attract penalty rates and allowances will experience a reduction in pay when taking leave. This can be a disincentive to taking leave and also devalues time taken away from work.</p> <p>ACTU submit Payment during paid leave should not fall below reasonable expectations of take-home pay over the same period.</p>	<p><b>Proposal Summary:</b> Awards should be varied so that when employees take annual leave they get their ordinary hourly rate (including any penalties) plus a 17.6 per cent annual leave loading. FWC should also consider variations responding to specific affiliate submissions including:</p> <ul style="list-style-type: none"> <li>Increasing annual leave to 5 weeks, 6 weeks for shift workers.</li> <li>Flexibility in how annual leave is taken e.g. flexibility to take annual leave at half pay at the request of the employee.</li> </ul> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>MEU (3, p2)</li> <li>CEPU (6, p3)</li> </ul>
CPSU-SPSF	63.	76-77 p11	Annual leave loading - CPSU-SPSF	<p>CPSU-SPSF submit there is an inequity associated with the non-payment of the 17.5 per cent annual leave loading where an employee does not take annual leave in any year of employment.</p>	<p><b>Proposal Summary:</b> Vary SCHADS award.</p> <p><b>Proposed Wording:</b></p> <p><b>31.3 Annual leave loading</b></p> <p>(a) In addition to their ordinary pay, an employee, other than a shiftworker, will be paid an annual leave loading of 17.5% of their ordinary rate of pay.</p> <p>(b) Shiftworkers, in addition to their ordinary pay, will be paid the higher of:</p> <p>(i) an annual leave loading of 17.5% of their ordinary rate of pay; or</p> <p>(ii) the weekend and shift penalties the employee would have received had they not been on leave during the relevant period.</p> <p>(c) Annual leave loading shall be paid on the first occasion in a leave year, other than the first leave year of employment, when an employee takes at least two (2) consecutive weeks recreation leave. Where an employee does not have at least 2 weeks recreation leave available, the employee may use a combination of recreation leave and any of the following: public holidays, flex leave, extended leave, leave without pay, time off in lieu, rostered day</p>



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Party	REF	THEIR REF	Issue	Commentary	Proposal
					<p><i>off. The employee shall be paid the annual leave loading for such period, provided the absence is at least 2 weeks.</i></p> <p><i>(d) If at least two weeks leave, as set out in paragraph 78.6.1 of this subclause, is not taken in a leave year, then the payment of the annual leave loading entitlement for the previous leave year shall be made to the employee as at 30 November of the current year.</i></p>
SDA	64.	239-242 p41-42	<b>Annual leave payment provisions unfair to some workers - SDA</b>	SDA submit the accrual and ability to take annual leave is linked to how a worker carer manages their care arrangements. For workers who work hours or rosters that attract penalty rates or allowances, when they take leave, they suffer a reduction in pay. SDA submit the payment of either the 17.5 per cent loading or penalties, whichever is greater, is an unfair provision because workers who tend to work more standard hours receive an additional payment whereas workers who work non-standard unsociable hours typically receive their usual pay.	<b>Proposal Summary:</b> Awards should be varied so that when employees take annual leave, they get their ordinary hourly rates (including penalties) plus a 17.5 per cent annual leave loading.
UWU	65.	43-48 p12-13	<b>Annual leave loading for part-time employees - UWU</b>	UWU state in the cleaning award, annual leave loading is only payable for part-time employers in certain circumstances.	<b>Proposal Summary:</b> Proposal to address award-specific issues like the Cleaning Award's part-time loading conditions to ensure part-time employees are not financially penalised while on annual leave or taking personal/carer's leave.

### Quantum of annual leave - Discussion Question 13

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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
AMWU	66.	Rec 4 25-29	<b>5 weeks of annual leave for all employees - AMWU</b>	AMWU state annual leave has not increased since 1973 with only certain shift workers entitled to 5 weeks per year. The 2023 AMWU Member Survey revealed that 94.27% of survey participants support an increase to annual leave. International comparison shows that Australia's 4 weeks of annual leave are relatively low, Austria, Denmark, France, Luxembourg and Sweden have 25 days.	<b>Proposal Summary:</b> 5 weeks annual leave for all employees, including casual employees (who have worked at least 3 months).

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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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
ANMF	67.	95-100 p18-19	<b>Restriction of additional week of annual leave for shiftworkers - ANMF</b>	ANMF submit in Nurses Award access to the additional week's annual leave under the current wording of clauses 4 and 13.1 are applied by employers in a manner that restricts access to the additional week. There is a discrepancy between the definitions of shiftworker provided in clause 4 and in clause 22.2(b).	<p><b>Proposal Summary:</b> Definition of shiftworker for the purposes of the additional week of annual leave should be consistent with the definition provided in the definitions section of the Nurses Award.</p> <p><b>Proposed Wording:</b> Clause 22.2(b) should be varied as follows: <i>A shiftworker, for the purposes of the additional week's annual leave provided by the NES, is defined at clause 4.</i></p>
CPSU-SPSF	68.	74-75 p11	<b>Additional week of annual leave - CPSU-SPSF</b>	CPSU-SPSF submit other industries have additional leave, with up to 6 weeks for shift work and an extra week's annual leave if a worker works in a remote area.	<p><b>Proposal Summary:</b> Review options to increase annual leave for shift workers to 6 weeks and look at replicating remote area increased annual leave in compensation, in SCHADS.</p>
FAAA	69.	156-159 p38-39	<b>Increase of annual leave - FAAA</b>	FAAA submit Cabin Crew are required to be available for work on public holidays and through the holidays such as Easter and Christmas and as such it is reasonable for an additional two weeks annual leave to be provided in lieu of public holidays.	<p><b>Proposal Summary:</b> The amount of annual leave which is provided to Cabin Crew who regularly fly on Sundays and Public Holidays should be increased to align with the annual leave and public holidays provided to shift workers.</p> <p><b>Proposed Wording:</b> <i>19.2 Entitlement to annual leave</i> <i>(a) An employee is entitled to annual leave such that the employee's total entitlement to annual leave pursuant to the NES and this award for each year of employment is a total of 42 days' annual leave, inclusive of Saturdays, Sundays and public holidays on full salary for each completed year of service.</i> <i>(b) An employee who has worked 32 Sundays in the previous 12 months will receive an additional week of annual leave.</i></p>
HSU	70.	67 p15	<b>Baseline additional week of annual leave - HSU</b>	HSU submit employees covered by HPSS should be entitled to a standard five weeks' annual leave regardless of their shiftworker status. Is an entitlement already extended to nurses under the Nurses Award	<p><b>Proposal Summary:</b> Employees covered by HPSS should be entitled to a standard five weeks' annual leave regardless of their shiftworker status.</p>



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### Quantum of annual leave - Discussion Question 13

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Party	REF	THEIR REF	Issue	Commentary	Proposal
				<p>2020 (at cl 22.2(c)). Additional week of leave is justified as a matter of fairness.</p> <p>HSU submit is also necessary to counteract high levels of burnout in health sector and to provide fatigue management particularly given high level of on-call, recall and overtime worked by health workers, unsociable working hours, and roster rotations that require constant body clock adjustments which takes a toll both physically and psychologically on workers. Extension of 5 weeks' annual leave across health industry is becoming standard practice in enterprise agreements and HPSS should keep pace with industry standards to remain a relevant and fair safety net.</p>	<p><b>Proposed Wording:</b> Insert new clause 27.2A in HPSS to provide that employees who are not shiftworkers for the purpose of clause 27.2 are entitled to 5 weeks of paid annual leave for each year of service with their employer, and an employee who is a shiftworker for the purposes of clause 27.2 is entitled to 6 weeks of paid annual leave for each year of service with their employer.</p>
HSU	71.	68-73 p15-16	<b>Additional week of leave for shiftworkers - HSU</b>	<p>HSU state shiftworker entitlement to extra week of annual leave for purposes of the NES varies significantly Award to Award. HSU submit the addition of an extra week of annual leave for shiftworkers is specifically for purpose of compensating employees for disruption to personal and family life and therefore access to the additional week should not be predicated upon narrow conceptions of what a shiftworker is.</p> <p>HSU propose the definition of shiftworker for the purposes of NES under HPSS should be broadened to include at least regular work on Saturdays, and ideally also evening work.</p>	<p><b>Proposal Summary:</b> Consideration should be given to varying the definition of shiftworker for the purposes of the NES in SCHADS to include work regularly performed in the evenings, and in HPSS to include regular work on Saturdays and evenings.</p>
SDA	72.	245-250 p42-43	<b>Increase annual leave entitlement from 4 weeks to 5 weeks per year - SDA</b>	<p>SDA submit 4 weeks of annual leave is not a lot of time when considering the amount of time a worker carer needs to provide care. SDA state is common for OECD countries to provide 20 days of annual leave, but some countries provide more such as the UK, and Luxembourg. Also, many European countries have a statutory minimum of 25 days such as Austria, Denmark, Finland, Switzerland, France and Sweden.</p>	<p><b>Proposal Summary:</b> The minimum entitlement under Awards for Annual Leave should be increased to 5 weeks (and 6 weeks for shift workers).</p>

## Ceremonial leave - Discussion Question 18

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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
ACTU	73.	149-156 p54-55	<b>Ceremonial leave in all awards - ACTU</b>	<p>ACTU submit for many First Nations Australians, caring for community members can fall within cultural expectations and traditional kinship responsibilities. First Nations people, especially women and girls, are therefore more likely to be unpaid carers than non-Indigenous Australians. Majority of modern awards do not provide ceremonial leave for First Nations employees, with 4 of the 25 modern awards examined providing for cultural leave provisions e.g. the Nurses Award and SCHADS Award provide for up to 10 days unpaid leave where “legitimately required by indigenous tradition”, subject to employer approval.</p> <p>ACTU submit the lack of ceremonial and cultural leave entitlements across modern awards represents a large gap in the safety net for First Nations employees’ responsibilities outside of work. existing ceremonial leave provisions in awards are insufficient in a few key ways:</p> <ul style="list-style-type: none"> <li>• Only unpaid leave is provided.</li> <li>• Phrase ‘legitimately required by indigenous tradition’ is an unnecessary, burdensome and overcomplicated threshold and additional to the threshold of ‘for ceremonial purposes’.</li> <li>• It is subject to employer approval.</li> <li>• Employer’s discretion is not limited or qualified.</li> </ul> <p>Aboriginal and Torres Strait Islander employees’ caring and cultural obligations extend beyond a need for ceremonial leave and ACTU submit there is a need for award clauses to recognise this, including recognising foster and kinship care leave and expanding definitions of family and household.</p>	<p><b>Proposal Summary:</b> Awards should be varied to insert new ceremonial leave provisions into all awards. Proposed wording for such a clause is being developed in consultation with ACTU’s Aboriginal and Torres Strait Islander Committee and will be provided in reply submissions.</p> <p>Other variations include:</p> <ul style="list-style-type: none"> <li>• Foster and kinship care should be recognised for the purposes of accessing personal and carer’s leave.</li> <li>• FWC should consider the need for clauses that recognise the additional work and care requirements of First Nations employees, such as cultural load and cultural responsibility clauses that provide for an allowance or payment, and clause that provide for language allowances.</li> </ul> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• AMWU (para 38)</li> <li>• CEPU (6, p3)</li> <li>• CPSU-SPSF (79, p12)</li> <li>• MEU (3, p2)</li> <li>• SDA (299, p56)</li> </ul> <p><b>ACTU Reply Submission</b> Wording for a clause has been developed in consultation with the ACTU’s Aboriginal and Torres Strait Islander Committee to read as follows:</p> <p><b>X. Ceremonial leave</b></p> <ol style="list-style-type: none"> <li><b>An Aboriginal or Torres Strait Islander employee will be granted up to 5 working days paid leave and up to 10 working days unpaid leave per year for ceremonial purposes:</b> <ol style="list-style-type: none"> <li>connected with the death of a member of the immediate family or extended family; or</li> <li>for other ceremonial obligations; or</li> <li>to participate in significant activities associated with their culture.</li> </ol> </li> <li>For the purposes of cl X(a)(i), in recognition that extended families exist within Aboriginal and/or Torres Strait Islander society and obligations of Aboriginal</li> </ol>

Overtime, TOIL, and make-up time (Q10)  
On-call and recall to duty (Q11)  
Travel time (Q12)  
Annual leave (Q13)  
Ceremonial leave (Q18)  
Other proposed leave (Q19)

### Ceremonial leave - Discussion Question 18

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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
					<p>and/or Torres Strait Islander employees may exist regardless of the existence of a bloodline relationship or not, “<b>extended family</b>” means any close association between the employee and deceased.</p> <p>c. Paid ceremonial leave will not accrue from year to year and is not paid out on termination of employment.</p> <p>d. Ceremonial leave can be taken in part days and is in addition to compassionate and bereavement leave.</p>
AHEIA	74.	p14	<b>Provide access to ceremonial leave - AHEIA</b>	AHEIA submit most awards are silent on ceremonial leave. Though, they are common features in higher education enterprise agreements.	<b>Proposal Summary:</b> Supports a variation to provide access to employees for ceremonial and/or cultural leave, on a similar basis to that of compassionate leave.
ANMF	75.	123-126 p22-23	<b>Broader entitlement for ceremonial leave in all awards - ANMF</b>	<p>ANMF submit their proposal will complement changes to the definition of immediate family and will provide appropriate recognition for first nation employees.</p> <p>ANMF submit use of the word “legitimately” in ceremonial leave clauses implies there are illegitimate forms of ceremonial leave and that the employer has the knowledge to determine this. This is out of step with ensuring workplaces are free from racial discrimination.</p>	<b>Proposal Summary:</b> All awards should be amended to include a broader entitlement such a “ceremonial, kinship and cultural care leave” and the word “legitimately” should be removed from ceremonial leave clauses.
ASU	76.	47 p13-14	<b>Ceremonial leave provisions should be sufficient for all employees - ASU</b>	ASU submit current compassionate leave arrangements do not provide enough time for ASU members to grieve or fulfill cultural obligations related to death. These obligations may include travel to remote and regional parts of Australia or overseas.	<b>Proposal Summary:</b> Ceremonial leave arrangements should be reviewed to ensure they are sufficient for all employees.
CFW	77.	35 p8-9	<b>Include ceremonial or cultural leave provisions in all awards - CFW</b>	CFW submit cultural or ceremonial leave has been shown to assist Aboriginal and Torres Strait Islander employees remain in employment while meeting family, community, and cultural obligations.	<b>Proposal Summary:</b> All awards should include provisions for ceremonial or cultural leave.

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### Ceremonial leave - Discussion Question 18

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?

Party	REF	THEIR REF	Issue	Commentary	Proposal
FAAA	78.	171 p41	Support for ACTU - FAAA	The FAAA supports the ACTU submissions in the work and care stream on ceremonial leave provisions.	
NTEU	79.	31-34 p7-8	Ceremonial leave in higher education sector awards - NTEU	NTEU submit all university enterprise agreements contain provisions for paid cultural leave. The proposals ensure that a fair and relevant minimum safety net is maintained.	<p><b>Proposal Summary:</b> Vary higher education sector awards so that Aboriginal and Torres Strait Islander communities be entitled to paid leave of at least 5 working day and leave without pay of at least 10 days per calendar year for the purpose of fulfilling ceremonial obligations.</p> <p>Awards should provide that Ceremonial obligations may be traditional or urban in nature and may include initiation, birthing and naming, funerals, smoking or cleansing and sacred site or land ceremonies.</p> <p>Provisions should ensure that employers must approve at least 5 paid working days per year for Aboriginal and Torres Strait Islander employees to prepare for or attend community events, such as NAIDOC Week and other cultural events. If granted unpaid leave, an employee may opt to use their annual leave instead.</p>
UWU	80.	43-48 p12-13	Ceremonial leave - UWU	UWU propose to extend ceremonial leave with pay for First Nations workers in all modern awards to honour cultural responsibilities.	<b>Proposal Summary:</b> Paid ceremonial leave in all awards.
WFPR	81.	36-37 p13	Include ceremonial or cultural leave in all modern awards - WFPR	WFPR submit cultural or ceremonial leave is an important provision that has been shown to assist Aboriginal and Torres Strait Islander employees remain in employment while meeting their family, community and cultural obligations.	<b>Proposal Summary:</b> All awards be varied to include provisions for ceremonial or cultural leave.

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Other proposed leave					
Party	REF	THEIR REF	Issue	Commentary	Proposal
ACTU	82.	157-158 p56-57	<b>Paid leave for community service and disaster management - ACTU</b>	No additional commentary provided.	<p><b>Proposal Summary:</b> Vary awards to provide for paid community service leave and paid disaster management leave for employees who are volunteers with emergency management organisations, to acknowledge the significant work done in caring for people in the community.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> </ul>
ACTU	83.	157-158 p56-57	<b>Paid leave to attend appointments - ACTU</b>	No additional commentary provided.	<p><b>Proposal Summary:</b> Vary awards to provide entitlements to paid leave to attend appointments associated with pregnancy, adoption, surrogacy and permanent care orders (including attending pre-natal appointments with a partner who is pregnant).</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> </ul>
ACTU	84.	157-158 p56-57	<b>Grandparental leave - ACTU</b>	No additional commentary provided.	<p><b>Proposal Summary:</b> Vary awards to provide for grandparental leave, which would provide an eligible employee access to 52 weeks unpaid leave for each grandchild during the period up until the child's 5th birthday, with 12 weeks paid.</p> <p><b>Proposal endorsed/supported by:</b></p> <ul style="list-style-type: none"> <li>• MEU (3, p2)</li> <li>• CEPU (6, p3)</li> </ul>
SDA	85.	305-307 p57	<b>Grandparental Leave provision - SDA</b>	<p>SDA members rely heavily on grandparents to provide care. Grandparents are the most common source of non-parental care. SDA submit there needs to be more support available to grandparents to enable them to work and provide care to grandchildren.</p> <p>SDA submit it is mostly grandmothers that provide this care and consideration must be given to the fact that women retire on almost half the retirement savings of men.</p>	<p><b>Proposal Summary:</b> Introduce Grandparental Leave which would provide for an eligible employee to access 52 weeks of unpaid leave for each grandchild during the period up until the child's 5<sup>th</sup> birthday, with 12 weeks paid.</p>

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Other proposed leave					
Party	REF	THEIR REF	Issue	Commentary	Proposal
CPSU-SPSF	86.	83 p13 Ann. F	Gender affirmation leave - CPSU-SPSF	No additional commentary provided.	<p><b>Proposal Summary:</b> Vary SCHADS to introduce gender affirmation leave in line with the draft clause below.</p> <p><b>Proposed Wording:</b>  <b>CPSU NSW - SCHADS – Gender Affirmation – Draft clause</b>  <b>1. Gender Affirmation Clause number.</b>  1.1. Modern Australian workplaces should be committed to providing a supportive and inclusive environment for transgender and gender diverse employees and recognises the importance of providing support for employees who choose to undergo gender affirmation or transition.  1.2. Employers must recognise that there is no legal requirement for an employee to inform management or anyone else in the workplace of their intention to affirm their gender. Therefore, for the purposes of accessing a Gender Affirmation leave entitlement, the employee may be required to provide such evidence as would satisfy a reasonable person that the leave is being used for the purpose intended by this clause.  <b>2. Gender Affirmation leave can be accessed for purposes related to the affirmation of a staff member’s gender or gender transition which may include (but is not limited to):</b>  2.1. social affirmation (including changing the employee’s name and pronouns, and adopting the dress and style of presentation the employee deems appropriate);  2.2. medical affirmation (including surgery and/or hormone therapy, attendance at medical and/or counselling appointments, and rest and recovery from medical procedures); and  2.3. legal affirmation (including legally changing the Employee’s name and/or gender marker on personal identification documents such as the Employee’s passport, birth certificate, driver licence, and banking documentation).  <b>3. A staff member who is undergoing gender affirming care and/or processes is entitled to the following paid leave entitlements:</b>  3.1. 60 days paid gender affirmation leave is available after 12 months of continuous employment for any purpose related to gender affirmation. To access this 60 day paid leave entitlement,</p>



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Other proposed leave					
Party	REF	THEIR REF	Issue	Commentary	Proposal
					<p>the staff member will be required to provide such evidence as would satisfy a reasonable person that the leave is being used for the purpose intended by this clause. Such evidence may be a medical certificate from a treating practitioner or a letter from a legal practitioner.</p> <p>3.2. 30 days paid gender affirmation leave is available after 12 months of continuous employment for the purpose of undergoing a surgical procedure relating to gender affirmation. To access this 30 day paid leave entitlement the staff member will be required to provide evidence that would satisfy a reasonable person that a surgical procedure is being undertaken as part of gender affirming care. This evidence does not need to identify the actual nature of the surgery itself.</p> <p>3.3. Paid leave entitlements as outlined in 4.1 and 4.2 can be accessed in any order.</p> <p>3.4. Periods of paid gender affirmation leave will count as service for all purposes.</p> <p>3.5. An Employee may take gender affirmation leave in one block or in lesser periods as required.</p> <p>4. An Employee must give notice to their employer of an intention to take gender affirmation leave as soon as practicable. Such notice must:</p> <p>4.1. advise the Employer of the period of leave proposed to be taken; and</p> <p>4.2. be accompanied by evidence that would satisfy a reasonable person that the leave is being taken for gender affirmation purposes.</p> <p>4.3. Such evidence may include a medical certificate or letter from the Employee's Registered Health Practitioner or statutory declaration by the Employee</p> <p>5. Any application for leave without pay or sick leave without pay pursuant to subclauses [TBC] or [TBC] must also be accompanied by the evidence referred to in subclause 4.3.</p> <p>6. For the avoidance of doubt, Gender Affirmation Leave is provided in addition to any other leave that may be available to the staff member, including Personal Leave.</p> <p>7. Gender Affirmation Leave does not accrue, and unused leave is not paid out on termination. The leave described above is available to the employee to utilise as needed while they remain an employee.</p> <p>8. A staff member is entitled to take up to 12 months of unpaid leave after 12 months service with their Employer. The Employee should give at least 8 weeks' notice to their Employer of their</p>

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					<p>intention to take extended unpaid leave and make this application consistent with the requirements in clause [TBC].</p> <p>9. If the staff member has less than 12 months of service with their Employer, they may still make an application for unpaid leave where required.</p> <p>10. The leave will only be available to permanent full time or part time staff Employees.</p> <p><b>Other related matters</b></p> <p>11. In addition to the above, Employers will support Employees who are affirming their gender by:</p> <p>11.1. Updating their employee records promptly, including email, website, staff directories and images, to reflect their name, title, gender and any other details requiring updating as requested by the employee;</p> <p>11.2. Providing a new ID card, where requested;</p> <p>11.3. Notifying the employee's manager, colleagues and students, where and in the manner requested by the employee;</p> <p>11.4. Providing trans and gender diverse awareness training for managers, supervisors and colleagues if requested by the employee;</p> <p>11.5. Respecting the right of the employee's privacy by not disclosing any information about the employee's trans or gender diverse status without their consent;</p> <p>11.6. Ensuring safe access to bathrooms and facilities that accord with the employee's gender;</p> <p>11.7. Employers will protect the privacy and maintain confidentiality of information given by an Employee under this clause. Employers will ensure that, unless authorised by the employee, personal information, including gender information will be kept strictly confidential;</p> <p>11.8. In line with Human Rights and Anti-Discrimination legislation, Employers must be committed to inclusive workplaces that will not tolerate any discrimination, bullying, harassment or disfavour based on gender identity.</p>



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Other proposed leave					
Party	REF	THEIR REF	Issue	Commentary	Proposal
CPSU-SPSF	87.	83 p13 Ann E	Menstruation and menopause leave - CPSU-SPSF	No additional commentary provided.	<p><b>Proposal Summary:</b> Vary SCHADS to introduce menstruation and menopause leave in line with the draft clause below.</p> <p><b>Proposed Wording:</b>  <b>CPSU NSW - SCHADS - Menstruation and Menopause Leave and Support – Draft clause 1) Menstruation and Menopause Leave and Support</b>  <i>a) In recognising the experiences of menstruation and menopause can be debilitating and that stigma and taboo may surround these experiences modern workplaces should provide a commitment to support staff who have negative health experiences during menstruation and menopause and to facilitate reasonable self-care on these occasions.</i>  <i>b) Employers must approve any reasonable request from an employee who is experiencing problems during menstruation or menopause including:</i>  <i>i) The opportunity to work under temporarily changed circumstances that encourage the comfort of the employee (for example, resting in a quiet area or a temporary arrangement to work from home); or</i>  <i>ii) Any other appropriate measure including those available under existing provisions for flexible work arrangements.</i>  <i>c) If an employee is unable to work if experiencing symptoms of menopause or menstruation, and where the options available under clause 1(b) above are not viable, employees (including part time and casual employees) shall be entitled to paid Menstruation and Menopause Leave up to a maximum of 36 days per year.</i>  <i>d) A medical certificate or any other evidence will not be required for an employee to access paid Menstruation and Menopause Leave.</i>  <i>e) Menstruation and Menopause Leave will be:</i>  <i>i) available in full on the anniversary of an employee's employment.</i>  <i>ii) accrued from year to year should any remaining leave be untaken.</i>  <i>iii) paid on a pro rata basis depending on the employee's ordinary hours of work at the time of applying for leave.</i>  <i>iv) forfeited by the employee on termination of their employment.</i></p>

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Other proposed leave					
Party	REF	THEIR REF	Issue	Commentary	Proposal
NTEU	88.	38 p8	Increase family and domestic violence leave - NTEU	No additional commentary provided.	<b>Proposal Summary:</b> Vary higher education sector awards by providing a minimum entitlement of at least 20 days of paid family and domestic violence leave per year.
NTEU	89.	39 p8	Gender affirmation leave - NTEU	No additional commentary provided.	<b>Proposal Summary:</b> Vary higher education sector awards by providing a minimum entitlement of at least 20 days of paid gender affirmation leave per year.
NTEU	90.	40 p8	Menopause and menstrual leave - NTEU	No additional commentary provided.	<b>Proposal Summary:</b> Vary higher education sector awards by providing a minimum entitlement of at least 20 days of paid menopause and menstrual leave per year, in addition to existing personal leave entitlements.